

The Legal Status of Soviet Foreign Trade Organizations

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In the Soviet Union the means of production have been socialized and are socialist property. Socialist property is the economic foundation of the U.S.S.R. and takes the form of state property, cooperative property, or property of social organizations. State property, i.e., property owned by the entire people in the person of the state, is the leading form of socialist property.

In the U.S.S.R. economic activity is pursued by socialist enterprises and organizations: state, cooperative, and social. They function on the basis of the state plan for economic development which embraces the country's entire economic life.

Foreign trade is organized on the basis of state monopoly. State foreign trade organizations have been set up to handle particular areas of foreign trade. The concept "foreign trade organization" includes only those organizations that directly engage in foreign trade and does not cover the foreign trade administration agencies. In this sense the Ministry for Foreign Trade of the U.S.S.R. and the State Committee of the Council of Ministers of the U.S.S.R. for Foreign Economic Relations, which direct foreign trade and external economic relations, are not foreign trade organizations.¹

The all-union foreign trade associations² are the most typical foreign trade organizations. As a rule, they are organized along the commodity principle; in other words, they export or import a specific range of goods. Some are strictly export and others are strictly import associations. In individual cases their activity is confined to a specific

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1. For details see, V.S. POZDNIKOV, *GOSUDARSTVENNAIA MONOPOLIA VNESHNEI TORGOVLI (THE STATE MONOPOLY OF FOREIGN TRADE)* (1969).

2. The Russian word *ob"edinenie*, which literally means "combination" or "union" and used to be commonly translated as "combine," is generally translated as "organization" in the phrase "Foreign Trade Organization" by American sources. Mr. Laptev prefers the use of the English word "association," and of the phrase "Foreign Trade Association." The same word is invariably translated as "association" when referring to the Soviet industrial associations created by the legislation of 1973-1974 to unite previously separate domestic economic enterprises and institutions. However, the common American abbreviation "FTO" for the Soviet foreign trade entities will probably preserve the use of the phrase "Foreign Trade Organizations" by American writers. (Editor's note)

territory,³ but as a general rule they may conduct their activities in any territory, both in the U.S.S.R. and abroad.

Foreign trade associations are economic organizations that function on the basis of economic accountability and enjoy the rights of a juristic person. This definition is in the rules of all the foreign trade associations set up in the Soviet Union.

One characteristic of a foreign trade association is that it directly conducts foreign trade transactions on the basis of economic accountability. "Economic accountability" (*khozraschot*) is the method of socialist economic management founded on the application of the objective economic laws of socialism. It is characterized by the following basic principles or elements: property independence, operational economic independence, the payment of the cost of economic activity from its own incomes and the achievement of profitability, material incentives, and responsibility for the results of economic activity. Economic accountability is the general principle of the organization of economic activity in all spheres of the Soviet economy. It has been fostered particularly during the economic reform enforced in the Soviet Union in recent years.⁴

Foreign trade associations are state organizations. They operate under the guidance of a higher organ of state administration. Usually this organ is the Ministry for Foreign Trade of the U.S.S.R., while some associations are subordinated to the State Committee of the Council of Ministers of the U.S.S.R. for Foreign Economic Relations. In individual cases foreign trade associations are set up along the lines of other organs of economic leadership.⁵

A foreign trade association, as a state organization, is formed on the basis of an administrative act of the competent organ of state administration, which in most cases is the Ministry for Foreign Trade

3. For example, Vostokintorg conducts foreign trade operations in a wide range of goods in a number of Asian countries. Lenfintorg is set up for trade with Finland, Dalintorg for trade with Japan.

4. For details on economic accountability see S.K. TATUR, *KHOZIAISTVENNY RASCHET V PROMYSHLENNOSTI S.S.S.R.* (ECONOMIC ACCOUNTABILITY IN SOVIET INDUSTRY) (1970); D.A. ALLAKHVERDIAN, *KHOZRASCHET I UPRAVLENIE (TEORIJA, OPYT, PERSPEKTIVY)* (ECONOMIC ACCOUNTABILITY—THEORY, PRACTICE, AND PROSPECTS) (1970); A.D. SMIRNOV, *OSNOVY KHOZIAISTVENNOGO RASCHETA (OCHEKTI TEORII)* (PRINCIPLES OF ECONOMIC ACCOUNTABILITY—OUTLINE OF THEORY) (1969); V.V. LAPTEV, *LEGAL PRINCIPLES OF ECONOMIC ACCOUNTABILITY AT AN ENTERPRISE OR FACTORY DEPARTMENT* (1970).

