# THE NEW REGULATION OF FOREIGN TRADE MANAGEMENT IN HUNGARY

Prof. F. MÁDL

(School of Law, University of Budapest)



## 1. General introductory remarks

In Hungary in 1968 a new system of state economic management has been introduced. Part of this is the foreign trade management. The substance of this new management system as expressed in the relevant new regulation should be projected here.

At the beginning a short explanation of what by foreign trade management, or economic management in general in this study is understood, should be given here. For foreign trade management, or economic management in general, socialist writing has both comprehensive or general and more partial or particular notions. And the interpretations, of course, follow these notions.

The very general definition – "management involves purposeful influence on the object of management by a subject" – is translated in to the more material elements of planning organization (with the economic means), directing, coordination, control and accounting materialized by the managing agency (the subject) with regard to the object. This object can be *a)* the economy as a whole, then the managing subject

is the state discharging its economic function in general and the management itself covers both central state management and that of the enterprise level as well. *b)* But it can be realized – and consequently interpreted – as this managing activity on *sui generis* state level (how by the said activities the competent central state organs influence, shape or determine the statics and dinamics of the *sui generis* enterprise level). *c)* And of course the enterprises, too, have their managerial functions, in fact the same ones, but with regard to their particular object (efficient production, trade etc) and within the limits of the state management. All this, *mutatis mutandis,* applies to foreign trade as well. Both in general and with regard to foreign trade the real meaning of management varies according to the characteristics of the object to what it concerns.[1] In this study the main emphasis is on the reform in foreign trade management, more closely: how the state management changed in mutual interaction with the simultaneously changed enterprise level management, how they are meant to be part of a more efficient general state economic management as a whole, how the dinamics of the newly defined relationship of these two levels evolve into a coherent system – aiming at the real final end, a better operation of the economy in general and the enterprise level in particular.

## 2. The reform, its economic policy motives, and the principles of the new regulation

1. The economic policy substance of the new system of economic management, or of the new economic mechanism as it is generally called, can be outlined briefly as follows.

Before the introduction of the new system of economic management in the what may be called expansive phase of economic development the state (as the owner of the majority of the means of production) was not only the sovereign, but almost the exclusive performer of all essential economic processes, in both their macro- – and micro-economic interrelations. By way of laws, decrees of the Council of Ministers, departmental orders and those of other govermental agencies not only did the state centrally define the general economic policy, the long- and short-term national economic plans, the investment policy, price policy and foreign trade policy, not only did the state settle all questions of general national economy, but the state decided all essential micro-economic questions too both in production, trade and the other fields of economy. The particular concrete economic units, and so the enterprises, hardly had anything what may be called 'autonomy' other than to transcribe, within the framework of central instructions, the national economic plan in to their plan contracts, and then produce what had been written down in conformity with the plan instructions and then put these produced products on the market for the benefit of national economy as a whole. The legal regulation relating to the micro-economic processes, among others also the plan contracts, were under the ruling of the super-

ior authorities. The commodity turnover was the turnover of goods which hardly met the criteria of commodity in the political economic meaning of the term. The case was one of commodity-form rather than of commodity in the true meaning. Developments, investments, reinvestments came to be realised under central governmental decisions issued in conformity with the national economic plan, while the state collection of the earned (accumulated) profits of enterprises took place in accordance with the method called direct collection on skimming. The value of this system was that it permitted a relatively fast drafting, deciding and realization of a general economic development policy on the one hand and comprehensive individual projects on the other hand, the creation of new branches of industry, the rapid completion of large investments, and in general the rapid expansive development of all branches of national economy affected.

After these general objectives have, however, been achieved, after the interests attached to a differentiated satisfaction of needs have grown in intensity and quality has gained in significance, after simultaneously the sources of expansive development, so among others the labour force and other objective conditions such as e. g. in certain fields the raw material resources, have ceased to promise further expansion, a search has had to be made for other reserves.

In the system of the complex interaction of economic management — as regards the competencies of decision-making in actions of both macro- and micro-economics — this meant the mobilization of the creative forces of the enterprises for such vital ends as: the satisfaction of growing and differentiated consumers' needs, a better observation of market demands, the quick response of the enterprises to the challenges of the market, and to this end close cooperation with other enterprises, fast reaction and decision making in the necessary and possible technological development, the speedy weighing of the pros and cons of new investments and of the justification of the establishment of joint venture economic associations, the more effective mobilization of the reserves within the enterprise e. g. through scientific organization, differentiated and performance-orientated wage policy, etc. Hence the goal was the greater efficiency of the economy and to this end the establishment of an economic policy doing justice to the given situation, viz. the development of state management and economic planning in a way that the particular economic units (a) transmit these mentioned potentialities and forces in the form of information and impetus to the central control and planning in the best possible form; and (b) exploit their reserves and potentialities within the framework of responsible autonomy of genuine own competences properly coordinated with the central state management processes. The idea was a relationship between the governmental level and that of the enterprises, in wich central economic management and enterprise competencies develop into a balanced operation: Where the governmental level could improve planning and would as a matter of course hold strategic policies perhaps even more firmly in its hands, in

addition to, and by the side of this, responsible and autonomous enterprise activity could and is expected to play a decisive role, strong enough to operate the other side of the lever. Among others this required actions in two directions. First, the appropriate formation of enterprise autonomy and, secondly, this in a proper interaction and organic relation, adjustment, and feed-back to the general interests of national economy (the general economic policy, the national economic plan) by way of indirect, so-called economic means and regulations rather than through a system of administrative instructions.

The introduction of this new system of economic management required comprehensive legislative work. Large volumes of legislative acts provisions of law were published in the social engineering of which then this something novel, this huge machinery was then, with January 1, 1968 – with non-insignificant modifications enacted since[2] – put into operation. This reshuffling of rights and obligations, in general of the competences, did in the method of regulation and in the legal institutions applied lead to substantial rearrangements. More precisely, the operation of the new economic management called for substantial innovations both in the legal approach in general and in the concretely applied regulation in particular. Theoretically, or in a generalized form the reform meant the prominence and strong operation of civil law or commercial law forms (i. e. the strong growth of enterprise autonomy, the freedom of contract, the money and commodity relations and the equality of rights further of other elements coming within this sphere) by the side of the earlier predominant means of public and administrative law.[3]

2. Since foreign trade is an organic part of national economy, and processes of development nanifesting themselves in the latter have perforce to appear also in the former, i. e. the processes of development in national economy will define also the considerations of the development of foreign trade. *Mutatis mutandis* this applies also to the reform of economic management. Historically we have to note that the foreign trade management as deriving from the reform of economic management with two phenomena of development. One of these is the since the sixties more and more intensifying economic coperation between East and West, the background of which is provided first, by the general internationalization of the economic processes, and, secondly, by the well-known developments in world politics. The other phenomenon at that time is economic integration in Europe in the process of becoming a reality. As a matter of fact as far as Hungary is concerned the socialist economic integration within the CMEA is of particular significance. The new system of economic management will have to offer in these processes – with the concentrated means of state directing actions, the means of material potentialities, and the expanded potentialities and liberated resources of the enterprises – better participation of Hungary in the international division of labour and contribute to the optimal economic development of Hungary. All this has required the comprehensive rewriting of the regulation of the foreign trade relations.

