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Thomas L. Shillinglaw

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## **Recent Developments in the Council for Mutual Economic Assistance**

There have been three areas of recent developments in the work of the Council for Mutual Economic Assistance (CMEA): the 32nd Session of CMEA in mid-1978 and the CMEA Executive Committee meeting in early 1979; the relationship between CMEA and the European Economic Community (EEC); and the work of the two CMEA banks—the International Investment Bank (IIB) and the International Bank for Economic Cooperation (IBEC). Each of these three areas will be discussed briefly below.

### **I. CMEA's 32nd Session and Executive Committee Meeting**

The 32nd Session of CMEA was held June 27-29, 1978, in Bucharest, Romania. In addition to CMEA member states, Yugoslavia (based on a pre-existing cooperation agreement between Yugoslavia and CMEA) and the following observer countries also participated: North Korea, Angola, Laos and Ethiopia. In addition, there were delegations present from Afghanistan and South Yemen.

An important development occurring during the 32nd Session was CMEA's unanimous approval for Vietnam to become a full CMEA member. Vietnam was admitted even though there had been no announcement regarding Vietnam's application or pending status following the May, 1978 CMEA Executive Committee meeting in Moscow. Vietnam had had unofficial representatives in different CMEA organizations since 1957, and since 1976 the country had been an observer at CMEA sessions. In May 1977, the country had been admitted to the two CMEA banks—IIB and IBEC.<sup>1</sup>

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\*Mr. Shillinglaw practices law in Milwaukee.

<sup>1</sup>In November 1977, IBEC adopted a legal basis for altering the amount of its nominal capital when a new country (such as Vietnam) becomes an IBEC member. The IBEC Council (the Bank's highest management body) was granted the authority to increase IBEC's nominal capital in an amount equal to the subscription payment (quota) designated for the country joining the Bank.

Vietnam's full CMEA membership is of particular interest because of the policies that CMEA will probably have to adopt to accommodate a member state which (like Cuba and Mongolia) is geographically remote from the other CMEA states and whose economy is not as developed as are the economies of the European members of CMEA. Also, recent CMEA large-scale projects have been designed for the contiguous Eastern European member states and the U.S.S.R. (for example, the "Union" gas pipeline from Orenburg, U.S.S.R. to the western Soviet border and from there to Eastern Europe; and the nearly completed electric transmission grid stretching from Vinnitsa, U.S.S.R. to Albertisha, Hungary and on to the rest of Eastern Europe).

In addition to projects where geography places Vietnam at a disadvantage, in other CMEA projects (of types such as the Kiembaevski asbestos ore beneficiation combine or the Ust-Ilimsk cellulose plant), it is doubtful that Vietnam would be able to make any significant contribution of technology or machinery. Vietnam will probably become, at least in the foreseeable future, the site of CMEA raw material development projects, as is presently the case in Cuba (nickel) and Mongolia (copper). Specifically, CMEA could assist Vietnam in oil extraction, with the contributing CMEA states being repaid in oil.

The communique following CMEA's 32nd Session emphasized the need to equalize the standards of economic development of all CMEA states, and in particular to speed the development of Cuba and Mongolia.<sup>2</sup> Vietnam's development will likewise undoubtedly become a CMEA priority. In fact, the Session's communique also expressed an interest in widening "bilateral and multilateral economic and scientific-cultural cooperation" with Laos, Angola, and Ethiopia.<sup>3</sup>

The CMEA Charter provides that any change to the Charter must be agreed to by all CMEA states.<sup>4</sup> During the 32nd Session, the U.S.S.R. reportedly proposed that the Charter be amended so that certain decisions currently requiring unanimity would in the future only require a majority vote. This proposal, if in fact formally presented, was not adopted by the Session. Another purported Soviet proposal (also not adopted) would have made participation in CMEA's economic integration programs mandatory, instead of voluntary as it is at present.

