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The U.S.-Soviet Maritime Agreement: A New Plan for Bilateral Cooperation

Jean S. Gerard*

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The U.S.-Soviet Maritime Agreement: A New Plan for Bilateral Cooperation

Jean S. Gerard

Abstract

The author starts with the premise that the U.S.-Soviet Maritime Agreement, which was signed on October 14, 1972, and renegotiated as of December 19, 1972, is unique. Before the agreement was signed, only about 6 percent of U.S.-Soviet trade was being carried in U.S. bottoms, whereas 94 percent was being carried in Soviet bottoms. The author highlights that one significant achievement of the Agreement was the reciprocal opening to access of forty U.S. ports and forty Soviet ports by commercial, scientific, and merchant marine training ships of the two nations upon four days advance notice. The selection of ports was based on commercial and national security considerations, and reciprocity. However, very few of the Soviet ports have unloading facilities adequate to handle the U.S.-flag vessels, whereas most of the U.S. ports can handle the Soviet vessels, many of which are smaller than the U.S. ships. Because so few of the Soviet ports have adequate facilities for large foreign commercial vessels, the congestion in the larger ports, like Odessa, was aggravated by grain shipments. When it was negotiated in 1972, the Maritime Agreement was an integral part of a series of far-reaching agreements between the U.S. and the U.S.S.R. The author concludes that it is vitally important, both from a strategic and a commercial point of view, to have a strong, healthy maritime industry. In addition, increased trade with the Soviet Union may broaden economic interdependence and strengthen political cooperation.

THE U.S.-SOVIET MARITIME AGREEMENT: A NEW
PLAN FOR BILATERAL COOPERATION

The U.S.-Soviet Maritime Agreement, which was signed on October 14, 1972,¹ and renegotiated as of December 29, 1972,² is unique. It is the only cargo-sharing agreement the United States has signed, and the only agreement whose negotiation is charged to the Commerce Department rather than the Department of State. In fact, one of the reasons the U.S. negotiating team has been successful in obtaining such a satisfactory agreement is that it is looked upon as a straight maritime agreement, not merely one of many different components.³

Before the agreement was signed, only about 6 percent of U.S.-Soviet trade was being carried in U.S. bottoms, whereas 94 percent was being carried in Soviet bottoms.⁴ When the U.S.-Soviet grain deal was consummated on July 8, 1972,⁵ its success was dependent upon working out some accommodation with the Soviets on the shipping of the grain. The Soviets preferred to carry the grain in their own ships, which, being generally smaller than U.S. ships, had ready access to the grain at the Great Lakes ports. This pleased the U.S. shippers at or near those ports. The International Longshoremen's Union, on the other hand, had been demanding that half of all (government generated) controlled cargo carried between U.S. and Soviet ports be carried on U.S. vessels.⁶ Since the cost of shipping cargo in U.S. vessels was over twice the current world market rate, the Soviet Union balked at the one-half in U.S. bottoms stipulation,⁷ as did the U.S. State Department, which opposed excluding third flag carriers. The United

States and her European allies are on record as generally opposing flag discrimination,⁸ European leaders because they represent some of the largest third flag carriers, and the United States mainly to please her European neighbors. Hence the formula in the U.S.-Soviet Maritime Agreement, which calls for one-third of the U.S.-Soviet trade being carried in U.S.-flag vessels, one-third in Soviet-flag vessels, and one-third in third flag vessels,⁹ is a new departure for the United States. The firmly expressed intention that the national flag vessels of the two countries should each carry equal and substantial (one-third) shares of the trade between the two nations¹⁰ was a tightening up of the originally proposed language of the Agreement, which had merely called for "good faith efforts" to effectuate this goal.

Port Access

One significant achievement of the Agreement is the reciprocal opening to access of forty U.S. ports¹¹ and forty Soviet ports¹² by commercial, scientific, and merchant marine training ships of the two nations¹³ upon four days' advance notice.¹⁴ Although the notice requirement is longer than the normal twenty-four-hour notice required of non-communist commercial vessels for entry to U.S. ports,¹⁵ it is much shorter than the fourteen-day advance request requirement which had been applied to ships entering the ports of either country before, requests which could have been denied.¹⁶ Vessels wishing to enter ports not listed in the Agreement must still comply with the fourteen-day prior request provisions.

The selection of ports was based on commercial and national

security considerations,¹⁷ and reciprocity. The ports listed by each nation were roughly paired as to similar characteristics, such as seasonal access, deepwater depth, and unloading facilities. There are many small ports as well as large ones listed.

Very few of the Soviet ports have unloading facilities adequate to handle the U.S.-flag vessels, whereas most of the U.S. ports can handle the Soviet vessels, many of which are smaller than the U.S. ships. This is one reason the U.S. insisted on the same terms of open access for the scientific, research, and training vessels, since calls at the specified ports by those ships can help maintain the U.S. right to reciprocal access. Any vessel deemed to be spying may be forbidden entry.

