THE LAW OF FOREIGN TRADE IN THE POLISH PEOPLE'S REPUBLIC

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I

INTERNATIONAL COMMERCIAL TREATIES AND AGREEMENTS

A. Bilateral Agreements

When, after World War II, Poland was rebuilding her commercial relations with Western countries, she was able to do so on the basis of existing commercial treaties and conventions, protocols, and other agreements concluded by her during the period from 1918 to 1939. World War II had not affected their validity, and they continued to constitute a legal framework for re-establishment of trade relations. In some instances, as in the case of the United States, an exchange of notes confirming the validity of the treaty took place. In others, the mere recognition of the new Polish government implied a resumption of commercial relations on a pre-World War II basis. Treaties concluded by Poland with leading Western industrial countries included: Austria (October 11, 1933); Belgium (December 30, 1922); Great Britain (Treaty on Commerce and Shipping, November 26, 1923, and Trade Agreement, February 27, 1935); Denmark (Treaty on Commerce and Shipping, March 22, 1924, and Convention on Trade Relations, January 10, 1934); Canada (July 3, 1935); France (November 10, 1923); Netherlands (May 30, 1924); Sweden (October 21, 1933, July 3, 1936, and post-war Agreement Concerning Exchange of Goods of March 18, 1947, and Supplemental Protocol on Exchange of Goods and Payments of April 22, 1948); Switzerland (June 26, 1922), and the United States (June 15, 1931).¹ These treaties "provide a legal framework for possible but generally unspecified trade, the framework covering matters such as tariffs, export and import licensing, quotas and exchange control."²

According to Stanislaw Dlugosz, the provisions of the pre-war treaties were included, either partially or in their entirety, in bilateral trade agreements that post-war Poland later concluded with the capitalist countries. One example is the long-term agreement with the Benelux countries of 1967 in which the mutual application of the most-favored-nation clause, provided for in the 1922 treaty with Belgium and the 1924 treaty with the Netherlands, was confirmed.³

Because her present economic system rests on a centrally-planned economy,

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¹ Compiled on the basis of KECK, SKOROWIDZ OBOWIAZUJACYCH PRZEPISOW PRAWNYCH NA DZIEŃ 31 GRUDNIA 1969 (1971).

² Hoya, *The Legal Framework of Soviet Foreign Trade*, 56 MINN. L. REV. 8 (1971).

³ Dlugosz, *Zalozenia umow gospodarczych z rozwinietymi krajami kapitalistycznymi*, 26-27 PRAWO W HANDLU ZAGRANICZNYM 6 (1966).

Poland bases her foreign trade not on treaties which must be ratified and thus become the binding law, but on bilateral agreements which do not require ratification, and must not be published in the official gazette. As C.M. Schmitthoff points out, bilateral agreements follow the socialist pattern. They are concluded for a limited period of time (usually for five years), they establish lists of goods to be exported to or imported by each party to the agreement, and they fix quotas annually in protocols.⁴ Operation of the agreement is subject to review by a mixed commission. Recent agreements concluded by Poland with France (December 23, 1969),⁵ the Benelux countries (September 8, 1971),⁶ West Germany (June 23, 1970),⁷ Italy (February 18, 1970),⁸ and Great Britain (April 24, 1971), once again reaffirm application of the most-favored-nation clause on the basis of reciprocity. In addition, all of the agreements mentioned above, except that with France, provide that the provisions of the GATT shall be applied.⁹

Since 1965 the subject matter of economic agreements has been expanded to include economic, industrial, and scientific-technical cooperation. Thus far, no uniform pattern has been established. In some instances separate agreements on cooperation were concluded; in others pertinent provisions were incorporated in general trade agreements. Presently, separate agreements with the Belgium-Luxembourg Union (1965), Italy (1965), the Netherlands and Denmark (1967), Sweden (1969), and most recently with France (October 5, 1972), are in force. Provisions on cooperation are included in agreements with Austria¹⁰ and Spain.¹¹

The recent Agreement on Development of Economic, Industrial, Scientific, and Technical Cooperation between Poland and France, signed on October 5, 1972, provides for broad cooperation. There is particular emphasis on the fields of production, technology, research, and training of technical personnel, as well as on formation of Polish-French joint ventures in other countries.¹² Of particular interest is a new Agreement on Development of Economic, Industrial, Scientific and Technical Cooperation between Poland and Great Britain signed on March 20, 1973. Its characteristic feature is that it is concluded for a period of ten years (until 1982). It provides for cooperation on a most liberal basis. Particular emphasis is placed on development of industrial cooperation. The Agreement creates broad possibilities for development of cooperation between Polish and British industrial enterprises as well as for scientific and technical collaboration.¹³ A special

⁴ It is interesting to note that the only commercial treaty Poland has concluded since 1945 is the Treaty on Commerce with Japan, signed on April 29, 1958.

⁵ 1970 HANDEL ZAGRANICZNY No. 4, at 367.

⁶ 1971 HANDEL ZAGRANICZNY No. 12, at 448.

⁷ 1970 HANDEL ZAGRANICZNY No. 10, at 324.

⁸ 1970 HANDEL ZAGRANICZNY No. 5/6, at 167.

⁹ Zaremba, *Umowy i komisje mieszane—institutionalne formy współpracy gospodarczej Polski z Europą Zachodnią*, 1972 HANDEL ZAGRANICZNY No. 9, at 324.

¹⁰ *Id.*

¹¹ Długosz, *supra* note 3.

¹² Trybuna Ludu, Oct. 6, 1972, at 1.

¹³ Trybuna Ludu, Mar. 21, 1973, at 3.

intergovernmental agreement between France and Poland was signed on August 1, 1972, providing for cooperation in the production of both city and intercity buses. Deliveries made in accordance with this agreement will be accorded the most preferential treatment as far as customs, duties, and payments are concerned. On August 1, 1972, the French firm, Berliet, signed a contract with Polish Motor Works in Jelcz in order to implement the intergovernmental agreement.¹⁴

B. Mixed Commissions

The tasks of mixed commissions provided for in the bilateral agreements include reviewing the operation of the agreement and offering recommendations for development of economic cooperation and commercial relations.¹⁵ However, important changes relating to the scope of activities and organization of mixed commissions have been introduced in the new long-term agreements. As S. Dlugosz writes:

they undergo presently a distinct transformation from a body representing administrative apparatus seeking solutions aiming at alleviating or smoothing out difficulties arising during the implementation of agreements into an institution consisting next to representatives of administration—representatives of industry, trade and financial circles.¹⁶

The agreements provide for setting up intergovernmental, or mixed, commissions to foster economic cooperation. The Intergovernmental Commission established pursuant to the Polish-French Agreement on Cooperation of October 5, 1972, is composed of a chairman, a deputy chairman, a secretary, and members. Ministers of the two countries are co-chairmen. Regular meetings of the Commission are to be held once a year, alternately in France and Poland.¹⁷ It has been said that because the commissions have failed to meet frequently, their function has been limited, and it is therefore difficult to evaluate their effectiveness.¹⁸

II

SOURCES OF FOREIGN TRADE LAW

The principal source of foreign trade law is article 7, paragraph 2, of the Constitution of the Polish People's Republic of July 26, 1952. It legalized the state monopoly of foreign trade that had, in fact, existed since the end of World War II. The sources next in importance are the five-year plans of national, social, and economic development, which formulate foreign trade policy and goals.

Provisions implementing both the constitutional principle of state monopoly of

¹⁴ 1972 HANDEL ZAGRANICZNY No. 10, at 399.

¹⁵ See, e.g., the agreement with France of Dec. 23, 1969.

¹⁶ Dlugosz, *New Elements in Some Long-Term Agreements*, 1971 HANDEL ZAGRANICZNY No. 1, at 14.

¹⁷ Trybuna Ludu, Oct. 6, 1972, at 1.

¹⁸ Zaremba, *supra* note 9, at 325.

foreign trade and the national plans are contained in numerous legal regulations, which may be divided into two groups. The first of these deals with the organization and functioning of the foreign trade apparatus, and with the administrative aspects of foreign trade, while the second group pertains to substantive law and the rules of procedure applicable to foreign trade transactions.

