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# The Multinational in Yugoslavia

## I. Introduction

The Euromarket has established itself as a premier international financial community and multinational corporations have taken full advantage of this market. Relative freedom from regulation has allowed London, which has 400 banks, to become a leading center for Eurocurrency transactions.[1] Other beneficiaries of this business include Singapore, Hong Kong and Luxembourg.[2] The more recent and better known participants in international banking activity include the Bahamas, Bermuda, the Caymans and Barbados. All centers of Euromarket transactions have one common element: a legal environment conducive to business.[3]

Many offshore centers such as the Netherlands Antilles, offer tax advantages along with a favorable legal climate as an inducement to trade.[4] Other participants in international activity, for example Panama, have based their popularity on banking secrecy. In short, all of these countries compete for the business of the multinational corporation, and the economic benefits that follow. Yugoslavia represents, geographically, a unique window on the East which, if possessed with a friendly environment for foreign investment, could participate fully in this international activity.

This article surveys the current law and policies with respect to the Yugoslav Joint Venture, specifically, the Law on Investment of Resources

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1. While the U.S. dollar accounts for approximately 80% of all Euromarket deposits, direct participation in the Eurodollar market has been effectively closed to American banks for years. The Federal Reserve Board's promulgation of regulations permitting domestic banks to establish IBFs (international banking facilities) has allowed these banks to compete more effectively in the Euromarket. *See* Note, *International Banking Facilities: Defining a Greater U.S. Presence in the Eurodollar Market*, 13 LAW & POL'Y INT'L BUS., 997 (1981). The INT'L HERALD TRIB., June 20, 1983, contains an informative special supplement on London's pre-eminence in financial markets at pages 7–13.

2. Note, *supra* note 1, at 1001.

3. *Id.* at 1002.

4. *See e.g.*, *Tax Report*, WALL ST. J., Aug. 8, 1984 at 1, col. 5.

of Foreign Persons in Domestic Organizations of Associated Labor.[5] The Law on Exports and Imports of Goods and Services[6] and policies governing financial institutions is also surveyed. The current position of the United States with respect to these laws is reviewed and recommendations are provided for a more responsive economic environment in Yugoslavia which is at the same time sensitive to that country's social objectives.

## II. Background

Yugoslavia was created in 1918 by piecing together parts of the Austro-Hungarian and Ottoman empires as well as parts of Turkey. The Yugoslav economic model remains unique. Historic instances of workers' self-management are sporadic, and include brief periods during the Paris Commune and the Spanish Civil War, in Germany during 1920 and in Hungary during 1919.[7] Yugoslav economic development before World War II was slow, painful and principally agricultural.[8] Beginning in 1946 the government pressed for forced industrialization in an attempt to imitate the Soviet pattern.[9] Unbalanced development resulted which, combined with historical commitments to the Yugoslav Revolution, caused the country to turn to self-management in 1950.[10] By the mid 1950s the basic institutional features of the present Yugoslav system were in place: self-management, social ownership, and a relatively free market for goods and services.

There have been major constitutional revisions—in 1963, 1967, 1968,

5. The Law on Investment of Resources of Foreign Persons in Domestic Organizations of Associated Labor, art. 2 (1978) (published in *Official Gazette of the SFRY*, No. 18/78) [hereinafter cited as *Joint Venture Law*]. Other recent literature concerning joint venture law includes: Artisien & Buckley, *Joint Ventures in Yugoslavia: Comment*, 18 JOURNAL OF WORLD TRADE LAW (1984); *Industrial Cooperation with Yugoslavia: Legal Aspects*, European Free Trade Association, Geneva (1983); *The Challenge to JVs: Survival of the Concept*, 12 BUS. EASTERN EUROPE 25 (January, 1983); Coughlin, *An Economic Analysis of Yugoslav Joint Ventures*, 17 J. WORLD TRADE L. 12 (1983); Buckley, *New Forms of International Industrial Cooperation: A Survey of the Literature*, 38 AUSSENWIRTSCHAFT 2 (June, 1983); Carter, *Democratic Reform in Yugoslavia*, London (1982); Cory, *Industrial Cooperation, Joint Ventures and the MNE in Yugoslavia*, in Rugman, *New Theories of the Multinational Enterprise*, Croom Helm, London (1982); Coughlin, *Technology Transfer to Yugoslavia via Joint Ventures*, 24 ACES BULLETIN PT. 3 (1982); Gupta, *Multinational Investment in Yugoslavia: An Appraisal*. 13 COL. J. WORLD BUSINESS 71 (1978).

6. The Law on Exports and Imports of Goods and Services, (published in *Official Gazette of the SFRY*, No. 15/77) [hereinafter cited as *Law on Exports*].