5. These organs of economic leadership include the State Committees of the Council of Ministers of the U.S.S.R. for Cinematography and the Publishing, Printing and Book Trade; the Ministry of Merchant Marine of the U.S.S.R.; and the Central Administration for Foreign Tourism attached to the Council of Ministers of the U.S.S.R. Subject to these are Soveksportfilm, Sovinfil'm, Vneshtorgizdat, Sovfracht and Intourist.

of the U.S.S.R. This follows the general procedure of forming state enterprises and organizations established by the decision of the Council of Ministers of the U.S.S.R. of November 16, 1964.⁶

The same procedure covers the reorganization or liquidation of foreign trade associations. Soviet law provides for the following methods of reorganizing state enterprises and organizations: merger, amalgamation, division, separation. Foreign trade organizations are usually dissolved by reorganization. An association is entirely liquidated only in rare cases.

The establishment of foreign trade associations by organs of state administration and their subordinated character do not imply that an association may be identified with the state as such, or with the Ministry for Foreign Trade or any other organ of state administration. A foreign trade association also functions as an independent subject of the law. It concludes transactions in its own name and not in the name of the state. But acts of the state, for instance, a ban on exports or imports, are binding upon it.

Each foreign trade association has its own charter, which is issued by the Ministry for Foreign Trade of the U.S.S.R. or some other higher organ to which it is subordinated. These charters are published in *Vneshniaia torgovlia*, the official journal of the Ministry for Foreign Trade of the U.S.S.R. However, the publication of a charter does not have constitutive significance; the charter comes into force as soon as it is issued.

The charter defines the basic characteristics of a foreign trade organization as a subject of the law. The charter is also important in that it determines the date of a foreign trade association's establishment.

In order to conduct foreign trade activity an association is provided with appropriate funds, which are usually called chartered capital.⁷ (With regard to other state organizations the term "chartered fund" is usually used instead of "chartered capital.") Chartered capital is firmly secured to the association but is not owned by it. Under

6. [1964] 25 SOBRANIE POSTANOVLENIÍ PRAVITEL'STVA SOIUZA SOVETSKIKH SOTSIALISTICHESKIKH RESPUBLIK (COLLECTED DECREES OF THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS) Item 145 [hereinafter cited as S.P.-S.S.S.R.].

7. Genkin, *Sub'ekty vneshnetorgovykh sdelok (Subjects of Foreign Trade Transactions)*, in PRAVOVOE REGULIROVANIE VNESHNEI TORGOVLI S.S.S.R. (LEGAL REGULATION OF THE FOREIGN TRADE OF THE U.S.S.R.) 43, 52 (D.M. Genkin ed. 1961) [hereinafter cited as PRAV. REG. VNESHNORG]; EKSPORTNO-IMPORTNYE OPERATSII—PRAVOVOE REGULIROVANIE (EXPORT-IMPORT OPERATIONS—LEGAL REGULATION) (V.S. Pozdnyakov ed. 1970) [hereinafter cited as EXIM. Op.]; D.F. RAMZAITSEV, PRAVOVYE VOPROSY VNESHNEI TORGOVLI S.S.S.R. (LEGAL PROBLEMS OF THE FOREIGN TRADE OF THE U.S.S.R.) 43 (1954).

Soviet law the state is the owner of all state property. Like other state organizations, the association has the right of possession, use and disposal of the property secured to it. The aggregate of these rights is characterized in Soviet law as the right of operational management.⁸

A foreign trade association's right of operational management covers the rights enjoyed by the owner of property. However this right is dependent on the state's right of ownership. At the same time, property is secured to an association so firmly that it cannot be dispossessed of it except in cases directly stated in the law. This is of great importance because it creates the basis of an association's activity founded on economic accountability. Moreover, the property secured to an association is the foundation for the legal responsibility for an association's obligations. An association answers its obligations with the property secured to it, in accordance with the laws operating in the U.S.S.R.