Regulations in the first group include (1) the Law of February 10, 1949 on Changes in the Organization of Chief Authorities of National Economy, which established the Office of the Minister of Foreign Trade; (2) the Order of the Council of Ministers of July 9, 1971 Concerning Functions of the Minister of Foreign Trade and His Powers in the Field of Coordination of Economic Relations with Foreign Countries; (3) the Decree of October 26, 1950 Concerning State Enterprises; (4) the Order of the Council of Ministers of January 10, 1952 Concerning the Establishment and Maintenance of the Register of State Enterprises, especially the provisions of section 15(3) making the Polish Chamber of Foreign Trade responsible for keeping and maintaining the register of State enterprises for foreign trade; (5) the Decree of September 28, 1949 Concerning the Establishment of the Polish Chamber of Foreign Trade; (6) the Law of July 14, 1961 Concerning Custom Duties, and the Order of the Council of Ministers of March 27, 1962 Concerning Import-Export Licenses; (7) the Law of March 28, 1952 Concerning Foreign Exchange Control, and pertinent implementing regulations; and (8) the Law of December 2, 1958 Concerning Banks and implementing regulations related to banking transactions.

The list of regulations belonging to the second group is headed, as far as substantive law is concerned, by the Civil Code of April 23, 1964. It also includes, according to article VI of the Law of April 23, 1964 Concerning the Introductory Provisions of the Civil Code, provisions of the Commercial Code of June 27, 1934, relating to limited liability and joint stock corporations (articles 158-497) and the merchant's right to retain possession of the debtor's chattel and securities (articles 518-24), as well as to contractual compensation of losses (article 531). Article VI also contains a provision relating to limitation of the seller's responsibility for defects in goods sold in foreign trade transactions. Sources of the rules of procedure applicable to trade law are contained in international conventions on procedure and arbitration, in articles 1096-1145 (provisions concerning international procedure) and articles 695-715 (arbitration) of the Code of Civil Procedure of November 17, 1964, and in rules of procedure in Polish arbitration courts.

III

FOREIGN TRADE MECHANISM

A. Foreign Trade Monopoly and Its Administration

The Constitution of the Polish People's Republic of July 22, 1959, in article 7, paragraph 2, states that "the State has monopoly of foreign trade." Aside from this

short sentence embodying the socialist doctrine that "the state monopoly of foreign trade is the only form of socialist organization of economic relations with foreign countries,"¹⁹ there is no legislation providing a more detailed definition of the term "state monopoly of foreign trade." According to general opinion, foreign trade monopoly means that the operation of foreign trade is the sovereign right of the state, and that the state controls and directs, by plan, the entire foreign trade of the country. It determines which legal or natural persons have the right to act in foreign trade relations. It also implies that the total turnover of goods is directed by the state plan, and that control over the activities of foreign trade organizations is exercised by the government through the Minister of Foreign Trade, by the granting of export and import licenses, as well as within the framework of foreign exchange control. The foreign trade plan is a part of the national economic plan, prepared by the government in compliance with the directives of the Central Committee of the Polish Worker's Party, and approved by the Polish Diet (Sejm).

Implementation and fulfillment of the foreign trade plan is the responsibility of the Minister of Foreign Trade. His functions and responsibilities are defined in the Order of the Council of Ministers of July 9, 1971, Concerning Functions of the Minister of Foreign Trade and His Powers in the Field of Coordination of Economic Relations with Foreign Countries.²⁰ The Order was issued as a result of economic reforms, introduced after January 1, 1971, aimed at the decentralization of foreign trade in order to insure closer, more direct contacts between Polish producers and their foreign customers.²¹

In broad terms, the Minister of Foreign Trade has responsibility for ensuring the achievement of national economic goals in the area of foreign trade in accordance with the national economic plan and foreign policy. He coordinates the foreign trade activities of other governmental and non-governmental agencies and organizations within the framework of the national economic plan, as well as supervising implementation of the plan. The main functions of the Minister of Foreign Trade include: (1) formulation of the country's foreign policy; (2) cooperation in the preparation of plans for the development of industries important to foreign trade in regard to Poland's participation in the international division of labor; (3) administration of foreign currency reserves assigned for foreign trade; (4) coordination of international payments connected with foreign trade; (5) implementation of customs duty policy; (6) granting import and export licenses; (7) concluding and signing international trade agreements, in compliance with the authorization of the Council of State or the Council of Ministers, and supervising their implementation; (8) representing Polish economic interests in international organizations; (9) formulation of principles for the promotion of Polish goods;

¹⁹ Gelberg & Majewski, *Monopol handlu zagranicznego w swietle Konstytucji Polskiej Rzeczypospolitej Ludowej*, 1954 PANSTWO I PRAWO No. 2, at 269.

²⁰ 1971 DZIENNIK USTAW (JOURNAL OF LAWS) No. 19, text 183 [hereinafter cited as Dz. U.].

²¹ POLSKA IZBA HANDLU ZAGRANICZNEGO (POLISH CHAMBER OF FOREIGN TRADE), INFORMATION FOR BUSINESSMEN TRADING WITH POLAND, INFORMATION PUBLICATIONS SERIES 15 (1972).

(10) direction and supervision of activities of foreign trade organizations and Polish missions abroad; (11) granting permission for Polish enterprises to conduct economic activities abroad; and (12) granting permission for foreign natural and juridical persons to conduct economic activities in Poland, and determining the object and extent of this activity, and the conditions under which this activity may be carried out.

B. Foreign Trade Organizations

The foreign trade monopoly is realized through special trade organizations, which have been authorized by the Ministry of Foreign Trade to conduct foreign trade. Until recently, they were the only medium through which a foreign trader could conclude foreign trade transactions. Their function may be defined as that of a middleman. However, following the practices of Hungary and East Germany, Poland has authorized some larger industrial enterprises to deal directly with foreign exporters and importers. To facilitate this innovation, some foreign trade organizations have been transferred from the jurisdiction of the Ministry of Foreign Trade to the jurisdiction of particular ministries.

According to Polish sources, there are forty-four foreign trade organizations, of which fifteen are directly subordinated to the Ministry of Foreign Trade and the remaining twenty-nine are supervised by other ministries.²² In addition to organizations engaged in trading, there are enterprises providing various services connected with foreign trade—advertising, consulting, information, public relations, international transport and forwarding, expert control of import and export goods, and the like. There are also commercial agencies representing foreign firms in Poland. Foreign trade organizations (hereinafter referred to as foreign trade enterprises) are established as state-owned enterprises, cooperatives, and their unions, or as corporations under commercial law (limited liability or joint-stock companies).

According to the Decree of October 26, 1950,²³ State-owned foreign trade enterprises are chartered, organized, reorganized, and liquidated by the Minister of Finance or by other competent ministries, in agreement with the Minister of Finance, and are governed by the provisions of the Decree, and sections 33-43 and section 128, paragraph 2 of the Civil Code of 1964. They have the status of juridical persons and operate on the basis of business accountability (*rozrachunek gospodarczy*). As juridical persons they have legal capacity. They also have capacity to enter into legal transactions, that is, they can acquire private rights and undertake legal obligations. They are liable only for their own obligations, and not for those of the State, or of other organizations. On the other hand, both the Decree (section 12) and the Civil Code (section 40) expressly provide that the State is not responsible for the obligations of foreign trade enterprises.

Contracts and other agreements, both oral and written, concerning financial

²² *Id.* at 18.

²³ Consolidated text in 1960 Dz. U. No. 18, text III.

and property rights and obligations (*prawa i obowiązki majątkowe*) are valid only if they are signed by two persons, who include the director of the enterprise or his deputies, and/or other duly authorized persons. According to the Civil Code (section 39, paragraph 1) those who have concluded a contract in the name of an enterprise without authorization, or have otherwise exceeded their powers, must return everything they have received from the other party and make good all losses incurred by that party.

State-owned foreign trade enterprises must be enrolled in the Registry of State Enterprises maintained by the Polish Chamber of Foreign Trade. The following information has to be recorded: name of the enterprise, its seat, its charter, the object of its activities, its funds, and names of persons authorized to represent the enterprise.

Cooperative foreign trade enterprises are governed and operate in accordance with the Law of February 12, 1961 on Cooperatives and Their Unions,²⁴ and are established, reorganized, and liquidated according to provisions of their charter and by-laws. Their status as a juridical person is based on the Law on Cooperatives as well as on the Civil Code (section 33, paragraph 1 [3]). They must be registered in the Registry of Cooperatives and their Unions. The register is maintained by courts of jurisdiction.²⁵ Furthermore, in order to conduct foreign trade activities, cooperative enterprises must have permission from the Ministry of Foreign Trade.