Because so few of the Soviet ports have adequate facilities for large foreign commercial vessels, the congestion in the larger ports, like Odessa, was aggravated by the grain shipments. Thus the U.S. was fortunate in having obtained special terms from the Soviets relating to ship unloading, including a guaranteed rate of cargo discharge of 2,000 metric tons alongside berth, and 3,000 metric tons for lightening operations,¹⁸ and tonnage duties at least \$1.75 a ton lower than the typical rates charged by the Soviets in 1972.¹⁹ Also in the November 24, 1973 Memorandum on Bulk Cargo Movements, the demurrage rates, which had already been increased,²⁰ were pegged to a maximum and a minimum, the minimum being the base for an index.²¹ One method of reducing unloading time and hence costs is through the use of LASH-type barges. Provision is made for such use in the 1975

Maritime Agreement.²² The U.S. has such vessels, the Soviets do not.

In the 1972 Maritime Agreement, the Soviets guaranteed thirty-two/thirty-three feet of salt water draft at discharge ports.²³ The charge to lighten vessels down to this draft was \$3.50 per long ton of cargo lightened.²⁴ The majority of U.S.-flag vessels require more than thirty-two feet of water and thus have had to pay lighterage charges,²⁵ even when, as at Odessa, the draft actually was deeper than the stated maximum for the port, and the ships were allowed to berth without lightening.²⁶ Thus in the additional memorandum concerning the 1972 Maritime Agreement, a thirty-four foot draft was guaranteed in the Black Sea, as were a thirty-two foot fresh water draft in the Baltic, and a thirty foot salt water draft in Nakhodka.²⁷ In the November 24, 1973 additional memorandum, the understanding was noted that vessels should not be charged lightening unnecessarily.²⁸

The 1972 Maritime Agreement maintained the restrictions which had been placed on ships that had called or would call on a Cuban port after January 1, 1963,²⁹ or which had called at North Vietnamese or North Korean ports within 180 days of loading of cargo, or would do so within 120 days.³⁰ Such vessels could not be bunkered at U.S. ports, nor were they permitted to load or unload in U.S. ports government-financed cargoes such as grains sold on Commodity Credit Corporation credit terms.³¹ Soviet ships which had called in Cuba or Vietnam since the cutoff dates could still call at U.S. ports and load or unload normal commercial cargoes.

In the 1975 Agreement, the restriction on the bunkering of

ships which had called on Cuban ports is not noted, but the above mentioned bunkering restrictions were placed on ships calling at ports under the control of South Vietnam and Cambodia as well as North Vietnam and North Korea, and vessels "registered in, owned or controlled by, or under lease or charter to" Cuba, North or South Vietnam, Cambodia or North Korea, or their nationals, could not be bunkered.³² These restrictions are still in force, even though the State Department, on March 17, 1977, lifted the travel ban on Cuba, Vietnam, Cambodia, and North Korea.³³

Controlled Cargo

The definition of "controlled cargo" in the Agreement is important.³⁴ Only that cargo which is subject to U.S. government control under the U.S. cargo preference laws is considered U.S. controlled cargo. Because of the nature of the Soviet system, essentially all of their cargo is controlled, and thus must be included in the total cargoes to be shared.

Equal and Substantial Sharing

Under the 1972 Maritime Agreement, "equal share of the trade" was measured on the basis of U.S. dollar freight value of cargo carryings by the respective national-flag carriers during each calendar year accounting period. The cargoes carried in linear vessels and bulk cargo vessels were accounted for separately. Under the 1975 Maritime Agreement, bulk cargoes are measured by the "number of weight tons of carryings under Charter parties, computed by

general commodity categories" such as grain and ore; whereas the "accountable liner share" is still computed by "U.S. dollar freight value of liner carryings of controlled cargo."³⁵ Even though unavailability of national-flag carriers is certified, the other party is still obligated to continue to offer the certifying party later shipments of controlled cargoes to restore the 1/3:1/3 balance if possible during the same calendar year.³⁶ It is difficult to compare liner cargoes and bulk cargoes, since there is no common denominator for "U.S. dollar freight value of liner carryings of controlled cargo" and "number of weight tons of carryings under charter parties." Therefore the 1975 Maritime Agreement merely calls for making adjustments between accounting periods, whereas the 1972 Maritime Agreement called for adjustments between accounting shares and accounting periods.³⁷

Freight Rates and Subsidy

Liner freight rates are set under the conference-rate system, and are bolstered by the U.S. operating subsidy program.³⁸ Bulk cargo, such as grain, is shipped under charter rates. These rates are set by the competing shipping lines in the various nations, most of whom have far lower costs than the U.S. Under the Agreement there are two categories of bulk rates.

Under the 1972 Maritime Agreement, non-agricultural bulk cargoes were to be carried at the average freight rate for that category and route over the prior three calendar years.³⁹ Under the 1975 Maritime Agreement, dry bulk cargoes in lots of 8,000 long tons or

more moving from the Soviet Union to the U.S. are carried at current market rates.⁴⁰ The amount of this trade is not significant.

