

ROMANIA LOOKS WEST: AN ANALYSIS OF LEGISLATIVE CHANGE IN THE FOREIGN TRADE SECTOR DURING THE SIXTIES

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In a world that is constantly changing, the realm of East-West relations has certainly been reflective of a whole new generation of thought that has emerged as to how communist and democratic systems can best co-exist in the future.

It is the purpose of this Article to examine a unique aspect of the East-West relationship—legislative change and innovation in the foreign trade sector in an East Europe country. While we Americans are used to observing and discussing U.S. legislation quite closely and thoroughly, foreign legislative acts are, as a rule, unknown to us. Certainly, this phenomenon is not less true in the area of foreign trade where change occurs rapidly and often in response to international trading trends and procedures.

This Article, then, attempts to explore foreign trade legislation in Romania during the 1960's. It seeks to trace a pattern of legislative development in Romania and to relate that development to her foreign policy initiatives and goals.

I. INTRODUCTION

The period from 1960 to 1970 has evidenced a remarkable growth in the volume of East-West trade. Buttressed by a thawing out of the cold war politics of the 1950's and an easing of the tensions that characterized East-West relations for so many years, the socialist nations of Eastern Europe have been quite successful in breaking out of the rigid inner-bloc trading system that the Soviet Union imposed on them after World War II, and in developing their economies into increasingly diverse and efficient state systems. Economic cooperation with the West has certainly cemented the improved overall relations and contributed a great deal towards the independence of these socialist states in the inter-

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national sphere. For the West, better commercial relations with Eastern Europe have been not only an important tool in the implementation of a more progressive foreign policy towards the communist bloc of Eastern Europe but also a real investment in what must surely be some very attractive and lucrative markets in the near future.¹

Of the East European nations (excluding Yugoslavia), the Socialist Republic of Romania has probably sensed the essence of this commercial detente best of all. Moving carefully but steadily through the 1960's, Romania has maintained a shaky but independent posture among her allies within the East European bloc while reaching out commercially, not only to Western Europe but also across the oceans to the U.S., Canada, and Japan.²

In spite of Romania's deep commitment to industrialization and a real interest in foreign trade as a means of building and strengthening her economy, the country is plagued in her efforts to

1. U.S. trade figures with Eastern Europe clearly indicate dramatic growth. In 1963, U.S. total trade (exports and imports) with Eastern Europe (including the U.S.S.R.) was \$248,303,000. By 1969, that figure had nearly doubled to \$444,745,000.

Specific East European states even increased their trade with the U.S. in spite of some rather severe restraints. For example, U.S.-Czechoslovakian trade stood at \$20,160,000 in 1963 but rose dramatically to \$65,031,000 in 1966, two years before the Soviet intervention. Even following the Soviet crackdown, these figures showed a healthy volume in total trade of \$38,426,000 for 1969, nearly double the 1963 figure.

Even East Germany, a country which has been most critical of U.S. policy in Vietnam and with whom we have no formal diplomatic relations, has increased its U.S. total trade from \$9,561,000 in 1963 to \$40,391,000 in 1969. U.S. DEPARTMENT OF COMMERCE, EXPORT CONTROL—93RD QUARTERLY REPORT, 3RD QUARTER 1970, at 31 (January 11, 1971).

2. Romanian trade with the West jumped from \$214,000,000 in 1959 to \$1,009,000,000 in 1966. More specifically, West German-Romanian total trade increased four fold between 1960 and 1967 while British-Romanian total trade more than tripled. Even Japanese-Romanian trade, virtually non-existent in 1960 was 3.11% of Romania's total foreign trade by 1967. ECONOMIC AND COMMERCIAL GUIDE TO ROMANIA 146 (1969-70).

Similarly, U.S.-Romanian trade relations show an impressive growth rate from \$6,428,000 in 1964 to \$31,341,000 in 1966 and up to \$79,824,000 in 1970. The outlook for continued expansion and improvement seems good. The Nixon Administration has shown a special interest in Romania as evidenced by President Nixon's visit to Bucharest in the summer of 1969 and the warm reception given to Romanian President Ceausescu on the occasion of his unofficial visit to the United States in the fall of 1970. More recently, Secretary of Commerce, Maurice H. Stans visited Bucharest and announced further relaxation of U.S. export controls to Romania. U.S. DEPARTMENT OF COMMERCE, EXPORT CONTROL—96TH QUARTERLY REPORT, 2D QUARTER 1971, at 24 & 29 (August 16, 1971).

increase trade with the West by a lack of hard currency and an imbalance of trade. Thus, because of the heavy program of imports of Western industrial equipment and technology, Romanian trade with the West is regularly in deficit. At present, this is the single greatest obstacle to real growth and progress in the Romanian economy. The problem is not unique to Romania but may be seen in the other East European nations, as well. In Romania, it stems from several deficiencies and weaknesses in the Romanian economy.

First, Romania has very limited gold reserves. As a metal that can be exchanged for hard currency, gold is a useful way for a country to maintain a healthy balance of payments. The U.S.S.R., which may have gold reserves second only to South Africa, has used this resource to prevent an imbalance of trade in recent years, but Romania (and the other East European nations) is not as rich, resource-wise, and thus has no easy way to correct her foreign trade imbalances.

Second, because of many years of trading exclusively within the East European bloc, Romania, until very recently, has had little opportunity to accumulate any hard currency reserves, which are so necessary to maintain a favorable balance of foreign trade in Eastern Europe. Yugoslavia, which reestablished trade with the West much more quickly than Romania, is an example of a socialist country which broke away from strict intra-bloc trading and began to earn hard currency some time ago. While it still has a trade imbalance of its own, Yugoslavia is on the road to making its "*dinar*" a convertible currency. Hence, the Yugoslavian example has been a strong influence on neighboring Romania, and much of Romanian growth of trade with the West has been at the expense of her allies within the East European bloc.

Third, in her desire to industrialize rapidly and develop a strong economic base, Romania has developed a taste for complex, expensive technology and know-how from the West. Romania's extensive trade with West Germany and her growing trade with Great Britain and France are indications of this search for high quality technical goods.³ Here, then, is a great dilemma for Romania. She must have these goods to industrialize, manufacture, and then sell her quality product abroad. But this technology is expensive and cannot be obtained without offering either currency or comparable goods in return.

3. See note 2 part one *supra*, at 145-146.

This, then, brings us to the fourth problem—Romania's lack of hard currency producing export items. Since Romania is not yet sufficiently advanced technologically to produce large numbers of high quality industrial manufactures,⁴ she has been forced to rely upon her natural resources and simple food products as the chief means by which to export to the West and to thereby earn hard currency. While the situation has been improving, particularly in the numbers of industrial exports being manufactured, it has also resulted in a drain on Romania's natural resources, especially in the petroleum and forestry areas.

The trade imbalance we have been emphasizing is clearly reflected in Romania's trade figures for the 1960's.⁵ Recognizing this problem, Romania has made external efforts to help improve her balance of trade. She has extended and intensified strong trading ties with Western Europe.⁶ Romania's trade relations

4. This situation is changing, however, as heavy industry assumes an increasingly important role in the overall economy of Romania. Strong emphasis is being placed on the production of electric and automated equipment. A symbol of this change is the vast iron and steel complex at Galeti. Nearly $\frac{2}{3}$ of Romania's planned investment in iron and steel was produced by this project between 1966-1970. U.S. Department of Commerce, *Basic Data on the Economy of Romania*, OVERSEAS BUSINESS REPORTS 5 (December 1968).

5. In 1960, Romania's trade with non-Communist countries stood at a favorable \$168,000,000 in imports as opposed to \$186,000,000 in exports. By 1964, however, the same figures stood at a not so favorable \$384,000,000 in imports as against \$332,000,000 in exports; and by 1966, this figure of approximately a \$65,000,000 trade imbalance held constant as imports stood at \$536,000,000 as against \$472,000,000 in exports. U.S. Department of Commerce, *Basic Data on the Economy of Romania*, OVERSEAS BUSINESS REPORTS 12 (December 1968).

U.S.-Romanian trade figures tell the same story. In 1964, U.S. exports to Romania stood at \$5,156,000 while U.S. imports from Romania stood at only \$1,272,000. By 1966 and then 1969, Romanian imports of U.S. goods were at \$26,686,000 and \$32,394,000 respectively while Romanian exports to the U.S. were still relatively small in comparison at \$4,655,000 and \$7,966,000 respectively. What is particularly important as to these figures is that during the 1960's an increasing percentage of these U.S. exports to Romania involved such items as electrical measuring and controlling instruments, material processing equipment and parts involving a change in temperature, electrical machinery, apparatus, and appliances, and geophysical and mineral processing instruments. This indicates that a large percentage of the approximately \$24,000,000 trade imbalance in 1969 may have involved high quality U.S. technology, thereby causing a rather severe balance of payments problem. U.S. Department of Commerce, *Basic Data on the Economy of Romania*, OVERSEAS BUSINESS REPORTS 16 (December 1968) and U.S. DEPARTMENT OF COMMERCE, EXPORT CONTROL—93RD QUARTERLY REPORT, 3RD QUARTER 1970, at 31 (January 11, 1971).