Cooperative enterprises licensed to conduct foreign trade are formed by unions of producer cooperatives (such as agricultural, horticultural, and handicraft) in order to sell their products. Three such foreign trade enterprises are: *Coopexim-Cepelia*, formed by the Central Board of Work Cooperatives; *Hortex*, Company for Foreign Trade of the Union of Horticultural Cooperatives; and *Polcoop*, Foreign Trade Enterprise of the Central Agricultural Union of Cooperatives *Samopomoc Chlopska*.²⁶

In spite of the fact that limited liability and joint stock companies are capitalistic in form, they exist in Poland. However, they do not "represent private economic initiative . . . [but] interests of a single stockholder, the State."²⁷ Until recently these companies "were composed of a rather limited number of service companies of commercial agencies and a large transfer and shipping firm which continued to function (despite its nationalization) under the name of the old 'International Shipping and Transfer C. Hartwig Co.'"²⁸ The number of joint stock companies has increased considerably. They are formed by smaller foreign trade enterprises,

²⁴ 1961 Dz. U. No. 12, text 61.

²⁵ Order of the Council of Ministers of Jan. 10, 1952, on Organization of and Keeping Register of State Enterprises, 1952 Dz. U. No. 3, text 22.

²⁶ POLSKA IZBA HANDLU ZAGRANICZNEGO, *supra* note 21, at 32, 35, 40.

²⁷ Grzybowski, *The Foreign Trade Regime in the Comecon Countries Today*, 4 N.Y.U.J. INT'L L. & POL. 183, 187 (1971).

²⁸ *Id.*

which become their shareholders, in order to handle their foreign trade transactions and represent their interest exclusively.²⁹

The limited liability and joint stock companies are chartered and organized in accordance with provisions of the Commercial Code of 1934. They must register in the registry maintained by the County Court (*sąd powiatowy*) for the City of Warsaw if their offices are in Warsaw, and at county courts in Gdansk, Katowice, Lodz, and Szczecin if their offices are located in any of those jurisdictions.

In general, there are two types of foreign trade enterprises. Those belonging to the first type are organized by associations of industrial units engaged in the same or similar economic activities. These associations have the status of juridical persons and operate on the principle of business accountability. For the purpose of conducting foreign trade activities, they may create separate foreign trade offices within their organizational framework, or they may form their own foreign trade enterprises as an integral part of their organizational structure. Their right to engage in foreign trade activities is based on a license issued by the Ministry of Foreign Trade, which exercises control over their activities. Enterprises of the second type are formed for the purpose of handling import and export of specific commodities and goods, or of providing specific services. Foreign trade enterprises of both types are listed in a publication issued by the Polish Chamber of Foreign Trade.³⁰

C. Foreign Trade Representation Abroad

Establishment, maintenance, and promotion of economic relations with foreign countries is one of the main functions of the Ministry of Foreign Trade. In fulfilling this function the Ministry of Foreign Trade is represented abroad by commercial counsellors, attachés, consuls, and vice-consuls. They are appointed and recalled by the Minister of Foreign Affairs on recommendation of the Minister of Foreign Trade, and they enjoy diplomatic privileges and immunities.

Duties of trade representatives include promoting economic and trade contacts with a given country, and assisting its businessmen in establishing contacts with Polish trade organizations, as well as ensuring proper execution of trade contracts and agreements between Poland and the country of their accreditation.³¹

D. Representation of Foreign Firms in Poland

1. *Polish Commercial Agency Enterprises*

There are ten Polish specialized commercial agency enterprises licensed to represent foreign firms in Poland. They are chartered and organized as joint stock

²⁹ *Id.* at 188.

³⁰ POLSKA IZBA HANDLU ZAGRANICZNEGO, *supra* note 21, at 17.

³¹ *Id.* at 47. According to Bohdanowicz, Polish firms have set up twenty-two of their own corporations and branches abroad. They are chartered according to the law of the country of their registration. In addition, eighty-three offices of Polish firms have been organized in foreign countries. 1970 HANDEL ZAGRANICZNY No. 11, at 360.

companies.³² Commercial agencies provide their services either on the basis of a long-term contract or on a commission basis, or possibly even on the basis of a gentleman's agreement.³³

Usually the services provided by the agencies include presentation of offers, assistance in trade negotiations, advertising and market research, technical services, organization and maintenance of consignment stores, exhibitions, and so on.³⁴ The common method of remunerating commercial agencies is by a commission fixed in accordance with the rates prevailing in international transactions in a given country.

2. *Branch Offices of Foreign Firms in Poland*

The Polish government has been extremely reluctant to issue permission to foreign firms to open branch offices in Poland. However, if granted, the permission limits the scope of activity of the branch office to providing technical information and services and maintaining parts stores, with the exclusion of buying, selling, and other commercial activities. If issued, such permission is for a one year period only. It should be noted, however, that this policy of excluding foreign firms from commercial activities in Poland has not been applied to the travel industry. This is particularly true with regard to foreign air lines, which have generally been permitted to open their offices in Poland on a reciprocity basis.

Recent developments indicate that Poland may reverse its policy as regards granting foreign firms permission to establish permanent offices in Poland for the purpose of carrying out commercial activities. During the Session of the Joint American-Polish Trade Commission, held on November 4-8, 1972, Poland expressly stated that the policy would be changed. Furthermore, it was agreed that any problems arising out of the accreditation procedures would be resolved by the Joint American-Polish Trade Commission.³⁵ Soon after the Commission meeting, New York's Chase Manhattan Bank was granted permission to open its office in Warsaw.

E. Polish Chamber of Foreign Trade

The Polish Chamber of Foreign Trade was established in 1949 to develop and strengthen economic relations between Poland and foreign countries.³⁶ Its main functions include (1) maintaining and developing relations with international and foreign organizations and institutions concerned with foreign trade, (2) conducting foreign market research, and (3) investigating the world economic situation and prices of goods which are major Polish import or export items. The Chamber provides, at the request of the Polish government, expert opinions and recommendations relating to foreign trade and to proposed legislation and international agree-

³² POLSKA IZBA HANDLU ZAGRANICZNEGO, *supra* note 21, at 47.

³³ *Id.*

³⁴ *Id.*

³⁵ U.S. DEP'T OF COMMERCE, FACT SHEET, JOINT AMERICAN-POLISH TRADE COMMISSION, 2d sess., Nov. 4-8, 1972, at 4.

³⁶ Decree of Sept. 28, 1949, on the Establishment of the Polish Chamber of Foreign Trade, 1949 Dz. U. No. 53, text 403, *as amended*.

ments. (Especially important so far as Western traders are concerned is the Chamber's duty to collect and publish Polish practices and usages in the areas of foreign trade and sea transport, as well as to issue certification of their current validity.) It also collects information concerning foreign laws and foreign and international practices for use by the Polish foreign trade organizations. In addition, the Chamber is authorized to issue certificates of origin for Polish export goods, to verify invoices and other documents required for handling foreign trade turnover, and to appoint its own experts to deal with the special problems that arise with respect to technology, transportation, insurance, and language differences. When requested by a foreign enterprise, it also recommends and evaluates Polish enterprises engaged in inspection of the quality, quantity, and volume of merchandise. Registration of state foreign trade enterprises is also the responsibility of the Chamber.

Promotional activities of the Chamber consist of the preparation of publications, the organization of lectures and international exhibitions and trade fairs in Poland, and the representation of Polish industry in similar affairs abroad. The Chamber also "cooperates and concludes agreements with foreign conciliatory institutions [and] represents the interests of Polish firms at the Court of Arbitration . . ."³⁷ It maintains its own Court of Arbitration as well. The organization, jurisdiction, and procedure of the court is discussed elsewhere in this article.

The Chamber consists of regular, corresponding, and honorary members. Regular members *ex officio* are all foreign trade organizations, Narodowy Bank Polski (National Bank of Poland); Bank Handlowy S.A. (Bank of Commerce, Ltd.) in Warsaw; Państwowy Zakład Ubezpieczeń (State Insurance Agency); Towarzystwo Ubezpieczeń i Reasekuracji Warta S.A. (Insurance and Reinsurance Company Warta Ltd.) in Warsaw; Polish maritime shipping, forwarding and port organizations; and associations of exporters and importers. Other institutions and domestic enterprises may be admitted by the Presidium of the Chamber to regular membership. However, any decision on such a question must be approved by the Minister of Foreign Trade. Both Polish and foreign juridical and natural persons who are willing to assist the Chamber in fulfilling its tasks may be elected by the Presidium of the Chamber as corresponding members. Honorary membership is bestowed on natural persons in recognition of especially important contributions by them to the development of Polish foreign trade. Their election is subject to approval by the Minister of Foreign Trade.