Although the above mandatory project participation plan was not adopted at the 32nd Session, the Session did approve "long-term purposeful programs of cooperation" in energy, fuels and raw materials (especially atomic

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<sup>2</sup>This emphasis was repeated in January 1979 by Leonid Brezhnev during a trip to Bulgaria. TASS, Jan. 19, 1979. Also, it should be noted that the U.S.S.R. has an agency, the State Committee for Foreign Economic Relations, which provides bilateral aid to developing countries at preferential rates.

<sup>3</sup>*Ekonomicheskaya Gazeta* (U.S.S.R.), No. 28, July, 1978, at 12-13.

<sup>4</sup>CMEA CHARTER art. 17.

energy plants),<sup>5</sup> agriculture,<sup>6</sup> food industries, and machine building. The decision regarding the development of long-term agreements in general had been adopted earlier, during the 29th and 30th CMEA Sessions. The 31st CMEA Session then agreed to develop specific preliminary cooperation drafts for fuels, energy and raw materials. The secretary of CMEA had stated, just prior to the 32nd Session, that these agreements would constitute the main cooperative thrust for the CMEA members through 1990.<sup>7</sup> It is noteworthy that oil and gas, which are of considerable importance to CMEA countries, were not specifically mentioned as areas where energy cooperation would be emphasized.<sup>8</sup>

These cooperation agreements, as adopted by the 32nd Session, are not compulsory for CMEA member states. However, an announcement by the heads of all delegations to the 32nd Session declared that the most important task of CMEA member states in the near future would be to prepare drafts of multilateral and bilateral agreements on concrete problems to be dealt with by cooperation programs in the above subject areas.<sup>9</sup> The delegation heads intended that these agreements would be signed before the 33rd CMEA Session, to be held in Moscow in the summer of 1979 commemorating CMEA's thirty years of existence.

Immediately following the 32nd Session in Bucharest, the 17th Session of the CMEA Cooperative Planning Committee met and discussed methods to implement the long-term agreements. This emphasis upon long-term agreements was further underscored by the leader of the Soviet delegation and Chairman of the USSR Council of Ministers, A. N. Kosygin, who in his speech to the 32nd Session pointed out that the Soviet government looks upon these programs as "planning documents—not only declarations" which "make concrete" the program of Socialist integration.<sup>10</sup> He also stated that the contents of the programs will, to a significant extent, be included in the 1981-85 national plans of CMEA member states. In fact, the benchmark of the real importance of these programs will be the extent to which they are included in these 1981-85 plans.

The CMEA Executive Committee met in Moscow on January 16-18, 1979. The main areas of concern, as expected following the CMEA 32nd Session, continued to be "organizational efforts" to carry out the "long-term pur-

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<sup>5</sup>In early December 1978, the CMEA Committee for Planning Activity adopted a plan for cooperative production of atomic power stations for 1981-90. MOSCOW DOMESTIC SERVICE, Dec. 7, 1978.

<sup>6</sup>The CMEA Agriculture Commission met in late-1978, at which time the plan for the Commission's 1978-9 work was adopted. *Selskaya Zhizn*, Dec. 1, 1978, at 3.

<sup>7</sup>*Supra* note 3, at 14.

<sup>8</sup>A potentially significant committee development which occurred during the 32nd Session was the creation of *Interneftprodukt*. Its charter members are Bulgaria, Hungary, Poland, Czechoslovakia and the U.S.S.R. The stated purpose of the committee is to create an organization to cooperate in several areas of petroleum products, in order "to satisfy the needs of these countries in these products."

<sup>9</sup>*Supra* note 3, at 13.

