

TOWARD A MORE RATIONAL EAST-WEST TRADE POLICY

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Each Presidential administration promises to articulate a policy on East-West trade. Each is torn between the demands of mercantilists for markets and hard liners for security. The United States ends up sacrificing both its trade and security interests, and still has no coherent policy on East-West trade.¹

“East-West trade” is shorthand for trade with communist countries. In the parlance of American foreign policy, communist countries are segregated and referred to as “non-market” countries.² The United States views the world as bipolar, divided into two hostile camps by geography and ideology.

The rationale for the segregation of communist countries is the Marxist doctrine of world struggle and the eventual supremacy of communism.³ But there is little historical support for this rationale. The proletariats of the world have shown little appetite for communism as it is practiced today. “Wars of Liberation,” by whatever name, are unguided by ideology. They are more likely to be motivated by aspirations for bread and freedom than by ideologies of capitalism or communism. Small communist countries, such as Bulgaria, pose little threat to the United States, even as members of the Warsaw Pact.⁴ Some non-communist nations are more hostile and more powerful than many communist nations.⁵

Judging from the current law, the overriding objective of United States East-West trade policy is free emigration.⁶ Access by communist

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1. See Parsons, *Recent Developments In East-West Trade: The U.S. Perspective*, in EAST-WEST TRADE 158, 159 (K. Grzybowski ed. 1972, 1973).
2. F. LEVCIK & J. STANKOWSKY, *INDUSTRIAL COOPERATION BETWEEN EAST AND WEST* 3 (1979). These “non-market” countries are also referred to as “planned economy” countries.
3. See J. PUBANTZ, *Marxism-Leninism and Soviet-American Economic Relations Since Stalin*, in EAST-WEST TRADE 145 (K. Grzybowski ed. 1972, 1973).
4. Brady, *Trade With the Eastern Bloc*, 48 VIT. SPEECHES DAY 56 (1981).
5. A list of aggressive, non-communist countries might include Israel, Iraq, Iran, and Syria.
6. Trade Act of 1974, Pub. L. 93-618, tit. IV, 88 Stat. 1978 (1974) (codified at 19 U.S.C. § 2101 et seq.), § 402, *Freedom of Emigration in East-West Trade*. § 402(a) sets out the law and policy of denying most-favored-nation treatment to nonmarket economy countries. Subsection (b) describes the procedure by which a country previously falling under clause (a) classification may regain most-favored nation treatment and other trade advantages. Subsection

countries to our markets and to official United States trade credits is conditioned upon the right of their citizens to emigrate.⁷ This objective reflects a concern for the plight of Jewry in the Soviet Union that is not reflected in policy toward non-communist countries, nor in our own immigration policies. Haitians wash up on our shores like human flotsam, but are not the stated object of official solicitude.⁸ United States policy now is reluctant to acknowledge the possibility of non-communist oppression.

The objective of East-West trade policy is not in fact free emigration. The Vice Premier of the People's Republic of China made that point when he asked Mr. Carter, "how many million do you want?"⁹ The ostensible beneficiaries of our official solicitude in the Soviet Union pay a high price for it. Their emigration falls off when the Jackson-Vanik Amendment is passed by the House of Representatives.¹⁰ Emigration from the Soviet Union increases with the pendency of SALT II.¹¹ It slumps again when SALT II is abandoned and the pipeline sanctions are imposed.¹²

The objective of East-West trade policy is not trade. Its real objective is to punish the Soviet Union for its transgressions, most recently in Afghanistan and Poland, and retard its economic and military development.¹³ The result of East-West trade policy is to achieve neither its

(c) describes the President's authority to waive subsection (a) and (b) with respect to any country.

7. *See id.*
8. In the latter part of 1979, thousands of Haitians journeyed to Florida to escape the repressive regime of the Duvalier family (President Jean-Claude Duvalier). The United States Immigration and Naturalization Service (INS) regarded them as illegal immigrants looking for jobs, and sought to deport them. These Haitians did not qualify as refugees from communist-dominated countries under federal law which allowed 17,400 annually at that time. *NEWSWEEK*, Apr. 2, 1979, at 37.
9. On January 28, 1979, Chinese Deputy Premier Teng Hsiao-Ping arrived in Washington to begin a nine day visit in the United States aimed at solidifying U.S.-Chinese diplomatic relations which had just been established on January 1. On January 31, President Carter and Deputy Premier Teng signed agreements for cultural and scientific exchanges, including an agreement establishing United States consulates in Shanghai and Canton and Chinese consulates in Houston and San Francisco and provisions for reuniting families. *See* 15 *WEEKLY COMP. PRES. DOC.* 200-12 (Feb. 5, 1979).
10. The Jackson-Vanik amendment refers to the emigration requirements of Section 402 of the Trade Act of 1974, 19 U.S.C. § 2101 (1976). *See Amending the Export-Import Bank Act and the Trade Act: Hearing before the Subcomm. on International Finance of the Comm. on Banking, Housing, and Urban Affairs of the United States Senate*, 96th Cong., 1st Sess. 49-422 (1979) (statement of Senator Adlai E. Stevenson, chairman of the subcommittee) [hereinafter cited as *Hearings before the Subcomm. on International Finance*]. Documents entered into the record at that hearing indicate that Soviet Jewish emigration decreased in 1974 by 38.2% and in 1975 by 35.7% (both as percentage changes from prior year).
11. *Id.* These documents indicate that Soviet Jewish emigration increased substantially in 1978 (up 73.1%) and projected to increase in 1979 (up 73.2%).
12. Because of the Soviet invasion of Afghanistan, President Carter requested Congress to delay consideration of the SALT II Treaty on January 3, 1980. Letter to the Majority Leader of the Senate Requesting a Delay in Senate Consideration of the [SALT II] Treaty, 16 *WEEKLY COMP. PRES. DOC.* 12 (Jan. 7, 1980). In 1980, Soviet Jewish emigration declined sharply from a record high in 1979. The monthly rate dropped from 4,800 in October 1979 to 2,000 in April 1980. *FACTS ON FILE* 467 (1980).
13. Brady, *supra* note 4.

ostensible or its actual objectives.¹⁴ Trade, which is strangely absent from considerations of East-West trade policy, also suffers.