The most important rate fixed under the Agreement is that for the transport of grain. Originally, the rate under the 1972 Maritime Agreement was to have been the same as that for non-agricultural bulk cargoes; the average freight rate over the prior three years for that category of cargo over the route in question. For wheat and other heavy grains, that worked out at \$8.05 per ton, for the route most expected to be used.⁴¹ However, as a result of the added volume of business with the Soviet Union, the rates increased sharply after the preliminary agreement had been reached. Thus, to avoid offering the Soviets freight rates below the current market rates, the price had to be renegotiated. The "mutually acceptable rate" agreed upon thus became the higher of the three-year average described or 110 percent of the current market rates for such cargo and route.⁴² The 10 percent premium agreed upon was considered an equitable sharing of the sharp increase in the rates.⁴³

On May 30, 1973, the representatives of the United States and the Soviet Union agreed to replace the negotiated rate, which had ranged from \$9.00 to \$9.40 per long ton of cargo in the U.S. Gulf/Black Sea trade, plus 10 percent, with an index system based on monthly average voyage charter rates for the carriage of heavy grains from the U.S. Gulf to Holland/Belgium.⁴⁴ A British publication, the Daily Freight Register, was used as the independent authoritative guide to these rates. The index system was felt to be more flexible

and more responsive to rate fluctuations than a periodically fixed rate. The agreed U.S.-flag rate for the U.S. Gulf/Black Sea route was set at \$16.94 for May of 1973, which put the U.S. in a favorable position on the index. This index system was used until September 22, 1975, when a new index system with a cumulative adjustment feature was instituted.⁴⁵ The initial rate in the 1975 Maritime Agreement was the same \$16.00 per long ton, with the cumulative adjustment differential.⁴⁶ The rate for 1977 has been fixed at \$16.47 a long ton, which includes a forty-seven cents-a-ton factor to compensate U.S. lines for cargo they were deprived of in 1975 and 1976. The \$16.47 rate will apply to the first 3.3 million tons of grain shipped in U.S. vessels this year, which includes 1.2 million tons to compensate the U.S. lines for not having received their one-third share in 1975 and 1976, and then will drop to \$16.00 a ton.⁴⁷

The formal pact setting the rates for 1977 could not be signed until the Soviets reconfirmed the original understanding between the two countries that "bilateral cargo" included cargo purchased by entities in third countries.⁴⁸ During part of the 1977 negotiations, the Soviets took the position that such cargo was out of their control, once purchased, and thus should not be included in computing the one-third shares. It was clearly understood in 1972 that the grain which had been purchased by Dreyfus was to be included in the computations. Although there are cases such as oil swaps which are difficult to account for in advance, the potential for abuse was too great for the United States to have accepted elimination of third country purchases from the computations.

The operating subsidy paid to U.S.-flag bulk carriers was authorized under the Merchant Marine Act of 1970.⁴⁹ The U.S.-flag vessels carrying grain to the U.S.S.R. were the first to benefit from this subsidy, wherein they were to receive the excess of their operating cost over the costs of competing foreign vessels. Unlike liner vessels, bulk carriers were not eligible for construction subsidies prior to passage of the 1970 Merchant Marine Act. Thus the shipping lines were permitted to include an allowance for depreciation and indebtedness of vessels in calculating their operating costs.⁵⁰ The subsidy was designed to create a break-even situation. The 1972 calculation took into consideration a minimum rate of \$8.05 per ton, the rate originally negotiated for the grain carriage.⁵¹ At that time it cost the U.S. lines approximately \$19.00 a ton to carry the grain from the Gulf coast to the Baltic. In order to prevent excess profit-taking, the Maritime Administration regulations⁵² require that all subsidy contracts contain renegotiation clauses.⁵³ As the market rates increase, the subsidy is reduced. No subsidy is paid when the ships are fixed⁵⁴ to carry cargo at break-even rates or better.⁵⁵

The amount of the subsidy involved depends on the amount of grain actually carried in U.S. ships, as well as on the rate at which it is carried. In 1976, \$38.5 million was paid to U.S. ships operating in the grain trade, out of a total ship subsidy payment of \$278 million. The subsidy for 1977 is expected to be \$18.3 million less, primarily due to a drop in Soviet grain purchases of 5.3 million tons.⁵⁶ Although the Soviets have agreed to ship more of the grain in U.S. ships, this is offset by the higher rate of \$16.47 per long ton

which they have agreed to pay.

Sovereign Immunity-Jurisdiction

Memoranda on Port Procedures in the respective Maritime Agreements⁵⁷ state the traditional U.S. and Soviet positions on sovereign immunity as it relates to possible attachment or detention of vessels. The U.S. follows the restrictive theory of sovereign immunity which recognizes such immunity with regard to sovereign public acts, but not with regard to private or commercial acts, including acts by public-owned or operated merchant vessels.⁵⁸ The U.S. provision indicates that attachment of a vessel for jurisdictional purposes should not be necessary in quasi in rem proceedings if an agent for service of process has been appointed. To avoid attachment or minimize the arrest period connected therewith in in rem proceedings, an agent should be appointed to post the necessary bond. The United States does not recognize the Soviet Union's claim of sovereign immunity for her commercial vessels. The most recent U.S. position is that foreign vessels should not be attached unless it proves necessary to execute on a judgment. In fact, an entire cause of action may be lost by an improper seizure.⁵⁹

The Soviet Union follows the absolute sovereign immunity theory,⁶⁰ and claims its state-operated merchant ships may not be subject to attachment or execution without its consent.⁶¹ The Soviet authorities may exercise jurisdiction over any foreign ships within the waters of the U.S.S.R., except warships, and only accord sovereign immunity to vessels which are the property of a foreign state if that

state accords immunity to Soviet-owned vessels.⁶² There are very few states which do grant such immunity. Thus Soviet detention of foreign vessels is possible in certain cases. The initial detention order is valid for seventy-two hours.⁶³

