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The Accession of the Soviet Union to GATT

Kevin C. Kennedy*

On August 15, 1986, the Soviet Union formally applied for permission to participate in the eighth and latest round of international trade negotiations being conducted under the auspices of the General Agreement on Tariffs and Trade ("GATT"). The agenda of these trade talks—to be known as the "Uruguay Round" —will be wide-ranging and will include negotiations on agricultural export subsidies, foreign investment, intellectual property rights, and trade in services. The talks, which will be held in Geneva, are expected to last up to four years. The Soviet Union initially requested observer status, with full membership in GATT following "in due course." To no one's great surprise, the Soviet Union's request was rejected.

The United States officially opposed the Soviet application, ostensibly because of the nonmarket orientation of the Soviet economy, a view shared by many Western nations. GATT principles, of course, are premised on the existence of national

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economies which are decentralized. Thus, given the centrally planned nature of the Soviet economy, the reservations of the West are sound. Regrettably, however, the official U.S. reservation to Soviet accession to GATT may lack candor when read against other statements by the White House that the Soviets want to use GATT for political purposes. The same charge could be made against U.S. opposition to Soviet GATT accession.

The respective positions of the Soviet Union and the United States on this issue are ironic. At the time GATT was first being discussed at the end of World War II, the United States favored Soviet accession to GATT. The Soviet Union, on the other hand, absented itself from GATT discussions, believing that the United States was bent on world economic and political hegemony.

Notwithstanding the West's opposition to Soviet accession to GATT, four Socialist countries have become GATT contracting parties—Poland, Hungary, Yugoslavia and Romania. Of these four, Romania, Poland and Hungary have nonmarket economies. Of equal significance, the Soviet Union is now the world's sixth largest exporter of merchandise trade after the United States, West Germany, Japan, the United Kingdom, and France. It ranks seventh in imports of merchandise trade. In 1983, 39 per cent of the Soviet Union's exports of merchandise trade was destined for the West. In short, the Soviet Union is a major player in international trade, especially with the West. Knowing that a country's influence in GATT is in direct proportion to its importance in international trade, the West undoubtedly realizes the not insignificant influence the Soviet Union would have in GATT if admitted to membership. But this realization is hardly a reason for opposing Soviet

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13 M. Kostecki, East-West Trade and the GATT System 2 (1979) [hereinafter Kostecki].

14 Id. at 3.

15 See World Development Report 197 (World Bank 1985) (Romania, Poland, Hungary listed as nonmarket economy countries) [hereinafter World Development Report]; J. Jackson & W. Davey, Legal Problems of International Economic Relations 1183 (1986) (Yugoslavia "has a sufficiently market-oriented economy that its membership was not thought to raise the problems encountered when the other East European countries applied for membership").

16 Christian Science Monitor, Sept. 15, 1986, at 20. In 1984, the "Soviet Union exported over $91 billion in merchandise trade and imported over $80 billion in such trade. World Development Report, supra note 15, at 197. This compares with the $216 billion worth of exports and the $338 billion worth of imports in merchandise trade for the United States in that same year. Id.

17 World Development Report, supra note 15, at 197. The United States ranks first, followed by West Germany, Japan, the United Kingdom, France, and Italy. Id.


19 On a trade-weighted basis, three percent of the industrial market economies' merchandise trade exports were destined for East European nonmarket economies in 1984, a total of nearly $60 billion worth of trade. World Development Report, supra note 15, 199, 203.
accession. To bar its entry into the 92-member GATT would undermine whatever aspirations GATT has for universality. In the words of Professor John Jackson, “there is more to be gained by full and universal participation in the international discussions of economic affairs than there is by the exclusion of certain states.”

This article examines the issue of Soviet accession to GATT. After an overview of the nonmarket economic and trade system, the article discusses GATT principles in the context of the accession of nonmarket-economy (NME) countries to GATT. The article then describes the experiences of Poland, Hungary and Romania in the GATT accession process. It thereafter briefly discusses the Soviet economy and broadly identifies areas of reform needed for Soviet accession to GATT. The article concludes that unless the Soviet Union is prepared to decentralize its economy sufficiently to allow market forces to have an effect on prices—a move that the Soviet Union suggests it is prepared to make—full membership in GATT as a contracting party cannot be realized.

I. CHARACTERISTICS OF NMEs

To better understand the nonmarket economic and trading system, a brief comparison with its Western counterpart is helpful. The industrialized West is in the main comprised of countries with mixed market economies. Greatly simplified, in a market economy international trade is driven by the independent decisions of buyers and sellers acting out of economic self-interest. Prices set by the market are used for allocating scarce resources. These scarce resources are in turn channelled into their most efficient uses by the market forces of supply and demand. Consequently, prices act as rationing and signalling mechanisms by which goods are traded consistently with buyer preferences.

In nonmarket economies such as the Soviet Union, by contrast, international trade is regulated by state planning and control which set the prices and output of

20 Jackson, supra note 10, at 777.
21 But see Kostecki, supra note 13, at 14: “Soviet authorities refused participation in the GATT on the basis of special arrangements such as were adopted for Poland and Romania.”
22 3 Int'l Trade Rep. (BNA) 1098 (1986).
24 Carbaugh, supra note 23, at 180. See Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination, 49 Fed. Reg. 19,374, 19,375 (Dep’t Comm. 1984) [hereinafter Carbon Steel Wire Rod from Poland].
26 See Potassium Chloride from the Soviet Union; Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition, 49 Fed. Reg. 23,428 (Dep’t Comm. 1984), where the International Trade Administration of the Department of Commerce commented: “In our opinion, the economy of a country is an NME whenever it operates on principles of nonmarket cost or pricing structures so that sales or offers for sale of merchandise in that country or to other countries do not reflect the market value of the merchandise. We have found this to be the case in the Soviet Union economy: prices are centrally administered; resource allocation is centrally directed; and the Soviet Union's currency, the ruble, exhibits extremely limited convertibility. Therefore, we determine that the economy of the Soviet Union is an NME.” 49 Fed. Reg. 23, 249.
goods, with scant consideration given to factors such as cost and efficiency.\textsuperscript{27} Resources are not regulated by a market, but instead by central planning; the NME government does not interfere with the market process, but instead replaces it. Of course, a planning elite in a centrally controlled economy could not possibly make every decision involved in the production and distribution of a nation’s products. As explained by one economist:

“The sentiment is often expressed that, for an economy of any complexity, completely centralized decision making would exceed the capacity of any but an omniscient decision maker, and that even one that had all the relevant information simply would not have the time to make more than a relatively modest number of crucial decisions. Further, limits to information gathering and processing exist that render such centralization infeasible.”\textsuperscript{28}

In order to reduce the informational requirements and the number of decisions to be made by the central planners, the system is decentralized to some degree. Certain decisions are delegated to the producing enterprises. Since decentralization can lead to a loss of control by the central planners, it is accompanied by an incentive system which is designed to channel accurate information back to the planners who in turn can insure that the enterprises behave in a desired manner.\textsuperscript{29}

Thus, rewards and bonuses are provided to induce desired behavior on the part of managers and workers. Despite the use of terms such as “incentives” and “bonuses,” an NME system cannot be equated with a market economy. As described by Lipsey and Steiner, “The big difference [between market and NME economies] in incentive systems is in whether those responsible for production respond to what is profitable to produce or whether they respond to what they are directed to produce.”\textsuperscript{30} In short, incentives in NME systems are control mechanisms.

In NME countries prices do not reflect relative scarcity\textsuperscript{31} nor are they related to


\textsuperscript{29} See Bonin & Marcus, Information, Motivation, and Control in Decentralized Planning: The Case of Discretionary Managerial Behavior, 3 J. Comp. Econ. 235 (1979), where the authors explain:

“[A]n omniscient planner could command his preferred solution using force as the motivating agent. However, when no agent possesses sufficient information to both solve the economic problem at hand and monitor compliance with the resulting directives, incentives must be carefully structured to promote truthful reporting and motivate optimal performance.”

Id. at 236.

\textsuperscript{30} R. Lipsey & P. Steiner, Economics 803 (1969) (emphasis in original).

\textsuperscript{31} See Berman & Bustin, The Soviet System of Foreign Trade, in Business Transactions with the USSR 55 (R. Starr ed. 1975) (’Nor do internal prices adequately reflect the movement of supply and demand within the Soviet Union’) [hereinafter Berman & Bustin]. On the subject of prices in NMEs, the following anecdote was recently reported in The Economist: “When the world revolution comes, a Czech official was once heard to remark over a cup of coffee, ‘we shall have to preserve one capitalist country. Otherwise, we shall not know what prices to trade at.’” The Economist, Comecon Survey, April 20, 1985, at 8, Col. 1.
market forces.\textsuperscript{32} As the International Trade Administration of the Department of Commerce explained in its \textit{Carbon Steel Wire Rod from Poland} negative countervailing duty determination:\textsuperscript{33}

"[W]e have found generally for NMEs . . . that prices are administered and that these prices do not have the same meaning as prices in a market economy. Not only are the NME enterprise's output prices controlled, but its costs, which are the prices paid for inputs, also are centrally determined. With administered costs and prices, profits are effectively administered as well. Finally, economic activity is centrally directed through the use of administered prices, plans and targets."\textsuperscript{34}

In NME countries productive resources are allocated in accordance with the central plan, with incentives encouraging compliance with the plan. Profit does not have the same meaning in an NME country as it does in a market economy, given that NME enterprises are not profit-maximizing. Instead, through central planning and the incentive structure, NME enterprises carry out the central planners' directives.

Nonmarket economies are also characterized by their inconvertible currencies.\textsuperscript{35} The basic rationale for currency inconvertibility is that convertibility would disrupt central planning.\textsuperscript{36} If rubles could be converted into dollars, and vice versa, free purchasing of goods across national borders would in theory be facilitated,\textsuperscript{37} upsetting the central plan under which production and distribution of goods is carefully controlled.\textsuperscript{38} The upshot of the inconvertibility of Eastern currencies, in tandem with central economic planning, has been the East's chronic balance-of-payments problem.\textsuperscript{39} In order to purchase Western goods, Eastern bloc countries have to use Western "hard" currencies. But because of the poor quality of Eastern manufactured goods—attributed to the lack of competition and the emphasis on quantity over quality of production in the East—\textsuperscript{40} the demand for those products in the West is