CONSIDERATIONS IN THE NORMALIZATION OF EAST-WEST TRADE

American diplomacy should reflect the realities of this world, including its new pluralism. The pluralism of the communist world is manifested by events in Poland,¹⁵ the internal tensions of Yugoslavia,¹⁶ the experiment with decentralization in Hungary,¹⁷ the independent foreign policy of Rumania,¹⁸ a grim three way conflict in Cambodia,¹⁹ and the overarching tension between the Soviet Union and the People's Republic of China.

The United States would, with more wisdom, normalize trade with Eastern European countries, weaning them from dependence on the Soviet Union.²⁰ By denying them trade²¹ we force their dependence on

14. See *United States-Western European Relations in 1980: Hearings Before the Subcomm. on Europe and the Middle East of the House Comm. on Foreign Affairs*, 96th Cong., 2nd Sess. 32 (1980) (statement of Simon H. Serfatz, Director, Washington Center of Foreign Policy Research, Johns Hopkins University) [hereinafter cited as *Hearings on Western Europe*].

Mr. Serfatz pointed out that the European community believes the United States "punishment" of the Soviet Union may harm the ally more than the adversary.

15. The movement for greater Polish independence in political, social, and economic arenas motivated the labor unrest in recent years. This culminated in the Gdansk Accords of 1980, in which the existence of independent, self-governing trade unions was formally recognized. FACTS ON FILE 657 (1980).

More recently, the continued influence of the Catholic Church, ongoing labor unrest, and the imposition of martial law evidence the problems of Russian control over Poland.

16. In the spring of 1981, university students and professors, journalists and officials were purged from the Communist party after protests demanding that the Kosovo province in southern Yugoslavia, be given republic status in the Yugoslavia federation. The Yugoslav Central Committee eventually ousted Kosovo party leader Mahmut Bakalli and the provincial president. FACTS ON FILE 429, 998 (1981).

17. The new private enterprise law, effective January 1, 1982, represents another step towards decentralization of Hungary's planned economy. The law provides for the following: Hungarian citizens can form private companies with as many as 30 employees; major state-owned farms can form privately owned subsidiaries that participate in profit sharing with the parent companies; five firms can combine into a private cooperative venture of up to 150 employees, and all new private firms would be eligible for venture capital loans. FACTS ON FILE 756 (1981).

18. At a meeting of communist nations on February 6, 1980, held in Bulgaria, Rumania joined North Korea in refusing to sign a statement endorsing the Soviet invasion of Afghanistan. Rumania further asserted its independence from Moscow by signing an agreement calling for the negotiation of bilateral contracts with the European community. FACTS ON FILE 109 (1980).

19. Southeast Asia has been embroiled in a three-way conflict involving the Vietnamese invasion of Cambodia (1978-79) and Thailand (June 1980). FACTS ON FILE 508 (1980).

20. F. LEVCIK & J. STANKOVSKY, *supra* note 2, at 100. In their chapter entitled "Economic Policy and Industrial East-West Cooperation," the authors synthesized the following from empirical data:

It may be assumed that as East-West relations expand, the share of intra-CMEA (Council for Mutual Economic Assistance) trade will continue to decline, or at best remain stable.

21. Parsons, *supra* note 1, at 161. The Export-Import Bank Act of 1945, which was founded to help finance imports and exports, was amended by the Export Expansion Finance Act of 1971 to provide greater potential for increased export commerce. However, political pressures intervened.

In the mid-sixties, the Bank was prohibited from granting credit for the sale or lease

the Soviet Union and a closed, inhibiting system of barter within the COMECON countries.²² Mutual interest in each other's welfare and profit comes with trade.²³ If our notions about capitalism and free enterprise are right, these nations will, within limits made larger by trade, work their way toward us. No nation seeks Soviet bondage. All have a uniqueness and some pride in their national identity. Poland, which has enjoyed the closest commercial relations with the West,²⁴ experiences the most visible struggle for human rights and national independence. Even compliant Bulgaria, emancipated from Turkish bondage by Soviet arms, is experimenting with new methods of decentralized decision-making in its economic system.²⁵

A differentiated approach to the communist nations might produce more caution in some parts and improved relations through trade in others. The passion for trade with the People's Republic of China, even in weapons and equipment with potential military uses, betrays more confidence in the ultimate good will of a billion armed and disciplined communist Chinese than history warrants. The United States tilted toward the PRC in an attempt to taunt the Soviet Union²⁶ and gave little thought to the implications. Japan and the other allied na-

of goods to a communist country or if the goods were known to be ultimately destined for use in a communist country, unless the President determined the transaction was in the national interest. A further blow was dealt to East-West trade in 1968 when the Bank was absolutely prohibited from extending credit to any country which traded with a country in armed conflict with the United States. This provision had the practical effect of preventing the Bank from participating in the financing of exports to any communist country.

Id.

22. The Council for Mutual Economic Aid (CMEA), or more commonly, COMECON, was formed in 1949 essentially to aid in the development of its member socialist countries through economic integration and mutual aid among its membership. See 1 A.J. PEASLEE, INTERNATIONAL GOVERNMENTAL ORGANIZATIONS 332 (1956). New Statutes of the Council were adopted in 1959. 368 U.N.T.S. 253. COMECON countries include the USSR, Bulgaria, Hungary, Poland, East Germany, Rumania, Czechoslovakia, Outer Mongolia and Cuba.