6. This has occurred at the expense of trade with the socialist countries

with West Germany, Italy, France, Great Britain, and Austria have all maintained constant growth in recent years. In many respects, it has been easy to reestablish and develop trade contacts with these countries since Romania has traditional commercial ties dating back hundreds of years with most of them. In some cases, such as with France, Great Britain, Austria, and Switzerland, this commercial cooperation has followed the successful settlement of outstanding economic and financial problems stemming from World War II and the subsequent communist take-over. And in most all cases, it has meant a standardization of economic exchanges by the use of common agreements and documents.⁷ Of particular interest to Romanian authorities have been the long term bilateral economic agreements that they have been able to negotiate with these countries.⁸ Depending on the credit terms available, these agreements have taken several different forms: barter transactions, counter-purchase deals, compensation trading, and even economic and technical cooperation arrangements.

An excellent example of this trading policy was seen several years ago when TAROM, the Romanian national airline, obtained several new routes to Western Europe and wanted to add a modern high performance aircraft to her fleet. Instead of turning to the Russians for the standard Soviet jet-prop, Romania went to the West for six of the faster, more modern British BAC-111's. Airplanes being costly items, this purchase was certainly a dramatic gesture on Romania's part that she intended to keep trading and even intensify her commercial dealings with the West. While such a purchase obviously puts a rather substantial figure in the import column, it also produces some indirect benefits which help the balance of payments in the long run. For instance, such a purchase certainly enhances Romanian-British trade relations and may well lead to future British purchase of Romanian exports. Furthermore, the hard currency earning potential of the products purchased is obvious. With jet service provided between Bucharest and the capitals of Western Europe by TAROM, Romania is getting her share of *pounds*, *francs*, and *deutschmarks*, in the air transport business. Similarly, faster and more efficient air

of Eastern Europe and the U.S.S.R. where the growth rates have leveled and in some cases even declined. As is well known, this has resulted in rather severe Soviet pressures on Romania to trade more within the East Europe bloc.

7. See note 3 *supra*, at 145.

8. Under these agreements, Romania is usually able to work out fairly favorable long term financing arrangements.

service to Bucharest means more businessmen and tourists (with their hard currency) coming to Romania.

A further external effort, and one with which the American reader will be more familiar, is Romania's overtures to the U.S. during the 1960's. There have been numerous developments. In 1960, the U.S. and Romania came to agreement over specific claims of U.S. nationals arising out of World War II damages and commercial and financial debts. They also agreed as to the unblocking (by the U.S.) of assets of Romanian residents.⁹ Even more significantly, in 1964, the U.S. and Romania carried on successful negotiations with reference to foreign trade matters.¹⁰ Specifically, U.S. export licensing procedures for goods destined for Romania were eased, economic cooperation was furthered in several areas, and practical difficulties concerning foreign trade (e.g., entry, travel, and work restrictions on representatives of U.S. firms) were eliminated, thus facilitating increased commercial intercourse. Following in the wake of these improved relations have come several new joint projects between U.S. and Romanian companies. The Universal Oil Products project in 1967-69 and the recently completed Corning Glass Company works are examples of both Romanian initiative in interesting larger U.S. firms to invest in Romanian trade and an increased U.S. business interest in the area.

In these recent efforts to improve her balance of payments deficit with the West, Romanian authorities have pushed hard in their talks with U.S. officials for better credit terms in transactions involving the purchase of U.S. exports¹¹ and for Most Favored Nation Status for Romanian exports to the U.S.¹² Both these measures would be of considerable help in balancing Romanian foreign

9. U.S. Department of Commerce, *Basic Data on the Economy of Romania*, OVERSEAS BUSINESS REPORTS 17 (December 1968).

10. In recent years "there has been a steady flow of two-way visits of high-level U.S. and Romanian officials who have encouraged the broadening of U.S.-Romanian relations." ROMANIA, COMMERCE TODAY, Vol. 1, No. 20, at 34 (July 12, 1971). See also note 2 *supra*.

11. Currently, both the JOHNSON ACT of 1934 (62 STAT. 744 (1934)), as amended, 18 U.S.C. § 955 (1964 ed.); and the EXPORT-IMPORT BANK ACT (59 STAT. 526 (1945)), as amended, 12 U.S.C. § 635 (1964 ed.) effectively bar the extension of commercial credit to Romania on favorable terms.

12. Most favored nation tariff treatment is denied to Romania and the other East European countries, except for Poland and Yugoslavia. In essence, this means that imported products from Romania are dutiable at higher rates than are similar imports from other countries.

trade. Easier credit terms would allow a continuation of the purchase of high quality technical and industrial goods without such an economy damaging outflow of hard currency. Most Favored Nation Status would enable Romanian exports to compete on an equal basis in the U.S. market, and thereby earn more dollars to put back into the Romanian economy. Whether the U.S. will grant these more favorable trade terms in the near future is uncertain. What is certain, however, is Romania's determination to use her posture as an independent socialist state in order to develop strong commercial ties with the United States.

II. LEGISLATION IN THE FOREIGN TRADE SECTOR

Equally important, and perhaps even more significant, in Romania's attempt to balance her foreign trade has been the economic legislation which this socialist country has passed in recent years. These laws and directives have been aimed at two specific goals—first, to facilitate foreign trade transactions (particularly with the West) by reorganizing and streamlining her foreign trade structure, and second, to increase the amount of convertible, hard currency earned and brought into Romania while, at the same time, restricting and controlling its flow out of the country. Of the legislation passed, the most important, thus far, is the law of the "industrial centrals."¹³ This Act is a major step towards reorganizing not only the foreign trade system but the economy as a whole. Through it and other legislative measures, Romania hopes to attain greater economic efficiency, greater pricing flexibility and more effective economic reorganization.¹⁴ Before examining in detail the provisions of this "industrial centrals" law, we would do well to look briefly at some of the other internal legislative efforts forwarded in the last few years to meet the above objectives.

A. *Internal Legislative Efforts*

1. *Simplified Export-Import Procedures.*—

First, we have noted that as a means to achieve her import

13. This law is HCM nr. 586, March 24, 1969 (*Hotăre pentru aprobarea Statutului centralei industriale (cadru)*). See part B of this article for a more complete discussion.

14. See note 9 *supra*, at 3.

requirements without resorting to surrendering large amounts of hard currency, Romania has resorted to various specialized forms of commercial exchange (e.g., barter, compensation trading, switch trading, etc.). What legislation, if any, has the government passed to similarly aid its foreign trade policy and international commercial dealings? An excellent example of such legislative aid is found in the customs law of Romania.¹⁵ Passed in 1961 and modified in 1969, this law defines the customs organization for the import and export of goods, establishes the attributes of customs control, and identifies the various obligations of the parties concerned in a customs matter.

In order to facilitate every type of export-import transaction in an efficient way, *Marea Adunare Natională* (the Grand National Assembly) adopted lengthy and detailed rules concerning the customs organization in this Act. In seven separate sections the law deals with imports and exports in terms of highways and railways, the sea and rivers, coasting via international waters, air, tourist items and parcel post, goods in transit, and goods in storage.¹⁶ These sections pay particular attention to the place of customs control and the forms and procedures by which documentation is passed and inspection carried out. Attention has been paid to detail. For example, Article 8, referring to customs duties as to railway organizations, requires a specific customs list for collective carriages and a resume of packages for postal carriages. Furthermore, such transmission acts must be timely made on arrival.¹⁷ Very little is left to interpretation although the Ministry of Commerce (Ministry of Internal Trade) does appear to have some degree of latitude as to developing and simplifying procedures where it deems the situation necessary.

This same phenomenon (the power to simplify procedures, or even eliminate formalities) is seen in Article 35 (as to goods for shipment, railway carriage, and parcel post) and in Article 40 (as to customs tariffs).¹⁸ The value of such powers is obvious. Import of specific needed items, where desired, can be handled quickly and expeditiously without the hassle of administrative

15. LEGE nr. 6, December 30, 1961 (*privend reglementarea regimul vama al R.S.R.*), and DECRET nr. 47, January 29, 1969 (*pentru modificarea LEGE nr. 6/1961 privend reglementarea regimul vamal al R.S.R.*). DECRET nr. 47 modifies only Articles 54 & 55 of LEGE nr. 6.

16. *Id.* at Chap. II, §§ 1-7.

17. *Id.* at Art. 8.