7. *See* M. DRULOVIK, *Self-Management and Statism*, in SOCIALISM AND YUGOSLAV THEORY IN PRACTICE, 54 (Belgrade, 1979) (lecture delivered at the Communist University of London, July 14, 1979). Self-management refers to the socialist concept of worker participation in industry, whereby worker representatives govern the businesses in which they are employed.

8. *Yugoslavia: An Introduction to the Yugoslav Economy for Businessmen*, The Chase Manhattan Bank, N.A. 7 (Oct. 1974); E. NEUBERGER & W. DUFFY, COMPARATIVE ECONOMIC SYSTEMS: A DECISION-MAKING APPROACH 243 (1976).

9. NEUBERGER & DUFFY, *supra* note 8, at 243.

10. Drulovic, *supra* note 7, at 54–5.

1971 and 1974—reflecting that political stability in Yugoslavia is a product of prolonged and complex bargaining. The country's economic development has been among the fastest in the world—since 1970, growth rates of production and employment have exceeded those recorded in OECD countries.[11] Industrial production has grown at approximately 6 percent per year; employment has expanded by over 1,700,000 jobs in the past ten years. In an effort to sustain this rate of growth and development, the country has endeavored to solicit investment activity on the part of Western multinational corporations, in a format perceived to be compatible with self-management at the worker level—the Joint Venture.

In Yugoslavia, an enterprise is a legal/economic entity whose function it is to produce and sell certain products or perform certain services with a corresponding financial effect.[12] Specific socio-economic conditions are prescribed. All of the resources and assets which are prerequisites for work or production in this enterprise are socially owned.[13] The enterprise is a work organization operated by a system of self-management. Management functions are performed by the workers who are self-managers and who make their own decisions, either directly or through their own delegates.[14]

The enterprise in the self-management system is also characterized by a unique subdivision into working entities. In the self-management enterprise the Basic Organization of Associated Labor (BOAL) corresponds to a profit center.[15] Each BOAL has its own balance sheet and income statement. These financial statements set forth the investment in, and costs associated with, labor, resources and income. In terminology unique to Yugoslavia, the assets of a BOAL are categorized as business assets, reserve assets and assets for common consumption, which include housing for workers.[16] Likewise, the income statement of such a venture has socio-economic categories of income which include revenues from the free exchange of

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11. Introductory note to The Law on Investment of Resources of Foreign Persons in Domestic Organizations of Associated Labor 5 (1978) (B. Colanovic, Chairman, Bd. of Directors, Yugobank); Nat'l Bank of Yugo Quarterly Bulletin X (no.1) (March 1982), p. 6 & table 4.

12. Turk, *The Place of Enterprise Economics in the Self-Management System*, U.S./Yugoslav Conference Proceedings on Ownership, Management, Productivity and the Quality of Working Life: Labor Management Systems in Yugoslavia and Worker Participation in the United States, 1 (Albany, New York, Oct. 5–7 1981). *See also* Babic, *Some Aspects of Plan Coordination in Yugoslavia*, in XIV ECONOMIC ANALYSIS AND WORKERS' MANAGEMENT 465,466 (1980).

13. Turk, *supra* note 12, at 2.

14. *Id.* at 3.

15. *Id.* at 4–5.

16. *Id.* at 6. Business agents are as generally understood in western socio-economic cultures, and are both fixed and current in nature. Reserve assets are emergency funds, generally set aside out of annual contributions from operations. They are deposited in banks and kept in ready reserve. Consumption assets include housing for workers, and rendering of low cost loans to workers for housing construction.

labor.[17] There are some 95,000 planning entities in Yugoslavia, 19,200 of which are BOALS.[18]

Each BOAL decides on the type, volume and quality of its line of products or services, and coordinates its activity with the work organization.[19] All business activity within the BOAL takes into account the interests of workers as self-managers.[20] Several BOALs might combine into composite organizations for financial or operating economies.[21] These composite organizations of associated labor operate as if several BOALs were merged together. Other self-managed organizations include work communities and work cooperatives and other forms of pooling of labor, loosely referred to as organizations of associated labor. Administrative, clerical and support functions are organized into work communities, or work organizations, which also have their own financial statements. For any given enterprise, the financial statements of the several BOALs and work organizations comprising the whole firm would be tallied together like consolidated financial statements.

