

Some Experiences of Occidental Petroleum in Negotiating Cooperation Agreements in the U.S.S.R.

I was told this was a panel discussion. I wasn't told that we were to make a presentation, so I think my remarks probably will more be in the order of "how did Occidental Petroleum negotiate seven agreements with the Soviet Union?"

Our Chairman of the Board, Dr. Armand Hammer, and Mr. Pizar went to Russia in early 1973, and as a result of these early visits, negotiated what we in Occidental call a global agreement. This global agreement included the Preamble of Intent, expressing the intent of the parties. It listed the ingredients for an industrial cooperation agreement. It listed a common need between the parties, a means for financing projects, a method of creating foreign exchange for setting up a barter arrangement.

One of the keys was Occidental's willingness to invest its capital in the United States to produce a needed fertilizer material to be shipped to the Soviet Union, and in return the Soviet's willingness to pay for such imports by exports of materials produced by them. Occidental's investment will probably be in the neighborhood of \$500 million to live up to our end of the agreement. Their investment, we believe, will be over \$1 billion, of which over \$400 million will be spent in the United States for United States technology, equipment and materials and construction supervision.

One might ask why and how was Occidental to be one of the first major United States corporations to become involved in major contracts between the East and West. I think the "how" is easy. It was through the efforts of Dr. Hammer, and with his guidance and with the guidance of Sam Pizar, it was accomplished.

The "why" is also easy. As far as Occidental is concerned, it is best summarized by certain statements made by Dr. Hammer before two Senate Committees. He said, "I have had a great deal of experience with the Soviets, ranging from my first barter deal 53 years ago to the contracts recently signed."

*Al Guffey is Vice President of Hooker Chemical Corporation, the chemicals subsidiary of Occidental Petroleum Corporation, Houston, Texas.

He also said, "I wear two hats, as it were. Under one of these I am Chairman of the Board of the 36th largest United States corporation. I am an ardent capitalist who has a responsibility to employees and shareholders. Since Occidental operates in some 27 countries, Russia is only another one of our markets. Under the other hat, I am one who can look back on a lifetime of involvement in world affairs and who sees the possibility that we, as American businessmen, may play an important role in assisting our Government in its efforts to achieve a lasting peace between two great powers. Russia, if détente survives, will therefore be a new sales territory for Americans, opening markets which will be plentiful."

Negotiating with the Russians was a lot of fun. It was different from the negotiations that we may have in the United States. It took us seven months to negotiate these seven contracts. Some of them were similar in form, so really we are only talking about three kinds.

The first kind was the commodity contracts, the exchange of fertilizer. Over a 20-year period, the value of these contracts will be some \$20 billion. The second type of contract was engineering contracts for the supply of technology, equipment and materials. We signed two of these with a value of \$100 million. The third contract was to supply the design of a trade center which, when installed, will have a value exceeding \$100 million.

What was the atmosphere under which these negotiations were conducted? First of all, let me mention the negotiating periods. In the seven months, I made eight trips to Moscow, along with Dr. Patrick, who is our attorney, and one other business-oriented person. If we were lucky, we would get to meet in session two or three hours in a week. The rest of the time they were working on their everyday business or negotiating with other companies.

Secondly, there is the matter of language. Most of our negotiations were in English, but there was always an interpreter present, and if a true meaning were required, or if we got to a real detail in the negotiations, automatically the translator would be used so that an understanding would be held by both parties.

What was the authority of the Soviet negotiators? I will say it was less than our own. We went with, I will say, the full authority of Dr. Hammer as Chairman of the Board, and we could talk about any subject; if we needed a specialist, we brought him with us. The Soviet negotiators were not in the same position. They would listen intently to a specific part of the contract which we were negotiating, but had to say, "I will have to check with another agency to see if they are in agreement, or as to what their opinion might be."

I think another point that will help set the stage for you is that even though we met only or two or three hours a week, we spent eight and ten hours every day drafting and redrafting in trying to come up with a common language, and I

mean words here, words that would suit the needs of us both, that would protect them and at the same time protect us.

We found that they did very little drafting of a clause in the contract; that they depended upon us to do it and then when it would be presented, we might not hear back on it for a week or two weeks, but they would come back finally and say, "we don't agree." They might have a suggestion to help us reach agreement, but in the end I think what really produced the agreement was our constant pressure and constant intent to change it to try to find a mutual understanding.

I will mention now some of the specific problem areas. Sam Pisar mentioned this morning *force majeure*. Occidental is an American company, and one of the problems concerning *force majeure* was that in the United States we have strikes and we wanted to include "strikes" in our *force majeure* clause. There is no such word in the Russian language, at least not to put in a contract. We had to find a word that would protect us, because we have a delivery obligation based upon the production of United States goods for export and we could be prevented from performing by several kinds of strikes. We not only have problems with the unions in our own plants, we have the longshoreman problem, the shipping problems, *et cetera*.

We went to Mr. Komorov, Deputy Minister for Foreign Trade, who finally suggested using the word "stoppage" instead of the word "strike."

Occidental's *force majeure* clause is a whole page, sometimes a page and a half. The *force majeure* clause in our contracts is substantively only one paragraph, and it reads like this:

The term "force majeure" shall mean circumstances, including stoppages, due to reasons beyond the reasonable control of the party affected, unforeseen and inevitable events of extraordinary character, and acts of the elements or circumstances of a spontaneous nature.

You will note that there is no mention of acts of God. You will note there is no long list of events constituting *force majeure*. It is replaced by "unforeseen and inevitable events." So in this paragraph we obtained all that could reasonably be given by the Soviet negotiators.

Another noteworthy issue is the matter of assignability of the contract. We have no problem with assignment in the United States. We usually retain the right to assign it to a third party, although we may have to guarantee the transferee's performance. The Russians didn't want that. They said the global agreement was signed between Occidental and the Ministry for Foreign Trade, and, therefore, that is the way they wanted the agreements to read. We convinced them to let us name an affiliate which Occidental would control 50 percent or more, and we did obtain the right to assign it to other affiliates whereby they would not unreasonably withhold their approval, but we didn't get

the right to assign it to a third party without their written consent.

I have done a lot of things in my business career, and I think one of the most enjoyable was working on the team for Occidental Petroleum for these contracts.