18. *Id.* at Arts. 35 & 40.

formalities. Since it is the Ministry of Commerce which has the power to order such simplification and because that ministry works in close harmony with the Ministry of Foreign Trade, such powerful rules in a centralized economic system can lead to the efficient operation of customs organizations in the foreign trade sector. While such control is rather arbitrary, it also allows a good deal of flexibility and is a strong administrative tool in developing the Romanian economy.¹⁹

Along these same lines, the law establishes various exemptions from the payment of customs duties.²⁰ Some of these relate directly to and facilitate the foreign trade process, such as the exemption for samples or models sent or received by commercial representatives of foreign states in Romania and sent or received by the State trading companies (Art. 46).²¹ Again, there is a special provision (Art. 47) for the Ministry of Commerce to establish other commercial benefits and categories of goods to be exempted from payment of customs duties.²² Under Article 47, this may be done on a case by case basis.

While this law may be seen, in many respects, as an "aiding" or "facilitating type" of legislation in terms of increasing foreign trade, it is also very much of a legislative act of control and authority. Chapter IV of the law is devoted to customs infractions and infringements. Penalties are carefully spelled out and some sanctions are quite stringent, such as Article 52, which provides that an exist visa will not be granted to a ship or plane by customs authorities where a penalty owing from the commander, owner, agent, or crew of the vessel or aircraft is not paid or guaranteed;

19. Ministry of Commerce power and authority goes not only to simplify and facilitate, but also to control and direct customs operations by means of sanctions and special rules. Thus, for example, under Article 67, customs rules for diplomatic missions and consulates and for foreign citizens residing in or passing through Romania on official business are established subject to the approval of the Ministry.

20. See note 15 *supra*, at Arts. 46 & 47.

21. This is an attractive feature to foreign traders working in Romania since it means they can ship in and display their product model without having to clear it through lengthy customs procedures or pay duties for that short term use.

22. This is a catch-all provision which gives the Ministry of Commerce discretion to establish customs exemptions for any goods, services, or commercially related items coming into Romania. For instance, goods or equipment which Romania was particularly anxious to get from the West or medical aid and supplies coming into Romania (at the time of the spring floods in 1970) would come in customs free under this article.

and that under such circumstances the captain of the port or director of the airport is obliged to retain the vessel or aircraft until such time as the penalty is so paid or guaranteed.²³ It should also be noted that penalty provisions relating to contraband have been updated by law so as to conform to the new Romanian penal code.²⁴ This has resulted in more clarity and certainty as to what constitutes illegal export and import transactions, and as such, besides being a control on foreign trade transactions, it is also an aid to those parties involved in international transactions to carry out their commercial dealings in the proper manner. Finally, it must be added that the power of sanctions, both as to inquiry and actual penalties, is vested in the Ministry of Commerce and its subordinate customs authorities. The procedural standards under which the Ministry of Commerce operates are broad in scope. With the authority to make broad inquiries and to retain goods and vehicles of transport, it is obvious that the Ministry has considerable latitude in enforcing this customs law.²⁵

2. *Attracting Tourism.*—

In recent years, tourism has come to play an important role in Romania's effort to achieve a balance of payments and to develop and stabilize her economy. Blessed with a rich culture, a varied topography, and specific areas well suited for tourism, Romania has moved to capitalize on her natural beauty as a means of earning hard currency. Establishing resorts and vacation areas takes a considerable initial investment, of course, but once built and flourishing, they provide a steady flow of incoming currency. If Western tourists are attracted, then the inflow is in hard currency; so, legislation promoting tourism is of the type that increases foreign trade by attracting hard currency. It is clearly an attractive form of foreign exchange and the amount of legislation passed in recent years to facilitate tourism has been impressive. Romanian officials claim that their program of tourism has been developed, even in a few short years, to match that of the developed programs of Western Europe.²⁶

23. See 15 *supra*, at Art. 52.

24. Articles 54 & 55 of LEGE nr. 6/1961 have been modified by DECRET nr. 47/1969.

25. See note 15 *supra*, at Arts. 56 through 65.

26. C. Popescu-Arbore, *Consideratii Generale Asupra Contractului in Turismul International*, Vol. 3 REVISTA ROMANA DE DREPT 81 (1970).

The key legislative act is the Decree for the Setting Up, Organization, and Operation of the National Travel Office, passed in 1967.²⁷ By this Act, the travel office (O.N.T.) is established as a central organization of the state administration, empowered as the only body to carry out state policy relating to tourism.²⁸ As such, O.N.T. coordinates all tourist activity in Romania. Prior to 1967, tourism was basically controlled and administered through the Ministry of Foreign Trade.²⁹ By this 1967 Decree tourism was elevated to a place within the government system commensurate with its growing importance within the economy. It is particularly significant that the government saw fit not merely to assign the department of tourism more duties and responsibilities within an existing ministry but rather to establish a separate organizational entity with extensive domestic and international responsibilities.

O.N.T.'s attributes are many and varied. They range from the basic organization of tourist activities at all levels (at home and abroad) to planning measures concerning the promotion and development of tourism in Romania.³⁰ Furthermore O.N.T. is a separate legal entity. As such, it is able to negotiate, conclude, and apply agreements and contracts relating to international tourist activity in Romania and also to organize and carry out currency exchange operations as authorized by the National Bank of Romania.³¹

Structurally, O.N.T.'s organization is broadly based. In addition to the agencies for domestic and international travel, and the departments for tourist facilities and supply, the Office includes departments for planning, research, and publicity. O.N.T. even handles its own legal matters through the judicial and arbitration offices.³² Both the breadth of its structure and the extent of its authority are reflected in O.N.T.'s ability to establish, or shut down, its subordinate travel enterprises, agencies, branch offices, and bureaus both at home and abroad.³³ Finally, it should be

27. DECRET nr. 32, January 27, 1967.

28. *Id.*, for the setting up, organization, and operation of the National Travel Office, at Art. 1.

29. DECRET nr. 284/1962 for the setting up, organization, and operation of the Foreign Trade Ministry.

30. *See* note 27 *supra*, at Art. 2.

31. *Id.* at Art. 2(e) & (r), and *see* note 26 *supra*, at 82.

32. *See* note 27 *supra*, at Art. 5.

33. *Id.*

noted that the collection and payments of currency resulting from O.N.T. activities are deemed to be foreign trade currency operations.³⁴ This means that currency earned by tourism must be cleared through the Bank of Foreign Trade and that the operation of O.N.T., while classified as an individual entity, is grouped together with other foreign trade activities for purposes of the Romanian economy as a whole.

As Romania's tourist activities have only developed in any volume in the last ten years, it is not surprising that the legislative basis for Romanian tourism has been established in piecemeal fashion over the same period. For example, 1964 saw two separate decisions of the Council of Ministers concerning specific aspects of Romanian tourism. In an effort to attract hard currency and facilitate its exchange in Romania, an act was passed by which the rate of exchange in *lei*, for specific hard currencies,³⁵ was established at 200%, thereby offering a special tourist exchange rate and an attractive incentive for Western tourists.³⁶ Another promotional feature designed to increase the flow of tourism was the establishment of a price reduction for popular gift items, when purchased with hard currency, and the setting up of hard currency ("dollar") shops at frontier points, airports, sea ports, and tourism centers.³⁷

At the same time, another act was passed which was designed to standardize hotel rates at "deluxe" hotels in Romania. This specific legislation shows the centralized control of O.N.T. over rate structure in this area. It is significant that the general authority to establish these tariffs and the appropriate facilities was vested not only in O.N.T.'s Price Commission and in the Ministry of Commerce, but also in the Ministry of Foreign Trade.³⁸ This reaffirms what we have seen before—namely, that while tourism is a separate and distinct state activity, under O.N.T., it is by law directly related to the foreign trade area.

More recently, further legislation developing the fabric of Romania's tourist activities has been passed. Again, these are

34. *Id.* at Art. 6.

35. These currencies include U.S. dollars, Canadian dollars, Italian lira, Swiss francs, Belgian francs, West German marks, Dutch florins, Swedish crowns, Norwegian crowns, Danish crowns, Japanese yen, and Australian dollars.

36. HCM nr. 354, June 6, 1964 (*Hotărîrea privind unele măsuri pentru creșterea încasărilor din activitatea turistică*), § 1.

37. *Id.* at §§ 2 & 3.