An association's property is subdivided into definite categories or funds, for which there are different legal regimes in accordance with their purpose. Such funds are fixed assets, circulating assets and special funds. The fixed assets include buildings, structures, equipment and other durable means of labor. The circulating assets are designated for the day-to-day operation of the association. For a more precise delineation between these two categories of property, Soviet law prescribes formal attributes: fixed assets cover property worth over 50 rubles and used for a period of over one year, while property that is of little value (costing under 50 rubles) and wears quickly (used for less than one year) is classified as circulating assets. Money designated for operational activity and deposited in the association's account at a bank likewise constitutes circulating assets.

Goods sold by the association under export transactions are classified among its circulating assets. The case is different with goods imported by the association. In this case the association acts as an agent, in its own name but on instructions from the Soviet organization for which goods are purchased abroad. The association concludes a contract of commission with the given organization, under which at the purchase of goods the right of operational management in the property is acquired by the principal and not by the foreign trade association, which is the agent (Articles 401 and 407 of the Civil Code of the R.S.F.S.R.). Consequently, the property purchased under an import transaction is not subject to claims on the obligations of the

8. Osnovy grazhdanskogo zakonodatel'stva S.S.S.R. i Soiuznikh Respublik (Fundamentals of the Civil Legislation of the U.S.S.R. and the Union Republics), art. 21 [1961] 50(1085) Ved. Verkh. Sov. S.S.S.R. 1273, 1280 [hereinafter cited as Ved.-S.S.S.R.].

association because the given property belongs by right of operational management not to the association but to the Soviet principal.⁹

The export of goods from the Soviet Union involves two transactions. Two purchase and sales contracts are signed: one between the foreign trade association and a Soviet manufacturer, and the other between the foreign trade association and a foreign firm. In both export and import operations foreign firms sign contracts with the foreign trade associations and not directly with the Soviet manufacturer. This derives directly from the monopoly of foreign trade in the U.S.S.R. However, foreign firms may have direct contact with Soviet industrial enterprises and organizations when negotiating the terms of the contract and in the fulfilment of the contract. This is particularly important in the manufacture of sophisticated equipment and the implementation of scientific and technical cooperation.

A foreign trade association signs contracts and conducts transactions in its own name. It is an independent subject of the law and enjoys the rights of a legal entity. According to Article 11 of the Fundamentals of Civil Law of the U.S.S.R. and the Union Republics, organizations that have their own property, may acquire property and personal non-property rights, undertake obligations, and can be plaintiffs or defendants in a court of law or an arbitration tribunal, are recognized as legal entities. Thus, a legal entity is characterized by organizational unity, property independence, and the possibility of participating independently, in its own name, in relations regulated by civil law.

Each legal entity has legal capacity, i.e., the possibility of acquiring rights and undertaking obligations. According to Article 12 of the Fundamentals of Civil Law the legal capacity of a legal entity is not general but specific. This means that a legal entity may engage only in such activity as conforms to the object or purpose of its activity. The object (purpose) of the activity of a legal entity is defined in its charter.¹⁰

These provisions concern foreign trade associations in general. The specific legal capacity of a foreign trade association is defined in its charter. The functions of the association concerned, that is to say, the purposes for which it may conduct legal actions, are usually listed exhaustively in the charter. For instance, in the Charter of

9. V.S. POZDNIKOV, *supra* note 1, at 118; M.G. ROZENBERG, PRAVOVOE REGULIROVANIE OTNOSHENII MEZHDU VSESIOIUNNYMI VNESHNETORGOVYMI OB"EDINENIAMI I SOVIETSKIMI ORGANIZATSIAMI ZAKAZCHIKAMI IMPORTNYKH TOVAROV (LEGAL REGULATION OF THE RELATIONS BETWEEN ALL-UNION FOREIGN TRADE ASSOCIATIONS AND SOVIET ORGANIZATIONS WHICH ARE CUSTOMERS FOR IMPORTED GOODS) 70 (1966); EXIM. OP., *supra* note 7, at 142.