### 3. The international background of the new regulation

3. The domestic new regulation of the foreign trade relations is of course not independent of that international system of rules which formulates and serves the international economic relations in general and the economic relations of the socialist countries in particular. Or the other way round we should preferably say that the system of norms of international origin to which Hungary, too, adheres, is part and expression also of Hungary's economic policy.

*(a)* This international system of norms appears on interstate (on international) plane, in general multilateral, bilateral and regional relationships.

Briefly, in the general multilateral sphere Hungary subscribed to conventions and organizations such as the Final Acts of the Helsinki Conference, the various Hague conventions, GATT, the union for the protection of intellectual property, the European Economic Comission, UNCTAD, UNCITRAL, the conventions on international arbitration, the various conventions on carriage and forwarding of goods, international sustoms agreements, concrete investment contracts, such as the Adria oil pipeline, etc.

Examples of the bilateral sphere are the various commercial agreements, the contracts for cooperation, agreements on judicial assistance, agreements on the delivery of goods, conventions on taxation, etc.[4]

Within the *sphere of economic integration*, in the framework of CMEA a comprehensive system of legal regulation has been and is being developed with the cooperation of Hungary. The sources of law emanating therefrom may differ as regards the method of regulation i. e. their legal character and time of genesis, but they are the same as regards their objectives and functions i. e. in the gradual development of the socialist economic integration in conformity with instruments such as the Statute of the CMEA and the Complex Programme. In the proper sequence these are sources of law such as the Charter of CMEA defining its general objectives, the organizations and their competences, the regulation of the session formulating the Complex Programme, the legal institutes of the instruments of joint agencies such as the Bank of International Economic Cooperation and the International Bank of Investments, international conventions and other legal acts for joint investments and the creation of economic organizations such as the Friendship Oil Pipeline, Intermetall, or Interatomenergo, the legal acts of the organs of CMEA, above all recommendations, a number of treaties bringing under uniform regulation trade and the forms of interenterprise cooperation such as the various general conditions (the General Conditions for Delivery of Goods, the General Conditions of Installation, etc.) contracts of carriage, conventions in the sphere of industrial property, regulation of arbitration by way of international conventions, other legal acts such as e. g. the model statutes of international economic organizations (economic associations, joint enterprises). The legal ins-

titutionalization of the economic integration developing within the CMEA has of course given incentive to lively literary activities.[5]

Briefly this is the structure, the legal order developed with Hungarian cooperation where Hungary as the member of the community of peoples and of world economy gives expression to her foreign trade policy in international interrelations, or where she is intent to provide the guarantees and international legal conditions for the effecient economic activities of her enterprises.

*(b)* However, the essential part of the system of regulation in the framework of which Hungarian economy participates in the international division of labour and Hungarian enterprises may operate in the spirit of the new system of economic management with better efficiency, is municipal law, i. e. the *domestic regulation* . This analysis hereafter discusses the new regulation of foreign trade relations in this municipal legal system. This is above all, in which Hungarian foreign trade policy – or rather that foreign trade legal mechanism of the reform which today has to be regarded as economic and legal reality[6] – is most directly reflected.

## 4. The legislative process of the new regulation

(a) *The unity and the phases of the legislative process*

4. Although the new regulation constitutes a uniform whole, still we have to point out that not all has been born at once and not all has become effective at the same time. The turning point is in any case the year 1968, i. e. the year of the introduction of the new system of state economic management. This is easy to concede even when looked at from the outside. The about two hundred laws and other normative acts included in the compilation of the Ministry of Foreign Trade "Collection of the most important laws relating to foreign trade" have their origin mostly in this period, and served the introduction of the reform.[17] A by no means insignificant portion of the regulation is of earlier date, however, even these rules may be considered fore-rumners of the reform. These provisions, too, were born with regard to the reform. A more recent part of the entire uniform regulation, sort of rearguard to the main body of the reform legislation, formulated certain provisions with greater precision on the one side and, on the other, consolidated the whole body of all norms into a comprehensive system.

If we are intent to analyse this substantially uniform process of legislation historically, then with a certain simplification we may distinguish four distinct phases. The *first phase* is the one directly expressing and serving the reform. This touched on as fundamental problems as the abolition of direct instructions and the obligatory plan indices addressed to the enterprises formerly (as part and very substance of the preexisting traditional economic management system), the introduction of the indirect state management operating with economic means, the recognition of the greater independence of the enterprise management

and so also that of the foreign trade enterprises, in respect of both the enterprises and their contract-making and other relations, the unity of national production and foreign trade processes, the formation of the legal conditions for direct and mutual interaction in forms to be specified below, the new structure of taxation and customs, etc. These were the what may be called strategic moves.

The *second phase* lasted from 1968 to about 1974 and closed with the enactment of the foreign trade code. In this phase the central ideas and basic legislation of the economic reform has been completed in some areas and greater precision has been given to many things of the first phase. By way of example mention may be made of Decree no. 28 of 1972 of the Minister of Finance on economic associations with foreign participation (international joint ventures), their formation and operation. There were certain new provisions on taxation. These were prompted by the circumstance that the new system of economic management part of the income of enterprises came to be collected for the state by taxation, and not everything important in this relation could be foreseen, so the need arose for certain subsequent modifications and a more precise formulation of the relevant norms. Here mention may be made of the norms directed to the coordination of the contract-making policies of the enterprises, above all of the foreign trade enterprises. This coordination came to be dictated by the circumstance that in the wake of the reform the enterprises acquired an increasing freedom of contract-making, a freedom that often gave rise to anomalies, anomalies namely which for the particular enterprise might have been of advantage, but prejudicial to the national economy as a whole. The way to overcome such contradiction was the introduced complementary legislation on the coordination of the enterprise contract practice.

The *third phase* was marked by the following principal items of legislation: The foreign trade code, viz. Act III of 1974; law-decree No. 1 of 1974 on foreign exchange law; the decree bringing under regulation the commercial representations of foreign enterprises in Hungary; the decree on the foreign associations (acquisitions, subsidiaries) of Hungarian enterprises. Whereas the foreign trade and the foreign exchange codes are mostly summarizing restatements of norms enacted in the earlier phases, the latter twoo decrees brought new institutions in new forms.