## III. Current Law

### A. Joint Ventures

Current Yugoslav law provides that a foreign person may invest resources in a BOAL with joint business aims and interests, including joint risk and income participation. This particular form of business activity is defined as the "joint venture."[22] The law provides that these investments of resources shall be of a "long term nature."[23] A joint venture contract must be completed in writing and approved by the federal administrative body in charge of affairs in the fields of energy and industry.[24] Article 6 of the law protects the joint venture investor from potential retroactive enactments. The law had provided that the "contract may not be contrary to the social plan of Yugoslavia . . . or agreements on the foundations of the social plans of the republics and/or autonomous provinces, nor to social compacts concluded by the [BOAL] involved," but this Article has been deleted from

17. *Id.* at 11–12.
18. Babic, *supra* note 12, at 466.
19. Turk, *supra* note 12, at 12.
20. *Id.* at 23.
21. Turk, *supra* note 12, at 4.
22. *Joint Venture Law, supra* note 5. The law was amended on November 27, 1984 (published in *Official Gazette of the SFRY*, No. 64/84 [hereinafter cited as *1984 Amendment*].
23. *Joint Venture Law, supra* note 5 at art. 3.
24. *1984 Amendment* at art. 4. This committee is a federal administrative agency in charge of energy and industry, but also is involved in other economic activities such as agriculture, building and tourism. Its authority is even broader when the approval of joint ventures is involved. *See* Introductory Note, *supra* note 11, at 11.

the law by the 1984 Amendments because it was considered unenforceable as a practical matter.[25]

Article 7 is very specific as to what the joint venture contract shall cover.[26] Joint venture contracts are not permitted in the fields of insurance, trade and social activities. The Federal Executive Council may, under certain circumstances, permit a joint venture in certain social activities such as education.[27] A joint venture contract could be concluded with a work organization or a composite organization, but a BOAL must be designated as being vested with the rights and duties of the contract.[28] The law refers to "domestic" organizations, encompassing BOALs and composites. This terminology is utilized primarily to differentiate between domestic and foreign parties to the joint venture. Perhaps the single most controversial provision has been Article 11, which was deleted by the 1984 Amendments:

> The value of resources to be invested under a joint venture contract by a foreign person in the same domestic organization of associated labor may not exceed the total value of the resources invested by the domestic organization of associated labor, nor may it be equal to the total value of such resources.[29]

In other words, the participation of a foreign partner was limited to 49 percent of the total value of the jointly invested resources. Thus, a Yugoslav joint venture was really a 51 percent Yugoslav-controlled enterprise, where the foreign investor was a 49 percent minority owner. The BOAL, with its mandate of self-management, controlled the enterprise. This provision

25. *Joint Venture Law*, *supra*, note 5, at art. 7; *1984 Amendment*, *supra* note 22.

26. A joint venture contract shall in particular regulate:

(1) Aims of the investment of resources and purpose, terms and manner of utilization of such resources;

(2) Total amount of the required resources to be invested in the joint venture and, out of this total, amount of resources to be invested by the domestic organization of associated labor and amount of resources to be invested by the foreign person;

(3) Manner of determining the part of income of the domestic organization of associated labor in which the foreign person shares;

(4) Basic elements and scales for determining the share of the foreign person in the income of the domestic organization of associated labor;

(5) Terms and manner of and time-limits for paying the share of the foreign person in the income of the domestic organization of associated labor;

(6) Terms and manner of and time-limits for returning the value of the resources invested;

(7) Mutual obligations of the contracting parties in the event of business losses, and other obligations concerning risk-bearing;

(8) Composition and competences of the joint business board and mode of election of such board;

(9) Mode of settlement of mutual disputes;

(10) Mode of securing foreign exchange and other resources for paying to the foreign person the amount accruing to him on account of his share in income, and for return of the value of resources invested. . . .

*1984 Amendment* at art. 7.

27. *Id.* at art. 11. Joint ventures in banking are regulated by a separate federal law.

28. *Id.* at art. 10.

29. *Joint Venture Law*, *supra* note 5, at art. 11.

hampered foreign investment in Yugoslavia for many years, but has at last been repealed.

The law provides details with respect to the formation of a joint business board and enumerates the duties and responsibilities of the board.[30] The board, which must have equal representation, can make business decisions for the joint venture, provided workers are consulted.[31] No minimum investment is required by the foreign investor, and loans, up to 50 percent of total capital, may be utilized in the financing of the venture.[32] Article 12 provides that if losses are incurred "in the course of several years" the joint venture can be cancelled.[33] Proportional sharing of income in relation to the amount of resources invested is provided. The permanent sharing of income is prohibited—the right of a foreign person to share in income realized in the joint venture will cease when the value of the resources has been returned, together with compensation for their use, or if a time limit has been stipulated in the joint venture agreement, that will terminate the sharing of the income, regardless of the extent to which the value of the resources invested has been returned.[34]

The law provides, in the calculations for the proportional distribution of income, that with respect to the BOAL, allocation be made for personal and collective consumption, "on the basis of a self-management enactment which establishes basic principles and criteria for distribution of the net income of the basic organization, in accordance with the law, self-management agreement and the social compact."[35] This means clothes, food, housing and the like. The law provides that income[36] and risk taking arising from the joint venture are to be shared in the same proportions.[37] Article 29 provides a method for determining and measuring what constitutes an operating loss.[38] Provision is made for transfer of earnings out of the

30. *Id.*, at arts. 14–16. Arts. 15–17 in the *1984 Amendment*. For example, one translation of new article 17 reads, "the joint business board shall take decisions on all issues relating to joint business operations."