Economic Impact

The Maritime Agreement has given a definite boost to the sagging U.S. maritime industry, which has been bolstered as well by the government's payment of operating subsidies to U.S.-flag carriers when the prevailing rates were deemed to be below the break-even point. The objective of parity in bilateral controlled liner cargo carryings under the Agreements appears to have been achieved, after a halting start.⁶⁴ U.S.-flag ships have been able to pick up a substantial amount of foreign-to-foreign and back haul carriage as well.⁶⁵ Although overall the U.S. has not been able to take full advantage of its opportunity to carry one-third of the U.S.-Soviet trade, due partially to the unavailability of sufficient U.S. ships to carry the grain when more profitable oil and P.L.480 wheat cargoes were available, for example, and due partially to various Soviet contracting practices,⁶⁶ the U.S. figures have increased from 17.9 percent of the grain carriage from July 1, 1972 to December 31, 1973,⁶⁷ to 26 percent in 1976.⁶⁸ The United States insists she is entitled to one-third of the carriage, not just of the offerings, and thus will no longer certify unavailability of U.S.-flag ships. To prove her good faith effort to give the U.S.-flag vessels one-third of the cargo, the Soviet Union fixed fourteen U.S. ships for April 1977 to carry a

record high cargo of 479,000 metric tons of grain.

U.S.-Soviet Trade Perspective

When it was negotiated in 1972, the Maritime Agreement was an integral part of a series of far-reaching agreements between the U.S. and the U.S.S.R. The hope was for the achievement of a lessening of tension through greater trade opportunities and interdependence. Among the other agreements were: The Grains Agreement,⁶⁹ signed on July 8, 1972; The Trade Agreement⁷⁰ and the Lend Lease Agreement,⁷¹ both signed on October 18, 1972. It was anticipated that U.S.-Soviet trade would at least triple over the next few years.

However, the Lend Lease Settlement and the Trade Agreement were made conditional on the U.S. granting the Soviet Union most favored nation (MFN) status, and this status has not yet been granted. The objection to the granting of MFN status was led by Sen. Henry Jackson. The Jackson-Vanik Amendment to the 1974 Trade Act⁷² makes granting of such status, and of essential credits, dependent on a new Soviet policy of free emigration by Jews from the Soviet Union. The Soviets had been liberalizing their emigration policy toward the Jews for several years, but could not accept this attempt to interfere with internal Soviet policy.

An even greater obstacle to increased U.S.-Soviet trade was the passage of Export-Import Bank legislation limiting the credit to the Soviet Union to \$300 million over four years.⁷³ This extremely small amount of credit limits the Soviets' ability to import U.S. technology and equipment. The U.S. exports to the Soviet Union tend to be

job-intensive, whereas the imports from the U.S.S.R. tend to be primarily low job-intensive raw materials. This provides potential job and trade surplus advantages for the U.S.⁷⁴ Since the Soviets need hard currency with which to pay for their imports, credit is essential to the successful large-scale increase of their trade. Fortunately, some credit is available from commercial banks, and the Attorney General has approved deferred-payment sales by private U.S. firms to the U.S.S.R.⁷⁵

Thus, although trade between the Soviet Union and the United States has greatly expanded since the signing of the agreements in 1972, there are obstacles which must be overcome if the full potential of those agreements is to be realized. The Maritime Agreement is a key agreement. While the trade expands, even at a reduced level, U.S. merchant shipping will be strengthened. It is vitally important, both from a strategic and a commercial point of view, to have a strong, healthy maritime industry. In addition, increased trade with the Soviet Union may broaden economic interdependence and strengthen political cooperation.

Footnotes

*B.A. Vassar College; J. D. Fordham University School of Law.

1. United States-Soviet Maritime Agreement, Oct. 14, 1972, 23 U.S.T. 3573, T.I.A.S. No. 7513 (hereinafter cited as 1972 Maritime Agreement).
2. United States-Soviet Maritime Agreement, Dec. 29, 1975, T.I.A.S. No. 8195, in 74 Dep't. State Bulletin 96 (1976) (hereinafter cited as 1975 Maritime Agreement). (When the provision or article or annex, etc., is in both the 1975 and the 1972 Maritime Agreements, the cite will be to both Soviet Maritime Agreements.)
3. The principal members of the U.S. team which negotiated the 1972 Maritime Agreement were: Secretary of Commerce Peter G. Peterson, Assistant Secretary of Commerce (previously Maritime Administrator) Andrew E. Gibson, and Assistant Secretary of Commerce for Maritime Affairs Robert J. Blackwell. When the 1975 Maritime Agreement was negotiated, the Secretary of Commerce was the Hon. Rogers C. B. Morton. Mr. Blackwell, previously Deputy Administrator to Andrew E. Gibson, has been a key member of this team and since July 7, 1972 has been Assistant Secretary of Commerce.
4. The Trade Act of 1974: Soviet-American Commercial Relations & the Future, 5 GA. J. INT'L & COMP. L. 505, 522 (1975) (hereinafter cited as Soviet Commercial Relations).
5. Grains Agreement with the Soviet Union, July 8, 1972, 23 U.S.T. 1447, T.I.A.S. No. 7423 (hereinafter cited as 1972 Grains Agreement).
6. Press Conference of Secretary of Commerce Peter G. Peterson, Washington, D.C., Oct. 14, 1972, at 26, 28, 31, 32, in U.S. Dep't. of Commerce, Fact Sheet and Documents Accompanying U.S.-Soviet Maritime Agreement, Oct. 14, 1972 (hereinafter cited as Commerce Fact Sheet, 1972 Maritime Agreement). There had been no Soviet vessels in East Coast or Gulf ports since 1963, when President Kennedy promulgated an executive policy requiring that at least 50 percent of all wheat and grain sold to the U.S.S.R. be carried in U.S.-flag vessels. 15 C.F.R. Sec. 376.3. President Nixon terminated this policy in 1971. 36 Fed. Reg. 1181 (1971).
7. Administrative Survey: 1972, 5 LAW & POLICY INT'L BUS. 493, 666-7 (1963) (hereinafter cited as Survey: 1972).
8. See Statement of H. Gardner Ainsworth, Director of the Office of