The *fourth* phase has set in with the end of the third and is still lasting. The following are the principal items of legislation: Act IV of 1977 on the restatement and amendment of the Civil Code of 1959; law-decree No. 8 of 1978 on the application of the Civil Code to foreign trade relations; Act VI on the state enterprises; law- decree No. 4 of 1978 on the economic associations (joint venture companies); decree No. 7/1978 of the Council of Ministers on the contracts of delivery of goods and contracting undertakings of the economic organizations (i. e. the enterprises). These codes represent the coherent codification and further development of the new system of economic management intro-

duced in 1968 and within it the statutory regulation of foreign trade relations. With the meanwhile realized codification of private international law (law-decree No. 13 of 1979) the legal regulation of foreign trade reached a stage of relative completeness giving expression to the economic mechanism in a legally comprehensive and systematized form. It seems justified to say that this legal mechanism is as a matter of course (in association with partial amendments and modifications) now and for the future tied up with the fate of the economic mechanism as a whole.

(b) *The new Civil Code and its amendment for the international application of the Code*

5. Since the analysis below of the norms directly or indirectly related to foreign trade relations does not extend to the new Civil Code and its amendment, a short discussion of the latter ones should be presented here.

In the first place it is the *Civil Code* certain peculiarities of which deserve special attention. First, we have to point out that the Code promulgated as Act IV of 1977 supersedes the Civil Code of 1959, although only the smaller part of the provisions of this latter code have been affected by the new legislation. Nevertheless the new enactment is not restricted to amendments and modifications, it is the restatement of the earlier code as a whole. Still the statement may be made, that the new Code, though it supersedes the earlier, tries to preserve the system of its predecessor to the possible extent. Even the numbering of sections known to the general public has been maintained.

Substantial innovations and changes have been made in the following principal items and institutions: The general provisions relating to the exercise of rights and the performance of obligations; further the provisions on juristic persons, the rights attached to the person and to intellectual property; the rights of uses; the contracts, liability and the special rules relating to the contracts of banking and credit. These innovations are almost wholly brought about by the new system of economic management. In the following a few examples will be given to illustrate this.

*(a)* Since the freedom of contract-making, the autonomy of the enterprises has been extended substantially and since for a large sphere of their activities (the choice of the business partner, the choice of the type of contract, the fixation of prices, etc.) they have been awarded extensive rights, to create the eventually needed preventive actions with respect of the abuse of this freedom the Civil Code has had to declare among its general principles that the enterprises have to make use of their now extended rights with due regard to the interests of socialist economy. So e. g. § 4 on the exercise of civil rights has been supplemented with the follwoing provision: "The economic organizations are in their civil law relations bound to act in agreement with the requirement of the planned, proportionate development of national economy; the law prohibits the unfair management and business transactions, so in particular

the abuse of economic power, further the acquisition of unfair profits; the more detailed provisions on unfair business transactions are subjected to separate regulation." Although this special regulation has already been promulgated it nevertheless appeared to be advisable to onclude the principle rules in the general principles of the Code. This is the case not only because in the form of fundamental provisions the Code outlines the framework of the special regulation, but also because if in the future practice any gaps would become manifest in the special regulation, recourse can be had to the provisions of the Code. It may safeiy be said that the provision might have a role also in international business transactions in so far as Hungarian law is applied in a foreign trade dispute originating in unfair market conduct.

*(b)* In the earlier Civil Code there are no provisions relating to juristic persons established through economic association in the form of joint venture companies. In the earlier system of economic organizations could not be created this form, this being the right and duty of the competent state management agencies (ministries and other executive organs). The earlier Civil Code expressly prohibited the exploitation of the original form of association, i. e. the civil law company for commercial purposes. Meanwhile momentous changes have taken place in this field and the economic association of the enterprises has become one of the structural elements of the new system of economic management. This structural element could not be ignored in civil law legislation. Therefore the Civil Code embraces the principal rules relating to the basic forms of economic associations and their operation with the remark, however, that detailed regulation of the economic association will be laid down in a separate law. From this law (the mentioned law-decree No. 40 (1978) branch off decrees bearing on foreign trade relations as referred to earlier, viz. the one on economic associations established in Hungary with foreign participants and the other on Hungarian enterprises entering into economic associations abroad.

*(c)* As has already been mentioned, the restatement of the Civil Code has brought about substantial changes in the domain of contracts. In conformity with the new system of economic management the enterprises' direct plan-obligation as originating in binding central plan instructions, the earlier system of central planing of all vital micro-processes as well, apart from certain essential exceptions of obligatory contract-making, in general the contract-making mechanism as characterized by the plan-contracts, ceased to be the law and practice. Consequently in the restated Civil Code the plan contract as an institution of law does not appear any more. On the other hand the Code provides substantial complementary regulation of contracts as adjusted to socialist economic organizations, such as contracts for the delivery of goods, contracts of public services, the contracts for locatio conductio operis (contracting), building, planning, research and travel. In addition to these conrecte types of contracts it appears to be worth while to discuss one question in its vertical nature, also manifestation of the new system of economic

management in this respect. This is the question of the rules governing the general conditions of contracts as laid down in the restated Code. With the extension of the freedom of contract of the enterprises at the same time their competence and potentiality to attach what may be called general conditions to their contracts has come to be recognized. These general conditions may, however, imply one-sided preferences, or be fraught with contradictions and so may give rise to unwanted situations within specific branches of industry. Therefore, the Civil Code, among the rules concerning the general conditions of contract, provides that legally authorized state or social agencies may contest a stipulated general condition thought to be injurious in court in a general form, while the actually concerned or damaged party may have the contract voided. In foreign trade relations, however, it should be remembered that in conformity with §. 8 of law-decree No. 8 of 1978 on the application of the Civil Code to foreign trade transactions these provisions of the Code cannot be resorted to. In other words in foreign trade relations the enterprises enjoy greater freedom in the enforcement of the provisions of their contracts. There are, however, other limitations here, so e. g. the reluctance of the other contracting party to enter the econtract just becouse of the unfair or disliked general conditions.

6. An amendment to the Code of specific character is the often mentioned law-decree No. 8 of 1978, which in the parlance of the legal profession has received the name of the "foreign trade civil code", and which deals with the application of the Civil Code to foreign trade matters. It is an amendment in the legislative technical meaning of the term that it is modifying and amending the Civil Code. The question may justly be asked, why a civil code was codified simultaneously with its modification and amendment enacted. The explanation is that in the present instance we have the case of an amendment of a specific nature. The amendment does not, namely, apply to the general sphere of operation of the Civil Code. There is not a single provisions in it which would affect the domestic application of the Civil Code. The first section of the law-decree introducing the amendment declares that its privisions – which characteristically depart from the Civil Code or amend it – cannot be resorted to unless the Hungarian Civil Code has to be applied as the proper law in the sphere of foreign trade relations, i. e. in an international law suit: in this case the Civil Code applies whith the specified modifications of the amendment. Consequently the amendment is of a dual nature: first, it modifies certain provisions of the Civil Code, and secondly, it incorporates complementary provisions, which are not included in the Civil Code, and brings the regulation of institutions on which the Civil Code is silent.