23. F. LEVCIK & J. STANKOVSKY, *supra* note 2, at 16.

24. Sadowski, *The Law of Foreign Trade in the Polish People's Republic*, in EAST-WEST TRADE 114 (K. Grzybowski ed. 1972, 1973).

Poland's commercial relation with the West was rebuilt after W.W. II on the basis of existing commercial treaties and conventions, protocols, and other agreements which she had negotiated between 1918 and 1939. For example, American-Polish trade relations were re-established by the agreement of April 24, 1946, in which Poland agreed to effect the goals of the Treaty of Friendship, Commerce and Consular Rights between the U.S. and Poland. *Id.* at 138.

25. Sipkov, *The Law of Foreign Trade in the People's Republic of Bulgaria*, in EAST-WEST TRADE 96 (K. Grzybowski ed. 1972, 1973).

The doctrine that foreign trade monopoly is a sovereign function of the People's Republic of Bulgaria does not, however, mean that the State assumes the role of a merchant, that it itself engages in foreign trade activities. The State does not act in the capacity of a trader but it effectuates foreign trade transactions through government economic enterprises, the rights and responsibilities of which are defined by the Council of Ministers. Thus, the development of the country's international commerce is entrusted to special foreign trade organizations (*vnshnoturgovski organizatsii*) which are selected from among the various government economic combines, enterprises, societies, cooperatives, and the like.

26. The normalization of diplomatic relations between the United States and the People's Republic of China began on January 1, 1979. On July 7, 1979, the two countries signed the Agreement on Trade Relations, which laid the basis for normalized trade between the two

tions are less impulsive and more wary of involving themselves in the conflict between the communist super powers. They maintain an "evenhanded" policy²⁷ to which the United States subscribed until Afghanistan.²⁸

With the discovery that a Soviet brigade in Cuba was organized along combat lines²⁹ and the Soviet invasion of Afghanistan,³⁰ the United States overreacted.³¹ With the 1980 elections looming, Congress panicked. The United States played out all the non-military options.³² The United States left itself with little but military force or acquiescence for the next time the Soviet Union transgressed its sensibilities. Now we are building up the military.³³ We scrapped Salt II³⁴ and imposed economic sanctions,³⁵ punishing ourselves,³⁶ as well as the Soviets for their transgressions.³⁷ We tilted toward the PRC.³⁸ We

countries. U.S. DEP'T. OF COMMERCE, INTERNATIONAL TRADE ADMINISTRATION, U.S.-CHINA COMMERCIAL RELATIONS, A COMPILATION OF BASIC DOCUMENTS (1982).

27. Kitagawa, *Legal Aspects of Soviet-Japanese Trade*, in *EAST-WEST TRADE* 169 (K. Grzybowski ed. 1972, 1973). "The most-favored-nation clause is a keystone of Soviet-Japanese trade. In contrast with the U.S. policy regarding the clause and Soviet trade, Soviet-Japanese trade was marked by the reciprocal recognition of this clause to the fullest extent from the very beginning of the resumption of trade after W.W. II."
28. Memoranda From the President, 16 WEEKLY COMP. PRES. DOC. 32, 33 (Jan. 7, 1980). On January 7, 1980, President Carter ordered an embargo on wheat and corn exports to the Soviet Union. On January 8, President Carter directed the Secretary of Commerce to review and revise the U.S. policy regarding the export of high technology and other strategic items to the Soviet Union and ordered that no validated export licenses for shipment of goods or technical data to the Soviet Union be approved until review was complete.
29. President's Remarks to Reporters, 15 WEEKLY COMP. PRES. DOC. 1602 (Sept. 7, 1979). In late August 1979, the Carter Administration announced that intelligence reports indicated that a Soviet combat brigade of about 2,000 to 3,000 troops were stationed in Cuba.
30. On December 27, 1979, President Hafizullah Amin of Afghanistan was ousted in a coup reportedly engineered by the Soviet Union. His overthrow had been preceded and was followed by airlifting thousands of Soviet troops across the border into Afghanistan. By December 29, U.S. officials estimated that the invading troops numbered more than 30,000 men. *FACTS ON FILE* 973 (1979).
31. In December 1979, the Soviet Union invaded Afghanistan. Retaliatory actions by the United States government included: (1) the suspension of agricultural exports, (2) the restriction of Soviet fishing privileges in U.S. waters, (3) the United States boycott of the 1980 Summer Olympic Games in Moscow, and (4) restrictions on exporting high technology and other strategic items to the Soviet Union. *See* 126 CONG. REC. S 363 (daily ed. Jan. 24, 1980).
32. *See id.*
33. The Reagan Administration issued a report entitled "Program for Economic Recovery" on February 18, 1981, which indicated that defense spending would increase from \$157.9 billion in 1981 to a projected outlay of \$249.8 billion in 1984. As a proportion of the total federal budget, this represents an increase from 24.1% in 1981 to 32.4% in 1984. White House Report, 17 WEEKLY COMP. PRES. DOC. 145 (Feb. 18, 1981).
34. *See* Statement by the White House Press Secretary and Letter to the Majority Leader of the Senate, 16 WEEKLY COMP. PRES. DOC. 12 (Jan. 3, 1980). On January 3, 1980, President Carter requested Congress to delay its consideration of the Salt II Treaty until both he and Congress could assess Soviet actions and intentions involving the Soviet invasion of Afghanistan.
35. *See supra* note 31.
36. There was widespread skepticism, particularly among our European allies, about the effectiveness of economic sanctions against the Soviet Union. *See Hearings on Western Europe, supra* note 14, at 68-154 (preface by Lee A. Hamilton, Chairman, Subcomm. on Europe and the Middle East).
37. *See supra* note 31.
38. *See supra* note 28. On July 7, 1979, the People's Republic of China and the United States

boycotted the 1980 Summer Olympics.³⁹ The Reagan Administration lifted the grain embargo⁴⁰ and inconsistently imposed the pipeline sanctions.⁴¹ We revived the Cold War. The Carter and Reagan Administrations put us back, more or less, where we were after the uprisings in Czechoslovakia and Hungary:⁴² powerless to help the victims of Soviet aggression and, in the eyes of the world, powerless to do anything convincingly, and in concert with our Allies, when the Soviets transgress our interests.