38. HCM nr. 355, June 6, 1964 (*Hotărîrea privind stabilirea tarifului pentru hotelurile de lux*), §§ 1, 2, & 4.

laws dealing with specific problems related to tourism, and they reflect a growing recognition of the need to accommodate foreign tourists. In 1967, a law was passed authorizing the founding of a Romanian Automobile Club, primarily to provide an organization for the growing number of private car owners in Romania; but also to facilitate auto-tourism within the country. Recognizing the growing popularity of auto-tourism throughout Europe and the potential of this form of tourism for the economy, the law makes provision for full cooperation between the Auto Club and O.N.T.³⁹ A year later, in 1968, special legislation was passed for the administrative organization of the Intercontinental Hotel-Bucharest to be under the supervision and control of O.N.T. It had become evident during the mid-1960's that as tourism increased, more hotel space would be needed in Bucharest. This Act, while not specifically related to the construction of the hotel, did establish a distinct enterprise in the name of the future hotel and temporarily placed it under the complete control and leadership of O.N.T.⁴⁰

No set of legal rules involving tourism in an East European country would be complete without definitive rules as to passports. Of particular interest to both the foreign tourist and businessman are the provisions relating to visas. In the not so distant past, it was necessary to obtain a visa for entry into Romania well in advance of one's journey. Such visas were for a fixed duration and upon expiration they were void, with little chance of extension or renewal. In recent years, however, interest in increasing tourism and the need to provide ease of entry and exit for foreign businessmen have resulted in changes in this policy. Just last year the law relating to passports and visas was updated from 1968.

Under the current law, visas are still required for entry and exit at any border crossing or other point of entry,⁴¹ but they can

39. HCM nr. 614, March 23, 1967 (*Hotărârea privind autorizarea înființării asociației "Automobil Clubul Român"*), Art. 2.

40. HCM nr. 63, January 23, 1968 (*Hotărârea privind înființarea întreprinderii "Hotel Intercontinental București," sub îndrumarea și controlul Oficiului Național de Turism al R.S.R.*), Arts. 1 & 3.

The enterprise "Hotel Intercontinental Bucharest" will ultimately be responsible to O.N.T. in any case, but by this Act, O.N.T. did assume immediate responsibility for commercial obligations and expenses taken in the name of the enterprise.

41. DECRET nr. 156, March 24, 1970 (*privind regimul pasapoarelor*), Art. 25. Note that the U.S. and Romania have abolished certain visa fees on a reciprocal basis. See T.I.A.S. 6677 (U.S. Department of State), May 1, 1969.

be obtained in some cases (e.g., for tourists) on the spot. Also, many different types of visas now exist,⁴² thereby accommodating all types of visitors from tourists and businessmen, to those merely in transit.⁴³ Furthermore, this same provision permits both single and multiple entry/exit visas.⁴⁴ Tourist visas are good for 30 days but may easily be renewed up to a maximum of 90 days, thus permitting the tourist, and the foreign businessman, the opportunity to extend his stay.⁴⁵ It is possible to stay in Romania for more than 90 days, also, either by leaving the country and re-entering on a new tourist visa or by obtaining a simple visa for one year, under which one must register with the police.⁴⁶ Special provision for foreigners coming to Romania other than as tourists is made in this Act, whereby it is possible for such persons to obtain the multiple entry/exit visa.⁴⁷ This accommodates very well the foreign businessman, who is working on a project in Romania, and who finds it necessary to return frequently to the home office or who must leave Romania for business matters on short notice.⁴⁸

Control of the issuing of passports, including responsibility for answering the requests of foreigners for both entry and exist visas, rests with the Ministry of Internal Affairs and the Ministry of Foreign Affairs.⁴⁹ But, as we have noted, this authority is delegated to the proper officials at Romanian embassies abroad and at frontier and other port of entry control points.⁵⁰ These less restrictive provisions with respect to passports and visas have aided Romania's program of promoting tourism a great deal, and per-

42. Under Art. 26 the following visas are granted: diplomatic; duty; simple; and tourist. Also, provision is made for a special transit visa (good for 72 hours).

43. See note 41 *supra*, at Art. 26, and HCM nr. 424, April 9, 1970 (*Hotărîrea privind stabilirea unor măsuri în legătură cu regimul pasapoartelor*), Art. 4 (B) § 2.

44. See note 41 *supra*, at Art. 26.

45. *Id.* at Art. 28.

46. The simple one year visa (with proper registration with the local police), for instance, is the means by which foreign students may study in Romania and foreign businessmen and technicians may stay in Romania for lengths of time in connection with on going joint industrial projects.

47. See note 43 *supra*, at Art. 9.

48. Such a multiple entry/exit visa allows several departures and re-entries during the fixed duration of the visa. This permits the foreign businessman to avoid 7 to 14 day waits for an exit visa to be processed under the simple, one year, visa provision.

49. See note 43 *supra*, at Arts. 3, §§ 1(e) & 4.

50. *Id.* at Arts. 3, §§ 4(a) & 4(b), 1.

haps even more importantly, have made it far easier for foreign businessmen to enter Romania and deal effectively and efficiently with the state trading companies.

3. *Foreign Currency And Precious Metal Control.*—

Romania has passed considerable legislation establishing definite rules as to foreign currency and precious metals. This legislation may be seen essentially as a "control type" of legislative action. In an effort to effectively control the flow of currency (both domestic and foreign), Romania, as early as 1960, set up elaborate rules for all foreign currency transactions and exchanges. State policy is very clear in this respect. Retention of foreign currency or precious metals by Romanian nationals is strictly forbidden (except by express means of the law) and the National Bank of Romania, as a state monopoly, has the exclusive right to buy and sell these instruments of wealth.⁵¹ In this way, the government is able to keep a close check on all hard currency entering the country and to carefully conserve it. This control, in turn, makes the job of planning foreign trade easier for the proper authorities at the Ministry of Foreign Trade and the Bank of Foreign Trade.

The obligations of state enterprises and other trading organizations, which deal in foreign trade and earn hard currency, are set out in the decree. Under this Act, these organizations are compelled to yield such hard currency earnings to the National Bank of Romania immediately after realization.⁵² Such hard currency that is yielded will be paid according to the plan and the rate of exchange established by the Council of Ministers.⁵³ Again, this authority allows the Council of Ministers and the other central organs to dominate and control the market for hard currency and prevent commercial fluctuations in the state set exchange rates for anything other than external causes. Beyond the policy role played by the Council of Ministers and the functional role of the National Bank of Romania, authority in financial operations also rests in the Ministry of Finance. Under this decree, that Ministry is authorized to approve all payments and fees made abroad on behalf of the state and financial operations of the state

51. DECRET nr. 210, June 17, 1960 (*privind regimul mijloacelor de plata străine, metalelor pretioase si pietrelor pretioase*), Art. 1.

52. *Id.* at Art. 10.

53. *Id.* at Art. 12.

enterprises involved in foreign commerce.⁵⁴ As we shall see later, the new Bank of Foreign Trade also plays a significant role in the regulation of foreign currency exchange. In essence, however, we have seen a very rigid system of regulation with various organizations within the state structure exercising tight control on the import of hard currency earned through foreign trade.

In recent years, several changes in this basic law have occurred. In light of economic changes abroad, and particularly the broader range of international tourist activities, legislation was passed in 1970 which eased some of the rigid rules establishing obligations on Romanians who legally acquired foreign currency or precious metals.⁵⁵ Basically, special categories of foreign wealth were established which were excepted from the obligation of surrender in Article 9. Where these exceptions are made, however, the exempt foreign currency must be spent for specific building of facilities, buying of goods, or payment of services. These exemptions and requirements for spending are established by the Council of Ministers.⁵⁶

Particularly significant for purposes of tourism were changes which eased the currency and precious metal declarations. Under the 1960 law, it was necessary for foreign tourists entering Romania to declare with customs authorities all foreign currency and precious metals and stones.⁵⁷ In 1967, legislation was passed which no longer required foreign currency to be declared (precious metals and stones must still be declared).⁵⁸ Also passed under this decree was a provision no longer requiring special authorization for the taking of foreign currency from Romania, thus making easier the customs procedures for tourists.

4. *Reorganization Legislation.*—

Within the last three or four years the Grand National As-

54. *Id.* at Art. 15.

55. Under Art. 9 of DECRET nr. 210/1960 such holdings had to be presented and surrendered to the National Bank of Romania within fixed time periods from the date of acquisition (either 30 or 60 days depending on the nature of the acquisition).

56. DECRET nr. 25, January 30, 1970 (*pentru modificare* DECRETULUI nr. 210/1960 *privind regimul mijloacelor de plată străine, metalelor pretioase și pietrelor pretioase*), Art. 9.

57. *See* note 51 *supra*, at Art. 22.

58. DECRET nr. 885, September 11, 1967 (*pentru modificare* DECRETULUI nr. 210/1960 *privind regimul mijloacelor de plată străine, metalelor pretioase și pietrelor pretioase*), § 2 (modifying Art. 22).

sembly has passed some very important foreign trade legislation which we shall call "reorganization type" legislation. Unlike the other forms of legislation we have seen above, these acts are not meant to control or merely aid specific aspects of the Romanian foreign trade system. Rather, reorganization legislation goes to the root of the commercial problem, which is the structure of that system, and seeks to change not simply by amending existing legislation and programs but by innovating and styling new solutions to existing problems. It is most promising to see such innovative legislative change come out of a rigidly structured nation like Romania, and it most certainly is a good omen for those in the West hoping to increase commercial ties with Bucharest.