The Chamber is governed by the General Assembly, the Council of the Chamber, the Presidium, and the President. The latter is a permanent chief executive officer of the Chamber, appointed and recalled by the President of the Council of Ministers upon the recommendation of the Minister of Foreign Trade. The functions and responsibilities of the President and the collective governing bodies are

³⁷ POLSKA IZBA HANDLU ZAGRANICZNEGO, *supra* note 21, at 20.

defined in the By-Laws of the Chamber, enacted by Resolution No. 149 of the Council of Ministers of April 13, 1959.³⁸

Two factors are responsible for the character and organizational structure of the Polish Chamber of Foreign Trade. The first is the state monopoly of foreign trade, and the second is the fact that the regular members are state, cooperative, and other social enterprises. Due to these factors, the Chamber was organized as a semi-autonomous instrument of the government, subject to control and supervision by its agencies. This control is evident in the right of the government to appoint and recall the Chamber's President and to approve the other executive offices, who are elected either by the General Assembly or by the Council. Representatives of various ministries and state committees attend meetings of the General Assembly and Presidium of the Chamber, with the right to vote. The Chamber's budget, as well as other financial decisions, is subject to the approval of the Minister of Foreign Trade.

F. Banks Serving Foreign Trade

The post-World War II transformation of Poland into a socialist state naturally affected the Polish banking system. The Decree of October 25, 1948, on Reform of the Banking System legalized the state monopoly of banks which had existed de facto since 1945,³⁹ and the Law of April 13, 1960, on Banks reaffirmed it.⁴⁰

There are three banks in Poland authorized as foreign exchange banks. They are Narodowy Bank Polski (National Bank of Poland), which is a state bank, Bank Handlowy w Warszawie S.A. (Commercial Bank of Warsaw, Ltd.), and Bank Polska Kasa Opieki (Bank PKO, Ltd.). The two latter banks are organized in the form of joint stock companies with the state as a single stockholder.

1. *Narodowy Bank Polski*

The National Bank of Poland, established in 1945, operates as a distinct legal entity under the provisions of the Law on the National Bank of Poland.⁴¹ It is the central bank and has exclusive authority to issue currency. It is charged with the control of money and credit and with responsibility for financial implementation of the national economic plan. As a foreign exchange bank it has the right to deal with, and conclude transactions in, foreign exchange and to grant licenses to foreign trade organizations so that they may deal in foreign exchange. It supervises operations of other banks pertaining to exchange rates. Finally, the Bank is authorized to grant and receive foreign exchange credits, as well as to accept and extend guaranties connected with foreign trade transactions. The credits accepted and guaranties given by the Bank may be secured by the Bank's assets.

³⁸ Consolidated text in 1964 MONITOR POLSKI (OFFICIAL GAZETTE) No. 29, text 130 [hereinafter cited as M.P.]

³⁹ Consolidated text in 1951 Dz. U. No. 36, text 279.

⁴⁰ 1969 Dz. U. No. 20, text 121.

⁴¹ 1958 Dz. U. No. 72, text 356.

2. *Bank Handlowy w Warszawie S.A.*

Bank Handlowy w Warszawie S.A. is organized in the form of a joint stock company. It is described by some writers as an auxiliary of the Narodowy Bank Polski. The organizational structure and scope of activities are set forth in the by-laws, as limited by the Law on Banks and regulations issued by the Minister of Finance or other government agencies pursuant to the Law on Banks, or to other statutory provisions. Its banking operations are limited exclusively to foreign trade dealings. They include financing and providing credits to Polish foreign bank accounts and supervising their banking operations.⁴² Due to reforms concerning the financing of industrial investments, and especially due to the liquidation of the Investment Bank in 1969, financing and crediting of investment activities of foreign trade enterprises and enterprises supervised by the Ministry of Foreign Trade have become the responsibility of the Bank Handlowy.⁴³

In particular, the activities of the Bank Handlowy include participation in the organization of trading companies in Poland or abroad, financing and giving credits to them, and supervising their banking operations—principally buying and selling foreign currency. The Bank has the right to issue securities; to accept, issue, and collect bills of exchange; to grant and accept warrants and securities; and to undertake other obligations.⁴⁴ It is also within the scope of the Bank's activities to negotiate long-term loans with foreign banks for the purpose of financing Polish industrial enterprises. (Such a loan was negotiated by the Bank with Lloyds Bank of London on September 28, 1969. The purpose of the loan was to buy British machinery and other equipment.⁴⁵) The Bank Handlowy w Warszawie maintains a well-organized network of banking correspondents in various countries around the world.

3. *Bank Polska Kasa Opieki S.A.*

The Bank of Polska Kasa Opieki S.A., established in 1929 as an affiliate of the Post Office Savings Bank in Warsaw, provides the usual banking services and facilities. These include purchase and collection of checks and other foreign instruments of payment, purchase and sale of foreign currency, maintenance of interest-bearing checking accounts in foreign currencies, and the rendition of other services connected with trade between Poland and foreign countries in which the Bank PKO has its own branches, affiliated institutions, or correspondents. In addition to banking services, the Bank PKO is engaged on a large scale in the so-called "inland export scheme," under which a recipient in Poland may purchase goods—either imported or made in Poland, but earmarked for export—if the goods are paid for in foreign currency.⁴⁶

⁴² Order of the Minister of Finance of Oct. 26, 1966, 1966 M.P. No. 59, text 283.

⁴³ Regulation of the Council of Ministers of Oct. 23, 1969, on Rules and Procedure for Liquidation of the Investment Bank, 1969 Dz. U. No. 31, text 252.

⁴⁴ POLSKA IZBA HANDLU ZAGRANICZNEGO, *supra* note 21, at 57.

⁴⁵ 1970 HANDEL ZAGRANICZNY No. 1, at 9.

⁴⁶ POLSKA IZBA HANDLU ZAGRANICZNEGO, *supra* note 21, at 58.

IV

THE TREATMENT OF FOREIGN TRADERS AND INVESTORS

A. Status of the Foreign (Western) Trader
in Polish Courts and Arbitration

The status of a foreign trader in Polish courts and arbitration is governed by the provisions of the Civil Procedure Code, Part III, Provisions Concerning International Procedure, articles 1096-1145. These provisions are based on three principles—priority of international agreements, equality of foreigners regarding judicial protection, and recognition of the jurisdiction of foreign courts and other foreign agencies and of their decisions and documents.⁴⁷

The first principle is embodied in article 1096 of the Civil Procedure Code which states that “provisions of this Part shall not apply if an international agreement, to which the Polish People’s Republic is a party, provides otherwise.” An international agreement, within the meaning of this article, is any bilateral agreement concerning legal aid,⁴⁸ as well as multilateral agreements dealing with questions of international procedure. Poland is a party to several multilateral agreements on civil procedure, such as the Hague Conventions of July 17, 1905, and March 1, 1945, the Convention on Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (New York Convention), and the European Convention on International Commercial Arbitration (Geneva Convention) of April 21, 1961.

As to the relation between an international agreement and Polish law, it is agreed among the Polish legal writers that an international agreement, as *lex specialis*, takes precedence over the Polish law, as *lex generalis*. Accordingly, the Civil Procedure Code applies only to the nationals of (1) countries with which Poland has not concluded a bilateral agreement and (2) countries which are not parties to a multilateral agreement to which Poland is a party. It is also applicable to procedural matters not dealt with by bilateral or multilateral agreements to which Poland is a party.⁴⁹

The second principle—the principle of equality—is the precept that foreign nationals and foreign legal entities enjoy treatment equal to that enjoyed by Polish citizens with regard to access to Polish courts, provided the Polish court has jurisdiction. A foreign national has both civil procedural capacity (*zdolność sądowa*) and active civil procedural capacity (*zdolność procesowa*).

Whether the Polish courts have jurisdiction depends upon the subject matter of the litigation. Disputes arising from foreign trade transactions come within the

⁴⁷ Jodlowski, *Zasady przewoźne polskiego międzynarodowego prawa procesowego*, KSIĘGA PAMIĄTKOWA KU CZCI KAMILA STEFKI 120 (1967).

⁴⁸ Three agreements with Western countries are presently in force: Convention on Mutual Legal Aid between Poland and Austria of Mar. 19, 1924; Convention Regarding Legal Proceedings in Civil and Commercial Matters between Poland and Great Britain of Aug. 21, 1931; and Accord Regarding the Facilitation of Application of the Hague Convention of Mar. 1, 1954, on Civil Procedure, concluded by Poland and France on Apr. 5, 1962.

