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Gorbachev and Glasnost: Soviet Foreign Policy for the Future

I. INTRODUCTION TO GORBACHEV'S GLASNOST

In February of 1987 several prominent figures in United States foreign policy met in Moscow with Soviet leader Mikhail Gorbachev¹ to discuss his glasnost policy.² Translated literally, glasnost means openness,³ but it also has been used to describe Gorbachev's entire reform program.⁴ Additionally, the reorganization within the basic structure of the Soviet government and the economy has been labeled perestroika.⁵ The emergence of this new thinking raises questions about the effect glasnost will have in certain areas of great concern to the western world, namely, existing Soviet trade regulations and the present levels of Soviet involvement in international trade.

This Comment will address the substance of glasnost and how it will affect Soviet international policies and the possible United States responses to the glasnost initiative, particularly in the area of foreign trade. In order to accomplish this, Soviet and United States foreign trade regulations will be discussed, specifically the Soviet Enterprise law, and the Soviet Foreign Trade Organizations and the United States Export Administration Amendments Act of 1985. The discussion will lead to the conclusion that in order for glasnost to be successful in the field of foreign trade, both the Soviet Union and the United States must seriously consider altering their existing trade regulations.

II. THE IMMEDIATE IMPACT OF GLASNOST

Initially an exploration of why Gorbachev began this new policy

1. In March of 1985, Mikhail Gorbachev was appointed General Secretary of the Soviet Union after the death of General Secretary Chernenko. Gorbachev is a graduate of Moscow University and is a lawyer by profession. Hough, *Gorbachev's Strategy*, 64 FOREIGN AFF. 33, 34 (1985).

2. Whitaker, *Countering Gorbachev*, NEWSWEEK, Feb. 23, 1987, at 32. Among those who attended the meeting were Jeane Kirkpatrick, former United States ambassador to the United Nations and Henry Kissinger, former United States Secretary of State. *Id.*

3. *Glasnost and Us*, 244 THE NATION 785, 786 (1987). "Glasnost: Openness, specifically the government's use of public forums to disclose its activities"

4. *Id.*

5. "Restructuring . . . reorganization within the basic structures of government and the economy." *Id.*

of economic and political openness and how he has begun to implement this plan through the rethinking of Soviet trade and economic policies is helpful. One major factor is Gorbachev's apparent dissatisfaction with the state of the Soviet economy.⁶ Gorbachev has already taken large steps towards improving the economy of the Soviet Union.⁷ Gorbachev has publicly stated that a vital element of his plan is reorganization. This implementation has begun within the Soviet political structure.⁸ The aim of the reorganization "is to shift the Soviet Union from 'an overly centralized command system of management to a democratic system based mainly on economic methods.'"⁹

When the Soviet Union's Parliament assembled on June 29, 1987, the major issue to be discussed was the "Law on the Socialist Enterprise."¹⁰ This new law took effect in January of 1988 and will apply to all Soviet factories by 1991.¹¹ The aim of this law is "to make companies responsible for their own profits and losses, and to free them from day-to-day supervision by ministries and central planners."¹² This new law calls for production factories to achieve financial independence. Managers of these facilities will be faced with the responsibility of making their own day to day decisions. In addition to this change, the earnings of the workers will be a direct reflection of their performance on the job.¹³

Under the new law, production facilities will be able to purchase

6. Whitehead, *U.S.-Soviet Relations*, 87 DEP'T ST. BULL. 43, 44 (1987). Whitehead is the Deputy Secretary of State. See also Goldman, *Gorbachev and Economic Reform*, 64 FOREIGN AFF. 56 (1985) (Gorbachev is a "man in a hurry who realizes he has to deal with some significant dilemmas, particularly in the economic sphere").

7. For example, ministries have been reorganized, state committees or super-ministries created to deal with broad sectors of the economy, and new laws on domestic private enterprise have been enacted. Whitehead, *supra* note 6, at 44.

8. Kirkpatrick, *Gorbachev's Campaign is for Real*, L.A. Times, Feb. 16, 1987, § II, at 5, col. 3. Kirkpatrick quotes from a copy of a speech that Gorbachev delivered on January 27, 1987 to the Plenum of the Communist Party's Central Committee. In the speech, Gorbachev stated, "we have begun reorganization and must not look back." *Id.* In addition, Kirkpatrick states that one of the themes of Gorbachev's speech was the "criticism of ineffective management" in the Soviet Union. *Id.*

9. Galuska, *Reforming The Soviet Economy*, BUSINESSWEEK, Dec. 7, 1987, at 76. (This issue of Businessweek ran a cover story on the changing Soviet economy and how the December summit with President Ronald Reagan would test Gorbachev's reorganization plans.)

10. *The Ayes Have It*, THE ECONOMIST, July 4, 1987, at 46.

11. *Id.*

12. *Id.*

13. *Supra* note 9. One such factory that will be operating under the new Enterprise Law is the A.A. Zhdanov Vladimir Tractor Works. "For the first time, Zhdanov will have to cover all its costs and earn enough to finance investments, after turning over half its profits to the Soviet Tractor Agricultural Machine Ministry." *Id.* at 79. These factories will not be ex-

their required supplies directly from the manufacturer as opposed to taking all their purchase requirements to Gosplan, the single government entity that coordinates such efforts.¹⁴ In addition to this, "industrial managers will have increasing control over the use of profits for reinvestment or as workers' bonuses [a]nd for the first time, they will risk going bankrupt."¹⁵ However, there is much debate as to whether these proposed changes will amount to any large scale reforms.¹⁶

Although this new Law on the Socialist Enterprise is well intended,¹⁷ two elements of vital importance required to make it successful are not included in the plan.¹⁸ First, there is no "price mechanism"¹⁹ that will adequately allow Gorbachev and his economic planners to properly determine the future domestic and international demand for Soviet manufactured goods.²⁰ Second, the State will still supply and control all necessary raw materials.²¹ The final word as to whether this enterprise law will have any substantial effect on either the domestic or international market is still to come.