10. For details on legal entities see S.N. BRATUS, SUB"EKTY GRAZHDANSKOGO PRAVA (SUBJECTS OF THE CIVIL LAW) (1950).

Soyuzpromexport, the association for export of industrial products, functions are defined as follows. In accordance with Paragraph 6 of its Charter, this association:

- a) conducts operations for the export from the U.S.S.R. and the import into the U.S.S.R. of solid mineral fuel, ores, ferrous metals, mineral fertilizers, asbestos and articles made from it, non-ore minerals, and some forms of finished manufactured goods;
- b) takes part in planning and conducting measures to expand the export of the goods within its nomenclature and to improve the quality of these goods;
- c) studies the situation in foreign markets in the line of the goods within its nomenclature;
- d) organizes and holds thematic exhibitions and also takes part in exhibitions and fairs in the U.S.S.R. and abroad involving goods exported by it;
- e) takes part in drawing up, according to established procedures, the standards and technical requirements for the goods within its nomenclature;
- f) organizes the advertising of the goods within its nomenclature.¹¹

To carry out these functions Soyuzpromexport enjoys the following rights as stated in Article 7 of its Charter:

- a) to sign contracts in the U.S.S.R. and abroad, conduct all kinds of transactions and other legal acts including credit, promissory note and banking operations with institutions, enterprises, organizations, societies, companies, and individuals, and to claim and answer in a court of law or an arbitration tribunal;
- b) to build, purchase, alienate, hire, and rent in the U.S.S.R. and abroad subsidiary enterprises for its activities;
- c) to purchase, alienate, hire, or rent in the U.S.S.R. and abroad all kinds of movable and real property;
- d) to set up branches, offices, permanent representatives, and agencies in the U.S.S.R. and abroad in accordance with operating laws, and also to take part in all kinds of societies and organizations whose activities conform to the purposes of the association.¹²

The association's organs or representatives act legally on its behalf. The organs are the chairman and vice-chairmen of the association. They are appointed by the higher body to which the association is subordinated. The duties of the chairman and his deputies are established by the chairman. Accordingly, the chairman and the vice-chairmen head offices, departments, and other structural subdivisions of the association.

The chairman directs all the affairs and has charge of the property of the association, conducts transactions and other legal acts linked with the activity of the association and conducts the business of the association with institutions, enterprises, organizations and

11. [1970] 10 VNESH. TORG. 63.

12. The functions and powers of Tekhmasheksport are defined in similar detail in the charter of that organization, published in [1969] 11 VNESH. TORG. 63.

individuals in the U.S.S.R. and abroad.

The representatives of an association are persons authorized to act on behalf of the chairman. The power-of-attorney for concluding foreign trade transactions on behalf of the association is issued in each separate case with the permission of the Ministry for Foreign Trade of the U.S.S.R. Persons receiving such a power-of-attorney may act on behalf of the association only after their powers-of-attorney may have published in the journal *Vneshniaia torgovlia*.

A special procedure has been established by Soviet law for the signing of foreign trade transactions.¹³ Under this procedure foreign trade transactions must in all cases be signed by two persons. Promissory notes and other monetary obligations in foreign trade issued by an association in Moscow must be signed by the chairman or his deputy (first signature) and by the association's chief bookkeeper (second signature). All foreign trade transactions, including promissory notes and other monetary obligations, concluded by the association outside Moscow (in the U.S.S.R. and abroad) must be signed by the chairman of the association or his deputy (first signature) and the person acting on a power-of-attorney (second signature), or by two persons, each of whom has received a power-of-attorney to sign transactions on behalf of the association with rights of first and second signature respectively.

The procedure of signing foreign trade transactions differs from the procedure of signing contracts between Soviet state enterprises and organizations. These are signed by one person—the chairman of the enterprise or organization. A common feature is the mandatory requirement that all foreign trade contracts and other transactions be in writing and be signed by authorized persons.

The implementation of property responsibility for the obligations undertaken by foreign trade associations is of great importance.¹⁴ This responsibility is governed by the general rule on the

13. Decree of the Central Executive Committee and the Council of People's Commissars of the U.S.S.R. of October 13, 1930, [1930] 56(583) *SOBRANIE ZAKONOV I RAZPORIAZHENII RABOCHE-KREST'IANSKOGO PRAVITEL'STVA SOIUZA SOVETSKIKH SOTSIALISTICHESKIKH RESPUBLIK* 1083 [hereinafter cited as S.Z.-S.S.S.R.]; Decree of the Central Executive Committee and the Council of People's Commissars of the U.S.S.R. of December 26, 1935, [1936] 3 S.Z.-S.S.S.R. 3.