31. *1984 Amendment*, at art. 17.

32. *Id.* at art. 8. Repeal of Art. 11 of the 1978 law eliminated minimum investment requirements.

33. *Id.* at art. 13.

34. *Id.* at arts. 17–27.

35. *Id.* at art. 22.

36. *Id.* at art. 18.

37. *Id.* at art. 28.

38. [A] loss shall be deemed to have been incurred through a joint venture of a [BOAL] using resources of a foreign person, if the income realized through the joint venture, as stated in the annual balance sheet, is smaller than the sum total of the amount of advanced payments of personal incomes made to workers for their work in the joint venture up to the amount specified by the relevant self-management enactment, the amount of personal incomes guaranteed by law for the period for which they have not been paid, and the amount of obligations to be met under the law out of the income in connection with the joint venture.

*Id.* at art. 29.

country.[39] The law provides that the BOAL has a right of first refusal on the transfer of the joint venture interest.[40] In the event that the BOAL's right of first refusal is not honored, the BOAL can bring suit before a competent court of law and demand the transfer be made to it under the same terms as the planned transfer to the third party.[41]

Article 43 provides for compensation in the event of expropriation. Such compensation is also provided for the BOAL.[42] Detailed provisions enumerate the procedures required for approval and registration of joint ventures;[43] provision is also made for settlement of disputes.[44] Finally, punitive provisions and fines are provided for violations of the law.[45] These violations include utilizing imported equipment not provided in the contract; improper photographing of armaments prior to completion and approval of a joint venture agreement to manufacture such armaments; failure to file timely applications and forms; and failure to timely disclose reportable events, such as a transfer of interest in the joint venture.[46]

## B. Exports and Imports

This joint venture legislation must be viewed with an understanding of The Law on Exports and Imports of Goods and Services.[47] "Exports and imports of goods and services are performed on in accordance with the policy of foreign economic relations set by the Assembly of the Socialist Federal Republic of Yugoslavia."[48] This enactment regulates the foreign trade system, sets conditions for exports and imports of goods and services and prescribes conditions for the work of BOALs and their relations with foreign partners.[49] Thus, any joint venture desirous of marketing its output beyond Yugoslav borders becomes subject to this law.

The law provides for the registration of a BOAL which engages in foreign trade.[50] The statute requires pooling the resources of ventures engaged in

39. *Id.* at art. 30. "A foreign person may use resources which he is entitled to transfer abroad to increase his participation in the resources of the joint venture. . . ." But, "[a] joint venture contract may provide that the obligations of the [BOAL] towards the foreign person arising from his share in the net income may also be settled by deliveries of part of the products manufactured by the joint venture. . . ." *Id.* at art. 32.

40. *Id.*, at art. 37.

41. *Id.*

42. *Id.*, at art. 43. Since 1972 OPIC insurance has been available to American corporations investing in Yugoslavia.

43. *Id.*, at arts. 46–56.

44. *Id.*, at art. 57.

45. *Id.*, at arts. 58–61.

46. *Id.*

47. *Official Gazette of the SFRY*, No. 15/77.

48. E. Ludviger, Introductory Note to The Law on Exports 6 (1977).

49. *Id.*, at 5.

50. *Law on Exports*, *supra* note 6, at art. 7.

similar activities,[51] and permits pooling where the foreign trade is on a "long-term basis" and on a "major scale."[52] In fact, individual workers are prohibited from engaging in foreign trade.[53] A BOAL engaging in foreign trade is subject to the jurisdiction of the court in the territory in which the organization has its principal place of business.[54]

The coordinating Committee of the Federal Executive Council has broad powers under this law.[55] The Committee lays down criteria for consent to engage in foreign trade, coordinates the work of committees of the republics and institutes proceedings if work obligations have been violated.[56] The law further provides for an intricate system of licenses and quotas including quality, value, and time period regulations to be determined by the Committee.[57] Certain goods are subject to the issuance of special licenses;[58] this determination is also made by the Committee. Economic services and foreign transport are treated separately.[59] Other specific trade activities are covered by other sections, such as Article 71 dealing with duty free shops, Article 70 dealing with agencies for foreign banks, and Article 72 dealing with fairs and international exhibitions. Punitive provisions of this law are extensive, covering some twenty-six articles.[60]

## C. Other Laws Affecting Foreign Investment

Provisions have been made for opening representative offices in Yugoslavia,[61] provided the foreign firm has invested in a BOAL, has entered a co-production contract, or has entered into a technical or business

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51. *Id.*, at art. 8.
52. *Id.* The Federal Executive Council defines "long-term" and "major scale."
53. *Id.*, at art. 11.
54. *Id.*, at art. 12.
55. *Id.*, at art. 17. "The Coordinating Committee . . . shall consider and make proposals . . . , in particular:

> (1) development of socio-economic and self-management relations in such organizations; (2) implementation of self-management agreements and social compacts; (3) implementation of personnel policy; (4) organization and development of the trade network in Yugoslavia and abroad; (5) legality in foreign trade operations."