In addition to these domestic changes, Gorbachev has begun to direct his attention to the international trade community. He has already "given [seventy] large factories the right to trade abroad directly"²² and "he is keenly wooing western companies to set up joint ventures in [the Soviet Union]"²³ Previous Soviet regulations made it difficult for U.S. firms to set up facilities in the Soviet Union. In May of 1977, the Soviet Union developed a procedure by which a company could begin activity in their country.²⁴ Each business had to obtain a special permit from one of several Soviet ministries or State committees.²⁵ The U.S. companies can only obtain these permits if

pected to pull their own weight from the outset. The Soviet state will continue to buy about seventy percent of the factory output for the next three years. *Id.*

14. *Id.* at 78.

15. *Id.*

16. *Not the Russian Revolution*, THE ECONOMIST, Feb. 14, 1987, at 36. "Soviet industry is in a mess . . . The new law is unlikely to sort it out." *Id.*

17. *Id.*

18. *Id.*

19. *Id.* A price mechanism is an economic indicator that accurately reflects the proper demand for goods in the market.

20. *Id.*

21. *Id.*

22. *Russia's Long Shot*, THE ECONOMIST, August 29, 1987, at 11.

23. *Id.* See also Wall St. J., Aug. 29, 1987. (Soviet Union's nine page special advertising section).

24. W. BUTLER, SOVIET LAW 340 (1983).

25. *Id.*

they meet one of several requirements:

- (1) the foreign firm had to be well-known on the world market and have concluded large-scale commercial transactions or have a large goods turnover with the respective Soviet organization or, (2) carry out industrial co-operation with Soviet enterprises and organizations or, (3) have concluded very important scientific-technical co-operation agreements with the respective Soviet organizations or, (4) seek a permit pursuant to an intergovernmental agreement with the Soviet Union.²⁶

If a permit is obtained, it is valid for two years, and then subject to renewal. When operations begin in the Soviet Union, all necessary equipment and personnel is supplied by the appropriate local agency.²⁷ Despite these restrictions, there has been some indication that a number of United States companies are discussing the possibility of setting up joint ventures.

In order to develop these possible ventures, especially with businesses in the United States, Gorbachev invited top United States businessmen to meet with him at the Soviet embassy during the 1987 Washington Summit with President Reagan.²⁸ One United States company agreed to enter into a joint venture with a Soviet company. In November of 1987, Combustion Engineering Inc. (CE) set up a joint venture called Applied Engineered Systems with the Soviet Ministry of Oil Refining and Petrochemical.²⁹ Charles Hugel, president of CE, stated "[s]trategically, [the Soviet Union] is by far the single largest untapped market."³⁰ CE's partner in this venture, the Soviet Ministry of Oil and Petrochemical, is the largest oil company in the world. It is larger than Exxon Corp. and the Royal Dutch/Shell Group combined.³¹ Applied Engineered Systems, the result of the joint venture of which CE owns forty-nine percent, "will manufacture oil and petrochemical controls in the Soviet Union and will help man-

26. *Id.* at 340-41.

27. *Id.*

28. See *supra* note 9, at 77. See also, Flanigan, *Gorbachev Has Shopping List for Capitalists*, L.A. Times, Dec. 6, 1987, § IV, at 1, col. 1. Some of the executives invited to attend this meeting were: Dwayne Andreas of Archer Daniels Midland, a soybean processor; Richard Mahoney of Monsanto in chemicals; Wayne Calloway of Pepsico; John Murphy of Dresser Industries; Fred O'Green of Litton Industries, the chairman of Seagram's; the president of Coca-Cola; and Armand Hammer of Occidental Petroleum. In addition to these participants, Charles Hugel, chairman of Combustion Engineering, who recently entered into a joint venture with a Soviet entity, was in attendance. *Id.*

29. *The Twain Are Meeting-And Cutting Deals*, BUS. WK., Dec. 7, 1987, at 88.

30. See *supra* note 9, at 84.

31. See *supra* note 29, at 88.

age the modernization of oil refineries and plants [within the Soviet Union].”³²

The Soviet Government has set up standards by which joint ventures will be measured. These standards govern every aspect of these ventures from ownership to dispute settlements.³³ A foreign partner is entitled to own forty-nine percent of the authorized capital of the joint venture.³⁴ The partner can contribute equipment, technology, buildings and money.³⁵ The management of the venture is comprised of two branches each having representatives from both partners; the supervising board,³⁶ which makes the strategic decisions, and the executive branch,³⁷ which performs the day-to-day management of the venture. Each of these branches has representatives from both partners.³⁸ In the area of foreign trade, the joint venture has the ability to trade under a general license from the Ministry of Foreign Trade.³⁹

These joint ventures present an interesting question. How are disputes to be resolved? The Soviet Foreign Trade Advertising Agency Vneshtorgreklama (SOVERO) states that “[i]t has been decided from the onset that the foreign partners [United States businesses] should be guaranteed due process of law. Disputes may be settled either in the court or through arbitration—in the Soviet Union or in Third World countries. The choice is up to the partners.”⁴⁰ Therefore, if an American company wishes to tap the Soviet market through a joint venture with a Soviet entity, it will be forced to abide by this decision when a dispute arises. They will not have the benefit of the Western courts.