⁴⁹ Jodlowski, *supra* note 47, at 128.

jurisdiction of Polish courts if (1) the defending party resides or has its seat in Poland on the day the summons is served; (2) the defending party has property or assets in Poland; or (3) the subject matter of the dispute is situated in Poland, or an obligation originated in or is to be performed in Poland.⁵⁰ In cases involving possession of, and property rights in, immovables situated in Poland, as well as lease or tenancy of such immovables, the jurisdiction of Polish courts is exclusive. According to article 1104 of the Civil Procedure Code, the parties to a contract may agree in writing to submit an existing or future dispute, arising from the contract, to the jurisdiction of Polish courts. By the same token, it should be noted that with regard to contractual obligations, a Polish entity may conclude with its foreign partner a written agreement excluding any dispute under the contract from the jurisdiction of Polish courts in favor of a court of another state, if such change is effective according to the law of the other state.⁵¹

The civil procedural capacity and the active procedural capacity of foreign nationals, foreign legal entities, and foreign organizations which do not enjoy the status of legal entities are decided according to the provisions of the Polish Civil Procedure Code (article 1117, paragraph 1), as *lex fori*. Thus, civil procedural capacity is enjoyed by any person or legal entity which has legal capacity (article 64); and active civil procedural capacity is enjoyed by any person or entity which has the capacity to enter into legal transactions (article 65).

A foreign party to civil proceedings may be represented by an attorney practicing in the country of which he is a citizen, and in the case of a legal entity, in the country of its seat. However, this right is applicable only on the basis of reciprocity. Also based on the principle of reciprocity are provisions of the Polish Civil Procedure Code regarding costs of the proceedings. As a rule, a foreign plaintiff is required, upon the motion of the defendant, to give security for costs. However, this requirement may be waived if the plaintiff's *lex patriae* does not compel a Polish national to give such a security. Apart from this instance, security for costs is not required if the foreign plaintiff resides or has property or assets in Poland, has been exempted from paying costs, or if the parties have agreed to submit their dispute to the jurisdiction of Polish courts (articles 1119 and 1120).

Conditions under which decisions of foreign courts may be recognized and enforced in Poland are set forth in articles 1145-53 of the Civil Procedure Code. They are based on the principle of reciprocity, that is, a foreign decision may be recognized and enforced only if decisions of Polish courts are recognized and enforced in the country where the decision was rendered. There are separate provisions dealing with recognition and with enforcement. Accordingly, a foreign court judgment, a foreign compromise, or a decision of a foreign arbitration tribunal may be recognized, provided (1) it is final in the country in which it was rendered; (2) the case does not fall, according to Polish law or an international agreement, under

⁵⁰ Code of Civil Procedure, art. 1103.

⁵¹ *Id.*, art. 1105.

the exclusive jurisdiction of Polish courts, or the courts of another country; (3) the Polish party has not been deprived of the possibility of a defense in the proceedings of the foreign court; (4) the case has not been finally settled by the Polish courts or it was not initiated in competent Polish courts before the foreign court judgment became final; (5) the judgment does not contradict basic principles of the Polish legal order; and (6) in a case in which a Polish law should have been applied, the judgment is based on the Polish law, or on a foreign law if it does not differ essentially from the Polish law. Recognition of a foreign decision by a Polish court is not dependent upon reciprocity if, according to Polish law, the case belongs to the exclusive jurisdiction of a foreign court.

Petition for recognition may be filed by any person who has a legal interest in such recognition. It should be accompanied by an official copy of the decision in the original language, as well as its certified Polish translation, and certification to the effect that it is final. The petition for recognition is heard by a panel of three professional judges with the participation of the parties and a public prosecutor, and their decision can be appealed.

According to the Civil Procedure Code, foreign judgments and arbitral awards are enforceable if an international agreement so provides. If such an agreement does not provide otherwise, the judgment or arbitral award must have been rendered after the agreement became effective. Also, the judgment must be enforceable in the country where it was rendered. Petition for enforcement of a judgment is also heard by a panel of three professional judges. After the decision allowing the enforcement of a judgment becomes final, it authorizes execution proceedings.

B. Status of Foreign Companies and Investors

The present trend toward expanding East-West economic relations revived an interest in investments in socialist countries of Eastern Europe among Western, and especially among American, businessmen. However, the question arises whether the political and economic systems of the East European countries, based on socialized ownership and management of the means of production and industry, would permit the establishment of industrial enterprises with the participation of foreign investors who, quite naturally, would demand co-ownership of the enterprise, a voice in its management, and the right to transfer profits abroad free of currency controls. A compromise solution has been found by Yugoslavia: a foreign firm which has invested in a Yugoslav enterprise does not become a co-owner of the enterprise, but it nevertheless participates in its management and profits.

While some Western writers maintain that such a form of investment in Poland requires special legislation, others state that "Polish enterprises claim that they can enter into equity joint ventures on an ad hoc basis."⁵² A survey of the existing Polish legislation seems to support the latter point of view. According to the pro-

⁵² R. KRETSCHMAR & R. FOOR, *THE POTENTIAL FOR JOINT VENTURES IN EASTERN EUROPE* 10 (foreword) (1972).

visions of sections 161 and 310, paragraph 3, of the Commercial Code of 1934, which are still in force,⁵³ foreign limited liability and joint stock companies may be granted permission to conduct their activities in Poland. The permission is granted by the Minister of Foreign Trade, who at the same time determines the object, extent, and conditions under which the activities may be conducted.⁵⁴ Thus far, these provisions have not been applied, and no foreign company has been permitted to engage in commercial activities. That the pertinent provisions of the Commercial Code have remained in force, in spite of the fact that the whole system of civil and commercial law has been reformed and adapted to the communist legal doctrine, indicates that the possibility of letting foreign companies operate exists, at least in theory.

The meeting of the Joint American-Polish Trade Commission of November 4-8, 1972, suggests that Poland has "expressed a strong interest in finding American [as well as Western European] partners for long-term joint economic projects . . . ." To achieve this objective "the Polish delegation proposed various alternatives which include shared profit and shared management responsibilities."⁵⁵ The time may come when the Polish government will be more amenable to accepting other alternatives which will allow foreign investors a fuller share of control over their enterprises.

V

FOREIGN TRADE ARBITRATION

A. Legal Framework

Submission to arbitration of disputes arising from foreign trade transactions between a Polish foreign trade organization and a Western trader depends upon the will of the parties. It has been the policy of the Ministry of Foreign Trade that all contracts concluded by Polish foreign trade organizations with a market-economy trader must contain an arbitration clause, providing for arbitration by the Court of Arbitration of the Polish Chamber of Foreign Trade.⁵⁶ However, it should be pointed out that an agreement between the United States and Poland concerning arbitration, signed on November 8, 1972,

encourages settlement of commercial disputes by arbitration under rules of the International Chamber of Commerce or the Arbitration Rules of the Economic Commission for Europe, a United Nations agency, in a country other than Poland and the United States with arbitrators appointed by an authority in a country other than Poland and the United States. Parties to contracts, however, are free to decide

⁵³ Art. VI of the Introductory Provisions to the Civil Code of Apr. 23, 1964, 1964 Dz. U. No. 16, text 94.

⁵⁴ Order of the Council of Ministers of July 9, 1971, Concerning Functions of the Minister of Foreign Trade and His Powers with Regard to Coordination of Economic Relations with Foreign Countries, ¶ 4(8), 1971 Dz. U. No. 19, text 183.

⁵⁵ U.S. DEP'T OF COMMERCE, *supra* note 35, at 4.

⁵⁶ W. SIEMINSKI, *UMOWA AGENCYJNA W EKSPORCIE DO KRAJOW KAPITALISTYCZNYCH* 189 (1965).

on any other means of arbitration "which they mutually prefer and agree best suits their particular need."⁵⁷

The legal framework for arbitration is provided in the Civil Procedure Code of November 17, 1964,⁵⁸ which became effective on January 1, 1965, and in both multi-lateral and bilateral international agreements. The provisions of the Civil Procedure Code are applicable both to ad hoc arbitration and to permanent arbitration institutions (article 695). Within the limits of their capacity to assume obligations independently, the parties may agree to submit to arbitration any dispute concerning property rights, except disputes regarding alimony and labor relationships (article 697, paragraph 1). As long as the parties are bound by an arbitration agreement, they may not seek a settlement of their dispute in a court of law (article 697, paragraph 2).