*Id.*, at art. 17.

56. *Id.*
57. *Id.*, at arts. 26, 27, 28.
58. *Id.*, at art. 29 (narcotics); art. 30 (provision for listing); art. 31 (regional distribution objectives may require special license); art. 32 (quotas may be jointly used); art. 33 (subassemblies and components); arts. 34–36 (equipment and fixed assets used in manufacture for export); arts. 37 (armaments); art. 38 (in temporary economic emergency the Committee can suspend any of these provisions).
59. *Id.*, at art. 54.
60. *Id.*, at arts. 87–113.
61. The Decree on the Opening and Work of Representative Offices of Foreign Firms in Yugoslavia, (*Official Gazette of the SFRY*, No. 30/77) [hereinafter cited as *Representative Office Law*].

cooperation contract with a BOAL.[62] Specific provisions of these laws cover opening an office to monitor an investment in a BOAL, to supervise construction of vessels, to conduct tourist operations and to engage in financial activities jointly with domestic operations.[63]

A multinational could participate in Yugoslavia's economic growth through a licensing arrangement, but would have to contend with other cumbersome legislation.[64] This licensing law has been recently amended and improved, but continues to provide, among other things, that the foreign licensor must guarantee to protect the Yugoslav licensee for "damages," which are loosely defined.[65] The Yugoslav licensee cannot be restricted with respect to his export markets, thus creating potential conflict with other non-Yugoslav licensees of the foreign licensor.[66] There are also inconsistencies with other Yugoslav regulations.[67] Uncertainty with respect to "exceptions" to the law, and whether or not agreements will be approved under those exceptions, points to limited utilization of license agreements by multinationals in Yugoslavia.[68]

In 1976 and 1977 certain banking and credit laws were enacted,[69] reflecting both the socialist character of the socio-economic system and Yugoslavia's system of self-management.[70] The combination of a market economy and decentralized planning, where the enterprises are managed by those who work in them, means that workers decide on the volume and structure of production, prices, income distribution and investment.[71]

The country's institutional financial structure, essential to the entire economic system and not just the joint venture program,[72] includes two

62. *Representative Office Law*, *supra* note 61 at art. 3.

63. *Id.*, at arts. 5, 6.

64. The Law on Long-Term Production Cooperation, Business-Technical Collaboration, and the Acquiring and the Awarding of the Material Right to Technology Between Organizations of Associated Labor and Foreign Persons, (*Official Gazette of the SFRY*, No. 40/78) [hereinafter cited as *License Law*].

65. Hitch, *Summary and Analysis of the 1983 Amendments of the Yugoslav Long-Term Cooperation and Technology Transfer Law*, Memorandum of Baker & McKenzie, Chicago, Ill., Apr. 13, 1983, at 6.

66. *Id.*, at 6–7.

67. *Id.*, at 7, referring to the Industrial Property Law, (*Official Gazette of the SFRY*, No. 34/81). *See e.g.*, *Law on Exports*, at art. 4.

68. *See* Hitch, *supra* note 65, at 7.

69. *See e.g.*, The Monetary System Act, (*Official Gazette of the SFRY*, No. 49/76; The National Bank of Yugoslavia Act, (*Official Gazette of the SFRY*, No. 49/76; The Credit & Banking System Act, (*Official Gazette of the SFRY*, No. 2/77; The Security Act, (*Official Gazette of the SFRY*, No. 58/77; The Law on the Performance of Economic Activity Abroad, (*Official Gazette of the SFRY*, No. 15/77; and The Law on Foreign Exchange Operations and Foreign Credits Relations, (*Official Gazette of the SFRY*, No. 15/77).

70. Dimitrijevic, Golijanin, Knezevic, Mijovic & Zecevic, FINANCIAL INSTITUTIONS IN YUGOSLAVIA 6 (Belgrade, 1977).

71. *Id.*, at 6–7.