Regardless of these regulations and the uncertainty of any joint venture, several United States firms have seriously pursued the possibility of following CE and entering into joint ventures. For example, Pepsico is negotiating to open two Pizza Huts in Moscow, and more if successful.⁴¹ Occidental Petroleum plans to build a petrochemical

32. *Id.*

33. *New Thinking for Foreign Trade*, BUS. WK., Dec. 14, 1987, at 137-42. (Special advertising section prepared by the Soviet Foreign Trade Advertising Agency Vneshtorgreklama (SOVERO)).

34. *Id.* at 138.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 141.

41. *Supra* note 29.

complex with an Italian company⁴² and Honeywell is negotiating to design plants and provide processing systems for the chemical industry.⁴³

Before any United States business determines that it will test the market of the Soviet Union, it must determine whether the proposed joint venture is a sound business decision. Management must look at the costs that will be incurred in order to establish the venture and the initial production costs. In addition to determining what these costs will be, they must determine whether the proceeds from the sale of the product will be sufficient to cover all the production costs. If it is determined that the venture makes sound business sense, then they must make sure that they adhere to any and all existing United States and Soviet trade regulations.⁴⁴

Gorbachev has let it be known to the western world, especially the United States, that he is looking to make changes that will strengthen the economic muscles of the Soviet Union. He has extended the invitation or challenge to the super powers to investigate the possibilities of involving themselves directly and benefiting from this transformation. The question now becomes whether the United States should react favorably to this challenge and if so, will our existing trade regulations allow us to substantially increase our trade with the Soviet Union or will these regulations hamper us in such a way that all possible benefit from any trade would be negated.

III. HOW SHOULD THE UNITED STATES RESPOND TO GORBACHEV'S GLASNOST?

In the mid-1970's, during the height of detente with the Soviet Union, the State Department published a pamphlet that detailed the number of existing bilateral agreements between the United States

42. *Id.*

43. *Id.* In addition to these ventures, several other companies are in negotiations to set up additional ventures. Monsanto is working on an agreement to set up a herbicide plant. Archer Daniels Midland is discussing ventures in chicken raising, grain storage and soybean processing. SSMC is negotiating a venture to produce sewing machines. Dresser Industries is discussing a venture to produce energy, mining, and construction equipment and Cummins Engine has begun negotiating a venture that would manufacture diesel engines and components. *Id.*

44. Whitehead, *supra* note 6, at 45. See also Hewett, *Reforming The Economy*, 244 THE NATION 785, 804 (1987). ("Soviet officials are aggressively seeking foreign partners for such ventures. In addition, seventy Soviet enterprises and twenty ministries will be able to engage directly in foreign trade . . .")

and the Soviet Union.⁴⁵ Prior to the publication of the pamphlet, a total of one hundred and five bilateral agreements existed between the United States and the Soviet Union.⁴⁶ Fifty-eight of these agreements had been signed in the early 1970's⁴⁷ and the remaining fifty-seven had been signed between 1933, when the United States and the Soviet Union established relations, and the early 1970's.⁴⁸ The large number of bilateral agreements entered into during the height of detente suggests that these agreements were considered an essential feature of detente.⁴⁹

However, during the 1970's and 1980's, United States-Soviet relations have worsened.⁵⁰ It is believed that the 1979 Soviet invasion of Afghanistan⁵¹ and the "crushing of the Soviet human rights movement following the signing of the Helsinki Final Act⁵², along with the Soviets refusal to allow emigration⁵³, was the turning point in the United States-Soviet detente. During this period, any hopes of a strategic arms agreement ended⁵⁴ and United States-Soviet relations worsened.

Another major reason for this downward trend in Soviet-United States relations are the increased trade restrictions and embargoes imposed by the United States government against many countries including the Soviet Union.⁵⁵ Now that Gorbachev has unveiled his glasnost policy, the United States is faced with the problem of deciding whether these changes are substantial or just Soviet rhetoric. If the Soviets are found to be in the midst of genuine change, the United

45. Parris, *The U.S.-Soviet Bilateral Relationship*, 87 DEP'T ST. BULL., 45 (1987).

46. These include agreements on cultural exchanges, science and technology, environmental protection, medical science, public housing, space, agriculture, transportation, and atomic energy. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Parris, *supra* note 45. See also, *Reforming the Soviet Economy*, BUS. WK., Dec. 7, 1987, at 84. Trade between the United States and the Soviet Union in 1987 totalled only about two billion dollars which was mostly grain sales to the Soviet Union.

51. The invasion of Afghanistan in 1979 forced the United States to discover a new label for their existing relationship with the Soviet Union because "detente" was no longer a fitting description. Parris, *supra* note 45.

52. The United States was not in the position to or able to ignore the Soviets actions in the area of human relations. *Id.*

53. Flanigan, *supra* note 28, at § IV, at 1, col. 1.

54. United Nations Conference on Trade and Development, Trends, Policies and Prospects in Trade Among Countries Having Different Economic and Social Systems at 138, U.N. Doc. TD/B/918 of August 26, 1982.

55. *Id.*

States must decide whether it should relax its restrictions on the Soviet Union.