The Reagan administration, with its militancy and coolness to negotiations for arms limitations,⁴³ made Mr. Brezhnev appear to be the peacemaker.⁴⁴ People by the hundreds of thousands have filled the streets of Europe to protest.⁴⁵ Friendly European governments have been shaken.⁴⁶ Increased expenditures for defense were cut back in Europe,⁴⁷ and never materialized in Japan.⁴⁸ The gas pipeline sanctions increased tensions between the Allies. Now we arguably negoti-

signed the Agreement on Trade Relations. During the last half of the 1970s, United States trade with the People's Republic of China increased dramatically. Brady, *supra* note 4.

39. White House Statement on U.S. Withdrawal From the Games To Be Held in Moscow, 16 WEEKLY COMP. PRES. DOC. 356 (Feb. 20, 1980).
40. On April 24, 1981, President Reagan lifted the 15 month old embargo on sales to the Soviet Union. Memorandum to the Secretary of Agriculture, 17 WEEKLY COMP. PRES. DOC. 466 (Apr. 27, 1981).
41. In August 1982, trade sanctions were imposed on companies violating the U.S. embargo on sales of any U.S.-developed technology for use in the Soviet-Western European natural gas pipeline. On September 1, 1982, the United States government reduced the scope of sanctions imposed in connection with the pipeline. The modified sanctions would bar companies only from buying oil and gas equipment from the United States. See 128 CONG. REC. S 11140 (daily ed. Sept. 8, 1981).
42. In October 1956, the Soviet Union extinguished a large-scale revolt in Budapest, Hungary. In August 1968, the Soviets overran Czechoslovakia encountering little resistance. These events lead to strained relations with the Soviet Union during those years. T.A. BAILEY, A DIPLOMATIC HISTORY OF THE AMERICAN PEOPLE 837, 916 (1970).
43. See The President's News Conference of January 29, 1981, 17 WEEKLY COMP. PRES. DOC. 64, 66 (Jan. 29, 1981). Also, on March 26, 1981, President Reagan warned the Soviet Union that any intervention in Poland or any internal measures "aimed at suppressing the Polish people" would have a "grave effect on the whole course of East-West relations." FACTS ON FILE 186 (1981).
On March 21, 1981, National Security Adviser Richard V. Allen warned that Western Europe was threatened internally by "outright pacifist sentiments" and a "grave economic crisis." Allen asserted that the U.S. would not accept arms control negotiations, which many Europeans supported, as a substitute for the modernization of NATO's missile forces in Europe. FACTS ON FILE 189 (1981).
44. Remarks at a White House Briefing, 17 WEEKLY COMP. PRES. DOC. 182 (Feb. 24, 1981). In February 1981, President Brezhnev of the Soviet Union suggested a summit meeting for the USSR and the United States.
45. Hundreds of thousands of people took part in demonstrations in a number of European cities on October 24 and 25 to call for nuclear disarmament and protest plans by NATO to display new medium-range nuclear weapons. FACTS ON FILE 789 (1981). See also ISSUES IN RELATIONS BETWEEN THE UNITED STATES AND WESTERN EUROPE, FALL 1981: REPORT OF A STUDY MISSION TO WESTERN EUROPE, NOVEMBER 4-13, 1981, TO THE HOUSE COMMITTEE ON FOREIGN AFFAIRS, 97th Cong., 2nd Sess., 32, 88-93 (1982) (Findings, Clement J. Zablocki, Chairman, Committee on Foreign Affairs) [hereinafter cited as REPORT].
46. *Id.* at 2, 11.
47. For example, West Germany announced that the proportion of the national budget allocated to military spending would decline from 18% to 16% by 1984. FACTS ON FILE 181 (1981).
48. Although the Japanese National Defense Council announced a five year program for increasing Japan's defense capabilities, on July 23, 1982, Japanese Premier Zenko Suzuki declared a fiscal state of emergency on September 16, 1982, indicating that the government

ate from greater weakness for the reduction of arms, the Reagan Administration's defense build up notwithstanding. The Soviets are encouraged to compromise their differences with the PRC.

Six years ago the United States subsidized Soviet wheat purchases.⁴⁹ In one year, during the heyday of detente, the United States offered the Soviets \$500 million in credits for the purchase of non-agricultural commodities.⁵⁰ At Helsinki, the United States offered the Soviets the Western imprimatur of approval for Soviet domination in Eastern Europe in exchange for lip service to human rights.⁵¹ No sooner were credits extended than the game of linkage began.⁵² The Soviets were denied access to official credits and United States markets upon "most favored nations" terms.⁵³ When we discovered the brigade in Cuba and scrubbed SALT II,⁵⁴ the Soviets invaded Afghanistan.⁵⁵ They had little to lose by their aggression and perhaps something to gain. The force levels of the West were irrelevant then, as they were in Angola.⁵⁶ We lurch from one extreme to another, from one Administration to the next, rarely basing policy on realities.

would have to reduce spending on education, welfare, national security, and overseas aid. FACTS ON FILE 553 (1982).