\begin{itemize}
  \item See Tam, \textit{On Incentive Structures of a Socialist Economy}, 3 J. Comp. Econ. 277 (1979), where the author notes in this connection: "In a socialist economy it is often the case that commodities are produced by a few large-scale enterprises, and that the planner sets prices for these products. Controlled prices, however, lead to, among other things defects, inferior product quality and lack of incentives for innovation by managers."
  \item Id.
  \item Id. at 19,377.
  \item Id. at 19,377.
  \item Id. at 360.
  \item Id.
  \item Id.
  \item Id. But even if currency convertibility existed, the distribution of goods in the East is still tightly controlled. This control is buttressed by the allocation of scarce resources to the production process, a restriction referred to as commodity inconvertibility. \textit{Id.}
  \item Id. at 360-61.
  \item Id. at 361. As observed in Goldman, \textit{Gorbachev and Economic Reform}, 64 Foreign Aff. 56 (1985)
    "Central planning in the Soviet Union penalizes rather than encourages innovation. Soviet industrial ministers and factory managers have traditionally been rewarded for producing more, rather than improved, products. Any manager who shuts down the production line in order to change models or upgrade product quality risks a drop in production and thus a drop in his or her bonus. Seldom is any bonus provided for better quality. Even when managers do innovate, they invariably find it impossible to obtain the necessary capital funds for any innovation not anticipated well in advance." Goldman, \textit{supra} this note, at 60 [hereinafter Goldman]. Similar observations are made in Bialer & Afferica, \textit{The Genesis of Gorbachev's World}, 64 Foreign Aff. 605 (1985), where the authors comment that [t]he system of centralized, direct planning stresses quantity over quality and lacks the flexibility necessary for innovation." \textit{Id.} at 606 [hereinafter Bialer & Afferica].
\end{itemize}
low, inhibiting the East's ability to earn sufficient foreign exchange to pay for its purchases in the West.

Finally, centrally planned economies conduct foreign trade through state trading organizations which have a trade monopoly over product groups. This bureaucratic shield hinders manufacturers' ability to respond to demands from foreign purchasers for their products. The East's foreign trade system has consequently been identified as an additional barrier to East-West trade.

Against this brief overview, we turn to a consideration of the experience of NMEs vis-à-vis GATT accession.

II. NMEs AND GATT

In the early post-war period, the Eastern bloc governments maintained a cautious distance from GATT and multilateral trade. They feared that America aspired to world political and economic domination, believed that trade protectionism was necessary for their own industrialization, and insisted that principles of non-discrimination in trade were inappropriate in a world of have and have-not countries. Furthermore, GATT was and still is designed for countries in which market mechanisms operate, that is, where trade occurs on the basis of purely economic considerations. Against this backdrop, the dramatic reversal of attitude of the East European governments with the announcement in 1955 that they now embraced principles of multilateralism and non-discrimination in world trade must have come as a great shock to many Western observers. As explained by one commentator:

"The centrally-planned economies now realized that an international trade order promoting freer trade, non-discrimination and multilateralism would be in the interest of small and middle-sized trading nations and that it was, indeed, these countries which derived the most important economic advantages from participating in the system."

With an appreciation of the benefits to be gained from participating in a multilateral trade organization based on a principle of non-discrimination, several Eastern bloc countries began seeking GATT membership in the late 1950's. In 1957, Poland
and Romania obtained observer status.\textsuperscript{50} Poland became an associate member in 1959 and a full member in 1967.\textsuperscript{51} Romania became a full member in 1971.\textsuperscript{52} Hungary became an observer in 1966 and a full member in 1973.\textsuperscript{53} While Bulgaria became an observer in 1967,\textsuperscript{54} it has not made any further progress toward attaining full GATT membership.

As evidenced by these dates, the process for obtaining full GATT membership has been protracted for Eastern bloc countries,\textsuperscript{55} although not without its rewards for those countries which have become members. For example, in 1984, 28 per cent of Hungary's merchandise exports went to industrial market countries.\textsuperscript{56} For Poland that figure was 34 per cent\textsuperscript{57} and for Romania in 1983, 25 per cent.\textsuperscript{58}

The legal framework chosen for dealing with centrally-planned-economy countries and their accession to GATT has been a country-by-country approach, with GATT members negotiating arrangements with state-trading countries under the auspices of GATT.\textsuperscript{59} As the following discussion explains, no uniform solution for dealing with East European countries in GATT has been settled upon.\textsuperscript{60} Four patterns have emerged.

The case of Czechoslovakia and GATT is best described as \textit{sui generis}. Czechoslovakia was already a full member of GATT at the time its economy became centrally

\textsuperscript{50} Kostecki, \textit{supra} note 13, at 11. Full GATT membership takes place in a series of stages. As explained by Professor John Jackson:

"Since the negotiation of the 'ticket of admission,' i.e., tariff concessions by the acceding government, may be a prolonged affair and since the acceding government may also need some time to adjust its international trading practices to bring them into conformity with the obligations that it will undertake in GATT, the practice has developed in GATT of new countries undertaking a series of 'stages' of participation in GATT. The first step may be no more than to obtain 'observer status' under Rule 8 or 9 of the Rules of Procedure for Sessions of the Contracting Parties. The next step may be . . . a declaration of 'provisional accession' (not to be confused with 'provisional application'), granting 'provisional accession', to the new participant for a limited period of time . . . pending the completion of negotiations for full membership . . . . [T]he provisional participant has virtually all the benefits of membership as a true contracting party. The last and final stage is the protocol for accession itself. . . . Sometimes the protocol may have special terms that will give the acceding government for which it is drafted the equivalent of a 'reservation.' "

Jackson, \textit{supra} note 10, at 94-95 (footnotes omitted).

\textsuperscript{51} Kostecki, \textit{supra} note 13, at 11.

\textsuperscript{52} Id.

\textsuperscript{53} Id.

\textsuperscript{54} Id.

\textsuperscript{55} The protracted process of Eastern bloc accession to GATT is attributable in part to the disproportionate benefits nonmarket economy states receive under the most-favored-nation ("MFN") principle embodied in GATT. As explained by Lansing and Rose, \textit{supra} note 8:

"Greatly simplified, . . . because the government of an NME [nonmarket economy] states both collects tariffs (from itself) and purchases all imports, the lower tariffs that MFN treatment generates produce no greater incentive to import; the level of tariffs do not affect the price the government pays for imports . . . Moreover, NME states generally effect their trade protection policies not through the tariff structures that market economy states mainly employ but through quotas . . . The upshot is that an exchange of MFN treatment between NME and market economy states favors the NME state."