The response and feelings generated by glasnost have varied. Peter Peterson, Chairman of the Council on Foreign Relations,⁵⁶ expressed his reservation about the Soviet invitation to United States firms to establish joint ventures with their Soviet Union counterparts. "[H]e advises: We should be intrigued, stay cautious, but be open."⁵⁷ He seriously doubts Gorbachev's ability to reconcile market forces that dictate what the demand in the market for a particular good will be against the existing Soviet planned economy which is a set five year plan dictating what will and will not be produced in Soviet production facilities.⁵⁸

Others believe that the glasnost policy, if successful, will ultimately strengthen East-West trade. This idea is reflected by Cyrus Vance,⁵⁹ former Secretary of State, who believes that a successful program implemented by Gorbachev will eventually lead to a more stable United States-Soviet relationship and if the Soviet economy is strengthened, East-West trade will increase.⁶⁰

Many businessmen have begun to see the potential for expansive and profitable trade agreements with the Soviet Union. They are describing the Soviet Union as "a huge market."⁶¹ However, other business leaders believe the more realistic approach is to "wait and see." They maintain that there might be many new opportunities for trade and economic development, but there should be "no illusion that a bonanza is in the offering"⁶²

One affirmative suggestion that has been voiced and acted upon is that the United States and its allies should begin "reviewing current export restrictions in the hopes of simplifying the list of prohibited items and speeding up the licensing process."⁶³ This aspect will be developed later in this Comment.

All of these reactions lead to the conclusion that the United States is not yet certain how to respond to Gorbachev's policy. Initi-

56. Trehwhitt, *Coping with Gorbachev*, U.S. NEWS & WORLD REP., April 13, 1987, at 26.

57. *Id.*

58. *Id.*

59. Cyrus Vance was appointed Secretary of State on January 23, 1977 by President Jimmy Carter. He remained in this position until his resignation on April 21, 1980. KANE, *FACTS ABOUT THE PRESIDENTS* (4th ed. 1981).

60. Whitaker, *Countering Gorbachev*, NEWSWEEK, Feb. 23, 1987, at 33.

61. *The Bear Facts*, THE ECONOMIST, Feb. 14, 1987, at 56.

62. *Id.* at 57.

63. Whitehead, *supra* note 6, at 45.

ating expansive economic and trade programs with the Soviet Union would be financially and economically unsound. The United States must determine Gorbachev's true intentions and how the United States, as an economic leader, should respond to his challenge.

IV. EXISTING TRADE REGULATIONS TO WHICH THE SOVIET UNION AND UNITED STATES MUST ADHERE?

One major obstacle to any economic venture with the Soviet Union is the existing trade regulations that hinder both the United States and the Soviet Union. The two countries have economic and political systems that are diametrically opposed to one another. Yet if Gorbachev's policy is to succeed in the international trade arena, the two systems must establish a plan that will allow them to interact successfully.

A. Existing Soviet Foreign Trade Regulations

The Soviet Union's international trade is governed by the USSR Ministry of Foreign Trade.⁶⁴ The Ministry of Foreign Trade is a composite of "more than fifty foreign trade associations 'FTOS' which carry on about 95% of Soviet foreign trade"⁶⁵ The Ministry of Foreign Trade is an extremely complex structure which has an abundance of power and responsibility.⁶⁶ The Minister of Foreign Trade is appointed by the Supreme Soviet of the Soviet Union⁶⁷ and the Deputy Ministers are appointed by the USSR Council of Ministers.⁶⁸ The actions ultimately taken by the Ministry of Foreign Trade are decided by the Council of Ministers and other individuals who are appointed by the Council.⁶⁹ These individuals form a group which meets on a regular basis to draft trade proposals for the Minister of Foreign Trade who is ultimately responsible for foreign trade.⁷⁰ These FTOS

64. W. BUTLER, *supra* note 24, at 334.

65. *Id.*

66. The USSR Ministry of Foreign Trade is an all-union ministry and has responsibility for assisting in the preparation of export and import plans, drafting and negotiating inter-governmental trade agreements, administering foreign trade representation and the FTOS within its jurisdiction, licensing when necessary the import, export, or transit of goods, and developing and administering customs policy, inspecting the quality of export goods, and others.

Id.

67. R. STARR, BUSINESS TRANSACTIONS WITH THE USSR 27 (1975).

68. *Id.* at 27-28.

69. *Id.*

70. In addition to this basic structure, the Ministry below the Colligium is divided into three separate administrations:

function not only within the geographical boundaries of the Soviet Union, but also throughout the world.

Beyond the Soviet borders, the Ministry of Foreign Trade is represented by specific trade representations or FTOS.⁷¹ "These [trade representations] are defined by the 1982 Statute on Representations of the USSR Abroad as agencies of the USSR effectuating abroad the rights of the USSR in the realm of foreign trade"⁷² Among other functions, the trade representatives "oversee Soviet trade policy in the receiving country"⁷³

The FTOS are legal entities⁷⁴ which may acquire property rights in their own names and may sue and be sued.⁷⁵ They also have the right to engage in foreign trade transactions in a particular geographic area or within a particular product classification.⁷⁶ In the international realm, FTOS conduct normal trade operations and freely enter into contracts.⁷⁷ Within the Soviet borders, the FTOS are able to enter into binding contracts within other "economically accountable Soviet State enterprises."⁷⁸ Despite this legal autonomy, the Soviet government itself will stand behind the contract that the FTOS enter into.⁷⁹ Despite this limited economic power and duty, the FTOS are controlled by the Ministry of Foreign Trade.⁸⁰ The Ministry may liq-

1) The administration for commercial policy (organized according to country group);

2) The administration for distinct types of activities (includes treaties and legal administration); and

3) The administration for distinct types of products (includes administration for exports and imports).

Id. at 28.