49. *United States-Soviet Grain Agreement, S. 2492 and Other Matters: Hearings Before the Subcomm. on Internat'l Finance of the Senate Comm. on Banking, Housing and Urban Affairs, 94th Cong., 1st Sess. 30-31 (1976)* (Statement of Robert G. Lewis, national secretary, National Farmers Union).
50. THE NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES, ANNUAL REPORT TO THE PRESIDENT AND TO THE CONGRESS 25 (1974).
51. On July 30, 1975, the largest summit conference in European history convened in Helsinki, Finland, for the signing of the "final document" of the Conference on Security and Co-operation in Europe. This document, subject to numerous re-drafting, expressed principles for reassuring a permanent peace in Europe, for cooperation between nations and for establishing inviolable boundaries within the continent. This was the culmination of the long Soviet effort to gain recognition of the permanence of post-war boundaries in Europe. After much debate, the final draft made no explicit mention of human rights. Conference on Security and Co-operation in Europe: Final Act, Aug. 1, 1975, *reprinted in INT'L LEGAL MAT'LS* 1292 (1975).
 Ronald Reagan commented in the same vein as the author. When Reagan was campaigning for the Republican Presidential nomination in April 1976, he charged that President Ford's signing of the Helsinki pact was putting an American "stamp of approval on Russia's enslavement of the captive nations." FACTS ON FILE 232 (1976).
52. "Linkage" refers to the United States foreign policy strategy of connecting economic relations with political behavior. The concept of linkage has evolved from its original use by the Nixon Administration to a modified form by the Carter Administration which implemented linkage in a broader human rights context. *See Hearings on Western Europe, supra* note 14, at 78, 121 (statement by Richard D. Erb).
53. Because of the Jackson-Vanik amendment, *supra* note 10, the U.S. had never fulfilled a 1973 promise to normalize trade relations with the Soviets by granting them most-favored-nation status and access to credit from the U.S. Export-Import Bank. FACTS ON FILE 834 (1979).
54. *See supra* notes 12 and 29.
55. *See supra* note 30.
56. In January 1975, Portugal formed a transitional government in Angola that would rule until the Portugese territory acceded to independence in November. Struggling for eventual control of the government were three liberation groups: the MPLA (the Popular Movement for the Liberation of Angola), a Marxist-oriented group backed by the Soviet Union; the FNLA (the National Front for the Liberation of Angola); and UNITA (the National Union for the Independence of Angola). The latter two were considered pro-Western and were supported by U.S. aid (amounting to \$60 million in 1975). On July 15, 1975, the Soviet-backed MPLA took control of the Angolan capital city of Luanda. FACTS ON FILE 440, 516, 614, 993 (1975).

In this post-colonial world, conflicts are animated by religious fundamentalism, nationalistic movements, and the unpopularity of repressive regimes. The limits of military power were dramatized by the Americans in Vietnam, as well as by the Soviets in Afghanistan. We live in a transistorized world in which politicized masses, unperturbed by foreign force levels or economic sanctions, exercise power at the expense of government and elites. Even Cuba, ninety miles off our shores, is unimpressed by economic sanctions.⁵⁷

The Realities of our World Include Russia

Russian imperialism did not begin in Afghanistan. It began a thousand years ago. In 1917 it acquired an ideological cover.⁵⁸ The totalitarian state was perfected. Communist Russia's march continued and it is not likely to be arrested by the granting or withholding of credits or access to our markets.⁵⁹ The Soviet Union is animated by invasions from the Tartars to the Nazis, by its encirclement in the Cold War, by the imperialism of Peter and Catherine, by the communism of Marx and Lenin.⁶⁰ Its history gives us some basis for caution. Without some evidence of resolve and reliability in the West or some possibility for the peaceful and mutually advantageous accommodation of differences, the Soviet Union will be tempted to press its opportunities in the world. It will be even more tempted for reasons of ideology, as well as opportunism, if the economic systems of the West come apart and the social cohesion of Western nations is strained by poverty and economic injustice. The greatest threat to our security may be from within and the conditions paradoxically created by our reliance on armaments and, to a lesser extent, economic sanctions in dealing with the Soviet Union. Those nations which produce the most efficiently and market their goods and services the most aggressively enjoy the highest levels of economic growth and employment and the lowest levels of inflation; they tend to be the nations which spend the least on armaments.⁶¹ They go all out to win the new world war for the world's markets and supplies, uninhibited by the constraints of United States East-West trade policy.⁶²

Soviet adventurism could be resisted by nations which are economi-

57. In July 1964, the Organization of American States (except Mexico) voted to impose economic sanctions on Cuba and to prohibit all OAS members from official relations with Havana. T.A. BAILEY, *A DIPLOMATIC HISTORY OF THE AMERICAN PEOPLE* 894 (1970).

58. In March 1917, a Russian revolution overthrew the Czarist regime. *Id.* at 594.

59. Post-World War II developments during the height of the Cold War indicated that Soviet expansionism continued regardless of United States trade policy.

60. R. HILSMAN, *THE POLITICS OF POLICY MAKING IN DEFENSE AND FOREIGN AFFAIRS* 152 (1971).

61. *Export Expansion Act of 1971: Hearings on S. 2754 Before the Subcomm. on Foreign Commerce and Tourism of the Senate Comm. on Commerce*, 92nd Cong., 2nd Sess. 275 (1972) (statement of Bruce W. Rohrbacker, Director, McKinsey & Co.) [hereinafter cited as *Hearing Before the Subcomm. on Foreign Commerce and Tourism*].