Maritime Affairs, U.S. Dep't. of State, Aug. 14, 1972, reprinted in Survey: 1972, supra note 7, at 665. We have favored direct subsidies to our merchant marine, where necessary to enable our shipping to compete internationally, rather than in direct assistance through means such as cargo reservations which discriminate against other flags.

The United States has refused to sign the United Nations Conference on Trade and Development (UNCTAD) Convention on a Code of Conduct for Liner Conferences, one of whose objectionable provisions condones flag discrimination. Final Act and Annexes, document TD/CODE/11/REV. 1 and Com'1. 1, reproduced in 13 I.L.M. 912-951 (1974). See Shah, The Dispute Settlement Machinery in the Convention on a Code of Conduct for Liner Conferences, 7 J. MAR. L. & COM. 127, 129, 131 at note 13 (1975). On the other hand, the Agreement between the United States and Brazil contains a seemingly discriminatory provision, granting each government equal access to the carriage of 50 percent of the government-controlled bilateral cargo of the other. See Kilgour, The Energy Transportation Security Act of 1974, 7 J. MAR. L. & COM. 558 (1975).

Curiously, although the Soviet Union's bilateral agreements with European countries do not contain cargo-sharing arrangements, and thus, according to the critics of the U.S.-Soviet Maritime Agreement, should do a better job of protecting and fostering free trade than agreements containing such cargo-sharing provisions, the reverse appears to be true. In the early 1970s, at least, where large amounts of government-controlled cargoes were being carried between those European countries and the Soviet Union, Soviet vessels carried the bulk of the cargo, whereas third-flag vessels carried very little.

Third-flag vessels have done better under the U.S.-Soviet Maritime Agreement, and carriage by the vessels of the United States and the U.S.S.R. has been more nearly equal than has been so under the Soviet-Western European bilateral agreements, even though the one-third goal has not been reached. See Bourdon, The Meaning of the United States-Soviet Maritime Agreement, NAVAL WAR C. REC., Sept.-Oct. 1974, 65-70.

9. Both Soviet Maritime Agreements, supra notes 1 and 2, at annex III.
10. Id. at art. 6.
11. Mobile Ala.; Akagway, Alas.; Eureka, Long Beach, Los Angeles (including San Pedro, Terminal Island, Wilmington), Sacramento, and San Francisco (including Alameda, Berkeley, Oakland, Richmond), Cal.; Tampa, Fla.; Savannah, Ga.; Honolulu, Hawaii; Chicago, Ill.; Baton Rouge, Burnside, and New Orleans, La.; Baltimore, Md.; Bay City, Mich.; Duluth, Minn.; Superior, Wisc.; New York (including N.Y. and N.J. parts of the Port of New York

Authority), N.Y.; Astoria, Coos Bay (including North Bend), and Portland (including Vancouver, Wash.), Ore.; Cleveland and Toledo, Ohio; Erie and Philadelphia (including Camden, N.J.), Pa.; Ponce, P.R.; Beaumont, Brownsville, Corpus Christi, Galveston, Texas City, Houston, and Port Arthur, Tex.; Bellingham, Everett, Longview, Olympia, Seattle and Tacoma, Wash.; and Kenosha and Milwaukee, Wis. Both Soviet Maritime Agreements, *supra*, notes 1 and 2, at annex I. Seven of these ports are composite ports. This was a concession to satisfy the maximum number of competing local interests, while still limiting the total number of ports to the highest number the Soviets would open to U.S. ships.