71. *Id.*

72. *Id.*

73. *Id.* at 335. "In addition, they protect Soviet interests, study economic and market trends and developments and inform Soviet institutions about these . . . [and] supervise the activities of FTOs in the receiving country . . . and promote participation in Soviet and foreign trade and industrial exhibitions."

74. *Id.* at 30.

75. *Id.*

76. *Id.* at 31. Some examples of how these FTOS are organized are:

1) Soviet exports of lumber and lumber products are transacted by the All — Union Export — Import Organization Eksportles;

2) All exports and imports of oil and oil products are controlled by Soiuznefteksport; and

3) All exports and imports with the Mongolian People's Republic are controlled by Vostokintorg.

Id.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 32.

update an FTO or dispose of it all together by reorganizing the structure of the FTOS.⁸¹ The FTOS are governed by the 1978 Statute on the All-Union Economically Accountable Foreign Trade Association within the System of the Ministry of Foreign Trade.⁸² One of their functions is to carry out their export and import business in accordance with the five year and the annual Soviet economic plans.⁸³

The Foreign Trade Ministry remains an exclusive trader in many of the important economic areas.⁸⁴ They have retained control of raw materials, fuels, foods and some mechanical engineering products.⁸⁵ The Soviet government has also stated that these reforms should not be seen as the State abandoning its monopoly on foreign trade. Those firms given the right to trade in the foreign markets are still governed by Soviet economic laws and regulated by the appropriate state authority, and their resources will still belong to the State.⁸⁶ "A State Foreign Economic Commission under the USSR Council of Ministers will oversee all foreign trade, playing a watch-dog role to guarantee state interests."⁸⁷

Gorbachev must implement his economic policies into future Soviet five year plans in order for the Ministry of Foreign Trade to properly carry out its role in the Soviet international trade arena. This means that any hope of seeing immediate changes and staggering results is unrealistic. Gorbachev has a structure within which he must work. There are certain structures, such as the Soviet five year plan, that must be worked with in order for any actions taken by Gorbachev to have full effect. Any change in economic trade with foreign countries will have to be carried out by the FTOS and the Ministry of Foreign Trade under the existing Soviet structure.

If Gorbachev works closely with the Ministry of Foreign Trade, there is a strong possibility that his intentions can be correctly implemented. It should be pointed out that his plans will be implemented because, as the ultimate authority within the Soviet Union, he has the power to implement any program. But for his plans to be correctly implemented and reach their full potential, he must work with the

81. *Id.* at 33.

82. *Id.*

83. *Id.*

84. *New Thinking for Foreign Trade*, *supra* note 33, at 137.

85. *Id.*

86. *Id.*

87. *Id.*

people and the organization he has assembled around him. If he does this, the results he desires should be fulfilled.

B. Existing United States Trade Regulations

The United States has developed a statutory scheme that regulates what can and cannot be exported to certain countries⁸⁸ including the Soviet Union. These regulations inhibit United States trade with the Soviet Union, particularly regarding a large number of commercial goods. The area of major concern to the United States government is that of technology, both defense and non-defense related. The United States has tried to maintain leadership in technology by restricting the free trade of these goods to other highly developed countries that might use this technology adversely against the United States.⁸⁹ The Export Administration Amendments Act of 1969⁹⁰ "reduced controls on the export of civilian goods and technology to communist countries, but continued bans on the export of products and technology that would assist Soviet military strength."⁹¹

The United States has created a "dual system of export regulations."⁹² The first branch of the system is controlled by the United States Munitions List⁹³ and is regulated by the Arms Export Control Act.⁹⁴ The purpose of the Arms Export Control Act is to implement the authority of the "President to control the export and import of defense articles and defense services."⁹⁵ "Designation of defense articles and defense services are based primarily on whether an article or service is deemed to be inherently military in character."⁹⁶ If an article or service is placed on the United States Munitions List, its export is regulated exclusively by the Department of State.⁹⁷

The second branch of the system is governed by the Export Administration Amendments Act of 1985⁹⁸ and the Export Administra-

88. Such statutes are the Arms Export Control Act, 22 U.S.C. § 2778 (1987) and the Export Administration Amendments Act of 1985, Pub. L. No. 99-64, 99 Stat. 120 (1985).

89. Blair, *Export Controls on Nonmilitary Goods and Technology: Are We Penalizing Ourselves?*, 21 TEX. INT'L L. J. 363, 364 (1986).

90. Pub. L. No. 91-184, § 2401, 83 Stat. 841 (1969) (*terminated 1979*).

91. *Supra* note 89.

92. *Id.*

93. 22 C.F.R. § 120 (1985).

94. 22 U.S.C. § 2778 (1987).

95. *Supra* note 93, § 120.1.

96. *Supra* note 93, § 120.3.

97. *Supra* note 93, § 120.4.

98. Export Administration Amendments Act of 1985, Pub. L. No. 99-64, § 102, 99 Stat.

tion Regulations.⁹⁹ Under these Acts, the Department of Commerce maintains the Commodity Control List, which is a listing of the regulatory status and procedures for export of particular commodities to specific countries.¹⁰⁰ All goods and services which are not controlled or regulated by the Munitions List are controlled by the Export Administration Act and the Export Administration Regulation.¹⁰¹

The Export Administration Amendments Act of 1985 ("EAA") was the result of over two years of debate in the House of Representatives and the Senate.¹⁰² The EAA reauthorized and revised the Export Administration Act of 1979.¹⁰³ The EAA is structured as to achieve two goals: "first, to reduce the burden of export regulation and thereby improve the competitive position of the United States goods and services in the world market, and second, [to reduce the flow] of restricted, high technology products and data to the Soviet bloc."¹⁰⁴

The purpose of the EAA is to secure the safety of high technology within the United States marketplace and beyond by limiting only those specific items deemed to be a high security risk. All other goods are free to be traded on the open market.