62. *See id.*

cally strong, united in purpose, and attuned to the realities of a world little impressed by MX Missiles and frozen assets. Any level of military strength which conveys an impression of irresolution or retreat is unsafe against the history of Soviet expansionism.⁶³ But, perceptions of adequacy vary. Resistance can take many forms. The Soviet Union is generally influenced more by mixed prospects for trade and economic development than by prospects for warfare, undiluted by possibilities for peaceful progress on any front. That which powers may be persuaded to do by old-fashioned, and now neglected, methods of quiet diplomacy can be made more unlikely when national pride is threatened. The grain embargo⁶⁴ hardened the Soviet position.⁶⁵

Actions such as the freeze of Iranian assets,⁶⁶ once taken, are difficult to undo.⁶⁷ Embargoes, like the freezing of assets, are economic acts of war.⁶⁸ Recently, such acts have ended in American capitulation.⁶⁹ President Reagan lifted the grain embargo unilaterally;⁷⁰ the Soviet troops remained in Afghanistan.⁷¹ Soviet influence in Poland was undiminished. The pipeline sanctions were lifted for a European fig leaf.⁷² One mistake is compounded by another. Such inconsistencies and political expediencies dismay friends and bewilder enemies.⁷³

The cost of the grain embargo included \$1.4 billion for the purchase of grain destined for the Soviet Union.⁷⁴ Public expenditures for price

63. *See Proposed Legislation to Establish an Office of Strategic Trade: Hearings on S. 2606 Before the Senate Comm. on Governmental Affairs*, 96th Cong., 2nd Sess. 7 (1980) (testimony of the Sen. Jake Garn, R-Utah). The Hon. Garn states, "History will show it was during this so-called period of detente that the Soviets began to challenge Western interests in earnest on a global scale and mounted their drive for military superiority over the United States."

64. *Supra* note 28.

65. *See* J. WILCZYNSKI, *THE ECONOMICS AND POLITICS OF EAST-WEST TRADE* § 12, at 288 (1969).

66. Acting pursuant to his powers under the International Emergency Economic Powers Act, Pub. L. No. 95-223, 91 Stat. 1626 (codified at 50 U.S.C. §§ 1701-1706 (Supp. III 1978)), President Carter, on November 14, 1979, issued Executive Order No. 12,170, 44 Fed. Reg. 65,729 (1979) to freeze Iranian assets in the United States. In a statement accompanying the order, the White House said the freeze was "in response to reports that the Government of Iran [was] about to withdraw its funds" from American banks and transfer them to friendlier countries. 15 WEEKLY COMP. PRES. DOC. 2117 (Nov. 14, 1979).

67. *See* FACTS ON FILE 28 (1981).

68. *See East-West Trade: Hearings on Senate Joint Resolution 169 Before the Subcomm. on International Finance of the Senate Comm. on Banking and Currency*, 90th Cong., 2nd Sess. 1325 n.1 (1968) [hereinafter cited as *Hearings Before the Subcomm. on International Finance*].

69. *Supra* note 40.

70. *Id.*

71. *See Id.*

72. On September 29, 1982, the U.S. House of Representatives approved a revised version of a bill to rescind trade sanctions imposed by President Reagan on sales of U.S.-developed technology for use in the Soviet-Western European gas pipeline. Earlier that month, the U.S. government reduced the scope of sanctions already imposed on several companies. FACTS ON FILE 716 (1982). *See supra* note 41.

73. *Id.* Japanese Premier Zenko Suzuki on April 28 voiced doubt about the wisdom of President Reagan's ending the U.S. embargo when he said: "Frankly speaking I was somewhat perplexed by the timing." He also complained that the U.S. had not sufficiently consulted with Japan and explained its decision before announcing it. Economic sanctions adopted by Japan against the Soviet Union, in cooperation with the U.S. grain embargo would be reexamined, Suzuki said. *See also Hearings on Western Europe, supra* note 14.

74. *Suspension of U.S. Exports of High Technology and Grain to the Soviet Union: Hearings*

supports and storage costs became necessary.⁷⁵ Embargoes, including the extraterritorial pipeline sanctions, feed the world's impression that the United States is an impulsive and unreliable supplier of goods and services.⁷⁶ Increasingly, nations come to the United States for the purchase of food and other goods and services only as a last resort. The Japanese are reluctant to enter long-term contracts for the purchase of coal,⁷⁷ having previously experienced difficulty in obtaining soybeans.⁷⁸ Eastern Europeans and other Soviet allies are pressured to avoid United States products. American companies escape the caprice of American foreign policy by locating plants overseas.⁷⁹ The extraterritorial pipeline sanctions notwithstanding, they avoid embargoes by manufacturing with foreign source materials and foreign subsidiaries.⁸⁰ Embargoes against exports of United States goods produce exports of United States jobs and capital.⁸¹ The economic consequences of such sanctions are difficult to quantify.⁸² But they include inflation, economic stagnation, and unemployment.⁸³ They include national insecurity. The object of the sanctions remains unmoved and largely undisturbed.

The Soviets respond by devoting resources to the development of their own capabilities.⁸⁴ Deny them equipment for the production of industrial diamonds and they become the world's largest producer of

Before the Senate Comm. on Banking, Housing and Urban Affairs, 96th Cong., 2nd Sess. 76 (1980) (statement of Sen. Robert Dole, R-Kan.) [hereinafter cited as *Hearings Before the Comm. on Banking*].