12. Six on the Arctic Ocean: Arkhangel'sk, Igarka, Mezen', Murmansk, Nar'yan-Mar, and Onega; eight on the Baltic Sea: Klaipeda, Leningrad, Pyarnu, Riga, Tallinn, Vent pils, Vyborg, and Vysotsk; fourteen on the Black Sea: Batumi, Belgoro-Dnestrovkiy, Il'ichevsk, Ismail, Kherson, Kiliya, Novorossiysk, Odessa, Poti, Reni, Sochi, Sukhumi, Tuapse, and Yalta; two on the Sea of Azov: Berdyansk and Zhdanov; and ten on the Pacific Ocean: Aleksandrovsk-Sakhalinskiy, Kholmsk, Makarevskiy Roadstead (Roadstead Doue), Markarov Roadstead, Nakhodka, Nevel'sk, Oktyabr'skiy, Poronaysk, Shakhtersk, and Uglegorsk; both Soviet Maritime Agreements, *supra*, notes 1 and 2, at annex II. Only Makarevskiy Roadstead is a composite port. In 1968, when the present Merchant Shipping Code of the U.S.S.R. was confirmed by the Presidium of the Supreme Soviet of the U.S.S.R. and entered into force (Vedomosti SSS R (1968), No. 39, item 351), only 37 of the 165 Soviet ports and roadsteads were open to foreign vessels. The Merchant Shipping Code of the U.S.S.R. (1968) 14 (W. Butler and J. Quigley, Jr., transls. and eds. 1970). Three Black Sea ports: Sochi, Sukhumi, and Yalta, were added to this list to bring the number to forty for the 1972 Maritime Agreement.
13. Besides commercial ships and ships for merchant marine training purposes, the 1975 Maritime Agreement contemplated the access initially for seventy-six U.S. and fifty Soviet vessels engaged in hydrographic, oceanographic, meteorological or terrestrial magnetic field research of a civilian nature, as provided for in Article 1(a) of the Agreement. Lists of these non-commercial ships are appended to the Agreement. The Agreement, in Article 1(b), states it does not include vessels engaged in fishing or related activities, nor does it include warships or vessels carrying out State functions other than those mentioned in Article 1(a). (The Agreement specifically does not cover any liquified natural gas (LNG) trade which may develop between the nations.) 1975 Maritime Agreement, *supra*, note 2. The 1972 Maritime Agreement contains similar provisions, except that eighty-one U.S. scientific vessels and thirty-four Soviet scientific vessels

were listed. 1972 Maritime Agreement, supra note 1. The Soviet vessels, although fewer than those of the U.S., were built later, on the average. Furthermore, the Soviets have added younger ships than has the U.S. Of the sixteen new Soviet ships listed, the average age is 4.94 years. The average age of the sixteen new U.S. ships is 12.94 years. Additions to these lists may be made unilaterally.

14. Both Soviet Maritime Agreements, supra notes 1 and 2, at art. 4.
15. 33 C.F.R. sec. 124.10 (1976). Permission to enter is automatically granted on notice.
16. Summary from the White House Fact Sheet, at 23, in Commerce Fact Sheet, 1972 Maritime Agreement, supra note 6.
17. Certain large military ports are not on the lists, such as Charleston, Norfolk, San Diego and San Juan on the U.S. side, and Petropavlovsk, Sevastopol and Vladivostok on the Soviet side.
18. 1972 Maritime Agreement, supra note 1, at 101. A metric ton is 2,204.6 pounds, whereas a long ton is 2,240 pounds.
19. Press Conference of Secretary of Commerce Peter G. Peterson, Washington, D.C., Oct. 14, 1972, in Commerce Fact Sheet, 1972 Maritime Agreement, supra note 6, at 31.
20. See 1972 Maritime Agreement, supra note 1, at 100. The rates of demurrage payments to U.S.-flag operators (a penalty paid by the Soviet charterers to the shipowners for delays) were fixed at \$3,000, \$4,000, or \$4,500 per day, depending on the size of the ships.
The rate of demurrage penalty was increased by between \$1,000 to \$2,000 per day, depending on the size of the ship, in the May 30, 1973 additional arrangements implementing the 1972 Maritime Agreement. The dispatch premium for swift unloading remained one-half of the demurrage rate.
21. Nov. 24, 1973 Memorandum concerning bulk cargo movements, 4. The index system is similar to the system agreed upon to establish the U.S. Gulf/Black Sea freight rate, the average monthly rate being tied to average monthly rates in the Gulf/Holland-Belgian grain trade. The advantage to an index is that it can fluctuate in response to changes in the rates.
22. 1975 Maritime Agreement, supra note 2, at 52, in Memorandum on U.S. Port Procedures and other Matters, XI, 4.
23. 1972 Maritime Agreement, supra note 1, at 100, in an undated letter from Mr. N. Zuer, President of SOVFRACHT.