<sup>10</sup>*Id.* at 14.

poseful program of cooperation” (specifically an atomic power plant and related electric transmission network). The Executive Committee also discussed assistance to Vietnam and the prolonged CMEA-EEC negotiations.<sup>11</sup>

CMEA member states’ foreign trade has grown recently. The CMEA Permanent Commission on Foreign Trade, which oversees and coordinates this trade, announced that there was a twenty-four percent increase in CMEA members’ foreign trade in 1977 compared to 1976. In 1977, this trade reached 158 billion roubles. Mutual trade turnover among CMEA countries in 1977 was twenty-eight percent higher than in 1975, reaching ninety-one billion roubles. More recently, fifty-five-and-one-half percent of Soviet foreign trade in the first half of 1978 was with fellow CMEA countries, compared to a little over fifty-three percent in the first half of 1977. Despite this growth in intra-CMEA trade, even CMEA country officials acknowledge that increasing CMEA (especially Eastern Europe member states) cooperation in raw materials with developing countries is necessitated by the projected decline in the 1980s of Soviet raw material deliveries to Eastern Europe. Currently, about two-thirds of Eastern Europe’s raw material requirements are covered by intra-CMEA bilateral agreements, and eighty percent of these deliveries originate in the U.S.S.R. Since individual Eastern European CMEA member state economies are not large enough to establish the required large-scale raw materials long-term trade and production cooperation agreements with developing countries, these CMEA countries will have to become jointly involved in such projects.<sup>12</sup>

Fixed pricing for intra-CMEA trade for five-year periods (in the middle and end of each decade) had been based on average world “primary market” prices for the immediately preceding five-year period. However, in early 1975, at Soviet suggestion, intra-CMEA prices were revised (one year early), and some prices (including oil) were based on average prices for the preceding three years. This was of benefit to the oil-exporting U.S.S.R., since the resulting oil prices reflected the 1973 world price increase. The resulting trade imbalance in favor of the U.S.S.R. *vis-à-vis* Eastern Europe averaged approximately a billion roubles annually from 1975 through mid-1978. A recent Hungarian commentary suggested that after 1980, it might be practical for CMEA to return to the five-year period of price validity.<sup>13</sup> Of course, with increasing CMEA-country trade with the West, a pricing system for intra-CMEA trade which more closely reflects western pricing helps to rationalize the CMEA countries’ total foreign trade.

CMEA pricing is currently, and will be at least through 1980, based on annual price corrections. These prices are now in theory set on the basis of the average world market price for the five years preceding the current year at

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<sup>11</sup>TASS, Jan. 19, 1979.

<sup>12</sup>*Raw Material Imports of Socialist Countries from the Developing Countries*, FIGYELO, Dec. 27, 1978 (translation from Hungarian).

<sup>13</sup>*A Further Development of the Socialist Foreign Trade Price System*, KULGAZDASAG, Oct. 1978, at 38 (translation from Hungarian).

issue. (It is thought that over five years, any short-term market fluctuations will be greatly discounted.) In fact, price modifications are concluded bilaterally between member countries, but not necessarily annually and not necessarily for every product traded between these two countries.<sup>14</sup> More effective multilateral CMEA price regulation is still required in order to minimize or eliminate intra-CMEA price deviations which can (1) delay deliveries when an exporter has found another higher CMEA country purchase price, or (2) discourage acceptance of goods by an importer which has found a lower selling price from another CMEA supplier.

Intra-CMEA oil prices for 1979 will be increased an estimated 17.6%, thereby approaching the Organization of Petroleum Exporting Countries' price level. Different Eastern European states will continue to pay the U.S.S.R. different prices for this oil.<sup>15</sup> If the present trend continues, the Eastern Europe members of CMEA will require almost all of the U.S.S.R.'s exported oil and gas by the mid-1980s. Since the export of these commodities currently constitutes approximately half of Soviet hard-currency earnings, the Soviet government will be forced to make difficult choices allocating these exports between the West and CMEA.<sup>16</sup>