The rights of units of a socialized economy to conclude arbitration agreements is limited to instances specified in a regulation issued by the Council of Ministers (article 697, paragraph 3).⁵⁹ However, this limitation does not apply to arbitration agreements with parties domiciled or having their seat abroad, and such units may conclude arbitration agreements with foreign traders (article 697, paragraph 4). A Polish unit is also permitted to submit disputes arising from contractual obligations to arbitration by a foreign arbitration tribunal (article 1105, paragraph 3).

The law requires that the arbitration agreement be in writing and that it be signed by both parties. It also requires that differences concerning legal relations from which a dispute has arisen or may arise in the future be precisely stated in the arbitration agreement (article 698). The arbitration agreement may include the names of the arbitrators and of the umpire, or their number, and the manner of their appointment (article 698, paragraph 1). No special qualifications are required of an arbitrator or umpire except that he must have full capacity to enter into legal transactions, he must not be deprived of public and honorific rights, and he must not be a judge of a state court (article 699). A foreigner may be appointed as an arbitrator. However, any arbitrator may be challenged on any ground which justifies the challenge of a state judge (article 48) or at the request of the arbitrator himself or of one of the parties (article 49). If one of the parties fails to appoint an arbitrator in the manner prescribed in the agreement in spite of the fact that he was asked to do so, the arbitrator may be appointed by the court at the request of the other party. Likewise, the court may appoint an umpire should the arbitrators fail to do so.

The parties themselves may establish the rules of procedure, but if they neglect to do so before commencement of the arbitration proceedings, the arbitration tribunal will apply the rules it considers proper. The arbitration tribunal is not bound by the provisions of the Civil Procedure Code, but at the same time it must fully

⁵⁷ U.S. DEP'T OF COMMERCE, *supra* note 35, at 4-5.

⁵⁸ 1964 Dz. U. No. 43, text 296. Relevant provisions are contained in articles 695-715.

⁵⁹ No such regulation has yet been issued.

investigate and consider all of the circumstances of the case necessary for arriving at a decision (article 706). The decision of the arbitration tribunal must include: (1) a reference to the arbitration agreement, (2) a specification of the place and date of the award, (3) a designation of the parties and arbitrators, (4) a statement of the settlement of the claims of the parties, (5) a specification of motives taken into account by the tribunal in rendering the decision, and (6) signatures of all arbitrators, or a majority of them if a minority of the arbitrators refuses or is unable to sign it (article 708).

The award must be served on the parties, and a receipt must be obtained. The arbitration award, as well as a settlement by agreement made before the arbitration tribunal, has the legal force of a decision of a state court, or a settlement by agreement made before such a court, and is enforceable in a court of law. The enforcement clause is issued by a competent court, but the court may deny the motion for issuance of the enforcement clause if the award violates the law or principles of social cooperation of the Polish People's Republic (article 711).

Although the arbitral award is final, it may nevertheless be set aside by the court upon the request of either party on one or more of the following grounds: (1) that there was no arbitration agreement or that it had become null and void; (2) that the party was deprived of the possibility of defending its rights before the arbitration tribunal; (3) that the rules of procedure before the arbitration tribunal, set forth by the parties or by provisions of the law pertaining in particular to the composition of the tribunal, voting, provision for the challenge of an arbitrator, or for setting aside the award, were not observed; (4) that the decision concerning the claims of the parties is not understandable, is contradictory, or is contrary to the law and principles of social cooperation of the Polish People's Republic; or (5) that the Civil Procedure Code provides reasons for requesting a reopening of the court proceedings. The court is bound by the arguments on the motion for annulment of the award. However, it determines, *ex officio*, whether the award violated the law or principles of social cooperation of the Polish People's Republic (article 714). The motion for setting aside the award must be filed within one month of the date on which the award was served on the party concerned. If a motion for annulment is filed, the court may delay execution of the award (article 713).

B. Permanent Arbitration Tribunals

There are four permanent arbitration institutions—the Court of Arbitration of the Polish Chamber of Foreign Trade in Warsaw, the International Court of Arbitration for Maritime and Inland Navigation in Gdynia, the Gdynia Wool Association in Gdynia, and the Gdynia Cotton Association in Gdynia.

1. *Court of Arbitration of the Polish Chamber of Foreign Trade*

The Court of Arbitration of the Polish Chamber of Foreign Trade was established by the Council of the Polish Chamber of Foreign Trade in 1949 to settle disputes arising from commercial transactions and the transport and insurance

of goods, where at least one of the parties to the dispute is a physical or juridical person whose domicile or seat is outside the territory of Poland. The organization of the Court and its rules of procedure are set forth in the Rules of the Court of Arbitration of the Polish Chamber of Foreign Trade, 1949, amended and revised in 1959.⁶⁰ The Court accepts a dispute for arbitration (1) when the parties concerned have concluded an agreement in writing to refer the dispute to the Court; (2) when the plaintiff in his petition for the Court's arbitration and the defendant in his answer to the Court's interrogation have accepted in writing the jurisdiction of the Court; and (3) when arbitration by the Court is provided for in an international agreement.

The Court of Arbitration consists of a Presidium, a Secretary, a Deputy Secretary, and a panel of arbitrators. The Presidium is composed of a President and four Deputy Presidents, appointed by the Council of the Polish Chamber of Foreign Trade. The functions of the Presidium are twofold. It administers the affairs of the Court, and it handles the Court's business during the preliminary arbitration proceedings. In particular, it hands down decisions concerning challenges of arbitrators and objections to the jurisdiction of the Court. Upon request, it advises the arbitration tribunal on points of law. The Presidium can render an award without a hearing if the entire claim has been admitted by the defendant before the arbitration tribunal has been constituted. Finally, the Presidium fixes the place of hearings and making of awards. Following the rendering of the award by the arbitration tribunal the Presidium may correct obvious errors or contradictions on the motion of the President.

A panel of arbitrators is maintained by the Office of the Polish Chamber of Foreign Trade. It consists of at least thirty persons approved by the Chamber's Council. An arbitrator may be either a Polish citizen or a foreign citizen, provided he has full capacity to enter into legal transactions and enjoys unrestricted civic and honorific rights.

A dispute submitted for arbitration is heard by an arbitration tribunal consisting of two arbitrators and an arbitrator-chairman. As a rule, each party to the dispute designates an arbitrator, within the period of time fixed by the Secretary of the Court of Arbitration, from among those listed on the panel of arbitrators.⁶¹ If a party fails to designate an arbitrator within the prescribed period, the arbitrator for the party concerned is appointed by the President of the Court of Arbitration. Either of the parties may also ask the President of the Court to appoint an arbitrator on its behalf. Each party may designate more than one arbitrator, provided the number of arbitrators for each is equal. The arbitrator-chairman is either appointed by mutual agreement between the parties, or in the absence of such an agreement, is elected by the arbitrators, or is nominated by the President of the Court if the arbitrators fail to choose an arbitrator-chairman within a seven-day period.

⁶⁰ J. JAKUBOWSKI, *PERMANENT ARBITRATION COURTS FOR FOREIGN TRADE IN POLAND* 13 (1962).

⁶¹ In the case of the defendant, not less than one week.

The Rules of the Court of Arbitration stress that the arbitrator must be impartial and must act in strict confidence. He may not represent the interests of either party, nor may he be bound by any instructions. He must fulfill his functions conscientiously and to the best of his ability. The arbitrator may disqualify himself if he does not consider himself sufficiently impartial or if there are reasons for challenge of a judge by virtue of the law as specified in the Polish Civil Procedure Code. An arbitrator may also be challenged by either party if there are doubts as to his impartiality or on grounds stated in the Civil Procedure Code. The party may challenge an arbitrator designated by it only when the basis of the challenge has become known after the designation has been made, and if the other party does not agree to such a change, the challenging party may request the Presidium of the Court to rule on the justification of the challenge.

A petition for arbitration by the Court should include (1) identification of the parties, their places of residence or seats; (2) the plaintiff's justification of the claim and its value; and (3) grounds for the Court's jurisdiction. The foreign party may submit the petition in French, English, German, or Russian. The Polish party may be ordered to furnish a translation of its papers in one of these languages.

As a rule, the arbitration tribunal hears the case in Warsaw. Nonetheless, at the request of both parties, or *ex officio*, the Presidium of the Court may order the hearings to take place elsewhere. The language of the hearings is Polish, but the tribunal may decide to hear the case in another language, provided neither party objects. The case is tried orally and in open court. However, upon request of one of the parties, or *ex officio*, the tribunal may order the case to be heard *in camera*. Parties may attend the hearings and may be represented by an attorney.