\textit{Id.} at 340 (footnotes omitted).

\textsuperscript{56} World Development Report, \textit{supra} note 15, 203.

\textsuperscript{57} Id.

\textsuperscript{58} Id.

\textsuperscript{59} Kostecki, \textit{supra} note 13, at 15.

\textsuperscript{60} Id. at 16.
controlled. Despite a rupture in trade relations with the United States as a consequence of Czechoslovakia's entry into the Communist bloc, no serious difficulties arose within GATT from this event. Professor Jackson has suggested that "[o]ne of the reasons that difficulties have been avoided, however, may be that other GATT contracting parties did not feel that the amount of trade involved was consequential enough to warrant an investigation of such problems as existed." The experience of Yugoslavia serves as the paradigmatic example of how a Socialist state, given sufficient political will, can join GATT unconditionally. When Yugoslavia first applied to GATT for observer status in 1950, it had a nonmarket economy. Over the next nine years Yugoslavia took steps to decentralize its economy, culminating in associated member status in GATT in 1959. The protocol between Yugoslavia and GATT establishing this special relationship accorded Yugoslavia "such treatment as will achieve an equitable balance of rights and obligations as envisaged in the General Agreement." In plain English, this meant trade relations between Yugoslavia and GATT members would be conducted to the extent possible given Yugoslavia's economic system. While this special relation of associated membership was in part a reflection of reservations by GATT members about Yugoslavia's centrally-planned economy, it at the same time signalled optimism that Yugoslavia could indeed move to a decentralized economy. As events unfolded, this optimism was not without foundation. During its three years as an associated member, Yugoslavia decentralized its economy, introduced tariffs, abolished multiple exchange rates, and became multilateralist in its trade relations. The introduction of meaningful tariffs was not without difficulty, however, owing in large measure to price disparities between Yugoslavia and the rest of the world. Following further decentralization of its economy, Yugoslavia obtained full GATT membership in 1966 under the normal GATT obligations as exist among the other contracting parties.

The experience of Yugoslavia with GATT is both reassuring and sobering. As summarized by Professor Kostecki:

"First, this experience, especially in its earlier stage, provided the GATT countries with the opportunity to acquaint themselves with difficulties that would arise in relations with target-

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61 See Kostecki, supra note 13, at 23-25; Jackson, supra note 10, at 362.
62 Id.
63 Jackson, supra note 10, at 363.
64 Kostecki, supra note 13, at 25.
65 Id. at 11, 25.
67 Kostecki, supra note 13, at 25.
68 Jackson, supra note 10, at 363.
69 See Kostecki, supra note 13, at 25-26.
70 Kostecki, supra note 13, at 26.
71 Id.
72 Jackson, supra note 10, at 363.
protected, state-trading systems. Secondly, Yugoslavia’s participation in the GATT provided empirical evidence that socialist economies could decentralize sufficiently to permit their membership of [sic] the GATT under the same conditions as Western market economies. Finally, Yugoslavia’s road to the GATT clearly demonstrated that substantial reforms are required to shift from a target-protected, state-trading system to the GATT model of foreign trade and that, even under political conditions extremely favourable to decentralization, years of adjustment are necessary."73

In contrast with the dramatic accommodations Yugoslavia made in its economy to achieve GATT accession, Poland and Romania represent special cases of state-trading countries obtaining GATT membership without adjusting their trading systems.74 Shortly after obtaining observer status in 1957, Poland abandoned its effort to accede to GATT through the Yugoslav model of economic decentralization.75 It instead proposed accession on the basis of a global import commitment.76 After a number of false starts spanning a ten-year period,77 Poland finally became a full GATT member in 1967.78 With certain exceptions to the general prohibition on quantitative restrictions,79 the protocol for accession provides for full application of the General Agreement to Poland, including the most-favored-nation clause.80 Harboring no illusions about the efficacy of tariff concessions in the context of a state-trading economy,81 the GATT contracting parties and Poland agreed to a schedule pegged to value of imports. Annex B to Poland’s Protocol of Accession provides in part that “Poland shall . . . undertake to increase the total value of its imports from the territories of contracting parties by not less than 7 per cent per annum.”82 The formula was premised on reciprocity: In exchange for Poland’s import commitment, the