## II. CMEA-EEC Relationship

An area of continuing (though slow) development for CMEA is its attempt to structure a relationship with the European Economic Community (EEC).<sup>17</sup> There continues to be a fundamental difference in view between CMEA and the EEC over the form of this relationship. CMEA wants a trade clause included in its overall agreement with the EEC. Such a clause would have the effect of elevating CMEA to the level of the EEC Commission, since it would permit CMEA (through its Executive Committee) to negotiate trade agreements with the EEC on behalf of its member states. The EEC position (first officially adopted in 1974) continues to be that the CMEA Charter does not empower that organization to conduct such negotiations. The EEC reasons that CMEA is only an association of sovereign states, with no supranational institution analogous to the EEC Commission.<sup>18</sup> Furthermore, at a more practical level, the EEC would have more leverage negotiating trade agreements with individual CMEA states than it would negotiating with CMEA itself.

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<sup>14</sup>*Id.*

<sup>15</sup>Frankfurter Allegemeine, Feb. 7, 1979, at 11 (translation from German).

<sup>16</sup>SHELL OIL COMPANY, TRADE IN EASTERN EUROPE 1 (Jan. 1979).

<sup>17</sup>For some of the recent developments in this area, see Shillinglaw, *Cooperation Between CMEA and EEC*, 12 INT'L LAW. 677 (1978).

<sup>18</sup>As recently as March 1979, a Czechoslovak government communique repeated the CMEA assertion that the CMEA Executive Committee does in fact have the competence to conclude agreements with other international organizations (such as the EEC) to the same extent that CMEA can negotiate agreements with individual countries. Rude Pravo, March 24, 1979, at 6 (translation).

With the continuing unlikelihood that an EEC-CMEA trade agreement will be the subject of negotiations, there were discussions in May 1978 concerning CMEA-EEC agreements for informational exchanges in economic forecasts, statistics, protection of the environment and standardization. There was a follow-up CMEA-EEC meeting in Brussels in July 1978, although no further developments occurred.

The communique to the 32nd CMEA Session in 1978 merely pointed out that during the Session there had been an "exchange of opinions" among CMEA members on the question of continuing contacts and discussions between the EEC and CMEA. The communique concluded that CMEA continues to take the position that discussions between the two organizations should continue in order to reach agreement between "CMEA and CMEA member states on the one hand and the EEC and EEC member states on the other hand."<sup>19</sup> This position, if adhered to, would seemingly preclude individual trade agreements between the EEC and CMEA member states. Immediately following the 32nd Session, the CMEA Executive Committee met in Bucharest and (among other items of business) adopted a decision regarding EEC-CMEA cooperation which corresponded to that which had just been adopted by the CMEA General Session. This, essentially, is where the current relationship between the EEC and CMEA now stands.

If substantive trade issues are not soon dealt with by CMEA-EEC negotiations, there may be an increase in EEC protectionist measures against Eastern Europe products, such as those introduced against steel in early 1978. To counter any such EEC measures, it is conceivable that other Eastern European states (in particular Poland and Hungary) would try to convince the Soviet Union that it is in the best interest of these countries to follow Romania's example of unilaterally approaching the EEC on this issue.<sup>20</sup> Romania had earlier declared itself to be a developing country for purposes of eligibility for EEC Generalized Preferences.<sup>21</sup> The EEC responded by granting these preferences to Romania, which thereafter entered into technical agreements with the EEC in the areas of textiles and steel.<sup>22</sup> Poland's concern was expressed in a communique in late 1978 which complained that EEC volume restrictions and high EEC tariffs on imported manufactured goods are the causes of the fact that nearly three-fifths of CMEA exports to the EEC were raw materials and food.<sup>23</sup>

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<sup>19</sup>Supra note 3, at 12-13.

<sup>20</sup>A Polish article, published in late 1978 and commenting on the slow progress of EEC-CMEA cooperation, concluded with the observation that Polish trade with Western Europe is twice that of any of the other CMEA countries (except the U.S.S.R.) and therefore Poland is "particularly interested in successfully solving the issue of access to the Common Market." *CMEA and the Common Market—Artificial Division*, *POLITIKA*, Nov. 25, 1978, at 11 (translation).

