

## Questions and Answers Regarding Arbitration

**MR. STEIN:** I would like to make a comment on Ben's observation about the failure to specify the applicable procedural rules in an investment agreement. From the Soviet standpoint, in the case of contracts calling for arbitration in Stockholm, they are familiar with the Stockholm procedures and maybe that is why they are happy with leaving it blank, knowing that those rules will be applied, rather than mentioning something like the ECE rules, which have, as far as I know, never been applied in practice. I have mentioned clauses in some U.S.-Soviet contracts which call for Switzerland as the location for arbitration rather than Stockholm. These do provide for the ECE procedural rules. This is probably because the Soviets don't know what the arbitrators in Switzerland would do in the absence of such a specification of procedural rules.

Now, getting back to the question of location, as to whether you could ever have an arbitration in either the Soviet Union or one of the Eastern European countries, or in New York. In some contracts I have seen with the Poles there is a provision for home-and-home arbitration; however, that is not the norm, but an exception.

**QUESTION:** What has been your experience in the past with compliance with the awards, like Russia?

**MR. STEIN:** As far as we know, the Soviets have complied with arbitration awards without the necessity of filing an action in a Soviet court for a judgment to enforce the award. They normally just pay the award.

**QUESTION:** I would like to know what effect the Russians' denunciation of the U.S.-Soviet Trade Agreement will have upon the agreement's exhortation to use third country arbitration? Secondly, do you think the Soviets would be again pressing for arbitration before the FTAC in Moscow? Thirdly, maybe that isn't such a bad thing after all, because the FTAC does have a long line of published decisions from which you can get a pretty clear idea of what their application of commercial law is, which is apparently not true in Sweden.

**MR. STEIN:** First of all, even before the U.S.-U.S.S.R. Trade Agreement, the Soviets had already made it a practice in East-West trade to agree to arbitration in a third country, such as Sweden. The fact that the Trade Agreement is still in a void is probably not going to mean there will be more pressure to have arbitration in Moscow.

MR. SALANS: My recent experience confirms that. We have just concluded two contracts in the month of April with Soviet foreign trade organizations which had Stockholm arbitration, or third-country arbitration, in them.

MR. HOLTSMANN: With respect to your comment about the published opinions of the FTAC, I would point out to you that these decisions are not said by the Soviets to be all of the FTAC's decisions. They are, however, described as being representative decisions.