One such innovation is the law creating the Romanian Bank of Foreign Trade.⁵⁹ Created in 1968, this bank is organized as a central state organ and as a special bank of the department of external operations of the National Bank of Romania.⁶⁰ Despite its obvious connection with the National Bank of Romania, it is a separate, independent organization and a legal entity.⁶¹ The Bank of Foreign Trade has as its specific goals, carrying out the policies of the Communist Party and the state as to cash payments, and developing credit dealings and control of bank currency with regard to foreign operations.⁶²

The specific attributes of the Bank of Foreign Trade are quite broad and they reflect a real grant of authority to this organization with respect to foreign trade transactions. The basic provision permits the Bank to organize and carry out financial matters with respect to all operations of the foreign trade system and any other operations with foreigners, including the exchange of currency.⁶³ In addition, the Bank has the power to buy and sell hard foreign currency, both in Romania and abroad; to give credit, both in *lei* and in foreign currency, to Romanian enterprises and organizations that deal internationally; to authorize imports, exports and transfers of titles of value; to enter into financial arrangements with foreign banks and parties in accord with financial agreements or credit conventions previously stated; to give and receive financial guarantees on payment terms; to issue,

59. LEGE nr. 16, June 21, 1968 (*privind înființarea, organizarea, si funcționarea Băncii Române de Comerț Exterior*).

60. *Id.* at Art. 1.

61. *Id.* at Art. 6.

62. *Id.* at Art. 1.

63. *Id.* at Art. 2(a).

when necessary, obligatory instructions concerning loans, credit, discounts, cash payments, and other banking operations; to present to the Council of Ministers various plans and programs for the international banking system; and, to participate and cooperate with international financial institutions and banking operations on problems of international commerce.⁶⁴

As can be seen, these powers give the new banking organization a wide scope of action and a great deal of responsibility. Under this law the Bank would appear to have a good deal of autonomy and yet still rely for guidance upon the National Bank of Romania. Of course, it might also be questioned here just how independent and autonomous the Bank of Foreign Trade really is.

This brings us to a critical question that must be asked in any economic reform or reorganization in Romania. While the reform is carefully delineated legislatively by the implementation of the reorganization theory, is the practical effect of the created change to operate as planned, or does it fall back on traditional centers of control and authority, thereby making the reorganization only a paper one? Our question is difficult to answer since observation of the internal workings and decision of central state organs is not permitted. It is safe to say, however, that this reorganization is more than a paper one. While the National Bank obviously has guided and directed the Bank of Foreign Trade in these its formative years, the organization would appear to be establishing itself and maturing as a central state organ. It is clearly to Romania's advantage to have separated the financial workings of foreign trade from the daily operations of the National Bank. It allows a much closer coordination between the Ministry of Foreign Trade and the banking authorities; it leads to smoother and more efficient financial planning, and it facilitates the making and carrying out of commercial transactions between foreign business operations and the state enterprises. All in all, it should be seen as a positive step in Romania's quest to improve her foreign trade structure and develop her economy.

B. The Industrial Central

1. Generally.—

Along the same lines as the Bank of Foreign Trade law, is legislation that is, perhaps, the most significant of any we have

64. *Id.* at Art. 2.

mentioned thus far. This is the law of 1969 which established the "industrial central" within the Romanian economic structure.⁶⁵ Very basically, the "industrial centrals" scheme is a regrouping of industry into units having common interests, i.e., production, marketing, etc. As a reorganization of operational control in Romanian industry, the industrial centrals plan hopes to provide the Romanian economy with better organization and greater economic efficiency. As such, it is a key piece of legislation in the foreign trade sector, and is especially important to the export trade, where the industrial centrals will have a good deal of responsibility.

In essence, this Act is of the "reorganization type" of legislation, but it also reflects of the other types of legislative action we have seen. Like the Customs Act it may be seen to aid the foreign trade policy of Romania. Similarly, the Industrial Centrals Act is meant to facilitate and to increase foreign trade, just as the tourist laws are. Finally, to a lesser degree this legislation also has elements of the control aspect that we saw in the Foreign Currency Regulation Act. In all, this legislation is very comprehensive, effecting not only the foreign trade sector but the whole Romanian economy as well. That the Act performs so many functions as a piece of legislation concerned with foreign trade is an indication of its importance to the development of the Romanian economy.

2. *The Basic Structure of the Romanian Foreign Trade System.*—

Before examining the Act itself, we should first review very basically the structure of the Romanian foreign trade system in order to understand how the system has evolved, and particularly to see what preceded the initiation of the "industrial central" scheme. Foreign trade in Romania is conducted as a state monopoly with the Romanian Government acting as the only importer and exporter.⁶⁶ As it is under state control, foreign trade is conducted strictly in accordance with the national economic plan. The Ministry of Foreign Trade is responsible for the planning, regulation, and supervision of the foreign trade system.⁶⁷ Tradi-

65. See note 13 *supra* for citation to this law.

66. Under Article 8 of the Constitution of the Socialist Republic of Romania, foreign trade is a State monopoly.

67. The attributes of such commercial representation in the Romanian State monopoly are: representing the interest of the country in the domain of

tionally, sales and purchases have been made by the government controlled and operated state trading companies, which were subordinate to the Ministry of Foreign Trade, in whom the state monopoly rests.⁶⁸ All Romanian industry is controlled by a group of industrial ministries, which are supported, in turn, by planning, research, and design institutes, and from both of which the individual factories and enterprises receive direction. Thus, when a foreign trade transaction is involved, it has traditionally resulted in the efforts of several state organizations and ministries, with the Ministry of Foreign Trade having ultimate authority and exercising final control. The factors involved in a state monopoly, and which the above efforts of state organizations and ministries affect, include: a licensing system for exports; authorizations for particular industries; hard currency control; granting of the right of monopoly with respect to imports and exports; registration of all enterprises participating in foreign trade; and, establishing lists of foreign trade goods.⁶⁹

How, then, has the Ministry of Foreign Trade operated in Romania? What has been its structure and how has it functioned traditionally to fulfill its role within the Romanian economy? As originally established in 1948, the Ministry of Foreign Trade had rather general attributes. They included leading and realizing the economic policy of Romania in commercial relations with other countries; carrying out the foreign trade plan; negotiating and entering treaties, accords, and economic agreements with foreign countries; proposing and implementing plans and projects in foreign trade; organizing and guiding state export/import enterprises and economic agencies abroad; and, realizing an effective customs policy.⁷⁰ These attributes reflect a foreign trade structure which was intended at the time to trade primarily within the East European communist bloc. As such, the functions are quite general. There was no need for special provisions to facilitate trade with the West at that time because there simply was none.

Over the years some changes were forthcoming, but essen-

foreign trade and developing the same; regulating the operation of all foreign trade activities; and realizing the operation of the foreign trade system by means of such actions as the freeing of the import authority, delivery of certificates of origin, and informing other countries of commercial conditions in Romania.

68. See note 9 *supra*, at 11.

69. T. R. POPESCU, *PROBLEME JURIDICE ÎN RELATIILE COMMERCIALE INTERNATIONALE ALE R.P.R.*, Bucuresti: Editura de Stat., 37 (1955).

70. *Id.* at 45-46.

tially, the functions of the Ministry of Foreign Trade remained the same. Until very recently, the Ministry had virtually complete and total control over all operations and transactions relating to foreign trade. Working through the National Bank of Romania and its (the Ministry's) various subordinate agencies and enterprises, the Ministry of Foreign Trade was basically at the top of the pyramid of the Romanian foreign trade structure with power being dispersed downwards to subordinate state organizations. As a result, all decisions on imports came through the Ministry with the help of the import planning authorities. Similarly, all export decisions had to be channeled through, decided upon, and approved by the Ministry of Foreign Trade.

More recently, however, new legislation was passed which reflects the government's interest in making the Ministry of Foreign Trade compatible with the various reorganized economic organizations and agencies.⁷¹ In the new legislation, two ideas seem to have emerged in addition to the Act's avowed purpose of accommodating economic reorganization and reform within the country. Both the idea of a collective leadership within the realm of foreign trade and the idea of a unified organizational scheme amongst this leadership run through this decree. In this way, the legislation is intended to effectively carry out the economic policy of the Romanian Communist Party and to correct the country's foreign trade problems.

The decree itself develops the functions of the Ministry of Foreign Trade very clearly and goes to the heart of Romania's foreign trade needs and difficulties. It talks optimistically in terms of developing Romania's foreign exchange by continuing the enlargement of the country's international commercial relations. More particularly, the Act discusses openly the greater promotion of cooperation between Romania and foreign enterprises.⁷² As we shall see, this provision would seem to be directed at facilitating the industrial centrals idea by encouraging direct enterprise contact and no longer speaking in terms of mandatory regulation by the Ministry of Foreign Trade at this level. As to instrumentation of the foreign trade plan (traditionally under the exclusive domain of the Ministry), the Act talks in terms of the planning authority still resting in the Ministry but in conjunction with

71. DECRET nr. 622, September 12, 1969 (*privind organizarea si functionarea Ministerului Comertului Exterior*).

72. *Id.* at Art. 6.

other ministries, central banking and planning organs, and, most importantly, even local (production) organizations.⁷³ In other articles, the Ministry's tight control over both the development of efficiency in foreign trade and the coordination of both export and import activities gives way to the idea of the Ministry of Foreign Trade participating in a more responsive collective leadership group.⁷⁴ Especially important here is the local organizations having some say in the planning of foreign trade. As will be seen, this is one of the main goals of the Industrial Centrals Act.