<sup>21</sup>OFFICIAL JOURNAL E.E.C., L-358, 28 December 1973.

<sup>22</sup>For textiles: Commission of E.E.C., COM (1977) 167 FINAL, OFFICIAL JOURNAL OF E.E.C., L-357, 31 December 1977, for steel exchange of letters between E.E.C. Commission and Romania, 1978.

<sup>23</sup>Supra note 20.

### III. CMEA Banks—IIB and IBEC

The International Investment Bank (IIB), which handles long-range financing (up to fifteen years) for projects involving at least two CMEA member countries, recently negotiated a \$500 million loan from a consortium of Western banks, with Dresdner Bank of Germany as the lead bank.<sup>24</sup> The interest rate margin over the London Interbank Rate was five-eighths of one percent for the first two-and-one-half years of the ten-year loan, and three-fourths of one percent for the remainder of the loan. The IIB has stated that the loan is for the Orenburg pipeline and for "other CMEA projects."<sup>25</sup>

In early 1979, twelve Japanese banks loaned IIB \$175 million at 0.625% over the London Interbank Rate. At least a part of these proceeds could be used specifically for financing Eastern European (non-U.S.S.R.) CMEA oil imports following the disruption of Iranian supplies. If so, this would be IIB's first acknowledged loan for purposes other than investment. As a result of this shift in loan policy, IIB will probably become increasingly involved in financing CMEA-country projects in developing countries.<sup>26</sup> This may be done through a special IIB fund consisting of convertible currencies and "transferable roubles."<sup>27</sup>

In early April 1978, the council of the other CMEA bank, the International Bank for Economic Cooperation (IBEC), held its 47th Session. In addition to IBEC members, the heads of the national banks of Finland, Yugoslavia, and Laos also attended the session. During the session it was announced that the Bank's operations in 1977 grew to over 140 billion transferable roubles.

In early 1977, the legal status of IBEC under British law had been questioned by British counsel to a western bank.<sup>28</sup> In response, in November 1977, IBEC altered Article XI of the Agreement Concerning Multilateral Settlements in Transferable Roubles and the Organization of IBEC of October 22, 1963. This amended Article XI now provides that IBEC is an international organization possessing the right to sign international agreements with states as well as with international organizations. Also, IBEC amended Article 5 of its statutes to provide that in case of IBEC's default, its creditors would have prior claim to the Bank's assets, and only after these claims are satisfied would remaining assets be distributed among CMEA member states.

In April and May 1978, there was an exchange of public letters between the Bank of England and the British Foreign and Commonwealth Office (FCO).<sup>29</sup> The Bank of England had asked the FCO for an opinion as to the legal capacity under British law of an international financial institution, such

<sup>24</sup>EAST-WEST Markets, May 30, 1977, at 8.

<sup>25</sup>Business Eastern Europe, May 20, 1977, at 157.

<sup>26</sup>Ekonomicheskaya Gazeta (U.S.S.R.), Oct. 30, 1978, at 20.

<sup>27</sup>*Raw Material Imports of Socialist Countries from the Developing Countries*, *supra* note 7. For a short discussion of "transferable roubles" see Shillinglaw, *The Council for Mutual Economic Assistance (CMEA)*, 11 INT'L LAW. 580 (1977).

<sup>28</sup>See Shillinglaw, *supra* note 27.

<sup>29</sup>Copies of letters on file with author.

as IBEC or IIB, to sue and be sued in English courts on loan agreements governed by English law. This question concerned an international institution which (1) had been established by sovereign states pursuant to a treaty (as opposed to being a creation of local law of these states) to engage in financial activities, and (2) which had been granted legal personality by these states under the law of the member state in which the institution has its permanent location. The Bank of England also asked the FCO if in the future the FCO would supply a statement to an English court regarding the FCO's opinion as to such an institution's legal personality under British law.