Incidentally the amendment is not too voluminous: it is composed of altogether forty sections, nearly twenty of which regulate two institutions, namely, first, the contract for commercial representation, and, secondly that of customers' service. In Hungarian foreign trade legislation it is this law-decree which governs the two institutions. There are alto-

gether seventeen sections only which modify the provisions of the Civil Code in their substance (as applied in an international case), if we ignore the introductory first section and the closing three sections of the law-decree.

This already indicates that this is not an international commercial law code like the one which in Czechoslovakia governs the civil or commercial law relations of international commerce. In the drafting stage of the restatement of the Civil Code suggestions were brought forward for a regulation on the Czechoslovak pattern. Eventually, however, somehow under the pressure of time and for want of capacity, choice was made for the present solution.

The question what in the first place may be asked is, why for the event of foreign trade application of the said seventeen sections the Civil Code had to be modified, or more precisely, why a modified application of the Civil Code had to be decreed. The principal reason is implied in the circumstance that the Civil Code relies on socialist economic conditions, and within these it is orientated to such highly elevetead norms governing the cooperation of the various subjects at law (natural persons, enterprises and other economic entities) as compared to which international practice formulates the requirements at a lower level. In foreign trade relations the Hungarian enterprises would find themselves in a disadvantageous position if in their transactions they were obligated to a higher degree of care and liability than required by the law of the western countries, or in general by international commercial practice. The 'foreign trade civil code' has with its provisions but adjusted Hungarian law, namely the part of it concerning foreign trade, i. e. overwhelmingly Hungarian contract law, to the international level of contract law. In the following we shall quote a few examples to illustrate this statement. In conformity with Section 208 of the Civil Code on the so called preliminary contract such a contract (an agreement in advance obligating the parties to conclude actual contracts later in due time) expressing lasting cooperation of the enterprises may – in addition to the mutual agreement of the parties to this end – be declared as mandatory by law. Similar to this is the exceptionally mondatory contracting as regulated by Section 198 of the Civil Code, a provision concerning mainly contracts for delivery of goods and contracting in locatio conductio operis. Obviously, obligations of this kind binding the socialist economic organizations at home cannot be imposed in international relations. To impose this burden on the Hungarian partners also would be unreasonable. Consequently the amendment to the Civil Code states that in foreign trade relations the corresponding sections of the Civil Code do not apply. There is yet another example: Earlier we have already discussed the judiciary control of the general conditions of contract, of the very rigorous state supervision. It is a general practice in international trade that large enterprises have their partners sign blueprint contracts or general conditions, moreover make use of these for strengthening their contractual position. It would be illogical and economically irrational if in their foreign rela-

tions Hungarian enterprises were more tied by the provisons of the contract than their partners. The next example: Section 308 of the Civil Code, establishes far-reaching warranty rights and remedies for the benefit of the obligee as a result of the restatement of the Code. These provisions imply more rigorous liabilityes to be discharged by supplier than foreign laws specify or which have become established in international practice. Again it was justified, as was done by sections 8 and 14 of the amendment to agree to warranties in line with the international standards. And a last example: Sections 314 and 318 of the Civil Code restrict the right of the contracting parties to limit liability for a breach of contract to an extremely narrow sphere or to exclude it altogether. This again would amount to an exaggeratedly grave burden for the domestic enterprises as compared to international practice. Therefore section 15 of the amendment declares that the parties may limit or exclude liability for a breach of contract.

7. The application of the Civil Code, or in general of Hungarian law, to foreign trade relations takes place whenever an international convention, the agreement of the parties, or the normative rule of private international law decrees the application of Hungarian law. Within the sphere of contracts covered by the terms of the General Conditions of Delivery of Goods of the CMEA recourse may be had to this rule too, although as a rule the General Conditions regulate the delivery (sales) contracts of the CMEA enterprises directly, i. e. by substantive norms; as regards questions not settled by this regulation of the General Conditions section 110 declares that in this case the municipal law of the seller applies. I. e. here we have an international convention which may lead to the application of municipal law even if the convention is aimed at the application of uniform international rules in the given relations. In a number of relations there are no such conventions, and in these cases the extremely frequent agreement of the parties may bring about contingencies when recourse is had to the application of the municipal substantive law of the application of the one or the other party, and so also to the application of Hungarian law. If there are no stipulations to this effect in the contract, as a third step the provisons of Hungarian private international law are those which dependent on the circumstances of the case may decree the application of the domestic Hungarian substantive law.

In this connection few words may be admitted on the need for an effective system of norms of private international law for the completeness and efficient operation of the modern legal mechanism in this field. It goes without saying that an effective system of norms of private international law – which in the event of a conflict of various systems of municipal laws and in want of an international convention determines the municipal law to be applied – is a vital part of a comprehensive legal-system claiming good operation in all possible relations. Hungarian prilvate international law, was uncodified and was living in the forms of customary law. Very recently, however, the code of Hungarian private international law has been enacted (Law-decree No 13 of 1979). This

code is meant to provide comprehensive rules for the settlement of any kind of conflicts that are likely to emerge in foreign trade relations. The code brings under regulation also conflicts of natural persons arising in fields other than foreign trade. The Code extends also to foreign trade contracts, to juristic persons, and even to issues of international procedure, to arbitration and to the enforcement of judgements and other judicial decisions settling international economic disputes.

In outlining the historical process of the new legal system of international economics, above (in sections 5 to 7) we could follow the fundamental codes and laws which provide the civil and commercial law system of the transactions of foreign trade enterprises or of other economic units authorized to foreign trade, as viewed from the domestic side, so to say horizontally. In the following the *particular institutions* of the new mechanism of foreign trade *management* deserve more intensive analysis.

## 5. The principal elements of the new regulation

(a) *The foreign trade monopoly today: differentiation and rearrangement of the competences*

8. Approaching from the process of the foreign trade relations to the particular principal elements, i. e. to the principal institutions, we have come to what is as a matter of course the foremost institution, namely to the *foreign trade monopoly*. First we have to speak of the vertical plane of this institution, and for that matter of the following questions: *(a)* the organizational aspects of the foreign trade monopoly of the state; *(b)* the management (directing) of foreign trade with regard to the planned and newly materialized efficient autonomy of the enterprises.