14. See Genkin, *Pravovoe polozenie sovetskikh eksportnykh i importnykh ob'edineii za granitseii* (*The Legal Status of Soviet Export and Import Associations Abroad*) in *PROBLEMY MEZHDUNARODNOGO CHASTNOGO PRAVA* (PROBLEMS OF PRIVATE INTERNATIONAL LAW) 3, 14 (L.A. Lunts ed, 1960); See also, I.S. PERETERSKII & S.B. KRYLOV, *MEZHDUNARODNOE CHASTNOE PRAVO* (PRIVATE INTERNATIONAL LAW) 92 (1959); L.A. LUNTS, *MEZHDUNARODNOE CHASTNOE PRAVO OSOBENNAIA CHAST'* (PRIVATE INTERNATIONAL LAW—SPECIAL PART) 49 (1963); M.M. BOGUSLAVSKII, *IMMUNITET GOSUDARSTVA* (STATE IMMUNITY) 180 (1962).

responsibility of juristic persons established in Article 13 of the Fundamentals of Civil Law and is usually reproduced in the charters of the foreign trade associations. According to these, an association is answerable for its obligations with that property against which a claim may be made under Soviet law. This means, in particular, that a claim cannot be made to the fixed capital of the association. Neither the state nor other state organizations bear the responsibility for an association's obligations. For its part, the association likewise bears no responsibility for claims made against the state or other state organizations. An association's independent property responsibility for its obligations springs directly from its property independence, by the fact that a certain part of state property is secured to the association, and that it has the right of operational management of this property.

In the implementation of responsibility, a claim may be made only against an association's circulating assets, ordinarily its cash funds in its bank account. Circulating assets are firmly secured to the association within limits of the established norm. The circulating assets within the limits of the norm cannot be taken from the association by a higher organ. Only circulating assets over and above the norm may be taken in individual cases envisaged by law. This procedure not only gives a sound financial basis for the business activities of an association but also ensures the possibility of exacting the corresponding sums in fulfillment of the association's responsibility for its obligations.

Soviet foreign trade associations are legal entities created under Soviet law and, as such, their responsibilities are determined by Soviet law. Thus, no matter what criteria of international law may be applied (the criterion of the place of its office or the criterion of its whereabouts), it will be found that in all cases Soviet law is the association's private law.¹⁵

In some cases all-union export and import agencies are set up for the conduct of export and import operations instead of all-union foreign trade associations. The functions, rights and duties of these export and import agencies are similar to those of the foreign trade associations.¹⁶ However, these agencies must be distinguished from the agencies set up in the foreign trade associations as structural subdivisions. The latter do not enjoy the rights of legal entities and they enter into legal relations only on behalf of the corresponding association.

15. For details see Genkin, *supra* note 14, at 3; L.A. LUNTS, *supra* note 14, at 183; L.A. LUNTS, VNESHNETORGOVAIA KUPLIA-PRODAZHA (PURCHASES AND SALES IN FOREIGN TRADE) 91 (1972).

16. See, for example, the charter of Tekhnabeksport, [1963] 12 VNESH. TORG. 54.

In addition to state foreign trade organizations the right to conduct foreign trade transactions is enjoyed by Tsentrosoyuz, the central union of the consumers' cooperatives. Tsentrosoyuz is a union of consumers' cooperative organizations whose main purpose is to conduct trade in order to supply consumer goods to the population. It has a foreign trade association, Soyuzkoopvneshtorg, which conducts export and import operations.¹⁷

In individual cases Soviet organizations taking part in foreign trade operations are set up in the form of joint-stock companies. One of these is Vneshtorgbank of the U.S.S.R., the bank for foreign trade. Vneshtorgbank provides, among other services, credits for foreign trade and conducts settlements on the export and import of goods.¹⁸ Vneshtorgbank enjoys the rights of a legal entity. It has a joint-stock capital, a reserve capital and also special funds. Its joint-stock capital is established at 300 million rubles divided into 6,000 shares (of 50,000 rubles each), which are paid in full by the shareholders. Shares in Vneshtorgbank may be owned by Soviet state organizations, institutions and enterprises, and also by cooperative organizations. Only inscribed shares are valid. The administration of Vneshtorgbank consists of the general meeting of shareholders, the council, the board and the auditing commission.¹⁹