Therefore, in order to achieve the goals of the EAA, all goods that are not deemed to be a high risk would be deleted from the restricted list and be free to be traded on the open market. The government would have the responsibility of determining whether the goods presently listed as being restricted are in fact a high security item. If they are not they should be removed. This would reduce the burden of export regulations and at the same time restrict those goods which are in fact high technology items.

In the 1979 Act, Congress established that there is a need to pay close attention to foreign policy and national security. In actuality, Congress made specific findings that represented this concern. These findings were:

- 1) United States citizens should be able to engage in interna-

120 (1985) (amending Export Administration Act of 1979, Pub. L. No. 96-72, 93 Stat. 503 (1979)).

99. 15 C.F.R. §§ 368.1-399.2 (1985).

100. Blair, *supra* note 89, at 364.

101. *Id.*

102. Note, *The Export Administration Amendments Act of 1985: A Reassessment and Proposals for Further Reform*, 19 VAND. J. TRANS'L L. 812-13 (1986).

103. *Id.* at 812.

104. *Id.* at 813.

tional commerce;¹⁰⁵

2) exports benefit both the United States and the world economy by increasing employment and production domestically which strengthens the value of the dollar which in turn reduces inflation;¹⁰⁶

3) both the private sector and the Federal Government should place a high priority on exports so that the national economy is strengthened;¹⁰⁷

4) foreign policy in the United States is affected by the availability of some materials that go into the composition of goods that are exported;¹⁰⁸

5) the national security of the United States may be affected by the unrestricted trade of goods and technology;¹⁰⁹

6) uncertainties in export policy can cause domestic business efforts to be curtailed;¹¹⁰

7) unreasonable restrictions on access to world supplies can cause worldwide political and economic instability;¹¹¹

8) special attention should be paid to the need to control exports of technology which have military significance;¹¹²

9) agricultural commodities should be restricted minimally in order to achieve a balance of payments and to eliminate world hunger;¹¹³

10) special emphasis should be given to the control of products that are hazardous to the public health and environment;¹¹⁴

11) there has been an increased threat to the security of the United States and its allies due to the acquisition of national security sensitive goods and technology by the Soviet Union;¹¹⁵

12) the United States should seek to eliminate the flow of goods and technology to controlled countries;¹¹⁶ and

13) excessive dependence of the United States and its allies on

105. See 50 U.S.C. app. § 2401 (1985) (Congressional Findings) (amending 50 U.S.C. app. § 2401 (1982)).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

potential adversaries for energy resources could lead to some difficulties.¹¹⁷

Because the EAA of 1985 was enacted to "reauthorize and revise"¹¹⁸ the EAA of 1979, there may be a question as to whether these policies are still applicable.

Impliedly, these policies are still the backbone of the EAA of 1985. "[The EAA of 1985] . . . has significantly reformulated American export control strategy, with important implications for national security, foreign relations, and the well-being of American industry."¹¹⁹ In addition, the basic objectives¹²⁰ of the EAA of 1985 directly impact the possibility of conducting meaningful trade with the Soviet Union and other countries. These implications and objectives are compatible with the concerns stated by Congress in its 1979 finding. If the objectives are to be taken seriously and strived for, increased trade with the Soviet Union in areas other than defense and high technology will be a distinct possibility.

If the United States desires to increase trade with the Soviet Union, the EAA will have to be utilized so that trade will involve only those goods that the United States government deems appropriate. Such goods will have to be items not included on the Military Critical Technologies List and thus subject to trade control by the Secretaries of Defense and Commerce.¹²¹

It is still possible for the United States to abide by its initial policy decision established when the EAA came into existence and to increase trade with the Soviet Union. The basic policy of the EAA is to apply national security controls "to the maximum extent possible

117. *Id.*

118. Export Administration Amendments Act of 1985, *supra* note 98.

119. Feldman, *The Restructuring of National Security Controls Under the 1985 Amendments to the Export Administration Act: Multilateral Diplomacy and the Extraterritorial Application of United States Law*, 21 STAN. J. INT'L L. 235 (1985).

120. The [EAA of 1985] has three basic objectives:

1) To improve the effectiveness of existing controls on high technology trade with the Soviet Union by improving licensing decisions, enforcement, and international cooperation;

2) To develop new controls on transfer of [defense technology] with maximum international cooperation; and

3) To reduce the burden of controls on United States trade and foreign relations by decentralizing exports of less sensitive goods to cooperating nations, expediting routine licensing decisions, and eventually eliminating controls on items available to our adversaries from other sources.

Id. at 236-37.

121. *Id.*

in cooperation with all nations"¹²² to restrict the export of goods and technology that "make a significant contribution to the military potential" of the nation's adversaries.¹²³ The United States may choose to increase trade in areas that are not deemed to be contributing to the military potential of the Soviet Union. This may bypass the restrictions placed on military goods.