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73 Kostecki, supra note 13, at 26-27.
74 See Kostecki, supra note 13, at 27.
75 Id.
76 Id. See Gadbaw, The Implications of Countertrade Under the General Agreement on Tariffs and Trade, 5 J. Comp. Bus. & Cap. Market L. 355, 363 (1983), where the author notes that a 1946 International Trade Organization draft would have required any country with a complete or substantial monopoly over imports to undertake a global import commitment.
77 See Kostecki, supra note 13, at 28-29, where the author relates Poland’s difficulties in arousing sufficient interest in its membership, explained in part by the insignificance of Polish trade for GATT countries.
78 Jackson, supra note 10, at 363.
79 See Protocol for the Accession of Poland to the General Agreement on Tariffs and Trade, Oct. 18, 1967, 19 U.S.T. 4331, T.I.A.S. No. 6430, pt. 1, para. 3(a) [hereinafter Poland Protocol of Accession], which provides: “Contracting parties which on the date of this Protocol apply to imports from Poland prohibitions or quantitative restrictions which are inconsistent with Article XIII of the General Agreement may, notwithstanding these provisions, continue to apply such prohibitions or restrictions to their imports from Poland provided that the discriminatory element in these restrictions is (a) not increased and (b) progressively relaxed as far as the quantities or values of permitted imports of Polish origin are concerned so that at the expiry of the transitional period . . . any inconsistency with the provisions of Article XIII has thus been eliminated.”
80 Id., pt. 1, para. 1.
81 In its simplest form, in a state-controlled economy the state sets the prices for all domestically produced goods, prices that may have little connection with costs, supply, and demand. The state thus has the power to underprice its own goods relative to competing imports, thereby reducing or eliminating domestic demand for such imports. Consequently, any tariff concession on those imports is meaningless. In addition, after imports clear customs, the price of those imports can be arbitrarily raised in a command economy. One motivation for such an action would be to protect a competing domestic industry. The effect, of course, would be to once again lower or eliminate the demand for those imported goods.
GATT contracting parties would make tariff concessions on imports from Poland.\textsuperscript{83} This commitment is subject to an annual review\textsuperscript{84} of the steps Poland has taken to ensure an increase in the total value of its imports from the territories of the contracting parties.\textsuperscript{85} In the light of several defects in this formula—the absence of a nexus between export and import performance and the failure to account for inflation when calculating Poland’s annual import performance\textsuperscript{86}—Poland’s initial commitment was replaced by a more flexible one that measured import performance by the same average annual rate of increase, but calculated it over a longer period of time.\textsuperscript{87} A shortfall of imports in one year could be offset by superior import performance in prior or succeeding years.\textsuperscript{88}

Following Poland’s lead, Romania obtained GATT observer status in 1957.\textsuperscript{89} It sat on the sidelines, however, until the negotiations with Poland were concluded, expecting (and correctly so) that Poland would serve as an NME test case.\textsuperscript{90} Romania experienced many of the same problems that Poland weathered during its accession negotiations, e.g., the problems of discriminatory quantitative restrictions, safeguards, and reciprocity.\textsuperscript{91} Since Romania suffered from balance-of-payments problems, it rejected any measure of import performance that was not tied to its export performance with GATT contracting parties.\textsuperscript{92} In addition, Romania viewed itself as a developing country entitled to special concessions.\textsuperscript{93} Consequently, in its protocol of accession signed in 1971,\textsuperscript{94} Romania stated that it “firmly intends to increase its imports from the contracting parties as a whole at a rate not smaller than the growth of total Romanian imports provided for in its Five-Year Plan.”\textsuperscript{95} Significantly, and most obviously, unlike the Polish case where an import commitment was made, Romania’s undertaking does not refer to any specific rate of annual import increase.\textsuperscript{96}

\textsuperscript{83} Kostecki, supra note 13, at 94.
\textsuperscript{84} Polish Protocol of Accession, supra note 79, pt. I, para. 5.
\textsuperscript{85} Id., Annex A, para. (ii)(d).
\textsuperscript{86} Kostecki, supra note 13, at 95. The first defect inured to the detriment of Poland which suffered chronic balance-of-payments problems, while the latter had the effect of limiting the effectiveness of Polish concessions. Id.
\textsuperscript{87} GATT Basic Instruments and Selected Documents, 18th Supp., 201 (1972).
\textsuperscript{88} See Kostecki, supra note 13, at 95.
\textsuperscript{89} Kostecki, supra note 13, at 11.
\textsuperscript{90} Id. at 30.
\textsuperscript{91} Id.
\textsuperscript{92} Kostecki, supra note 13, at 96.
\textsuperscript{93} Id.
\textsuperscript{94} Id. at 11.
\textsuperscript{95} GATT Basic Instruments and Selected Documents, 18th Supp., 10 (1972) (emphasis added). As noted by Kostecki, “[t]he expression ‘firmly intends’ implies that it is much more a declaration of Romania’s intention than a firm commitment as, for example, those included in the GATT schedule of concessions. In that respect the Romanian arrangement is consistent with her claim to developing country status.” Kostecki, supra note 13, at 96.
\textsuperscript{96} See Kostecki, supra note 13, at 97, where the author observes: “The Romanian promise not to decrease the GATT share of imports in total Romanian imports, however, could be considered the most important declaration of the Romanian party in the GATT. In commercial terms it seems quite straightforward, but in political terms it testifies to Romania’s scepticism concerning the future of East European integration and expresses the desire to bolster economic independence \textit{vis-a-vis} the Soviet Union and the other non-GATT CMEA [Council for Mutual Economic Aid or “COMECON”] countries.”
The latest NME country to join GATT is Hungary. Unlike the experiences of Romania and Poland in GATT accession, and in imitation of the Yugoslav example in that process, Hungary sought GATT membership on the basis of tariff concessions.\(^9\) This proposal was initially received with scepticism from some GATT members who noted that the effectiveness of Hungarian tariffs could be subverted by restrictions on pricing and state monopolies.\(^9\) After some wrangling over this issue, Hungary was finally able to convince the sceptics that its tariffs were in fact its primary method of trade protection. (This followed the decentralization of the Hungarian economy in 1968.\(^9\)) With that understanding, Hungary became a full member of GATT in 1973 on the basis of tariff concessions but with a commitment to reduce its relatively high tariffs.\(^10\) Hungary made no commitment to increase imports from GATT members at a fixed percentage or on the basis of past import performance.\(^10\)

In view of the experiences of Poland, Romania, Hungary, and Yugoslavia in the GATT accession process, is there a place within GATT for the Soviet Union, given its archetypical nonmarket economy? Unless the Soviets are prepared to make gradual but nevertheless dramatic reforms in their economic system, the answer is certainly “no.” The next part of this article briefly examines and describes the Soviet economic and trade system, and the economic reforms proposed by General Secretary Gorbachev.