Although the foreign trade monopoly may be studied from a number of aspect and in fact it has been described by the several authors in different ways (and consequently a different picture will be obtained because of the different structures lent to the content and essence of foreign trade), here the concept of the state foreign trade monopoly may in a fairly generalized form defined as flollows: It is the totality of the rights and duties of the state by which the state is expected first to provide the international conditions of foreign trade or to shape these conditions, as far as possible to the ends and needs of its economic policy; secondly, to create the organizational elements and structure of foreign trade activities; and, thirdly, to shape the means of the management and conrol of foreign trade. According to this definition the foreign trade monopoly embraces everything and may perhaps be considered a too general notion. Consequently the definition has to be analysed to its depth. We have already spoken briefly of the matter, i. e. of the creation of an international system of conditions and in this connexion of the role of the state. If we now study the organizational aspects of the changes and then the development of the processes of management and control and within them the role of the particular economic units from closer

quarters, then we shall obtain a more concrete picture. namely, where the particular elements manifest themselves with creative-and-shaping force and consolidate in their totality to a living organism.

By the side of parallels to the foreign trade structure of the non-socialist countries the specifically socialist character in this foreign trade monopoly may be discovered in the unity of the floowing two factors: First, in the circumstance that the state is the owner of the enterprises and economic units taking part in foreign trade (if they are not state owned then other forms of social ownership prevail, so for example co-operative for cooperative foreign trade agencies, or the Yugoslav social ownership-concept for all economic units). The secord factor is expressed in the fact that as a direct consequence of the mentioned first factor in the state management of foeign trade qantitatively and qualitatively other rights and obligations will arise for the socialist state than to economically and historically other types of state. But we have to be aware of another circumstance, of that namely that the notion of the foreign trade monopoly is a historical category: it is in permanent motion and materializes in permanent inner development. In the facts of development so far accumulated the tendency towards differentiation may be discovered. As for its content this tendency may be formulated in a way that it tends to a reallocation of the competences where the competences and economic functions of the particular economic organizations are expanding. In th case of Hungary this means that the state continues to be the owner, still as good managing partner, or 'shareholder' allows sufficient elbowroom to its foreign trade enterprises for economic activities, ad guarantees optimal chances to this end. The state contents itself with the formulation of general normative conditions, directs and controls the whole 'game', the entire mechanism, from a higher strategic position. Direct interference of the state – either by restrictions or with a directly helping hand is foreseen for exceptional case only, where this is needed, i. e. in particular cases where this is essential because of the inadequacy of the general applied system to guarantee the interests of the national economy.

9. The *changes appearing on the organizational side of the foreign trade monopoly* are mostly kinds of overtures to the 'drama' where the action reaches its tension peak in the competences of management and disposition and in the legal position of the enterprises. Naturally here we have the case of an optimist drama where the thesis and antithesis give expressions to the dialectics of the given socialist economic development and at the end of which the 'apotheoisis' of the synthesis, i. e. a modern and efficient foreign trade mechanism has to stand on the stage.

Organizational differentiation has taken place partly at the governmental level, partly at the enterprisel level.

*(a)* Viewed from below this means that the besides of the earlier almost axclusive role of specialized foreign trade enterprises (commercial enterprises with sectoral monopoly, i. e. enjoying the exclusive right to carry out all foreign trade business activity in the particular industry

or group of products according to the governmental authorization thereto), the new system of economic management has sent a wider gamut of economic units to the arena of foreign trade activities. A number of suitable producing and other enterprises (i. e. non-foreign trade enterprises) have been bestowed foreign trade rights for their products or services, as the case may be, for exports or imports, or for both. Henceforth these enterprises could act directly in international economic life. To this we have to add the potentiality that producing enterprises have received what are called *ad hoc* export or import licences. The corresponding governmental provisions give as a reason for these measures that the economic unity of production and foreign trade activity should be effectively developed. This implies an organizational rearrangement channelling a better interaction of the economic units with the processes in the world market (i. e. to guarantee direct foreign trade activities to enterprises of adequate standards). This policy has led in foreign trade to wholesome differentiation, stronger interest-orientatedness, the better sensing of the incentives to performance and competition. Numerically the new policy has led to the appearance of a larger number of economic units in foreign trade and through this the substantial quantitative growth of the foreign trade sensitiveness and orientatedness of economy.

The so-called *ad hoc* foreign trade licences, too, conceal an essential phenomenon for the exercise of direct foreign trade activities, a direct presence in international economic processes, especially in cases of long-term international economic operations, in contracts for specialization or cooperation, as significant forms of modern international economy.[8]

It appeared to be justified to reinforce the unity of domestic and foreign trade processes with yet another element, namely with the formation of what may be called mixed enterprises or international joint venture companies, i. e. of economic associations with the particiaption and cooperation of foreign partners. Although the objective of these joint ventures is in general to assist certain domestic branches in technological development, these associations by this way contribute to the approximation of the desired unity. According to legislation introduced in this field the activities of such economic joint ventures may beyond technological development extend also to commerce, services and production. Hence in the presence of the appropriate conditions such enterprises may have functions also within the framework of foreign trade.[9] Another aspect of this phenomenon is now the statutorily regulated possibility of Hungarian enterprises to establish enterprises abroad or to become partners in foreign companies.[10] Another element of organizational differentiation is the fact that even non-state i. e. cooperative enterprises may be bestowed the right of foreign trade.[11] A by no means insignificant number of such licenses have already been issued. In exceptional cases – just as before the introdnction of the new system of economic management, i. e. before 1968 – licences are issued also to natural persons for foreign trade ectivities, in the first place in the field of commercial representation.[12]

*(b)* The organizational differentiation that has taken place with regard to foreign trade authorization and activity, has as a matter of course called for the corresponding legal regulation of the competences, among others for the regulation of such monopoly matters as the transfer of a portion of the monopoly held by foreign trade enterprises to the corresponding producing enterprises.[13]

*(c)* This historical development has, however, also meant that as regards the organizational structure differentiation has manifested itself also on the governmental level. A growing number of enterprises has become active in foreign trade whose state management (including formation, regulation, supervision etc.), has come within the competency of other central state organs i. e. not within that of the Ministry of Foreign Trade. Cooperative enterprises by their definition operat within the framework of cooperative structure and their management has developed accordingly. But for the sake of the uniformity of foreign trade policy the need for the coordination of the managing and controlling competences and obligations was a logical requrement, or in other words for the clear-cut definition of the functional managing and controlling position of the Ministry of Foreign Trade had to be preserved and maintained – to whomever the particular subjects of foreign trade activity belonged. On the one part this has found expression in the appropriate unambiguous regulation of the functions of all central managing and controlling state agencies, and on the other, in the legal regulation of the licensing and controlling functions of the Minis ter of Foreign Trade in respect of all foreign trade operations, hereincluded the granting of foreign trade rights to non-foreign trade enterprises.[14]