While the Ministry of Foreign Trade appears to have lost some of its authority, or to be now sharing that authority with other State organs, it should be noted that several articles of the Act give the Ministry broad approval and verification powers as well as the power to compel reports from subordinate units at all levels.⁷⁵ Furthermore, the remaining extent of power and scope of authority of the Ministry of Foreign Trade is in its ability to send obligatory instructions and commands to all ministries concerned with foreign trade, central economic organizations, industrial centrals, and enterprises.⁷⁶ Finally, under this new Act, it is still the Ministry of Foreign Trade that is accountable ultimately to both the government and the Communist Party for the execution and realization of the foreign trade plan.⁷⁷

3. *The Workings of the Act.*—

Having laid the ground work by setting the Ministry of Foreign Trade (both before and after its reorganization) in its proper perspective, we are ready to proceed to the Industrial Centrals Act itself. Passed in 1969, this legislation came approximately one year after the Bank of Foreign Trade Act was passed and some four months before the Ministry of Foreign Trade reorganization Act. As such, it is an integral part of the broad scheme of economic reform that has directly affected Romanian foreign trade in the late 1960's and into this decade. The general purposes of the Act are laid out in its preface. As defined, the industrial central is an autonomous economic unit made up of a union of enterprises (or unions of many enterprises) with a similar structure and na-

73. *Id.* at Art. 7.

74. *Id.* at Arts. 8 & 9.

75. *Id.* at Arts. 11 & 12.

76. *Id.* at Art. 13.

77. *Id.* at Art. 14.

ture and/or with a similar function as to its economic activities.⁷⁸ Thus, the enterprises are grouped according to the principle of horizontal or vertical concentration depending upon the specific nature of production. "The form of the 'industrial central' depends on the specific nature of the production processes, the size and number of enterprises, their geographical location, and the economic and technical cooperation occurring between the component units."⁷⁹ As the Act itself is rather broad in scope and intended to affect economic reform and reorganization throughout the country's industrial and manufacturing sectors, we will concentrate upon those parts of the Act which affect the operation of foreign trade.

Specifically, there are several different combinations which an industrial central can comprise. It can be made up of state enterprises which produce the same products or related products. Other possibilities include enterprises which take raw materials and then make the final product as well as cooperating enterprises within a specific production area. Also included are state enterprises of a complex structure involving two or more sub-branches in addition to basic simple structure enterprises.⁸⁰ The implications of this are obvious. By permitting such a broad range of combinations and alignments, this Act gives to the Romanian planning authorities and the Ministry of Foreign Trade great flexibility in reorganizing the industrial sector of the economy to accommodate the specific needs of the foreign trade plan. No longer is the foreign trade system strictly structured with the various ministries, led by the Ministry of Foreign Trade, exercising power down through the state trading companies and ultimately down to the individual enterprises. Now, while the ministries and state trading companies maintain their own roles within the system, there is new organization at the enterprise level. By consolidating and combining enterprises, it is clear that the resulting autonomous units have a greater role to play in the whole foreign trade system and that their responsibilities must necessarily increase as the industrial centrals mature and develop.

With the above expanded structural base, what functions and authorities are possessed by an industrial central under this Act?

78. HCM nr. 586, March 24, 1969 (*Hotărâre pentru aprobarea Itatului centralei industriale (cadru)*), Preface and Art. 1.

79. See note 2 part two *supra*, at 21.

80. See note 78 *supra*, at Preface.

In general, these units organize the economic activities of all the enterprise units of which the industrial central is made up. This includes managing and answering for subordinate enterprises, establishing directives and programs for economic and technical development in accord with both the national economic plan and the foreign trade plan, and having considerable control over its own financial operations.⁸¹ Thus, taking over some of the present functions and attributes of the ministries, state trading companies, and other central organizations, the industrial centrals function as independent, profit-making units with their own economic administration. They are legal corporate entities having financial means of their own and are able to carry out their own financial operations.⁸² Note also, that while the centrals will take over much of the current functions of the ministries as regards operational control, their subordinate enterprises will also have a greater measure of discretion than they have at present over current operations.

Functionally, industrial centrals are given a broad scope of general economic attributes so as to develop and increase production efficiency, particularly in the foreign trade sphere. Under the Act, an industrial central makes proposals for the national economic plan and the foreign trade plan. Furthermore, it formulates its own internal plan and places obligations on the component enterprises, including its own directives in addition to those of the Ministry of Foreign Trade and other central state organs. Beyond planning, an industrial central's general functions include organizing and controlling the means of production within that central and also seeing to various production related operations such as the supply of materials, equipment repair, and proper use of energy resources.⁸³ In this way it sees to the streamlining of its subordinate enterprises so as to ensure a concentration of production and a standardization of those products.⁸⁴

The industrial central is to provide the guidance, coordination, and control for the productive process, and it is responsible for all operational stages within the central. By this broad range of functions, the industrial central not only plays a very active role in the efficient operation of the economic system, but by contributing to overall economic planning, it is a dramatic departure

81. See note 78 *supra*, at Arts. 2 & 4.

82. See note 2 part two *supra*, at 21, and see note 78 *supra*, at Art. 4.

83. See note 78 *supra*, at Art. 15(a), (b), (c), (d).

84. See note 2 part two *supra*, at 22.

from the traditional communist theory of economic decision making, which has always rested upon centralization. This is especially true in the foreign trade area where planning has always been strictly the province of the Ministry of Foreign Trade and the higher state planning organizations.

To ensure that these general functions are implemented, the industrial centrals Act further spells out specific functions in five areas. These include research and design activities, investment and construction, production and worker organization, technical and material supply, and the sale of products domestically.

In the realm of research, an industrial central is granted considerable authority to develop research projects and to coordinate all research activities of subordinate units. In this way, it has a considerable voice in its own future and particularly in the direction of its productive capabilities. As the central office of the basic economic unit, it receives studies and reports of new trends in world technology, and develops new designs and techniques by coordinating the efforts of its subordinate units. Finally, as the coordinator of all research activities within the specialized area of production, it grants complete technical assistance to its subordinate enterprises.⁸⁵

As to investment and construction, Article 16(B) empowers an industrial central to direct and coordinate all building activities within the enterprise. This includes all expansion by way of new factories and modernization as to existing facilities. A central also has responsibility for the mapping out and implementing the investment plans of its component enterprises. On the basis of proposals from the subordinate units and its own financial determinations, made in conjunction with the national economic plan, it makes investment decisions for the industrial central as a whole and also for the individual enterprises.⁸⁶ Control over the financial means of a central and specific authority to make investment decisions concerning the central's profits and state subsidies are enormous economic powers, especially in light of previous financial policy in the industrial sphere. More will be said about this financial authority later.

With respect to production and worker organization an industrial central organizes, coordinates, and controls all production

85. See note 78 *supra*, at Art. 16(A).

86. *Id.* at Art. 16(B).

activities. It is especially concerned with improving cooperation between its component enterprises and also between related industrial centrals in its given production area. By use of scientific methods and research studies, the central is expected to efficiently design and use its manpower resources so as to maximize its own financial opportunities and make an effective contribution to Romania's economy.⁸⁷ Because of the authority granted by this law with respect to its own profits and financial resources, there is a strong incentive here for a central to be prudent and careful in its production activities and to be resourceful in the effective and efficient use of its manpower.

The industrial central is given extensive power and responsibility under Article 17 with reference to technical and material supply. In fulfilling this role, the central uses both domestic sources and imports. As to the latter, it relies not only upon import enterprises under the Ministry of Foreign Trade and other industrial centrals in related production areas, but also upon its own production units. Furthermore, a central has planning authority to coordinate these supply activities and is able to set and control consumption of these technical and material supplies. Included in these attributes is the authority to enter into long range contracts with other centrals or economic units in order to supply subordinate units through internal and external contractors.⁸⁸ These functional provisions show the self-sufficiency and economic autonomy of the central, and again represent a significant change from prior commercial policy when the Ministry of Foreign Trade and the appropriate ministry had the exclusive right and authority to coordinate such supply, particularly that accomplished through import.

Finally, as concerns the sale of products in Romania, the industrial central has very broad powers to plan, promote, negotiate, contract and distribute sales of its subordinate units' products within Romania.⁸⁹ When one considers the impact of dozens of industrial centrals working hard to efficiently and profitably dispose of their products, it is clear that the implications of a system of industrial centrals is, indeed, dramatic for the Romanian economy.