72. *Id.*, at 16.

basic groups of operations: the pooling of resources of the BOALs, which account for about two-thirds of all financing requirements in the country, and "mediation" aimed at assisting the concentration of the resources of the economy.[73] The banking sector is composed of national banks, commercial banks, savings banks, credit funds and insurance institutions, of which commercial banks account for about two-thirds of all activities.[74] There are nine national banks in Yugoslavia which operate homogeneously as one banking system.[75]

## IV. Multinational Investment in Yugoslavia

### A. Yugoslav Attitudes

Compounding the complex realities of Yugoslavian economic life are some geographic and cultural facts: the country is a blend of six republics and two autonomous regions, four religions, three languages, two alphabets, nine nationalities and an ongoing experiment in self-management. Most experts agree that Yugoslavia cannot drastically change its political or economic systems to help its financial position since these systems are strategically engineered to keep its various nationalities in place.[76] It is believed that the country's six republics and two autonomous regions often adopt ill-guided economic measures and block necessary federal actions.[77]

The complex set of laws and regulations related to the financing and operation of multinational activity in Yugoslavia is partly the product of an overwhelming desire to preserve the integrity of the country's self-management system. But it also reflects a deep-seated fear of the potential abuses of a pervasive multinational presence in the country. One commentator has drawn an analogy between the growth of multinational and regional economic communities such as the OECD and EEC.[78] There is a

73. *Id.*, at 12.
74. *Id.*, at 25.
75. *Id.*, at 28. The National Bank of Yugoslavia as the force behind the Central Banking System, and the leader of all financial mechanisms, has the following key functions:

1) Controlling the amount of money in circulation;
2) Maintaining the liquidity of banks and other financial organizations;
3) Maintaining liquidity in international payments;
4) Issuing bank notes and coins;
5) Performing operations on behalf of the Federation;
6) Exercising special supervisory powers. *Id.* at 30.

76. The Wall St. J., May 9, 1983, at 36, col. 1.
77. *Id.*
78. *See* Djurovic, The Behavior of Transnational Companies, 101 (Institute of Comparative Law, Belgrade, 1979); Bulajic, Legal Aspects of a New International Economic Order, 1 (Institute of Comparative Law, Belgrade, 1979). Bulajic displayed the same fears at an address, Comparative Resource Development Seminar, Inter-Univ. Center of Postgraduate Studies, Dubrovnik, (June, 1983).

genuine concern over the economic and social power of multinationals such as Mitsubishi, General Electric, Volkswagen, Unilever and Chrysler.[79]

Fear of economic domination by the multinationals "in specific economic areas or industrial branches means a negation of traditional liberalistic economy."[80] It has been perceived that the multinationals use legally improper means such as bribing officials in the host country, creating a scheme of corruption to obtain a favorable market position and obtaining preferential capital investment treatment.[81] "Performing of subversive activity in the host country, such as actions of political nature, economic and military actions against legal governments in the host country and with the goal of putting to power of such regimes as would follow the policy which would suit to the interests of [sic] transnational companies."[82]

These Yugoslav writers point out that multinationals are not oriented toward socialism. They exploit the natural resources of the host country, they "effect income for their further economic and, in a sense, political dominating [sic] over such a country."[83] And, "[R]obbed income deepens more and more the existing gap between the developed and the underdeveloped countries while creating conditions for new explosive situations including the [sic] armed conflicts."[84] It is perceived that these restrictive business practices preserve the fruits of scientific research activity for the multinationals, insure the disposal of goods from the parent of the multinational company, create "monopoly rents" and impose restrictions on affiliations, particularly to local firms, to insure the exploitation of foreign markets under the most favorable conditions.[85] "[T]ransnational corporations transfer into the developing countries only the so-called peripheral technology, while they are keeping [sic] secret and monopolize the essence and inner core of technological knowledge."[86] Yugoslavs believe that several enterprises in the host country could buy the same or similar technologies from various or even the same multinational, thus excessively importing that one technology.[87]

> Multifold importing of one and the same technology means increased outflow of foreign currency and results into [sic] introducing of standards of various countries into domestic economy [sic], as well as multiplying the types of one and the same product, which altogether makes [sic] more difficult to achieve efficiency in domestic industry.[88]

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79. *See* Brown, *Multinacionalna korporacija*, 18 PREGLED 8 (1975).
80. Djurovic, *supra* note 78, at 105.
81. *Id.*, at 108. The commentator cites as an example Lockheed Corporation.
82. *Id.* Djurovic offers Chile, Central America and African countries as examples.
83. *Id.*, at 109.
84. *Id.*
85. VOJNOVIC, TRANSNATIONAL CORPORATIONS AND RESTRICTIVE BUSINESS PRACTICES, 111 (Institute of Comparative Law, Belgrade, 1979).
86. *Id.*, at 112.
87. *Id.*, at 113.
88. *Id.*, at 114.