The regulation of the managing functions of the state as outlined here indicates that the foreign trade monopoly of the state has preserved its principal decisive position in these new organizational interrelations, too. The circumstance, that unlike the 1949 Constitution the new one of 1972 fails to speak of the foreign trade monopoly expressedly, must not be overrated. This should be done the less because the Foreign Trade Act of 1974, after a number of partial regulations,[15] presents the comprehensive theoretical codification of the state's foreign trade monopoly. Section 3 of this Act reads as follows: "In the Hungarian People's Republic foreign trade is a state monopoly. On the basis of the foreign trade monopoly the state develops the international conditions of foreign trade through the conclusion of international agreements and other ways. The state establishes the organizational system of foreign trade, gives authorization to conduct foreign tade activities, further directs and controls this activity. Except for questions of which the Council of Ministers has reserved its competency, drawn it to itself or has assigned it to another agency, the functions and competency of public administration deriving from the foreign trade monopoly shall be exercised by the central public organ designated by the Council of Ministers." The central administrative agency thusly to be appointed by the Council of Ministers is of course the Ministry of Foreign Trade.[16] As regards the said fundamental rules

concerning the organizational structure of foreign trade Section 7 of the Act declares another principle of vital importance: "In the development of the organizational system of foreign trade the organizational conditions for efficient action abroad shall be ensured."

Viewed from the organizational interrelations the foreign trade monopoly is at state level differentiated also in so far as certain fundamental competencies come within the jurisdiction of the legislature, the Parliament, the Presidential Council, and the Council of Ministers, so e. g. questions relating to international conventions and treties the domestic structure of state administration, the general economic policy and within it foreign trade policy – to mention some major issues only. In this organizational system the outstanding executive organ is of course the Council of Ministers, as defined by section 16 of the Foreign Trade Act: "The framework and principles of management of foreign trade policy shall be established by the Council of Ministers in agreement with the Act on national economic plan". The central and general positions of the Ministry of Foreign Trade will, of course, come into prominence also in the working-out and implementation of the foreign trade policy. This has been defined in an unambiguous and detailed form in the Government Resolution No. 1053 of 1974 on the enforcement of the Foreign Trade Act. First, as a general principle the Resolution declares in section 4 that "the detailed framing of the foreign trade policy on the basis of the guidelines laid down by the Council of Ministers is the task of the Minister of Foreign Trade". Secondly, any action taken at the administrative level in foreign trade, except for those taken by the Ministry of Foreign Trade, are not valid unless it has been taken in agreement with the Minister of Foreign Trade. Section 5 of the Resolution accordingly states: "The organs in charge of economic management which by authority of the Council of Ministers discharge state administrative functions and competences deriving from the foreign trade monopoly, further those organs and agencies which within the limits of their competences in production, trade, or services in conformity with section 17 of the foreign trade act establish or maintain contacts with foreign state organs, economic organizations, persons or international organizations are obliged to proceed in harmony with the foreign trade policy. To this end these organs and agencies are obliged to coordinate their actions with the Minister of Foreign Trade, and abroad, if need be with the head of the commercial section of the diplomatic representation, or other state foreign trade agencies fulfilling similar tasks. The Minister of Foreign Trade may waive this coordination". Thirdly, section 8 of the Resolution provides that in any decision of state economic management directly or indirectly affecting Hungary's foreign trade activities all state managing agencies have to proceed in agreement with the Minister of Foreign Trade. Fourthly, the predominant role of the Minister of Foreign Trade is in detail laid down in the provisions which formulate the direct rights and obligations of the Ministry of Foreign Trade in shaping and realization Hungary's foreign trade policy.[17]

(b) *The greater independence of the enterprises and their liability in foreign trade processes*

10. Discussing the new regulation on the managing and controlling policy effective in foreign trade, the repeteadly mentioned rearrangement in this policy and the high degree of independence of the enterprises as planned and carried into effect, – not everything can be covered here. Better we focus hereafter on how the inner substance of the management and control changed and transformed, how this new inner substance developed in agreement with the principles of the economic reform in the direction of the greater independence of the enterprises. In other words we propose to discuss how now management is effected, what competences are decisive to this end and where these competences have been vested. Or, in a slighty generalized form, how the equation can be balanced on the one side of which there stands state management of the value X plus an tenterprise activity range of the value Y and on the other side a higher performance of foreign trade is the adequate result. In these questions as a matter of course all phenomena and forms of development have to be surveyed within the system of conditions of the state monopoly of foreign trade, while the equation to be analysed is also part of the institution of state oreign trade monopoly.

(a) Before the reform the economic activities of the enterprises were materialized in conformity with the rules of a comprehensive, centrally defined and controlled national economic plan. In a somewhat simplified form we may say that enterprise activities were in their essential elements defined by plan instructions and other central state dispositions (so e. g. the choice of their contracting partners, the principal stipulations of their contracts, the prices of products and services, etc.). As regards their profits direct state collection (skimming) was the rule, investments were carried out in conformity with state plans, they were financed from central budgetary sources. Foreign trade enterprises too operated in conformity with this mechanism, although considerable difficulties were experienced in the outer (especially East-West) side of their business relationships, since this, as a matter of course, was sometimes very hard to adjust to the national economic plan.

The turning point, the decisive normative position taken here was laid down in Resolution No. 22 of the Economic Commission of the Government of 1967 on the method of economic planning: "The implementation of the national economic plan – by replacing the system of planing broken down into mandatory indices and instructions – has to be based decisively on the system of economic regulation. The enterprises, with due regard to the objectives and means of control laid down in the national economic plan, decide over their plans independently." Resolution No. 1 of 1967 the Government's Economic Commission formulates the provisions relating to foreign trade as follows: "At the introduction of the reform of the foreign trade mechanism on the lst January, 1968, the creation of the economic unity of production and

foreign trade activity shall be the fundamental consideration. This shall in the first place be achieved by economic methods, by the common interest of the enterprises in the economic result. In justified cases foreign trade activity shall also organizationally be combined with production of domestic trade".

Whereas these first sources of law understandably speak of the new economic methods, in the complete codification these methods manifest themselves together with the measures taken by the authorities and constitute the foreign trade mechanism in its totality. Accordingly section 19 of the Foreign Trade Act decrees: "Subject to the relevant legal dispositions the management of foreign trade shall be implemented by economic and administrative means serving the realization of the foreign trade policy," the elaboration of which is the task of the Minister of Foreign Trade in conjunction with the Minister of Finance and the other managing agencies concerned, as has been defined by paragr. *(b)* of section 7 of the Govt. Resulotion No. 1053/1974 introducing the Foreign Trade Act.