75. Shipments of Agricultural Commodities to the Soviet Union, 16 WEEKLY COMP. PRES. DOC. 186 (Jan. 22, 1980).
76. *Hearings Before the Subcomm. on Foreign Commerce and Tourism*, *supra* note 61, at 509, (testimony of Carl E. Bagge, President, National Coal Ass'n). See also *Hearings Before the Comm. on Banking*, *supra* note 74, at 50 (statement of Ray Schaub, Vice President, Legislative Affairs, National Corn Growers Ass'n). Mr. Schaub states, "Even the lifting of the current embargo will not repair the damage to the reputation of the United States as a reliable commodity trading partner with the Soviet Union and many other countries as well."
77. See generally OFFICE OF TECHNOLOGY ASSESSMENT, COAL EXPORTS AND PORT DEVELOPMENT, A TECHNICAL MEMORANDUM 17 (1981).
78. See *Economic Issues Between the United States, Japan and South Korea: Hearing Before the Subcomm. on Asian and Pacific Affairs of the House Comm. on Foreign Affairs*, 93rd Cong., 2nd Sess. 5 (1974) (statement of Lester E. Edmond, Deputy Assistant Secretary for East Asian and Pacific Affairs, Department of State). Mr. Edmond states, "Japan is concerned about the reliability of the United States as a supplier of such products as feed grains, soybeans. . . ." See also K. SATO, JAPAN'S POSITION IN THE WORLD MATERIALS CRISIS, THE CRISIS IN WORLD MATERIALS, A U.S.-JAPANESE SYMPOSIUM 23 (1975).
79. See *Hearings Before the Subcomm. of Foreign Commerce and Tourism*, *supra* note 61, at 517 (statement of Daniel L. Goldy, President, International Systems and Controls Corp.).
80. *Id.* at 527.
81. See generally PROGRAM COMMITTEE OF THE COMMITTEE FOR FOREIGN DEVELOPMENT, U.S. FOREIGN ECONOMIC POLICY AND THE DOMESTIC ECONOMY (1972). "The multinational corporation gives away America's comparative advantage by transferring abroad those distinctive assets that have made us competitive in the past—abundant capital, a high level of technology, and efficient and dynamic management. . . . [T]he U.S. multinational corporation pursues its worldwide profits at the cost of a loss of jobs for American workers." To the degree that American foreign trade embargoes cause corporations to establish subsidiaries abroad, they also cause the export of United States capital and jobs.
82. *Id.*
83. J. WILCZYNSKI, *supra* note 65, at 288.
84. *Id.* at 286.

industrial diamonds.⁸⁵ Deprived of gas turbines, they will build them. The Soviets generally divert resources from lower economic priorities and redouble their efforts to produce whatever is denied them.⁸⁶ They are already the world's largest oil producer.⁸⁷ The denial of equipment for the production of oil or transportation of gas, if successful, would increase energy prices over time. Consumers, including the United States, would suffer. The Soviet Union's oil, gas, and gold would increase in value. Dependence upon undependable Middle East sources would be extended; gas supplies in the North Sea depleted prematurely. The Soviet Union is one of the world's best credit risks.⁸⁸ It can obtain financing and supply its requirements for energy equipment from external or internal sources.⁸⁹ It has the financial resources, and there is virtually nothing now which cannot be bought from other sources, including energy technology.⁹⁰ The energy production commodity in greatest demand by the Soviet Union is large-diameter pipeline which is not made in the United States.⁹¹ The effect of these sanctions is not so much to retard energy development or punish the U.S.S.R.—as to punish and embarrass the United States.

Embargoes are difficult to enforce.⁹² Even the COCOM System, which has the support of our allies, has not always been effective as a means of controlling exports to the Soviet Union of high technology with military potentials.⁹³ Wheat, corn, and soybeans, unlike computers, are not identified by source. Trans-shipments and substitutions of shipments are possible in violation of regulations and promises.⁹⁴ Other nations do not share our enthusiasm for depriving themselves of trade.⁹⁵ They are hard pressed to export. They do not share the full extent of our moral indignation, or our conviction that embargoes are

85. *Industrial Diamond Association of America, Inc., Proceedings: The Industrial Diamond Revolution, A Technical Conference* (1968).

86. J. WILCZYNSKI, *supra* note 65, at 286.

87. OFFICE OF TECHNOLOGY ASSESSMENT, 97TH CONG., 2D SESS., TECHNOLOGY AND SOVIET ENERGY AVAILABILITY 19 (1981).

88. *See generally* OFFICE OF TECHNOLOGY ASSESSMENT, TECHNOLOGY AND EAST-WEST TRADE 46 (1979).

89. *See supra* note 87, at 172-173. The Soviet Union imports energy equipment from Japan, West Germany, France, Italy, and the U.S.

90. *Review of Implementation of Basket II of the Helsinki Final Act: Hearings Before the Subcomm. on International Economic Policy and Trade of the House Comm. on Foreign Affairs and the Commission on Security and Cooperation in Europe*, 96th Cong., 2nd Sess. 35-36 (1980) (statement of James H. Giffen, President, Armco International, Inc.); U.S. DEPARTMENT OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE U.S. (1981).

91. *See* OFFICE OF TECHNOLOGY ASSESSMENT, *supra* note 87, at 17-18.

92. *Hearings Before the Comm. on Banking, supra* note 74, at 65 (statement of B.J. O'Dowd, President, AGRI Industries).

93. J. WILCZYNSKI, *supra* note 65, at 288.

94. *Hearings Before the Comm. on Banking, supra* note 74, at 71 (statement of Sen. John G. Tower, R-Tex.).

95. *Hearings Before the Subcomm. on Europe and the Middle East, supra*, note 36, at 88 (statement by Richard D. Erb, Resident Fellow, American Enterprise Institute for Public Policy Research).

an effective means of bringing Soviet imperialism to heel.⁹⁶ They often give lip service to our efforts, agree to more "studies," and go on doing business with the Soviets, picking up our business.

AN EFFECTIVE EAST-WEST TRADE POLICY

In the continuing competition between the United States and the U.S.S.R., it would be wise to act with more predictability and some respect for our economic interests. It would be best if our actions were governed by a clearer perception of Soviet interests. That strategy must maintain the economic strength of the nation, its social cohesion, and the ideals which differentiate the United States and the Soviet Union. It should include an appropriate use of all our resources for our political purposes.