The FCO, in reply, stated that in its opinion such a financial institution does have legal personality in the United Kingdom.<sup>30</sup> The FCO added that if an English court were to ask it for an official statement on behalf of the United Kingdom Executive regarding such an institution's legal personality, it would be willing to supply such a statement in an actual case. Although such a statement by the British Executive would not be binding on British courts, it would undoubtedly be very persuasive.

On a separate matter, IBEC in November 1977 also altered its statutes to permit itself to extend loans to CMEA institutions as well as to CMEA member states. For example, IBEC can now loan funds directly to Interatomenergo, the CMEA atomic energy organization, which could well become the recipient of a number of IBEC loans because of the 32nd Session's emphasis upon atomic energy.

A final point regarding the work of the CMEA banks is whether any loan or other commercial transaction by an American bank with IBEC or IIB would violate United States federal law under section 5(b) of the Trading with the Enemy Act,<sup>31</sup> absent specific license by the Secretary of the Treasury. The specific question is whether such a loan would be construed as a loan made indirectly to CMEA member Vietnam in violation of the Foreign Assets Control Regulations,<sup>32</sup> or to CMEA member Cuba in violation of the Cuban Assets Control Regulations.<sup>33</sup>

Both of these regulations are administered by the Foreign Assets Control Office in the Department of Treasury. Neither of the regulations covers any multilateral organization in which the combined interests of two or more designated countries control less than twenty-five percent of the obligations of the organization.<sup>34</sup> Since Vietnam is the only CMEA country to which the Foreign Assets Control Regulations apply, and, of course, Cuba is the only country to which the Cuban Assets Control Regulations apply, it is quite doubtful that either of the regulations would apply to CMEA (or to IBEC or IIB) based on either of the above twenty-five percent provisions.

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<sup>30</sup>*Id.*

<sup>31</sup>50 U.S.C. app. § 5(b) (1976).

<sup>32</sup>31 C.F.R. § 500 (1978).

<sup>33</sup>31 C.F.R. § 515 (1978).

<sup>34</sup>31 C.F.R. §§ 500.303(c), 515.303(c) (1978).

Another consideration affecting loans from United States banks to IBB or IBEC (in other words, loans in fact made indirectly to IIB and IBEC member states) is the conceivable (though improbable) application of the United States Johnson Act.<sup>35</sup> This Act proscribes certain financial operations by any person within the United States with any foreign government in default in payment of its obligations to the United States. Certain IIB and IBEC member states are in this default position,<sup>36</sup> The Act currently applies to the U.S.S.R., Czechoslovakia and Poland. Furthermore, certain "delinquent obligations" of Cuba could in theory constitute "defaults" for purposes of the Act. Bulgaria and Hungary are not in default for purposes of the Act; Mongolia has not been party to a transaction which would subject it to Johnson Act liability; Romania and Vietnam, as members of the International Monetary Fund and the World Bank, are expressly exempted from Johnson Act coverage.

Four United States Attorney General opinions<sup>37</sup> have interpreted the Act in such a way as to exclude certain transactions from its coverage. For example, both loans by branches of United States banks incorporated abroad and "normal export financing" arrangements are excluded. The United States Justice Department has never initiated any action under the Act because of financial transactions with any CMEA member country. This inactivity has resulted in the Act not being an impediment to United States-CMEA country financing.

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<sup>35</sup>18 U.S.C. § 955 (1978).

<sup>36</sup>CMEA countries' debt to the West is currently placed at more than \$50 billion and is expected to grow to \$80 billion by 1980. Even this latter level is considered manageable given the extensive energy and other raw materials in the U.S.S.R. and, to a lesser extent, in the Eastern European member states of CMEA. *TRADE IN EASTERN EUROPE*, *supra* note 16, at 4.

<sup>37</sup>37 OP. ATT'Y GEN. 505 (1934); 39 OP. ATT'Y GEN 398 (1939); 42 OP. ATT'Y GEN. 229 (1963); 42 OP. ATT'Y GEN. 357 (1967).