This extension of the principle of planning *and* interestedness to foreign trade and in general to the enterprises and to the corresponding economic activities has as a matter of course called for the substantial legislative definition of enterprise independence. The foundations of this greater enterprise independence have been laid in decree No. 11 of 1969 of the Council of Ministers. The provisions of this decree have been amended in the latest piece of legislation, namely by the Act VI of 1977 on the State Enterprises. Section 2 of this Act states that to discharge its functions the enterprise manages and operates the assets entrusted to it and the labour force in its employment independently. Although sections 2 and 5 of the Act in addition to the economic methods also speak of state administrative means as part of the mechanism of state management, in the following passages of the Act decisive stress has been laid on the independence and the responsibility of the enterprises. This concept of economic policy has found expresssion most unambiguously in section 22 of the Act. "The enterprise shall with the assets entrusted to it by the State, further with those managed by it and the labour force in its employment conduct business within the scope of the provisions of law and within the scope of activity as defined by the establishing decision (by-laws and articles) independently." It is evident from this formulation that the legal limits of this independence are on the one part the general provisions of law and on the other, the constituting legal instruments. As for its content this independence has been defined by the following passage of the said section: "The enterprise shall, with its responsible and initiative venture and undertaking of risks adjusted to the economic conditions, serve the enforcement of the enterprise and social interests, the satisfaction of the needs of society. Within the sphere of management and the administration of the assets entrusted to it, the enterprise shall be entitled to all rights which shall not have expressly been withdrawn from it by provision of law. The enterprise shall, in

connection with its business, be granted definite rights in agreement with its independent management and responsibility, in particular in the domain of investment, technological development, exploitation of the intellectual and material resources, labour force, pricing, sales and procurement, organization, including plant and work organization, further in the financial, commerical, cooperative and monetary relations." These provisions which in the form of a source of high level formulate the position and functions of the fundamental units of the national economy, are in the opinion of this author landmarks in the development of Hungarian law and within it of civil law. Here we have the legislative formulation of enterprise autonomy and responsibility which was so far unknown in Hungarian socialist law, which has become the central element of the reform of economic management, and which in the history of law will hardly receive a different appreciation from posteriority.

This autonomous position of the enterprise the law has expanded so as to embrace other relations of the enterprise as well. So e. g. the earlier and the recodified Act on the state enterprise in sections 24 and 34, respectively, state that the founding organ cannot instruct the enterprise to the pursuit of definite activities unless this is justified for reasons of national defence or the performance of obligation assumed in a treaty or convention and in the given sphere the interests of national economy cannot be guaranteed with economic means satisfactorily or at all. Still even in such cases the financial independence of the enterprise as economic unit will have to be preserved. Therefore the respective section of the Enterprise Act states that if the performance of a definite instruction is financially detrimental to the enterprise the founding organ will have to attend to the elimination of this disadvantage and for that matter the compensation has to follow by properly weighing all circumstances and giving attention to the request of the enterprise and to the potentialities of national economy. This is, of course, the inside of the legal relationships of the enterprise which bear upon the rights and obligations existing between the founding organ and the enterprise. Although in the last resort these relationships may have indirect implications on the obligations and the responsibilities of the enterprise concerning third parties e. g. the creditors, still we have to point out that third persons cannot, on the plea of the provisions referred to above, reach the state, neither directly nor indirectly through the neterprise, they cannot sue the founding state organ for the obligations of the enterprise. In this connexion we would refer to the classical principle of company law: the enterprise, so e. g. any publicly held corporation or closed company (Aktiengesellschaft or GmbH), is responsible for its obligations only with the assets entrusted to, and managed by, it. Sections 27 of the enterprise Act formulates this as follows: "The enterprise shall be liable for its obligations with the assets entrusted to, and administered by, it." The state or the founding organ does not for debts owed by the enterprise to third persons qualify as a civil law party.

*(b)* Another aspect of the relationship between enterprise and state concerns the competency *of disposition of the profit earned by the enterprise.* This affects, first, the system of state collection of enterprise income, and, secondly, the investment policy. Before the reform of economic management the state collected the profits of the enterprise directly in the manner as defined by the managing state agencies (direct collection or skimming system). Investments were planned and financed centrally.

The new system of economic management has introduced here essential innovations by statutory regulation pointing to enterprise independence, cooperation, and development. The measures introduced by the reform have had bearings on all enterprises, so on foreign trade enterprises and such vested with the right of foreign trade. In conformity with the introductory provisions of the Government Decree No. 42 of 1967 bearing also on enterprise interestedness "The financial interestedness of the enterprises and their workers has to be attached to the actualities in proceeds and profit. For a realization of this part of the profit has to be remitted to the state budget in the forms of taxation so that simultaneously funds of stimulating enterprise interestedness shall come to be established." This principle together with other provisions of this decree and other laws has produced the detailed regulation of the system of taxation and the allocations to enterprise funds. This form of state collection of a definite part of profits, i. e. the system of taxation (income tax, production tax etc.) have created normative conditions for the enterprises with which now they can be acquainted in advance. In their economic activities they can predict the sum they will have to allocate to the state budget. In the knowledge of these they can draw up their plans and can calculate the part of the profits remaining at their disposal. For this purpose the Government Decree and its supplementing provisions have called to life the corresponding funds, so the development fund, the profit share fund and the reserve fund. The law, with normative power, even holds the enterprises to the accumulation of such funds.

Instead of going into further details we propose to discuss another aspect of the growth of the compencies and also of the responsibilities of the enterprises. This is the scope of rights and responsibilities concerning *their programmes,* that is the position of the enterprise where it can act as the subject of the particular product market or industry as a whole. Decree No. 38 of 1969 of the Council of Ministers on the order of investments (and the several decrees and resolutions enforcing it) by the side of state investments recognizes also those of the enterprises and cooperatives. Section 3 of the decree states that the right of decision within the latter category of investments lies with the enterprises and cooperatives. These investments are financed from their development fund and recourse may be had also to bank credits (section 16).

In connexion with the position of the enterprise as here described, again compared to the past, we would mention that in the new legislation provisions have been made to protect the enterprise in its right of dispo-

sal of its assets against the interference of the state, or better, the founding organ. Both the earlier enterprise act of 1967 and the following act of 1977 pronounce the principle already referred to that apart from certain exceptions (modification of the scope of activities, reorganization, etc.) the founding agency cannot withdraw the assets of the enterprise (sections 14, 28).

The investments of the enterprises may vary for their legal form. There are investments within the enterprise as legal entity (i. e. the expansion of the actual potentials of the enterprise), investments in the form of association with other enterprises, the formation of joint venture enterprises or companies, the joining to such existing enterprises, domestic joint ventures with the participation of foreign enterprises, participation in companies abroad, or the establishment of wholly owned subsidiaries abroad.

*(c)* The innovations in *the price and foreign exchange* regulations are part of the development which tends towards the greater autonomy of the enterprises.