The dispute is settled on the basis of evidence, including that submitted by the parties and that collected by the tribunal itself. At any stage of the proceedings the tribunal may seek the advice of the Presidium of the Court of Arbitration on points of law, especially foreign law, as well as on decisions of the Court in similar cases. According to section 31 of the Rules of the Court of Arbitration,

the tribunal shall apply that country's law which is most closely connected with the case in litigation, having regard first of all to the will of the parties. It shall take into consideration the principles of equity, of good faith and customs in so far as they are permitted by the proper law.⁸²

Decisions of the Court are by majority vote. They must be in writing, their motives must be stated, and they must be delivered to the parties within the period of time fixed by the tribunal, usually not later than seven days from the date the decision is rendered. The award of the tribunal is final and may not be appealed, and the losing party is expected to comply voluntarily within three months after notice of the decision. If the party concerned fails to do so, the Rules of the Court of Arbitration provide that the other party may request the Presidium of the Court

⁸² L. KOS-RABCEWICZ-ZUBKOWSKI, EAST EUROPEAN RULES ON THE VALIDITY OF INTERNATIONAL COMMERCIAL ARBITRATION AGREEMENTS 169 (1970).

to inform other arbitration courts, stock-exchange courts, and similar institutions of such failure. But the other party should be informed of this request. Awards by the tribunal of the Court of Arbitration have the same legal force as decisions rendered by a state court (article 711 of the Civil Procedure Code and section 34 of the Rules of the Court of Arbitration) and are enforceable and challengeable under the provisions of the Civil Procedure Code.

2. International Court of Arbitration for Maritime and Inland Navigation

The International Court of Arbitration for Maritime and Inland Navigation was established by an Agreement of June 17, 1959, between the Czechoslovak Chamber of Commerce, the Chamber of Foreign Trade of the German Democratic Republic, and the Polish Chamber of Foreign Trade, for the purpose of settling civil law disputes arising from maritime and inland navigation. Chambers of Commerce of other states may accede to the Agreement with the consent of the original signatories.

The jurisdiction, organization, and procedure of the Court are set forth in the Rules of the Court, dated June 17, 1959. The Court's jurisdiction includes civil law disputes arising from any maritime or inland navigation matter (except labor issues) and, in particular, from charter parties and bills of lading, contracts for handling goods, collisions of ships and assistance, when a sea-going or inland vessel is involved, salvage, damages to port accommodations and equipment, and general average.⁶³ The Court may accept a dispute for arbitration only if (1) the parties concerned have made an agreement in writing to submit their dispute to the Court's arbitration; (2) the plaintiff, in its request for arbitration, and the defendant, when asked by the Court, have in writing accepted its jurisdiction; or (3) arbitration is provided for in an international agreement.

The International Court of Arbitration consists of a Presidium, a President, a Secretary, and a panel of arbitrators. The Presidium is composed of members appointed by the founding Chambers, each Chamber appointing one member and one alternate member. The duties of the President are performed in rotation by each member or his alternate for one year. The panel of arbitrators consists of at least thirty members, who are specialists in maritime and inland navigation, insurance, and law. Placement on the list of arbitrators is made by the Presidium of the Court on recommendation of the Chambers concerned.

The rules of procedure are basically similar to those of the Court of Arbitration of the Polish Chamber of Foreign Trade. The only difference is contained in the provisions of section 14 of the Rules, according to which the contentious proceedings may be preceded by introductory conciliatory proceedings. These proceedings may be instituted upon the request of the plaintiff, with the defendant concurring. The conciliatory proceedings are conducted by the Secretary of the Court. Procedural questions not covered by the Rules are decided on the basis of the civil procedure code in force at the place of venue.

⁶³ *Id.* at 174.

With respect to the substantive law, the arbitration tribunal applies the law of the state most closely connected with the issue, but primary consideration is given to the will of the parties. It must also apply, within the limits allowed by the applicable law, the principles of good faith, as well as commercial, maritime, and navigational customs and usages. The award is final and cannot be appealed. The defaulting party is subject to the same sanctions as those provided in the Rules of the Court of Arbitration of the Polish Chamber of Foreign Trade.

3. *Gdynia Cotton Association*

The Gdynia Cotton Association was established in 1938 by the Cotton Merchants Association.⁶⁴ The jurisdiction, composition, and appointment of the arbitrators, as well as the procedure, are set forth in the Rules of the Gdynia Cotton Association adopted by the 24th Ordinary General Meeting on June 4, 1966. Having become effective on January 1, 1967, these rules apply to disputes arising from commercial cotton transactions (purchase-sale contracts) containing the phrase "Gdynia Rules" or "Arbitration in Gdynia" or some similar clause. The distinctive feature of the Rules is that unlike the Civil Procedure Code and the Rules of the other permanent arbitration institutions in Poland, they permit an appeal from the award. Accordingly, the Rules provide for a Court of Arbitration in the First Instance and a Court of Arbitration in the Second Instance.

Applications for arbitration and the other relevant correspondence must be filed with the Managing Director of the Gdynia Cotton Association in writing, by telegraph, or by teletype, in Polish, English, French, German, or Russian. A foreign firm is required to appoint a representative residing in Poland, whose address will be its legal domicile, and to whom all communications will be directed.

The application should include, among other items, a brief statement of the facts of the case, the claim and its justification, specification of proof, and the name of an arbitrator, as well as justification of jurisdiction of the Association's Court of Arbitration. After the other party has filed its reply and has appointed its arbitrator, the Managing Director of the Association convenes the Court of Arbitration. The proceedings of the Court of Arbitration are divided into two phases. During the first phase, the proceedings are conducted in writing, and the arbitrators may settle the dispute by conciliation. If conciliation fails and the arbitrators are unable to reach unanimous agreement as to the award, oral proceedings will be held, presided over by a third arbitrator (umpire) selected by the arbitrators or, should they fail to do so, appointed by the President or Executive Vice-President of the Association from the Panel of Arbitrators. The President (or Vice-President) also has the right to appoint an umpire if the arbitrators do not announce a unanimous award within fourteen days of their appointment. The arbitration tribunal applies the substantive law of the state that is most closely connected with the dispute, as well as customs and usages prevailing in the cotton trade, and principles of good faith. As for procedure, the provisions of the Civil Procedure Code are applied

⁶⁴ POLSKA IZBA HANDLU ZAGRANICZNEGO, *supra* note 21, at 102.

with regard to questions not covered by the Rules. Should strictly legal questions arise in the dispute, the arbitrators are to ask the Board of Directors of the Association for a decision as to whether to refer the dispute to a court of law. Such request must be submitted by the time the award has been announced.

The award of the Court of Arbitration of the First Instance may be appealed by each party within fourteen days of the date on which the decision is received. The appealing party is not permitted to present new arguments, new documentation, or other new statements or materials. The appeal is considered by an arbitration board of the Court of Arbitration of the Second Instance, composed of two arbitrators and a chairman appointed from the Panel of Arbitrators by the President or Executive Vice-President of the Association. The proceedings are in writing. A majority vote decides the case.

A special procedure is provided by the Rules for arbitrations involving cotton quality. All disputes concerning the quality of cotton are referred to arbitration, if the contract contains the "Gdynia Arbitration" clause. The inclusion of such a clause in the contract precludes jurisdiction by a state court of law or by any other court. Awards in arbitrations involving quality may be appealed to the Appeal Committee of the Association, which consists of a chairman and two members, or, if the arbitration clause in the contract so provides, to the Appeal Committee of *Chambre Arbitrale de Cotons S.A. in Le Havre, France*.

4. *Gdynia Wool Federation*

The Court of Arbitration of the Gdynia Wool Federation was established in 1967 to settle disputes arising from international sale-purchase transactions dealing with wool. Examples of such disputes are those involving quality, insurance, forwarding, and other operations connected with the wool trade. Like the Gdynia Cotton Association Rules, the Rules of the Wool Federation contain special provisions for arbitration on wool quality.⁶⁵

In addition to the permanent arbitration tribunals, settlement of foreign trade disputes by arbitration is possible through one or more of the many international arbitral bodies. Poland has signed and ratified the following international conventions on arbitration: (1) Protocol on Arbitral Clauses of September 24, 1923; (2) New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of June 6, 1958; (3) European Convention on International Commercial Arbitration (Geneva Convention) of April 21, 1961.

Provisions concerning the recognition and enforcement of arbitration awards in disputes arising from commercial transactions are also contained in bilateral treaties to which Poland is a party. Such a provision is, for instance, included in the Treaty on Commerce between Poland and Japan of April 26, 1958 (article 10).