Lawyers play an important role in the activities of foreign trade organizations. These organizations have legal departments (or bureaux), while the Ministry for Foreign Trade of the U.S.S.R. has a treaties and legal department. The general rules on legal work in the national economy apply to the organization and work of the legal service in foreign trade. These rules were established by a decree of the C.P.S.U. Central Committee and the Council of Ministers of December 23, 1970 entitled, "On Improving Legal Work in the National Economy,"²⁰ and by a decree of the Council of Ministers of the U.S.S.R. of June 22, 1972, issuing the "General Statute on Legal Consultation Offices."²¹

17. See, the charter of Soiuzkoopvneshtorg, [1963] 1 VNESH. TORG. 52.

18. For details on the activities of Vneshtorgbank, see Al'tshuler, *Mezhdunarodnoe raschetnye i kreditnye pravootnosheniia (International Legal Payment and Credit Relations)*, in PRAV. REG. VNESH. TORG 377; Shishov, *Raschetnye i kreditnye otnosheniia vneshnetorgovykh ob'edinenii s drugimi sovetskimi organizatsiiami (Payment and Credit Relations between Foreign Trade Associations and other Soviet Organizations)*, in PRAV. REG. VNESH. TORG 423; VALIUTNYE OTNOSHENIYA VO VNESHNEI TORGOVLI S.S.S.R. (CURRENCY RELATIONS IN THE FOREIGN TRADE OF THE U.S.S.R.) (A. B. Al'tshuler ed. 1968).

19. See the charter of the Bank for Foreign Trade of the U.S.S.R. issued by decree of the Council of Ministers on August 22, 1962, [1963] 3 VNESH. TORG. 45.

20. [1971] 1 S.P.-S.S.S.R., Item 1.

21. [1972] 13 S.P.-S.S.S.R., Item 70.

These decrees define the functions, rights and duties of lawyers. They are founded on the premise that the significance of the work of lawyers is growing in view of the extension of the rights of enterprises and organizations under the economic reforms being put into effect in the Soviet Union. Questions concerning business activity must be decided by the enterprises and organizations themselves within the limits of their competence and in strict conformity with the law. The principle of legality must be strictly observed in business relations. It is the task of the legal service to ensure legality in the activities of enterprises and organizations. In addition, workers of the legal service protect the rights and lawful interests of enterprises and organizations. Moreover, they use legal means to improve the economic indices of business activity, safeguard socialist property, and ensure the fulfilment of contract obligations.

As a general rule provisions on structural subdivisions are approved by the enterprises and organizations themselves. The General Statute on Legal Departments stresses the considerable importance of the work of these departments in ensuring legality in the activities of enterprises and organizations. The status of the legal consultant of an enterprise or organization is reinforced by the fact that the head of the legal department may be appointed and dismissed only by a higher organization. The legal consultant is subordinated to the director of the enterprise or organization but he controls the actions of the director from the standpoint of legality. All the legal documents signed by the director must be scrutinized and approved beforehand by the legal department (the legal consultant). If, in spite of the legal department's (legal consultant's) conclusion that a document is illegal, it is signed by the director, the legal department is required to inform the higher organization. These rules ensure the observance of legality in the work of enterprises and organizations.

In small enterprises, where the volume of legal work does not warrant the employment of staff legal consultants, legal services are provided by lawyers from the organized bar ("college of advocates"), which provides legal services to citizens and organizations. Members of the Soviet bar conduct cases in court and in arbitration tribunals and provide legal assistance through consultation. The bar is run on money received from clients. *Iniurcollegia* is a special organization of lawyers set up to serve foreign citizens and legal entities in the U.S.S.R. and to serve Soviet citizens and organizations abroad.

Methodological guidance of legal work in the national economy is provided by the Ministry of Justice of the U.S.S.R. This ensures the uniform and correct application of law and the strict observance of legality in business relations.

Discussion

A U.S. participant introduced five questions concerning the legal status of Soviet trade representations in the United States which, in his opinion, had the potential of becoming a serious problem in Soviet-American trade.