Another difficulty the Yugoslavs have with multinational activity in their country is the concept of the linked purchase. The practice of linked purchases has consequences for the national economy, "especially from the standpoint of its efforts to successfully industrialize itself on the ground of the substitution of imports."[89] The countries most mentioned in comparison to Yugoslavia in this connection are Peru, Bolivia, Colombia, India, Ecuador, the Phillipines, Mexico and Ethiopia.[90]

In spite of these fears, many Yugoslavs recognize that they have a major problem with their inadequate financial markets and restrictive joint venture regulations.[91] These problems and cumbersome regulations have restricted joint venture activity principally to those familiar with the Yugoslavian people and accustomed to dealing with them. Historically, Germany and Austria have been the most significant participants in the joint venture program, primarily due to their familiarity with the Yugoslav worker.[92]

## B. Current Problems and Prospects

Yugoslavia's two most pressing problems are inflation and unemployment.[93] The multiplicity of small BOALs which have failed to combine into larger, more effective and efficient competitive forces in world markets is another problem.[94] The Yugoslavs could also use progressive taxation, agreements on personal income, expanded unemployment compensation and guaranteed prices and guaranteed agricultural product sales to mitigate the ravages of recession, inflation and unemployment.[95] Investment auctions and other attempts at obtaining investment capital have not been particularly successful. These attempts at raising investment capital can be said to have been hindered by the risk-avoidance behavior of Yugoslavian labor-managed firms. Investment financing has generally come out of internal funds and taxes, causing a continued lack of capital that has plagued the growth plans in many sectors of the Yugoslav economy.[96] As one commentator has put it:

89. *Id.*, at 115.

90. *Id.*, at 117–19. *See also* Vojnovic, *The Code of Behavior for Transnational Corporations: Principles and Theoretical Foundations*, 121 (Institute of Comparative Law, Belgrade, 1979).

91. Huff, *Economics of the Yugoslav Joint Venture*, (Dec. 1972).

92. *Id.*, at 163. It is interesting to note that after fourteen years, many of Huff's concerns and recommendations have been acted upon.

93. Address by L. Adamovic, Comparative Resource Development Seminar, Inter-University Centre of Postgraduate Studies, Dubrovnik (June 1983).

94. Address by L. Markovic, Comparative Resource Development Seminar, Inter-University Centre of Postgraduate Studies, Dubrovnik (June 1983).

95. Soskic, *Some Characteristics of the Self-Management Economic System*, Socialism in Yugoslav Theory and Practice 21–4, University of Belgrade, Conference Collection (Belgrade, 1979).

96. *See generally*, B. Horvat, The Yugoslav Economic System (1976); Neuberger & Duffy, *supra* note 8, at 262–6.

> Growth of per capita GNP in Yugoslavia has been very high . . . standards of living and personal freedom have been rising sufficiently fast to make Yugoslavs the envy of inhabitants of neighboring command economies. On the other hand, high levels of unemployment, lack of price and output stability and inequalities in income distribution indicate that the Yugoslav system has proved only a qualified success.[97]

Western bankers generally praise Yugoslavia's efforts to solve its own current economic problems, but despair about an economic system which provides neither strong central guidance nor a free market.[98] Yugoslavia's balance of payments through 1983 shows a continued shortfall. The current account deficit was reduced to $1.4 billion in 1982 from $3.7 billion in 1979. The first quarter 1983 deficit of $267 million is less than one-third of what it was in the same period the year before.[99]

As recently as the fall of 1982, gasoline was rationed (8.8 gallons per motorist per month), restrictions were placed on heating and lighting, current export restrictions were imposed and heavy duties were levied on imports. In addition, individuals had to pay a head tax to travel.[100] While consumer purchasing power has been ravaged by 50 percent inflation,[101] Yugoslavia's imports show a steady increase, tempered only by recent controls. Its foreign indebtedness has expanded five-fold in the last seven years to finance its increased imports. In 1983, 500 banks, fifteen governments, the Bank for International Settlements, the International Monetary Fund and the World Bank rounded up nearly $7 billion in a credit package to revive the Yugoslav economy as well as to provide funds for the country to pay its debts.[102]

In spite of this backdrop of unsettling economic news and a fairly strong inflationary pattern, Yugoslavia remains a far healthier socio-political and economic environment for multinational investment than its neighboring managed economies. Czechoslovakia, Bulgaria and East Germany have no provisions for joint venture investment of any sort. Hungary, Rumania and Poland do provide for it, but with greater restrictions and more regulation than Yugoslavia.[103] Only three or four companies have negotiated successfully in Romania for multinational investment; about 50 companies have entered Poland, but on a small scale; and, approximately eight companies have made investments of any significance in Hungary. This compares with