The United States has potentially more control over world food supplies than Saudi Arabia has over oil, but we have never moved to use that power effectively.⁹⁷ The Soviet Union is doomed to dependence on external sources of grain. But, irrespective of Soviet provocation, the United States should develop a food policy for an era of chronic poverty, hunger, malnutrition, and political instability, a food policy more promising than a combination of expensive price supports, intermittent embargoes and the stealthy purchase of United States grain on advantageous terms by unfriendly nations. Other nations, both producers and consumers, lacking the luxury of large surpluses and internal markets, have public agencies to manage the marketing of grain.⁹⁸

In lieu of embargoes, we could make the Commodity Credit Corporation (C.C.C.) the exclusive agent for the sale of United States commodities to the Soviet Union and other nations against which we feel bound to act. In this hungry and dangerous world, the United States disarms itself uniquely and unilaterally by leaving the sale of American food to multinational traders and their foreign government customers. The C.C.C. could have taken over the grain stocks destined for the Soviet Union, scaled down the sales step by step, making it clear that the ultimate result could be an embargo. The policy could have been carried out, giving both the markets and the Soviets time to adjust to the carrot, as well as the stick. Other grain exporting nations have the means and incentives to cooperate with such a policy. Profits on the sale of food might be increased on sales to the Soviet Union, even as political interests are brought into play. Such a mechanism offers a

96. *Id.*

97. *Hearings Before the Comm. on Banking, supra* note 74, at 74 (statement by Sen. J. James Exon, D-Neb.). Senator Exon urged the Committee on Banking to recognize food as a very important and legitimate economic weapon and as one to be used with caution. To utilize food as an economic weapon, the government would have to take steps to protect the food producer. Elimination of embargoes, the Senator stated, is "a step in the right direction."

98. *Hearings Before the Subcomm. on Foreign Commerce and Tourism, supra* note 61, at 529 (statement of Daniel L. Goldy, President, International Systems and Controls Corp.).

means of demonstrating the rewards to be achieved by responsible behavior at the same time the United States demonstrates that aggression has its price.

The Russians also need our technology.⁹⁹ The United States and its allies should agree on the technologies which are critical to Soviet economic and military development and through the COCOM mechanism,¹⁰⁰ agree on which to embargo.¹⁰¹ They should also agree on clear-cut terms of trade, including the credits to be extended to the Soviet Union and its allies and the enforcement of those agreements, always leaving open the possibility of more credits and trade as relations improve. We need to construct incentives to good behavior, as well as disincentives to hostile behavior.

After World War II, United States leadership helped forge the international institutions of trade and finance which gave the world a measure of peace and prosperity.¹⁰² Today those institutions are in disrepair, and the United States is not in the preeminent position it occupied in the late 1940's and 1950's.¹⁰³ Cooperation with the other industrial nations is essential now.¹⁰⁴ We lack the authority for unilateral action and they resent the shocks and bumps of mercurial American policy. They fear the expediencies of American politics.¹⁰⁵

We must cooperate with our allies and pick up where Bretton Woods left off.¹⁰⁶ Cooperation means sharing the economic aid burden and, in the process, enjoying the economic benefits of expanded trade and investment in the lesser developed and non-market countries.¹⁰⁷ It means responsibility for exchange rate stabilization, payments financing, and long-term development, bilaterally and through multilateral banks and the International Monetary Fund. We can supply management for the development of Least Developed Countries' economies and help in building a scientific infrastructure for nations which at present have no means of developing technologies relevant to their needs. The United States can supply food to keep the hungry from

99. Brady, *supra* note 4, at 58.

100. *See supra* note 22.

101. *Supra* note 4, at 58-59. *See also Hearings Before the Subcomm. on International Finance, supra* note 10, at 1015 (statement by William Blackie, President, Caterpillar Tractor Co.).

102. *See THE U.S. ROLE IN A CHANGING WORLD POLITICAL ECONOMY: MAJOR ISSUES FOR THE 96TH CONGRESS, A COMPENDIUM OF PAPERS SUBMITTED TO THE JOINT ECONOMIC COMMITTEE 649-650 (1979) (essay by Richard E. Kaufman, Assistant Director-General Counsel, Joint Economic Committee). See also id.* at 7 (overview by Alfred Reifman).

103. *See id.* at 652. *See also OFFICE OF TECHNOLOGY ASSESSMENT, supra* note 88, at 160-70.

104. *See supra*, note 102, at 22 (overview by Alfred Reifman).

105. *Id.* at 13.

106. At the Bretton Woods Conference, July 1 through the 22, 1944, the International Monetary Fund and the International Bank for Reconstruction and Development were established. International Monetary Fund, Dec. 27, 1945, 60 Stat. 1401, T.S. No. 1501; International Bank for Reconstruction and Development, Dec. 27, 1945, 60 Stat. 1401, T.S. No. 1502.

The IRBD is an organization for long-term lending, but not for other traditional banking activities. Monetary co-operation falls within the domain of the IMF. With the exception of the Soviet Union and most Eastern European nations, most nations are members of the IMF. *See MANUAL OF PUBLIC INTERNATIONAL LAW 611 (M. Sorensen, ed. 1968).*

107. *See id.* at 650 (essay by Richard E. Kaufman).

dying and restore its image as a humane and powerful nation. We could cooperatively develop the world's fuel supplies and maintain stockpiles of industrial materials against the risk of interrupted supplies from undependable foreign sources. These are the kind of hard answers to which we once were equal and can be again. There are no short cuts to prosperity or security in east-west trade, which may be why the dilemmas remain unresolved—and the nation is left without a coherent policy.

If the world does not break out of the well-worn ruts of endless arms buildup and economic warfare, those ruts will lead again to conflict and exhaustion in times more dangerous than any before. The United States needs to pick up where it left off. Its ideals are in line with the world's aspirations. Its resources are in line with the world's needs.