First, he questioned Soviet practice on sovereign immunity, noting that the Soviet waiver of sovereign immunity for foreign trading organizations could be withdrawn, for example, at the beginning of a suit. If such a defense were raised and contested, he noted, U.S. courts would tend to take a restrictive view of the scope of sovereign immunity, while the Soviet Union claimed broad applicability for this principle. A second and related point was the use by non-immune trading organizations of clearly immune premises belonging to Trade Delegations. This, he felt, might result in an effective immunity from legal process for the officials and documents involved in litigation. Third, he expressed concern over the ability of foreign trade organizations to satisfy adverse judgments. Fourth, he noted, an increase in Soviet imports would lead to product liability litigation in which U.S. courts would claim long-arm jurisdiction over the Soviet manufacturer. He was concerned about the amenability of the Soviet manufacturers to such suits and also about the ability of manufacturers or trading organizations to meet the large judgments sometimes handed down in such actions. It was noted that unless U.S. businessmen were convinced that their Soviet counterparts could be held accountable, they would refuse to conclude contracts with them. Finally, the fear that the activities of the Soviet trading organizations in the United States might run afoul of the antitrust laws was expressed.

Mr. Pozdniakov replied to the foregoing comments. However, it was clear from Mr. Pozdniakov's comments, and the additional comments of Mr. Laptev that the significance of several issues was not apparent to the Soviet participants. Thus, Mr. Pozdniakov stated that he did not see how the U.S. antitrust laws would be applicable to Soviet trading activities, since these were designed to foster rather than restrain trade. In the same vein, Messrs. Pozdniakov and Laptev dismissed the problem of product liability litigation, since they were of the opinion that this was a question of quality control at the point of origin. Both Mr. Pozdniakov and Mr. Laptev agreed that they failed to see the relevance of the question whether individual Soviet officials could be served with legal process, since in any case the foreign trading organization and not the official would be the defendant in the action. The issue of subpoenas for evidentiary purposes was not confronted by the Soviet speakers. However, when the U.S. participant pressed the point, a Soviet participant suggested that the

Soviet organizations would probably follow the procedure used in respect to demands for evidence in arbitration proceedings, that is, they would submit the material demanded, together with any objections on the grounds of relevance or claims that the material constituted protected trade secrets, for *in camera* inspection by the judge.

Mr. Pozdniakov pointed out that, as a practical matter, foreign trading organizations could be sued and immunity was not invoked. Messrs. Pozdniakov and Laptev agreed that the foreign trading organizations had sufficient assets and carried sufficient insurance and bank guarantees for individual transactions to cover any liability which might arise from their contractual relations.

On the subject of liability for product defects, however, the reply left the primary question unanswered. Both gentlemen agreed that a foreign trading organization was liable only for claims arising directly out of the contract. Mr. Laptev asserted that the liability of both the trading organization and the Soviet manufacturer was governed by strict privity of contract, so that neither could in any case be liable to a person not a party to the agreement. Mr. Laptev did not, however, confront the questions arising from the fact that most U.S. jurisdictions have rejected the Soviet concept of privity.

Another Soviet participant added his opinion that the liability of Soviet enterprises was governed by strict rules of privity. On the question of immunity, he emphasized that a Soviet enterprise which is a legal entity is clearly distinct from the government, and thus neither is vicariously liable for the obligations of the other. He noted that the Soviet-American trade agreement explicitly denied immunity to trading organizations. The exceptional case was where the organization was performing a governmental function on behalf of the government.

Discussion on the status of foreigners in the U.S.S.R. centered on the Soviet education tax on emigrants to non-socialist countries. Mr. Shevtsov replied that the measure was imposed to prevent a brain drain from the Soviet Union. In the case of other socialist countries, compensation was not required because of their special relationships with the Soviet Union.

Mr. Pozdniakov stressed the magnitude of the government's investment in education. He also pointed out that as among socialist countries the emigration tax was reciprocally waived by bilateral agreements and no such agreements existed as between the Soviet Union and non-socialist countries.

The discussion turned to the question of direct contact between U.S. companies and Soviet producing enterprises. The Soviet view, as expressed by Mr. Pozdniakov, was that direct contact was inappro-

priate in a planned economy. A U.S. participant objected that in transactions involving extensive cooperation over long periods of time, the use of a commercial agent such as a trading organization was inappropriate. A Soviet participant, however, expressed the opinion that the system was sufficiently flexible to allow extensive participation by the producing enterprise during the negotiation phase as far as working out the details of technical cooperation, but that only the trading organizations had the experience in drawing contracts with Western firms which would be necessary for such complex transactions.