It is with reference to the specific foreign trade attributes of

87. *Id.* at Art. 16(C).

88. *Id.* at Art. 17(A).

89. *Id.* at Art. 17(B).

the centrals that we need to devote special attention. There are two sections of the Act (Article 17(C) and Articles 18-19) which deal with the industrial central functions with respect to the sale of export products and industrial central cooperation in production with foreign firms and organizations.

Under Article 17(C), a central organizes and promotes the sale of its own export products and is responsible for the carrying out of all delivery obligations. It is also responsible for the drawing up and implementation of its own export plan which is made in conjunction with the foreign trade plan. This means that it must work in close collaboration with the higher state organs of foreign trade in order to explore and contact prospects in foreign markets. It is given the authority to set up separate sub-units or enterprises concerned exclusively with export problems, and it also has considerable leeway to adjust and respond to changing economic conditions in the export field.⁹⁰ Furthermore, a central is given considerable latitude within the foreign trade plan to decide what self-produced products it chooses to export, and it is actually entitled, as a corporate legal entity, to conclude contracts with foreign trading partners. Responsibility for delivery obligations gives a central the ability to directly export its products without being channeled via state trading companies and/or the Ministry of Foreign Trade.

The industrial central, because of its financial autonomy, is empowered to control directly with the Romanian Bank of Foreign Trade for the purpose of obtaining credit in hard currency. This is a great aid to the central, enabling it to deal directly and openly with foreign traders. Furthermore, under this Article, centrals are able to participate as autonomous, independent legal entities in Romanian Chamber of Commerce activities, foreign trade fairs and exhibits, and international commercial advertising. This includes the sending abroad of permanent representatives, commercial agents, and temporary delegations on behalf of the central. Finally, to facilitate its role as a direct supplier of its subordinate enterprises' products, an industrial central is allowed, with the approval of the appropriate ministry and the Ministry of Foreign Trade, to establish storehouses abroad for the holding of

90. These adjustments may even occur within twelve month periods so long as they do not conflict with the national (economic) plan or the foreign trade plan.

Romanian goods to be promoted for export in another country.⁹¹ Thus, industrial centrals are given considerable latitude in the exporting of their own goods, and this, in itself, is a considerable departure from prior exporting practice.

Equally important are the provisions of the Act relating to cooperation in production with foreign firms and organizations. This is very significant because it is an attempt by the Romanian government to make it easier for foreign traders to deal with Romanian industry and manufacturing. As we have seen, the central is endowed with the power to determine and guide the productive operations of its subordinate enterprises and to maximize their industrial capacity. We have also noted that it organizes and controls all the financial activities of the central as a whole and all its subordinate units. Under Article 18, an industrial central has considerable planning authority as to the use of foreign currency. In fact, a central actually draws up a *valuta* (hard currency) plan for itself. This plan, of course, must be approved by higher authorities and coordinated with the national economic plan and the state budget. Financial authority also includes the quarterly allocation of planned profits arising out of central production and the implementation of both cash and credit plans for distribution to subordinate units. This authority is carried out in collaboration with the Ministry of Finance, the Ministry of Foreign Trade, both the National Bank of Romania and the Romanian Foreign Trade Bank, and other central planning and financial organizations.⁹² One further area of discretion and authority refers to pricing. While an industrial central does not have total freedom to set prices for its products, it is able to influence pricing decisions of the higher state organs. Hence, pricing research and studies are extremely important to the centrals and play a very significant role in its planning activities.

Planning authority in this area of cooperation in production with foreign firms and organizations further includes setting policy with respect to all internal organization with a central. In this way, an industrial central is able to structure itself so as to be receptive to foreign trade. Among its functions in this respect are included the power and authority to set selection criteria for personnel, to set long range staff programs for subordinate units, to

91. See note 78 *supra*, at Art. 17(C).

92. *Id.* at Art. 18.

coordinate enterprise staffs with particular production efforts, and to organize management staffs and approve technical units at the administrative level. Control as to management and personnel matters also goes to the making of policy decisions concerning salaries, promotions, and transfers.⁹³ With such broad reign over the internal organization and operation of both the industrial central as a whole and its subordinate enterprises, the central office's (of an industrial central) ability to respond to varying and changing production needs, both at home and abroad, is clearly established.

Several points emerge from these numerous and diverse provisions with respect to the role of the industrial central within the foreign trade system. That role can be defined in terms of new forms of commercial authority and responsibility. First, the key point is that the central emerges as an autonomous legal-economic entity with an important place within the economic system as a whole and with particular significance to Romania's foreign trade. This ability to operate as a separate legal entity in foreign trade activities encompasses, as we have seen, the selection of products for export, the direct sale of those exports, and the delivery obligations with respect to those sales.

Second, the industrial centrals scheme has placed in the hands of each central and its subordinate enterprises the authority and responsibility of organizing, coordinating, and running the means of production. Included here are all phases of the productive process and production related operations and services falling within the scope of the central. This may also involve not only organizing and coordinating within the central, but between a group of centrals (and their enterprises) in a related production area. It has been seen that this is a very broad power permitting a central to structure its productive enterprises as it deems most appropriate and efficient for selling its products in foreign markets. This power affords a central considerable flexibility to adjust itself internally so as to meet changing economic conditions both externally and internally. It also allows a central to direct and coordinate its own expansion construction and modernization, thereby giving the central considerable voice in its physical growth and development.

Third, and somewhat related to the second point, is an industrial central's important function of supply, both for its productive

93. *Id.*

enterprises and as a supplier of its products upon final manufacture. This function obviously shows the expanded role of the central as more than just a manufacturing operation. Supply responsibility gives a central added attributes and, in a sense, multiple duties with respect to the basic manufacturing process. It has been shown that these duties range from the authority to make long term contracts for material and technical supply and to set consumption norms, to the right to set up warehouses abroad in order to facilitate export sales. Furthermore, supply responsibility draws the central into the realm of imports, and we have noted that an industrial central does have some influence in the decision to import certain items into Romania.

Fourth, and perhaps most significantly, great responsibility is placed in each industrial central with respect to authority over the financial means and earned profits of the central. This power of the purse brings a great deal of control to a central to guide and compel its subordinate units, and it is clearly reflected in a central's ability to allocate profits, authorize cash and credit plans, and influence the pricing of its products. It also carries with it, however, considerable responsibility to run the central profitably and efficiently. For this reason, the industrial central is authorized to communicate and coordinate upwards to the various higher state planning and financial organizations. Such financial responsibility when coupled with the above production authority leaves little doubt but that the Romanian government intended not merely a new autonomous organization at the basic level of production, but a real reordering of the economic structure as well.

Fifth, it is clear that the industrial central has a great deal of responsibility with respect to planning for both its subordinate enterprises and its productive and financial growth. While decision making power is shared with the higher state planning organizations, the central is to have considerable breadth of authority to investigate and study better methods of production in light of world technological development, more profitable investment possibilities, and more efficient organizational and administrative programs. In general, then, these planning functions all give the centrals great flexibility in meeting changing world financial and economic conditions. The extent of a centrals authority to plan is unmistakably seen in its power to establish a *valuta* (hard currency) plan. It should also be noted that planning authority may go beyond the mere central itself and involve joint programs

and combinations of centrals on a horizontal basis or even several centrals and their enterprises, trading companies, and ministries on a vertical basis. Finally, planning responsibility significantly involves directors, managers, foremen, workers representatives, and even workers themselves at the enterprise and factory levels in addition to the hierarchy of the central itself. In this sense, then, an industrial central probably best represents an effective grass-roots industrial organization in Romania.

4. *The Impact of the Industrial Central on the Romanian Foreign Trade System.*—

In light of the above forms of commercial authority and responsibility as relates to foreign trade, we might next ask what impact this has on the Romanian foreign trade system. Initially, it should be evident that industrial centrals are taking over many of the functions within the foreign trade structure previously held by the industrial ministries and the state trading companies. Such reorganization reflects a "search for greater efficiency in day to day operations with less central regulation and for more rational economic criteria for long term decision making."⁹⁴ It should also be obvious that under the Act the industrial central itself and its subordinate enterprises achieve a degree of control and authority over their operations previously unknown in the Romanian economic system.

Specifically, the impact of the industrial central on Romania's foreign trade system manifests itself in several ways. One of the stated goals of the Act is to increase cooperation and collaboration in international commercial exchange. As noted above, a fair portion of this law directs itself to aiding exporting and facilitating trade relations with foreign firms and organizations. The very structural make up of the industrial centrals scheme reflects this purpose. Industry and manufacturing are regrouped in units having common interests. These groupings may be geographical, production oriented, supply oriented, or a combination of the above. They may be strictly horizontal or reflect vertical tendencies.