24. Id.
25. U.S. Dep't. of Commerce Fact Sheet, at 3, on the May 30, 1973 additional arrangements implementing the 1972 Maritime Agreement.
26. U.S. Dep't. of Commerce Fact Sheet, at 3, on the Nov. 24, 1973 additional arrangements implementing the 1972 Maritime Agreement.
27. Memorandum concerning Bulk Cargo Rates and Charter Party Terms, at 2, in May 30, 1973 additional arrangements implementing the 1972 Maritime Agreement.
28. Memorandum concerning Bulk Cargo Movements, at 4, in Nov. 24, 1973 additional arrangements implementing the 1972 Maritime Agreement.
29. 1972 Maritime Agreement, supra note 1, at 68. See 15 C.F.R. sec. 371.9(b) (2).
30. See 15 C.F.R. 371.9(b) (1).
31. Id. "Bunkering" means taking on fuel.
32. 1975 Maritime Agreement, supra note 2, at 42. See 15 C.F.R. 371.9(b) (1).
33. Travel Ban Expires, Wall St. J. Mar. 17, 1977, at 1 col. 5.
34. Both Soviet Maritime Agreements, supra notes 1 and 2, at annex III, 1(c).
35. 1975 Maritime Agreement, supra note 2, annex III, 1, (d) and (c) at 9.
36. Summary from the White House Fact Sheet, at 24, in Commerce Fact Sheet, 1972 Maritime Agreement, supra note 6. A limited variance from the equal and substantial sharing rule has been permitted when the cargo was offered on reasonable terms and conditions.
37. 1975 Maritime Agreement, supra note 2, annex III, 1 (d) and (e), at 9; both Soviet Maritime Agreements, supra notes 1 and 2, at annex III, 4(b).
38. The subsidy is authorized under the Merchant Marine Act of 1970 §§ 6, 14, 46 U.S.C.A. §§ 1151(a), 1171(a) (Pocket Pt. 1972), amending 46 U.S.C. 1151(a), 1171(a) (1970). See generally Bowman, The Merchant Marine Act of 1970, 2 J. MAR. L. & COM. 715 (1971).
39. 1972 Maritime Agreement, supra note 1, at 50.

40. 1975 Maritime Agreement, supra note 2, at 27.
41. Press Conference of Secretary of Commerce Peter G. Peterson, Washington, D.C., Oct. 14, 1972, at 26-28, in Commerce Fact Sheet, 1972 Maritime Agreement, supra note 6.
42. 1972 Maritime Agreement, supra note 1, at 50.
43. Press Conference of Secretary of Commerce Peter G. Peterson, Washington, D.C., Oct. 14, 1972, at 26-28, in Commerce Fact Sheet, 1972 Maritime Agreement, supra note 6.
44. U.S. Dep't. of Commerce Fact Sheet on the May 30, 1973 additional arrangements implementing the 1972 Maritime Agreement, 1.
"Using December, 1972, as the base period, during which the Gulf/Holland-Belgium rate averaged \$6.09 and the Gulf/Black Sea rate \$9.20, each successive month's reported Gulf/Holland-Belgium rate will be compared with the base \$6.09 to establish an index number which will then be applied to the \$9.20 base for Gulf/Black Sea movements to yield the following month's rate for U.S.-flag fixtures in this trade." Id.
45. U.S. Dep't. of Commerce Fact Sheet on the September 17, 1975 additional arrangements implementing the 1972 Maritime Agreement. During the initial period when the U.S. Gulf/Soviet Black Sea rate as derived by the new index is less than the minimum rate, a cumulative adjustment represented by the differential multiplied by the number of tons carried will be maintained in favor of the U.S.S.R. This adjustment will be reduced as the derived rate rises above the minimum rate. Once the credit in favor of the U.S.S.R. has been offset, the rate paid to U.S. flag vessels will be in accordance with the index and no further adjustments shall be made. Id. at 4.
46. U.S. Dep't. of Commerce Fact Sheet, on the 1975 Maritime Agreement, supra note 2, at 4.
47. Soviet to Increase Use of U.S. Ships for Trade, N.Y. Times, Mar. 31, 1977, at D5, col. 5; U.S. and Soviets Raise Grain-Shipping Rate and U.S. Lines Share, Wall St. J., Mar. 31, 1977, at 28, col. 4.
48. Karr, U.S., Russia Resolve Key Points of Accord on Shipping Grain to U.S.S.R. this Year, Wall St. J., Feb. 8, 1977, at 3, col. 2 [hereinafter cited as Karr].
49. See The Merchant Marine Act of 1970, which amended the Merchant Marine Act of 1936 to permit both operating and construction-differential subsidies for bulk carriers as well as liner vessels

- (regularly scheduled point-to-point service). 46 U.S.C. sec. s 1151(a), 1171(a) (1976). Liner vessels have been subsidized since the Act was enacted in 1936. See Survey: 1972, supra note 7, at 668.
50. 46 C.F.R. sec. s 294.7(b) (8)-(9) (1976).
 51. Summary from the White House Fact Sheet, at 25, in Commerce Fact Sheet, 1972 Maritime Agreement, supra note 6. The subsidy abatement feature operates to credit the U.S. government with the excess paid by the Soviet Union over the market price when the rates are between \$8.05 and \$9.00 per ton, and to give further credit for a substantial part of any amount received over \$9.00. In practice, 85 to 100 percent of the excess of the rate paid over \$9.00 has gone to abate the subsidy. Dep't. Commerce News Release No. 72-46 (Nov. 22, 1972).
 52. 46 C.F.R. sec. 294 (1976).
 53. 46 C.F.R. sec. 294.4(b) (1976).
 54. "Fixed" means chartered to carry cargo at a specific rate.
 55. See, e.g., U.S. Dep't. of Commerce Fact Sheet on the May 30, 1973 additional arrangements for the implementation of the 1972 Maritime Agreement, at 2, which indicates a subsidy abatement of \$5.71 per ton carried at the new \$16.94 rate, as compared to the abatement of \$1.14 per ton carried at the former \$10.34 rate. In November, 1973, six U.S.-flag vessels were fixed at \$28.96 per long ton, and thus received no subsidy. U.S. Dep't. of Commerce Fact Sheet on the Nov. 24, 1973 additional arrangements for the implementation of the 1972 Maritime Agreement, at 2.
 56. Soviets to Increase Use of U.S. Ships for Trade, N.Y. Times, Mar. 31, 1977, at D5, col. 5.
 57. Jurisdiction Over Legal Causes, Memorandum on U.S. Port Procedures, at VII; Jurisdiction in Soviet Ports, Memorandum on U.S.S.R. Port Procedures and Other Matters, at VII, in both Soviet Maritime Agreements, supra notes 1 and 2.
 58. See Tate Letter, 26 Dep't. of State Bull. 984 (1952); Victory Transport Inc. v. Comisaria General, 336 F.2d 354 (2d Cir. 1964), cert. denied, 381 U.S. 934 (1965). As early as 1918, Secretary Lansing stated: "Where (government-owned) vessels were engaged in commercial pursuits, they should be subject to the obligations and restrictions of trade, if they were to enjoy its benefits and profits." T. K. Thommen, Legal Status of Government Merchant Ships in International Law 40 (1962).