There is a strong indication that United States business interests have determined that nonmilitary goods can be traded with relative ease. As stated earlier, several companies have already established or are in negotiations with the Soviet Union to establish joint ventures. Examples of the nonmilitary ventures include grain storage machinery, energy, mining, construction equipment, and the production of diesel components.¹²⁴

In addition to the EAA restrictions placed on corporations within the United States, the United States cooperates with fourteen of its North Atlantic Treaty Organization ("NATO") allies in voluntarily restricting exports so that the security of all NATO members is preserved.¹²⁵ The organization that has been formed for this purpose is known as COCOM.¹²⁶ COCOM implements plans that control the shipment of strategic products to communist countries.¹²⁷ As with the restrictions implemented by the United States government, if COCOM relaxes its requirements or restrictions on which goods can be traded, the result will be an increase in trade between the United States and other countries, particularly the Soviet Union.¹²⁸

Thus, if Gorbachev's glasnost policy opens up the Soviet Union to expanded international trade and the United States chooses to take

122. 50 U.S.C. app. § 2402(3)(A) (1982); *see also* note 1 at 238.

123. 50 U.S.C. app. § 2402(2)(A) (1982).

124. *Supra* note 43.

125. R. STARR, *supra* note 67, at 17.

126. *Id.* COCOM stands for International Coordinating Committee on Strategic Trade with Communist Countries.

127. The COCOM members are Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Holland, Italy, Japan, Luxembourg, Norway, Portugal, Turkey, United Kingdom, and the United States. Levine, *Technology Transfer: Exports Controls Versus Free Trade*, 21 TEX. INT'L L. J. 373, 377 n.12 (1986) (citing Overman, *Reauthorization of the Export Administration Act: Balancing Trade Policy with National Security*, 17 L. & POL'Y INT'L BUS. 325, 362 (1985); Sherzer & Yeser, *Exports Controls Over Direct Commercial Sales of Military and Strategic Goods and Technologies: Who's In Charge?*, 7 B.C. INT'L & COMP. L. REV. 303, 312 (1984)).

128. This was also the recommendation of the Defense Science Board contained in a report published in 1986. It recommended that the United States export control rules be refocused so that the number of controlled items would be reduced. Levine, *supra* note 127, at 377.

advantage of this policy, the United States businessperson must comply with the Arms Export Control Act, the Export Administration Act, and the Export Administration Regulations. Gorbachev's glasnost policy will not affect these regulations unless the United States government, possibly through pressure applied by the American business community, decides that these regulations need to be relaxed.

V. POSSIBLE CHANGES TO BE IMPLEMENTED BEFORE GORBACHEV'S TRADE POLICY CAN BE SUCCESSFUL

In order for Gorbachev to successfully implement his policy, concessions must be made by both the United States and the Soviet Union. This is vital only if the United States has any desire to conduct increased business in the Soviet marketplace.

Many view the major obstacle to developing any large scale trade between the United States and Soviet Union as being the political and economic tension between the two super powers. "The implementation of the glasnost policy depends greatly upon a significant reduction in the tensions between the United States and the Soviet Union."¹²⁹ Gorbachev himself said "[w]e need a lasting peace to concentrate on the development of our society and to tackle the task of improving the life of the Soviet People."¹³⁰ "The principle of peaceful coexistence and the need to consolidate international detente has always been . . . the cornerstone of the Soviet Union's relations with countries having different economic and social systems."¹³¹

In addition to the strengthening of ties with the United States, the Soviet Union must loosen government regulation of the economy so that economic planning will be more efficient and economic waste will decrease.¹³² Gorbachev has outlined this economic reform in both speeches and public statements.¹³³ He has stated that this trans-

129. *Glasnost and Us*, 244 THE NATION 785, 786 (1987).

130. *Id.*

131. United Nations Conference, *supra* note 54, at 136. In 1982 the United Nations Conference on Trade and Development stated: "The firm intention to maintain stable and mutually advantageous trade and economic, scientific and technical ties with those Western countries which are prepared to co-operate with the Soviet Union was recently confirmed by the Twenty-sixth Congress of the Communist Party of the Soviet Union." *Id.*

132. Hewett, *Reforming The Economy*, 244 THE NATION 802 (1987). See also Hough, *Gorbachev's Strategy*, 64 FOREIGN AFF. 33 (1985). "[T]he Soviet system is too centralized, and the problem becomes progressively worse as the economy becomes more complex With all investments and product decisions having to go through the ministries and the State Planning Committee . . . in Moscow, huge bottlenecks and inflexibilities result." *Id.* at 41.

133. Hewett, *supra* note 132, at 802.

formation requires a "two-stage strategy."¹³⁴ The first stage will stress discipline, better personnel, and investment policies to get the economy on a new path.¹³⁵ This goal will be attained by increasing the responsibility of the worker and informing the worker, through educational programs, of his or her responsibility in the economic scheme. The second stage has been labeled "sustained growth."¹³⁶ This stage will concentrate on sustaining the growth obtained in the first stage. Included in this transformation are plans to encourage "individual and enterprise initiative by loosening the government's control of the economy."¹³⁷ The ultimate goal of the policy is to upgrade economic planning.¹³⁸

These proposed departures from domestic economic control have spilled over into the Soviet international trade. The allowance of foreign investment and joint venture projects are a radical departure from past procedures in which no foreign investment or joint ventures with western business were practiced.¹³⁹ Soviet government must do more if it hopes to fully integrate into the world economy. However, it must be noted that this system, although allowing limited foreign investment and joint ventures, is ultimately controlled by a central government and is not western capitalism; "[t]he government will still own almost all the means of production, and central planners will continue to have enormous influence."¹⁴⁰

Whether Gorbachev's glasnost policy will be implemented fully and function to the point of increasing foreign trade with the West remains to be seen. Gorbachev has outlined what he believes to be the road to successfully implementing glasnost. His ideas are radical in the eyes of Soviet officials and those that follow the development of the Soviet Union. It is hard to believe that one man could change years of thinking in such a short time in order to restructure an economic machine. It is equally hard to believe that the Soviet Union would be willing to loosen government regulations or make tremendous concessions in their foreign policy. However, if glasnost is to be effective and reach Gorbachev's goals, then changes will have to occur in these areas. Unless changes are made, the United States and other

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* at 804.