III. THE SOVIET ECONOMIC AND TRADE SYSTEM

The Soviet Union’s State Planning Commission and Ministry of Foreign Trade determines the level and composition of its foreign trade.\(^10\) In the Soviet Union foreign trade is a “state monopoly,”\(^10\) a distinctive phrase used only in connection with Soviet foreign trade.\(^10\) The most active of the agencies for conducting the Soviet foreign trade monopoly are the Foreign Trade Organizations (“FTOs”).\(^10\) A number

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9. Id.
9. Id. at 32.
10. Id. at 11, 97-98.
10. Carbaugh, supra note 23, at 180; Berman & Bustin, supra note 31, at 27-41, 54-55. See Bornstein, supra note 27, where the author notes: “[The quantities to be traded, and the prices involved, are usually determined not by the association or enterprise itself but by the branch ministry and/or the ministry of foreign trade—particularly in regard to trade with CMEA countries, which is arranged in high-level bilateral agreements covering quantities and prices. Thus enterprises still receive foreign trade assignments, and their discretion is usually limited to decisions on some aspects of the assortment, within the specified global total.” Bornstein, supra note 27, at 125. See also Georgetown Steel Corp. v. United States, No. 85-2805, slip op. (Fed. Cir. Sept. 18, 1986) (countervailing duty law does not apply to NME countries as a matter of law).
10. Id.
of FTOs exist, defined in terms of product, service, or geographic market. Soviet producers and manufacturers may not conclude contracts with foreign firms without going through the appropriate FTO. Each FTO is subject to central government control.

Ideally, of course, Western businesses trading with the Soviet Union would prefer the Soviets to trade on the basis of “commercial considerations only.” This desiderata seems beyond reach, however, because

“There is no way for the Soviet planners to divorce commercial considerations from other considerations. The fact that more than two-thirds of Soviet foreign trade is conducted with other socialist countries cannot be reconciled with the ‘commercial considerations only’ formula, nor can the very low level of consumer goods. It is the very essence of a planned economy that everything pertaining to commerce is, as Lenin put it, a matter of ‘public law’—that commerce serves a public, and hence also a political, function.”

Despite the seemingly intractable nature of central planning and the inability of economic reform to take root in the Soviet Union, General Secretary Mikhail Gorbachev has spearheaded the introduction of far-reaching economic reforms in the Soviet Union. In tacit recognition of the inhibiting effect its FTOs have on foreign trade, the Soviet Union announced in connection with its overture to GATT that individual ministries and industries would be permitted to deal directly with foreign buyers without the intervention of an FTO. This reform will not mean the abandonment of the state’s monopoly over foreign trade, however. Rather, it represents only an erosion of that control. Trade in raw materials and semi-

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106 Berman & Bustin, supra note 31, at 31. In the Soviet Union there are approximately 70 FTOs responsible for most of the Soviet Union’s exporting and importing. T. Hoya, East-West Trade 12 (1984) [hereinafter Hoya].
107 Berman & Bustin supra note 31, at 66. In Hungary, large domestic manufacturers are being permitted to sell directly to foreign customers without having to work through the FTOs. Hoya, supra note 106, at 12.
108 Hoya, supra note 106, at 11.
109 GATT, supra note 11, art. XVII(1)(b). The “commercial considerations only” criterion is that imposed by GATT on the conduct of trade by state trading enterprises. See Berman & Bustin, supra note 31, at 65.
110 Berman & Bustin, supra note 31, at 65.
111 See Goldman, supra note 40, at 58, where the author notes that the inherently conservative nature of Soviet planners inhibits significant economic reforms. Paradoxically, short-term economic gains serve to block long-run structural change. “If things appear to be going well, why take the risk?” is the planner’s attitude. Id.
112 For a review of the economic reforms initiated by Soviet leaders Khrushchev and Brezhnev, see Spero, supra note 35, at 362-63. See also Goldman, supra note 40, at 57 (“Under Brezhnev, Soviet work habits had deteriorated; alcoholism, corruption, inefficiency and disinterest made poor quality and increased output inevitable.”).
113 See Brown, Change in the Soviet Union, 64 Foreign Aff. 1048 (1986) [hereinafter Brown]; Goldman, supra note 40, at 56; Ploss, A New Soviet Era? 62 Foreign Pol’y 46 (Spring 1986).
114 See Soviet Union Increases Pressure to Win Role in New MTN Round, Pledging to Play by Rules, 3 Int’l Trade Rep. (BNA) 1098 (1986). But see Bialer & Affrica, The Genesis of Gorbachev’s World, 64 Foreign Aff. 605 (1986), where the authors state that Gorbachev is on record as insisting that centralized administration and control was necessary in foreign trade, particularly in the acquisition and disposition of advanced foreign technology. In a situation where the hard-currency resources of socialist states are severely limited, decisions regarding what to buy and how to distribute it must be highly centralized.” Id. at 62 [hereinafter Bialer & Affrica].
116 Id.
manufactured goods, comprising the majority of the Soviet Union's exports, will continue to be controlled by FTOs.117

More basic internal economic reforms are needed if the Soviet Union is to have any hope of meeting with success in its attempt to join GATT. Nothing short of abandoning central planning is in order,118 for the simple reason that central planning penalizes innovation. In the words of Professor Marshall Goldman:

“[W]hat is important in the high-tech industrial world of today is not the centralized mobilization and allocation of capital but flexibility and quick response time. In most societies, response time is usually faster when there are decentralized sources of capital. A few bureaucrats sitting in Moscow making ponderous committee decisions involving massive sums cannot deal with the high risks involved and the rapid product turnover of the high-tech economy. That requires many decision-makers with immediate access to varying quantities of capital.”119