59. Foreign Sovereign Immunities Act, 28 U.S.C. § 1330 (1976).
60. Tate Letter, 26 Dep't. State Bull. 984, 985 (1952).
61. Merchant Shipping Code of the U.S.S.R. (1968) (W. Butler and J. Quigley, Jr., transls. and eds. 1970) at art. 20.
62. Id. at arts. 75, 77.
63. Id. at art. 76.
64. Until 1974, the U.S. share of such cargo was only 8 percent, whereas the Soviet share was 68 percent. To correct this imbalance, par. 1 of the Nov. 24, 1973 Memorandum Concerning Liner Cargo Movements under the Agreement required that all new controlled liner cargoes be offered to ships of the nation having the smaller share of liner cargoes until parity should be achieved. The need for continuing these corrective measures was noted in the May 24, 1974 Memorandum Concerning Liner Cargo Movements under the Agreement. The Dec. 6, 1974 Memorandum Concerning Liner Cargo Movements notes the imbalance appears to have been corrected. The Commerce Fact Sheet on the 1975 Maritime Agreement states that the U.S.-flag liner vessels were experiencing no difficulty in carrying their equal share of U.S. dollar freight value of cargo carryings. Supra note 45, at 4.
65. As a result of the 1970 amendment of the Merchant Marine Act of 1936 (46 U.S.C. sec. 1244 (1976)), U.S. bulk carriers are now authorized to be operated or chartered in foreign-to-foreign carriage. Before, a liner vessel had to return to the U.S. from a trip to a foreign port before going to a second such foreign port. See Survey: 1972, supra note 7, at 852 n.27. By the end of 1973, approximately 95 percent of the U.S.-bottomed trade was augmented by back-haul cargo-carrying voyages. About 20 percent of the overall U.S. shipping business in 1973 was related to the Soviet trade. Bourdon, supra note 8, at 67.
66. Karr, supra note 48. See also, Press Conference of Secretary of Commerce Peter G. Peterson, Washington, D.C., Oct. 14, 1972, in Commerce Fact Sheet, 1972 Maritime Agreement, supra note 6, at 26, 30; Survey: 1972, supra note 7, at 665.
67. Bourdon, supra note 8, at 67.
68. Karr, supra note 48.
69. Grain Agreement with the Soviet Union, July 8, 1972, 23 U.S.T. 1447, T.I.A.S. No. 7423. The agreement provided for the sale of \$750 million worth of grain to the Soviet Union on a credit basis of \$500 million, to be repaid within three years of delivery date.

70. Trade Agreement with the Soviet Union, Oct. 18, 1972, 11 I.L.M. 1321 (1972). See Soviet Commercial Relations, supra note 4, at 522-24.
71. Lend Lease Agreement with the Soviet Union, Oct. 18, 1972, 23 U.S.T. 2910, T.I.A.S. 7428. The Agreement provided that the Soviet Union would settle its \$11.1 billion war debt to the U.S. for \$722 million, with \$48 million to be paid by July 1, 1975, the balance to be paid after MFN status was granted. Two payments were made before the Agreement was voided.
72. 1974 Trade Act, 19 U.S.C. sec. 2432 (1976). See Osakwe, Legal and International Barriers to United States-Soviet Trade: Soviet Perspective, 8 VAND J. TRANS. L. 85-120 (Fall 1974).
73. 12 U.S.C.A. sec. 635 e (b) (Supp. 1976). Ironically, the Export-Import Bank was created in 1934 partly to finance the anticipated U.S.-Soviet trade. See Osofsky, U.S.-Soviet Trade: Problems and Prospects, 27 MERCER L. REV. 717, 738 (Spring 1976).
74. Press Conference of Secretary of Commerce Peter G. Peterson, Washington, D.C., Oct. 14, 1972, in Commerce Fact Sheet, 1972 Maritime Agreement, supra note 6, at 27.
75. U.S. commercial banks are permitted to treat individual Soviet borrowing entities separately in applying the 10 percent legal lending limit. Osofsky, supra note 735, at 738-39; 49 Dep't. of State Bull. 661 (1963).

THE DEFECTION OF VICTOR BELENKO: THE USE OF
INTERNATIONAL LAW TO JUSTIFY
POLITICAL DECISIONS

James P. Eyster, II