⁶⁵ *Id.*

VI

LAW APPLICABLE TO FOREIGN TRADE CONTRACTS

The Polish Civil Code, which entered into force on January 1, 1965, abolished the dualism of the civil law existing before that date. The older system was expressed in the existence of two bodies of rules governing obligations arising from contracts—the Code of Obligations of 1933 and the Commercial Code of 1934.⁶⁶ Polish legislators, however, recognized that the provisions of the Civil Code, designed primarily to regulate civil-legal relations based on the socialist economic and legal doctrine, would not provide an adequate legal framework for foreign trade transactions. Consequently, the legislators decided to retain in force certain provisions of the Commercial Code which are based on traditional concepts of law. This was done in order to assure the equality of partners and fair dealing.

The usefulness of a certain legal system as an instrument regulating foreign trade transactions depends on the extent of the autonomy of will accorded to contracting parties.⁶⁷ The principle of autonomy of will has not been expressed in the Civil Code,⁶⁸ but it is commonly accepted that it does exist, subject to limitations defined in both the Civil Code and public law.⁶⁹

Limitations imposed by the Civil Code relate to legal capacity of juridical persons, including foreign trade organizations. According to article 36 of the Civil Code, foreign trade organizations enjoy only limited legal capacity. They may enter into (1) legally binding transactions within the scope of their authorized activity as defined in legislative acts, their charters, or by-laws or (2) collateral transactions involving matters necessary and incidental to the conduct of the particular activity. The enforceability of a particular contract will depend on which of these two types of transactions is involved. As to the first group, *ultra vires* contracts are null and void. This consequence is not spelled out in article 36, but it is obvious in light of the provisions of article 58 of the Civil Code.⁷⁰ On the other hand, contracts involving matters incidental to the authorized activity of a foreign trade organization may be declared invalid if the other party's *mala fides* (bad faith) is established. Otherwise, the transaction is valid.⁷¹ The question of responsibility for concluding such contracts is an internal matter of the enterprise.

According to article VI of the Introductory Provisions to the Civil Code, the parties to a contract have the right to select the form of contract they desire. Thus, the intention of the parties to conclude a contract may be manifested in any form or manner which makes their intention sufficiently clear. However, as far as Polish foreign trade enterprises are concerned, their freedom of choice with regard to

⁶⁶ Przymusiński, *The Commercial Laws of Poland*, THE DIGEST OF COMMERCIAL LAWS OF THE WORLD 5 (1968).

⁶⁷ Skapski, *Kodeks cywilny a międzynarodowy obrot handlowy*, 1972 PRAWO I PRAWO No. 5, at 58.

⁶⁸ *Id.*

⁶⁹ *Id.* at 60.

⁷⁰ KODEKS CYWILNY, KOMENTARZ (CIVIL CODE, ANNOTATED) 114 (F. Blahuta ed. 1970).

⁷¹ *Id.* at 115.

form is restricted by rules and regulations issued by their supervisory bodies. According to article 384 of the Civil Code, the Council of Ministers, or another supreme organ of state administration authorized by the Council, may establish general conditions of sale and forms of contracts on a basis different from those provided for by the Civil Code. Regulations issued on the basis of article 384 are binding as substantive law.

Article VI of the Introductory Provisions to the Civil Code contains two important rules aimed at liberalization of foreign trade. The first stipulates that the provisions of articles 518-24 of the Commercial Code relating to the right of retention shall remain in force with regard to foreign trade transactions. The second provides that the contracting parties, by mutual agreement, may limit or even exclude the seller's responsibility for defects of goods, provided these defects were not fraudulently concealed from the buyer by the seller.

Conflict of laws rules are contained in the International Private Law of November 12, 1965.⁷² It is based on the free choice of law principle. This principle is accepted by article 25, with the reservation that it must be connected with the contract. In the absence of agreement, the provisions of article 27 are to apply. As a rule, it will be the law of the domicile of the seller of goods or services that will be applied, except as to transactions concerning copyright. If a copyright problem is involved, the law of the domicile of the buyer of the copyright will apply. It should be recognized, however, that since Polish foreign trade organizations are bound by administrative regulations and instructions of their supervisory agencies, the importance of free choice of law is considerably reduced. In practice, foreign trade organizations are required to insist on the law of the seller when export contracts are involved. As far as import contracts are concerned, they should include a clause to the effect that specified places in Poland are to be considered as the place where the contract was made and is to be performed.⁷³ The form of the contract is controlled by the law governing the contract or the law of the place where the contract was made (article 12). As a rule the legal capacity of a juristic person is governed by the law of its domicile. But if a legal entity acts on behalf of its enterprise, the law of the latter shall apply (article 9).

VII

AMERICAN-POLISH TRADE RELATIONS

Trade relations between the United States and Poland were re-established after World War II by the Agreement of April 24, 1946, in which Poland agreed to "continue to accord to nationals and corporations of the United States the treatment provided for in the Treaty of Friendship, Commerce and Consular Rights between the United States and Poland, signed on June 15, 1931."⁷⁴ However, the conditions

⁷² 1965 Dz. U. No. 46, text 290.

⁷³ J. JAKUBOWSKI, WAZNIEJSZE KLAUZULE KONTRAKTU KUPNA-SPRZEDAZY W HANDLU ZAGRANICZNYM 131 (1964).

⁷⁴ 60 Stat. 1609, T.I.A.S. No. 1516, 4 U.N.T.S. 155.

created by the Cold War prevented development of normal trade relations between the two countries. During that period, the United States introduced several discriminatory measures against socialist states, such as an embargo on export of strategic goods, a ban on export of capital goods, and credit restrictions. Furthermore, in 1951 the United States withdrew from Poland the most-favored-nation status, although it was restored after the October, 1956, events. Under these circumstances, no general agreement providing for broad expansion of trade was concluded, with the exception of the Agreement Relating to Trade in Cotton Textiles of March 15, 1967,⁷⁵ extended and amended on February 24, 1970.⁷⁶ In addition, several agreements concerning purchases of agricultural commodities were reached.

General relaxation of East-West tensions offers an opportunity for expansion of trade relations between the United States and Poland. As the United States slowly lifts trade and credit restrictions, Poland, interested in modernization of its outdated industrial plants, seems to change her attitude toward American investments.

The first steps were taken during President Nixon's visit to Poland in June, 1972, during which issues related to commercial exchange and financial and credit matters were discussed. The Joint American-Polish Trade Commission was established at that time as well.⁷⁷ Thus far, the Joint Commission has met twice—in Warsaw in August, 1972, and in Washington on November 4-8, 1972. Although the Commission's two sessions did not lead to the conclusion of a general trade agreement, substantial progress has been made. The second session concluded with agreements on a number of basic commercial and economic issues, including reciprocal availability of trade credits, expanded arrangements for business facilities, and third-country arbitration.⁷⁸

Pursuant to the credit agreement, Mr. Nixon issued a presidential declaration on November 8, 1972, authorizing the U.S. Export-Import Bank to engage in transactions with Poland. Poland has given assurances that the facilities of the Bank Handlowy w Warszawie S.A., and the credit facilities of the Polish foreign trade organizations will be available to American importers.⁷⁹

CONCLUSION

As a socialist state with a centrally-planned economy, the Polish People's Republic naturally subscribes to the doctrine of state monopoly of foreign trade, a policy which is carried out through a foreign trade plan as a part of a national economic plan. The legal framework for the administration of Poland's post-World War II foreign trade policy has largely been structured around commercial treaties and protocols concluded prior to the War and revived thereafter. The mechanism

⁷⁵ [1967] 1 U.S.T. 276, T.I.A.S. No. 6228.

⁷⁶ [1970] 1 U.S.T. 456, T.I.A.S. No. 6835.

⁷⁷ U.S. DEP'T OF COMMERCE, *supra* note 35, at 4-5.

⁷⁸ *Id.*

⁷⁹ *Id.*

for the conduct of trade within this framework has been developed in the socialist fashion, and state-controlled foreign trade organizations, state financial institutions, and courts and arbitration tribunals have been designed to implement the foreign trade plan.

Recent events, including establishment of the Joint American-Polish Trade Commission, have revealed a disposition on the part of both the Polish People's Republic and the Western industrial nations for expansion of economic relations. The existing apparatus for the conduct of foreign trade is, in theory at least, adequate to accommodate this expansion, but actual expansion of trade may depend, in part, on Poland's willingness to grant foreign investors greater control over their investments in Poland. Such willingness must depend, in the final analysis, on the role foreign trade will be required to play in Poland's national economic plan.