Confronted with these realities, Soviet planners nevertheless staunchly cling to central planning because it avoids the unpredictabilities of the market with its concomitant bouts with inflation and unemployment.120 Gradually integrating a centrally planned economy with a market model is like mixing oil and water.121 Conversely, comprehensive economic reform in the Soviet Union has been compared to assigning a railroad engineer who has never flown before the task of flying a Boeing 747—not impossible, but it has its risks.122

In this connection, Professors Seweryn Bialer and Joan Afferica have concluded that the principal characteristic of the Soviet system is the primacy of politics over economics.123 This primacy has four significant consequences for economic reform, none of which advance such reform but which do entrench central planning.124 They explain:

117 Id.

118 As one economist has observed with respect to Soviet incentive/reform programs introduced in 1979, the expectation that such programs will cause NME enterprises to act like their market economy counterparts “... is a grand illusion. Without any alteration in the economic environment, financial autonomy can amount to no more than a change in accounting rules. To make it effective in inducing the desired behavior, firms would have to be given broad freedom of action, alternative suppliers would have to be available, prices would have to reflect relative scarcities and utilities reasonably well, and government bureaucracies would have to retreat to overseeing the economy rather than directing it through detailed plans. None of these systematic modifications forms any part of the latest reform package.” Schroeder, Soviet Economic “Reform” Decrees: More Steps on the Treadmill, reprinted in Soviet Economy in the 1980's: Problems and Prospects, Joint Economic Comm., 97th Cong., 2d Sess. 86 (1982) [hereinafter Schroeder].

119 In 1983, former Soviet leader Yuri Andropov introduced a series of economic reforms aimed at eradicating the root causes of Soviet economic ills. Managers were to be given more autonomy and incentives were introduced to increase productivity. Decentralization never occurred, however, because of bureaucratic intransigence. See Washington Post, Jan. 20, 1985, at H8, col. 3.

120 Goldman, supra note 40, at 64-65.

121 Goldman, supra note 40, at 61. Professor Goldman also challenges the assumption that the Soviet economy is free of inflation and unemployment. Id.

122 Goldman gives the example of a reform introduced by Soviet leader Andropov under which a portion of an industry’s profits could be placed in a special development fund. The rubles accumulated, but they had no value since actual material resources were not allocated as well, thereby subverting the entire reform effort. Goldman, supra note 40, at 64-65.

123 Bialer & Afferica, supra note 114, at 610.

124 Id.
"First, economic growth is of crucial importance to the leadership and cannot be left to the managers who directly administer the Soviet economy. Second, economic priorities are set in accordance with the political priorities of the leadership and the elite. Third, the administration of the economy and the implementation of economic plans is designed in a way that will not impinge on the political power of the leadership and the elite. Fourth, while economic growth and its attainment are a central preoccupation of the leadership and elite, economic factors and considerations in themselves do not determine the formulation of these goals and the methods by which they are to be attained."  

Genuine economic reform in the Soviet Union for Professors Bialer and Afferica means nothing less than the complete overhaul of a political economic system that has existed for nearly six decades, a daunting prospect indeed.

- IV. SOVIET ACCESSION TO GATT—PROSPECTS AND CONCLUSION

Recalling that GATT was created with market economies in mind, at least two words accurately describe GATT's approach in establishing trade relations with East European governments: pragmatic and gradual. Although GATT does contain a specific article dealing with the somewhat anomalous situation of state-trading enterprises, GATT does not envisage systematic and pervasive state control over trade. State trading is to be the exception, not the rule. That GATT has been able to accommodate the nonmarket economies of Poland and Romania is thus a testament to its flexibility.

Despite these early successes, problems still persist. From the perspective of the East, their exports to the West have not grown sufficiently to finance their import spending, resulting in severe balance-of-payments difficulties. From the perspective of the West, the Polish commitment and the Romanian undertaking based on import performance are meaningless. In recognition of these shortcomings, one commentator has proposed that the protocols be amended to contain two new general

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125 Id.
126 Id.
127 See, e.g., Patterson, supra note 1, at 186; Kostecki, supra note 13, at 135.
128 See Note, East-West Trade; The Accession of Poland to the GATT, 24 Stan. L. Rev. 748, 764 & n.94 (1972).
129 GATT, supra note 11, art. XVII. For a discussion of state-trading enterprises and GATT, see Jackson, supra note 10, at 329-61; Kostecki, supra note 13, at 35-64; note 11, supra.
130 See, e.g., Kostecki, supra note 13, at 134-46.
131 Kostecki, supra note 13, at 135. This is attributable in some measure to trade protectionism in the form of discriminatory quantitative restrictions maintained by Western governments. Id.
132 Id. at 141. In the case of Poland, for example, its commitment is based on current prices which can be eroded by inflation and increased by deflation. Patterson, supra note 1, at 188. Romania's "firm intention" to increase imports is ultimately unenforceable. Patterson, supra note 1, at 189. See also F. Roessler, The Scope, Limits and Function of the GATT Legal System 5-6 (GATT Working Paper undated), where the author states: "It is doubtful whether the Polish import commitment ever had any practical impact. In the years immediately following Poland's accession, the value of the dollar fell steeply. As a result, Poland could have met the commitment to increase the value of its imports without increasing their volume. In recent years, Poland, in a severe payments crisis, did not meet its import commitment . . . ."
provisions. The first is a guideline that GATT be applied to and by the NME country to the extent compatible with its economic system. The second guideline is a commitment by the NME

"to use all the means available in its economic and foreign trade system in a manner which will ensure that the cps [GATT contracting parties] receive benefits equivalent to those accruing to the NME under the GATT, and not to use the means available in its economic system to nullify and impair the benefits of the GATT."16

These guidelines are with a view to eventual graduation from an NME import commitment to adoption of a customs tariff, as the NME becomes economically decentralized and incorporates market-economy policies. Such graduation would permit elimination of the import commitment as a "ticket of admission" to GATT, thereby greatly facilitating the application of the countervailing and antidumping duty laws to NMEs, a problem that has been especially intractable and perplexing. Moreover, in order for these guidelines to be meaningfully implemented, the ability to verify compliance with GATT rules must exist. NME economic systems must therefore become more transparent.

