

1976

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Recommended Citation

Robert Herzstein, *East-West Industrial Cooperation Contracts: Introductory Remarks*, 10 INT'L L. 15 (1976)
<https://scholar.smu.edu/til/vol10/iss1/3>

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East-West Industrial Cooperation Contracts: Introductory Remarks

The term "industrial cooperation contract" is very broad and covers a lot of ground. As chairman, let me define the term and also sensitize you to some of the other issues that we will be discussing this morning.

An "industrial cooperation contract" includes almost any kind of long-range collaboration. It should be distinguished from a simple trade transaction or a simple one-shot license agreement, although many industrial cooperation contracts do involve technology licensing as a very important part of a much larger whole. The industrial cooperation contract is broad enough to include a joint venture type of agreement. We will be expecting to hear from our speakers about their experience with joint ventures, but which also apply to other forms of industrial cooperation contracts.

By way of flagging some items that will come up and that we all might have in mind as we listen to our speakers, I might simply call attention to some of the broad differences that an American company encounters in dealing with an industrial cooperation arrangement, in attempting to set one up with an Eastern European or Russian entity.

For one thing, instead of dealing just with another company which is fairly autonomous within the law of its own free enterprise economy, one is dealing with an entity operating under a state plan. The state plan may include elements for general economic development of a domestic sort. It may include a specific foreign trade plan, a plan relating to international economic and technical cooperation. It may deal with balance of payments.

These elements of the plan are assigned to state entities under the general organization and supervision of a Council of Ministers and a party organization. One encounters a Ministry of Foreign Trade, a Ministry of Finance, a national bank, a foreign trade bank, local government organizations and party organizations, producer and end-user units and various organizations thereof, much like

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one might encounter in holding companies or corporate conglomerates in the United States, and, of course, foreign trade companies.

The elements under the plan are assigned to and implemented by these various organizations under directives which have a distinctly bureaucratic flavor when they are viewed by an American lawyer who is used to working in a free enterprise context.

These facts serve to identify the different mentality, the different motivation, the different constraints and incentives that are operating on one's Eastern partner and which form the backdrop for some of the practical experiences we will hear about this morning.

Also, I would like to alert you to the fact that there will be some discussion of differences between dealing with the USSR and with East European countries, and a very interesting issue concerning the extent to which the wording of the contract is important in dealing with these East European and Soviet entities and to what extent the dynamics of the relationship are important.