97. NEUBERGER & DUFFY, *supra* note 8, at 261.
98. THE WALL ST. J., *supra* note 76.
99. *Id.*
100. THE ECONOMIST, Oct. 30, 1982, at 38, cols. 1–3. The tax amounted to approximately $78.00, one-third the average worker's monthly salary.
101. THE WALL ST. J., Aug. 1, 1984 at 25.
102. THE WALL ST. J., *supra* note 76.
103. Comparative Resource Development Seminar, Inter-University Centre of Postgraduate Studies, Dubrovnik (July 1984).

over 160 corporate investments in Yugoslavia, from just the United States.[104]

### C. Recommendations

Of the direct U.S. foreign investment of approximately $220 billion worldwide, only $145 million is invested in Yugoslavian joint venture programs, far less than would be expected, considering the strategic geographic location of the country.[105] Most existing joint venture participants have been in place in Yugoslavia since before December 31, 1980. In light of this lack of recent success in attracting U.S. investments, several recommendations are offered.

First and foremost, the 49 percent limitation in Yugoslavia's Joint Venture Law on foreign participation has just been eliminated by the 1984 Amendments. The Yugoslav Government has realized that self-management as a social objective can be maintained without 51 percent ownership of the joint venture, if the joint venture contract is properly worded prior to approval by the federal administrative body in charge of affairs in the fields of energy and industry. Proper structuring of the joint business board can add further guarantees to the workers-managers. For example, provision can be made for 50 percent worker representation, regardless of majority stock ownership. The provision presently contained in Article 12, that the joint venture agreement or contract may be terminated if losses continue, should be modified. A particular type of venture—mining or high technology, for example—might plan to show losses for three to five years before turning a profit. The present statute, on its face, does not make provision for such planned investment spending. This planned spending is particularly important for developing economies, such as Yugoslavia's. Minimum capital investment restrictions should have been lessened to permit small companies to participate in joint venture agreements.[106] In fact, in certain industry sectors, such as restaurants or retailing, there should have been no minimum requirement. The 1984 Amendments have eliminated minimum requirements.

Restrictions on investment returns should be modified. Present provisions allow return of capital and provide appropriate compensation for doing business with such resources. In fact, such a return might not be permitted if there was a time limit on the joint venture which expires prior to this calculable return. No upper limits should be placed on many types of

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104. *Id.*

105. VIII *Business News* 3 (Mar.–Apr. 1983) (US-Yugoslavia Econ. Council).

106. Note that the present joint venture companies operating in Yugoslavia up to the date of the 1984 Amendments are all "Fortune 500" companies.

businesses, to provide adequate incentive to invest. Notwithstanding the provision of Article 20, capital movements from the foreign investor should be freely convertible and returnable. Article 19, which provided upper limits on investor returns, has happily been repealed by the 1984 Amendments. Restrictions on joint ventures in insurance and banking should be carefully examined and re-evaluated. Additional joint venture restrictions in the form of export and import controls should be viewed generally with the understanding that joint venture investments in Yugoslavia are essentially going to be, and have been, export-oriented enterprises. The Law on Exports and Imports of Goods and Services should provide for specific consideration in Articles 7 through 10. Articles 26 and 27 need modification to give certain protections to export-oriented joint venture enterprises.

Ultimately the law concerning financial institutions requires modification to entice investment in the growing markets of Yugoslavia. There is evidently a move underway to organize a Yugoslav Bank for International Economic Cooperation.[107] Such a development could significantly assist in expansion of exports, insurance underwriting, reinsurance of export transactions and the organization and financing of joint ventures.[108]

Consideration might be given to the establishment of a free trade zone, much as was created in Panama as the Colon Free Trade Zone. Such a free trade zone could provide employment without sacrificing the goals of self-management and give the Yugoslav banking community excellent experience in the financing of international transactions. This experience is sorely needed if the country is to move forward as a home base for major multinational activity. This free trade zone could provide an early base for trading activity, which might then attract light assembly and manufacturing, thereby adding more employment and foreign exchange.

## V. Conclusion

Yugoslavia has been among the fastest growing countries in Europe. Its unique political and socio-economic structure as well as its vital geographic location points to popularity with multinational investors which has not been matched by the facts of actual investment. Revision and simplification of existing laws could provide the backdrop for enhancing the attractiveness of Yugoslavia for multinational companies desirous of expanding East-West trade. The 1984 Amendments to the Joint Venture Law represent an extremely important step toward making Yugoslavia an attractive home for multinational investment.

Yugoslavia is fortunate in that its unemployment problem is considerably

107. FINANCIAL INSTITUTIONS IN YUGOSLAVIA, *supra* note 70, at 51.
108. *Id.*

less severe than other developing countries. The country's continued program of transferring resources from more to less developed republics in the prominent provinces is assisting in the underdevloped portions of Yugoslavia. As the country moves forward, its future economic structure is certain to remain distinctly Yugoslavian. Revision of existing legislation can preserve this distinctive character while at the same time broadening the appeal to multinational investors.