Each central is an autonomous legal unit able to negotiate and contract independently and directly with a foreign trader. Particularly significant in this respect is the ability of the central to handle its own financial affairs, and especially to transact business

94. See note 9 *supra*, at 3.

directly using hard currency. Furthermore, complete control by an industrial central of internal administrative policy and structure, supply matters, and allocation of manpower allows for a very adjustable and facilitative trading posture in dealing with foreign commercial agents. The core idea, then, running throughout this Act, and the thrust of its provisions is clearly to be more responsive to foreign trade needs and procedures.

Equally facilitating in its impact and attractive in its function, are the specific attributes of the Act providing for the sale of central exports and central cooperation with foreign firms. For instance, responsibility for delivery obligations necessarily requires a close working contact with foreign traders beyond the mere contract stage. Also, such specific export related authority as a central's right to determine what products it will export, to draw up an export plan, and to organize special export sub-units all lead to close examination of foreign markets and to an interest in responding to those market needs. Furthermore, the broad range of planning attributes assigned to the centrals highlight a very strong desire to implement and develop closer ties with foreign trading interests. Broad planning authority certainly allows a central to react to what it sees as the most promising foreign market or trader, and so, must be seen as having a very positive impact on the growth of Romanian foreign trade.

Before continuing, we should briefly mention the procedure by which foreign trade transactions were carried on before establishment of the centrals so as to understand what changes the centrals have brought. As we have seen, under the traditional state foreign trade system in Romania, the Ministry of Foreign Trade was responsible for the planning and supervision of all foreign trade activities. Since Romanian industry and manufacturing are controlled by various industrial ministries, which are in turn supported by the planning and research institutes, the Ministry of Foreign Trade worked in close connection with these higher state organizations. We have also noted that actual sales and purchases were made by the state trading companies, which were directly responsible to the Ministry of Foreign Trade.⁹⁵ At the bottom of this structure were the various enterprises and factories receiving not only production directives from their appropriate ministries and planning authorities but also trade quotas, requests,

95. *Id.* at 11. Sales and purchases themselves also required approval by the Ministry of Foreign Trade and the appropriate industrial ministry.

and directives from the Ministry of Foreign Trade and the appropriate state trading companies. Local plant managers and enterprise directors had very little voice in export-import decisions, and, as might be expected, the system was subject to numerous breakdowns and problems with respect to meeting the foreign trade plans as set by the government.

In very practical terms, then, this meant that a foreign businessman interested in either an import or export transaction could approach trade with Romania only through the Ministry of Foreign Trade. From there his inquiry would be channeled downward through the appropriate state trading company eventually reaching the factory or enterprise concerned. If the Romanians were interested in the transaction, all business negotiations, including the contract agreement and even the carrying out and completion of the contract obligations, would have to be conducted through this long process. The system thus made for a very lengthy commercial procedure which was subject to delays and difficulties of all kinds. It also allowed the Romanians (through the Ministry of Foreign Trade's power of approval) to drive hard bargains and, in fact, to terminate negotiations or even contracts almost at will. While this centralized system obviously had some advantages for the government, it was not conducive to an efficient and profitable foreign trade system that could bring Romania the kind of industrial and technological help she needed to develop her economy and that could help solve her balance of payments problem with respect to hard foreign currencies.

Thus, we have seen the industrial centrals legislation as an attempt to make Romanian industry and manufacturing more responsive to world trade conditions and practices. As a result of this Act, it is evident that foreign businessmen may now avoid much of the arduous process of the old foreign trade system by dealing directly with the factory or enterprise which interests them. Since, as we have seen, the industrial centrals are independent and autonomous, much of the transaction, including complicated commercial details, can be negotiated directly in an efficient and fast way. It is now more likely that the foreign trader will come away from the transaction with a completed contract and a successful purchase or sale under the industrial centrals scheme.

While we have spelled out in rather considerable detail the independence and autonomy of the industrial central within the foreign trade system, it should not be thought that the state mo-

nopoly or ultimate control of the Ministry of Foreign Trade have been weakened in any way. The Ministry retains final approval authority over all import and export transactions, and, as noted, much of the new discretion and decision making on the part of the centrals and their enterprises are subject to a final check by the Ministry of Foreign Trade and other state organizations. For instance, with reference to both production and financial planning, we have seen that while the centrals now have considerable voice in policy and planning decisions, whatever they decide must fit into the national economic plan and the foreign trade plan. It must also be compatible with the decisions and directives of the higher state financial organs, such as the National Bank of Romania and the Romanian Bank of Foreign Trade. Producing enterprises will continue to receive certain compulsory indicators (both financial and production) from the higher planning authorities, and the Ministry of Foreign Trade will retain its supervisory role over foreign trade, emphasizing its policy making and coordinating roles more than that of operational director.

Finally, it should also be pointed out that while the Ministry of Foreign Trade and higher state organizations will readjust their roles as to export transactions in light of the industrial central innovation, imports will remain largely under the centralized control of the Ministry of Foreign Trade and its subordinate state trading companies. Because of the hard currency deficit, it is still very important for Romania, at this stage of her economic development, to plan and coordinate the use of the import transaction to her best advantage both industrially and financially. While industrial central discretion, authority and responsibility touch the import transaction area, the centrals are far more limited in this area than they are in the field of exports.

III. CONCLUSION

It is evident that Romania has made a strong move in the direction of improving her foreign trade system and consequently increasing her trade relations in the West. She has gone about this through foreign policy, through economic legislation, and by means of actual commercial practice. We have focused on the legislative approach and seen that Romania, in a rush of legislative activity in the late 1960's, carried out economic reorganization and reform in several areas. The thrust of this legislation has been to facilitate the foreign trade transaction and to increase hard

currency earnings. Furthermore, this approach has been a broad one, characterized by different types of economic laws ranging from "aiding" and "facilitating" legislative acts to legislation which controls and reorganizes.

Several significant conclusions emerge. First, it is especially encouraging that unlike some other East European economic reform schemes and reorganizations, which have been characterized by mass, poorly planned legislative reform, Romania has approached the task on a step by step basis. By modifying existing legislation and introducing new well-written laws, Romania is certain to achieve a more effective and enduring reorganization of her foreign trade system.

Furthermore, it is always impressive to see such reform take place in an East European socialist country since legislation there represents the true will and intention of the ruling Communist Party. In this case, there were no lobbies or pressure group activities for or against the legislation we have seen, only the policy and planning of the Romanian Communist Party. Legislation such as this would seem to indicate an enlightened and progressive commercial policy developing in the Party.

Finally, this wave of reform legislation has continued to grow. Within the past year Romania has passed two very significant laws in the foreign trade sector. One, passed in January 1971,⁹⁶ permits foreign firms to establish permanent trade representatives in Romania.⁹⁷ The other, which became law in March 1971,⁹⁸ is even more significant. Essentially, it makes possible a unique form of direct contact between Romanian industry and foreign markets, permits the establishment of joint companies (joint ventures) in Romania between Romanian enterprises and foreign companies, and allows up to 49% foreign ownership of equity in joint ventures on Romanian soil, with guaranteed hard currency repatriation of profits. "Under this law Romanian

96. DECREE NO. 15 of January 25, 1971, *On authorization and working regulations of commercial agencies set up by foreign trading firms and economic organizations in the Socialist Republic of Romania*, Published in 10 OFFICIAL BULLETIN OF THE SOCIALIST REPUBLIC OF ROMANIA, March 17, 1971.

97. Prior to the passage of this law, foreign companies could have agents and representatives in Romania but not operating out of permanent offices; rather, they were required to work out of temporary hotel room offices.

98. LAW NO. 1 of March 1971, *On foreign trade and economic and technical-scientific cooperation activities in the Socialist Republic of Romania*, 33 OFFICIAL BULLETIN OF THE SOCIALIST REPUBLIC OF ROMANIA, March 17, 1971.

enterprise will be seeking Western capital goods, technology, and management expertise in the form of equity investment rather than licensing or straight imports."⁹⁹

The new joint venture law would seem to represent somewhat of a departure from the trend we have traced in this Article. While simple licensing and the ordinary export-import transactions were the focus of Romanian foreign trade efforts in the 1960's, it may well be that the more ambitious and complex joint venture scheme will reflect the Romanian foreign trade pattern of the 1970's. Indeed, it would appear that this Act is aimed directly at American investment since U.S. companies are especially receptive to the joint venture idea. At this point, it is still too early to analyze this legislation in any meaningful way, but it is, at least, very clear that this Act represents the latest stage in the process of legislative economic reform that we have examined in this Article.

Romania is indeed looking West. Beyond more policy and commercial overtures, the legislation is being passed which will allow Romania to establish a well structured system of foreign trade. Old barriers are breaking down and it remains now for Western traders to fully recognize and utilize these legislative changes and to establish durable and lasting trade relations with Romania.

99. See note 10 *supra*, at 34.