140. *Id.* at 803.

powerful western nations will be unable to work with many of the existing Soviet regulations. The two systems are worlds apart. The Soviet Union will have to determine how intent it is to enter the world of foreign trade with the West. The Soviet Enterprise Law is clearly a first step designed to reach this goal.

VI. CONCLUSION

If the United States decides to increase its trade with the Soviet Union, concessions must be made in its foreign trade policy. As stated earlier, the United States should consider reducing the number of items that are prohibited from being traded internationally.¹⁴¹ By doing this, goods that are not defense oriented or damaging to the national security of the United States will be freely sold to the Soviet Union. The government has already begun to ease some economic restraints that have in the past hampered United States-Soviet trade.¹⁴² In January of 1987, the United States government decided to minimize the foreign policy controls on the export of oil and gas equipment into the Soviet Union.¹⁴³ As a result of this action, "[t]he United States oil and gas industry now have an opportunity to compete for Soviet markets on a more level playing field."¹⁴⁴

Finally, the United States should encourage implementation of joint ventures with Soviet manufacturers¹⁴⁵ provided that these ventures make sound business sense and comply with all export regulations. This is an important step in expanding international trade with the Soviet Union.¹⁴⁶ The Soviet Union has sought admission into the General Agreement on Tariffs and Trade (GATT) and has enacted laws intended to encourage foreign investments.¹⁴⁷ These actions allow one to believe that Gorbachev is serious about glasnost and the future of the Soviet Union in the area of international trade.

It is undisputed that the United States desires to be the leader in technology. It is also undisputed that the goods and services that would be most appealing to many countries, including the Soviet Union, would be those of high technology. Under no circumstances would the United States government be willing to jepordize their sta-

141. Whitehead, *supra* note 6, at 45.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. Evangelista, "New Thinking" in *Foreign Policy*, 244 THE NATION 795, 798 (1987).

tus as the leader in technology. Therefore, there is little hope of changing the regulations that govern the trade of these goods. However, as stated earlier, this does not mean that the United States government should develop a regulatory list that is overinclusive. The government should seriously look at the goods that are regulated and determine if there is a need to restrict the movement of these goods.

In the area of joint ventures, the government can encourage such projects, but ultimately, the interested business must make a sound business decision as to whether the venture will be sufficiently profitable. No business, even upon the blessing of the United States government, will set up a venture in the Soviet Union if there will be insufficient demand for their product in the Soviet Union and abroad. This ultimately may be the major stumbling block. Where will the demand for these goods come? If the answer is the Soviet Union, will there be the required buying power to purchase the goods? There must be money to purchase these goods. If the venture is too costly, thus pricing the goods out of the range of the consumer, the venture will never become a reality. Therefore, even if the United States government encourages these joint ventures and perhaps offers incentives to the participating companies, these ventures will not be a success without the occurrence of certain economic factors which are beyond the control of the United States government. One must keep in mind a recent invitation extended by Gorbachev in which he said, "... all wanting to work with us in new, more favorable conditions will gain from the successful realization of the plans of restructuring in our country and the modernization of the economy."¹⁴⁸

However, these obstacles can be overcome if both the Soviet Union and the United States work to make Gorbachev's glasnost policy a success. If this occurs, there is a strong possibility that foreign trade between the two countries will increase. John C. Whitehead, the Deputy Secretary of State,¹⁴⁹ stated in his address at a Forum on U.S.-Soviet Trade Relations: "if the Soviets are interested in improving relations, we are ready to work with them to build a more stable relationship, sustainable over the long term. This is a time of challenge but also a great opportunity. We look forward to tackling these challenges, and building on those opportunities."¹⁵⁰

Additionally, a series of recent articles determined that the cru-

148. *Supra* note 33, at 139.

149. Whitehead, *supra* note 6, at 43.

150. *Id.* at 45.

cial difference between the reforms set out by former Soviet Premier Brezhnev and Gorbachev's glasnost is that Brezhnev attempted to implement United States-Soviet relations while "maintaining the status quo in the Soviet Union."¹⁵¹ On the other hand, "Gorbachev seeks to implement United States-Soviet relations while pushing radical changes at home."¹⁵² The conclusion reached in this series of articles was that United States-Soviet relations will be long lasting if "Gorbachev manages to open up Soviet society and force more economic links with the rest of the world."¹⁵³

Recently Gorbachev characterized how his glasnost policy affects the foreign policy of the Soviet Union. In February of 1987, Gorbachev called attention to the revolutionary transformation taking place in his country, to the need for a wide democratization of the entire life of the society. He declared that a fair assessment of Soviet foreign policy required an understanding of the goals of domestic reform. He maintains that the Soviet international policy depends on United States internal policy.¹⁵⁴

Therefore, any hope of increasing foreign trade depends greatly on the success of the glasnost campaign and whether Gorbachev's domestic reforms are successful and cause a change in the international arena. One can conclude that Gorbachev is seriously looking at the existing structure in the Soviet Union and trying to determine how he can balance the political beliefs of a nation and the desire to enter a new economic age. Regardless of what will occur in the future, the first step has been taken. All that remains to be seen, is what type of effect the new Soviet Enterprise Law will have on Gorbachev's glasnost policy and the area of international trade.

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151. *Supra* note 9, at 88.

152. *Id.*

153. *Id.*

154. *Glasnost and Us*, *supra* note 3, at 795.