Juxtaposing these guidelines for successful and meaningful NME accession to GATT with the preceding discussion on Soviet economic reform, the odds of the Soviet Union successfully acceding to GATT are not good. Notwithstanding this sobering and pessimistic assessment, the commitment of Gorbachev to economic change should not be underestimated. Given his age (55) and the depth of his personal commitment to this issue, he is in a position not only to steer a course toward economic reform but also to see the journey to its end. Gorbachev is no Pollyanna; he has readily acknowledged the time and energy such reform will take. Still, while Gorbachev has recognized the irrationality of attempting to manage an economy the

133 Patterson, supra note 1, at 186.
134 Id.
135 Id. More concretely, Kostecki has proposed the state-trading economies adopt a tariff approach to trade. Kostecki, supra note 13, at 141. In support of this proposal, Kostecki notes that GATT members have nothing to lose and much to gain under such an approach; such a development would meet the West’s aspiration of moving the centrally-planned economies toward decentralization; and a tariff approach would be a step towards unifying relations among members of GATT, an essentially tariff-oriented agreement. Id.
136 See Patterson, supra note 1, at 191.
137 See Patterson, supra note 1, at 198: “Many experts agree that of all the problems involved in NME integration into the GATT-regulated trading system, few are as confounding as the application of the antidumping and countervailing duty regulations [footnote omitted] . . . . A good part of the problem stems from inadequate information and understanding of how the economic systems of the state-controlled economies operate. With limited information it is difficult to determine if the concepts of dumping and subsidization are meaningful in NMEs . . . .” See also Horlick & Shuman, supra note 27.
138 See Patterson, supra note 1, at 200, where the author notes that “Poland has willingly submitted information on price formation in cases of alleged dumping; Hungary has submitted the information traditionally required when balance of payments restrictions are imposed . . . .”
139 See Brown, supra note 113, where the author concludes that “[i]t is evident that Gorbachev is dedicated to transforming Soviet economic performance. If minor reforms do not achieve that, my reading of his character is that he possesses the self-confidence, pragmatism and political will to go further.” Id. at 1060.
140 See Brown, supra note 113, at 1056. In addition, Gorbachev has noted both the overt and covert opposition to economic reform within the Soviet bureaucracy. Id.
size of the Soviet Union's centrally from Moscow, optimism about future economic reform must be guarded at best in light of warnings from Gorbachev that the Eastern bloc should not to be seduced by the "false glitter of market-oriented reforms." Gorbachev has, in fact, argued that centralization is not only necessary, but that it may have to be strengthened. Perhaps more importantly, Gorbachev's proposed reforms may not be sufficiently radical; absent radical reform, proposals like the ones advanced by Gorbachev "are like drugs administered to a body that has already developed a tolerance for them; only a radically increased dose will produce results."

Gorbachev has, of course, only recently assumed the Soviet helm. One wonders how much of what Gorbachev says publicly about the conservative nature of economic reform in the Soviet Union is designed to counter bureaucratic resistance to such reform. As he solidifies his position over the coming years, it is not inconceivable that his proposals for economic reform may become bolder. Regardless of whether Gorbachev is merely posturing in order to placate the bureaucrats, at all events, absent decentralization, flexibility, transparency, and the introduction of market mechanisms, the Soviet economic system cannot possibly begin to move in a liberal, Western—and, presumably, a GATT-oriented—direction.

In order to avoid serious economic disruptions to the Soviet Union, could the transition to a market economy be done gradually as in Hungary? In the view of some Soviet economists, Hungary is an inept model, given its far smaller (273 million versus 11 million) and homogeneous population. As for using the Polish or Romanian experiences with GATT as possible accession models for the Soviet Union, the Soviets have also rejected GATT accession on the basis of any such special arrangements. The Yugoslav model would seem to be totally out of the question, in view of the very modest economic reform proposals advanced to date by the Soviet authorities.

In short, the prospects for eventual Soviet accession to GATT seem dim. If the Soviet economic system is to have any hope for eventually meshing with GATT principles, and if the Soviet Union sincerely desires to participate fully in the GATT

141 Id.
142 Bialer & Afferica, supra note 114, at 612.
143 Id.
144 Id. at 615. Bialer & Afferica have identified seven reform measures undertaken or contemplated by the Soviet leadership under Gorbachev: "wholesale change in managerial and administrative personnel and their reeducation; increase in labor discipline; diminution of the number of indicators in central planning and greater stress on quality and costs; technological progress; agricultural improvement; development of infrastructure; education; and effective utilization of the Soviet strong point, centralized mobilization of resources for essential goals." Id.
145 Id. at 616.
146 For an excellent critique of economic reforms proposed in the Soviet Union in 1979., see Schroeder, supra note 118, at 82-86.
148 See Goldman, supra note 40, at 63.
149 Kostecki, supra note 13, at 14.
trade regime, decentralization is a minimum precondition. And while decentralization is a necessary precondition, it is not a sufficient one. It must be coupled with the introduction of market-oriented incentives (i.e., profits), in order to stimulate improved product quality. The preliminary indications are that the Soviet Union is not prepared to undertake these steps. Without them, Soviet accession to GATT will remain little more than a distant hope.