As regards the *price policy* we would briefly mention that the new system of economic management has by discarding the earlier system of the central establishment of prices "freed" the prices in a differentiated form within the domestic contractual relations, or more correctly, it has adjusted the prices to the general economic and income policy, and to the commodity-money relationship and the general market conditions. The principles of the new price policy have been laid down in decree No. 10126 of 1966 of the Economic Committee of the Government which in its title "The new industrial price system" signals the essence of the reform: "In the new system of economic management – by organically combining the functions of central management as defined by the economic plan on the one hand and the commodity relationships on the other hand – the fundamental function of the industrial prices is to orientate and encourage the producers and consumers in their economic decisions coorrectly. By this the prices promote the reasonable exploitation of the economic resources, the adjustment of production to the solvent demand, the development of an economic structure of consumption, the balance of demand and offer. The industrial prices will perform their fundamental function if they materialize the joint effect of the following factors: the costs of production, the value judgement of the markets, state preferences (economic preferences). These factors determine the prices in conjuction and in mutual interrelations. Owing to the changes in the temporal order of the costs of production and the value judgement of the market this is possible only in a price system where the prices are determined by the state only within a narrower scope of products, further where the state control of prices operates with appropriate elasticity "(section 2). Subsequent legislation following in the wake of this decree imply decree No. 56 of 1967 of the Council of Ministers on price control. This decree provides the new general regulation of price control in the new system of pricing. This regulation affected all commodities marketed in inland,

introduced a differentiated system of price control, and recognized free market prices of commodities which did not come within the other category regulated by the decree, namely the commodities coming within the sphere of the direct state price-fixing (section 3). This price regulation accordingly applied also to transactions in foreign trade relations, that is to the relations between home enterprises and foreign trade enterprises, naturally except for the prices Hungarian enterprises practiced abroad which as a matter of course developed in conformity with the price mechanism usual in these relations.

Reforms of moment were born also in the sphere of the *planned foreign exchange economy*. The essential rules have been introduced by the resolution No. 16 of the Economiy Committee entitled "On the system of foreign exchange economy and the relevant state competences". Together with Law-Decree No. 1 of 1974 the two enactments contitute the reformed law on foreign exchange of the country. What concerns the foreign trade or more precisely the enterprises engaged in foreign trade, of the new regulation may briefly be summed up as follows: The state foreign exchange monopoly has remained the principle in this field of law, however, with a better flexibility needed for enterprise mobility and suiting the exigencies of the new system of economic management, i. e. with fewer bureaucratic ties; for a foreign trade transaction only the licence of the Ministry of Foreign Trade is needed, not like earlier also that of the foreign exchange authority; the foreign exchange the enterprise has earned has to be offered for sale to the National Bank of Hungary (this rule did not change); to their imports the enterprises buy the foreign exchange from the National Bank of Hungary, using their forint reserves (earlier even here a special permit of the foreign exchange authority was needed); the foreign trade enterprises and the enterprises vested with foreign trade rights may extend credits to their foreign partners without the special permit of the foreign exchange authority as earlier required; for the acceptance of risks by the foreign trade enterprises in their transactions the new system provides facilities for better conditions, so e. g. the extension of export-insurance, i. e. if the seller extends credit (up to the price of the goods sold) to the buyer, by the insurance contract the seller is insured against the fluctuations of currency rates or risks of a political nature etc.[18]

Here mention may be made of the measures in foreign exchange policy which aimed at better foreign exchange possibilities of the citizens and the travel agencies, promoting thereby tourism. The facilities are by no means insignificant. This is borne out also by the statistics of Hungarian tourism. Whereas in 1970 cca a million Hungarian tourist spent holidays abroad, by 1978 this number increased spectaculary to more than 5.4 millions; the number of the foreign tourists in Hungary in these two years was 6.3 and 16.9 millions respectively what for Hungary's population of 10 million is quite a number.[19]

*(d)* An important item of the macro- and microeconomic relations which among others wants to guarantee to the enterprises differentiated

normative conditions in the reform of economic management is the law on *customs or tariff*. Before the reform customs hed as a foreign trade calculation factor or as an institution of foreign trade policy hardly a word to say. The situation had changed gradually. The essential change supervened with the reform of economic management, fundamentally with the introduction of the Customs Code, that is Law-Decree No. 2 of 1966 and the recent commercial tariffs supplementing it. Tariffs have been brought under regulation by Decree No. 21 of 1976 of the Council of Ministers.

Briefly we may sum up the underlying concept of the new development as follows. On the one part the objective has been the establishment of a customs system which suits the international economic conditions and at the same time is appropriate for the efficient operation of Hungarian foreign trade relations. Secondly, the new system was meant to provide the possibility to the foreign trade enterprises to work with realistic preliminary estimates of the results of their planned transactions, so as to allow them to embark on reasonable long-term contract-making policies. The statement may, therefore, be made that with the differentiated customs law Hungarian law may approach the objectives of foreign trade policy with the hope of success, not in the last resort also owing to Hungary's accession to the GATT.[20] In this sense section 19 of the Foreign Trade Act postulates reality when it states with normative effect that the conduct of foreign trade activites and the enforcement of Hungary's foreign trade policy in addition to economic means takes place with the establishment and enforcement of the appropriate customs policy.

*(e)* As has been made clear earlier, and laid down in Decree No. 1 of 1967 of the Economic Commission regulating the principles of the relationships of enterprises with foreign trade authorization, the underlying concept of the mechanism of foreign trade claimed the harmony between foreign trade activities and production. The Foreign Trade Act, in section 4, restates this principle when it says that: "It is the function of foreign trade .... through the mediation of the requirements raised by the progress of world economy and in particular of the socialist economic integration, by the exploration of markets, to advance the economy of production, spezialization of production, beneficial structural changes in production, the improvement of its technological standards, and so to contribute to the growth of the national income." What is essential here, is the *unity of the processes of production and of foreign trade*, and within the framework of this, or partly for the sake of it, the transmission of the exigencies and challenges of world economy. We have to lay stress on this concept and objective in particular because in the previous mechanism of foreign trade the domestic economy and especially production were exposed in an indirect manner only to the demands and challenges of the world market. Of the changes that have benn introduced in the organizational sphere, we could see above. In the creation of the unity the *contracts of the enterprises* in general and of the foreign trade enterprises and of such vested with the right of foreign trade in

particular (their power to decide over their contractual relationships and the real substance of their activity as expressed by their contracts or foreign trade contracts related to their actual economic activity), is the other very important link, rather a large system of links, which has to be discussed next more closely.

The Foreign Trade Act has formulated this unity-creating and transmitting function of foreign trade addressed to the enterprise in section 15 as follows: "The contractual relationships between the authorized (to do foreign trade – F M) enterprises and the producing, commercial or service enterprises shall be shaped on the basis of the interests of national economy; within the framework of this the cooperation of the above economic organizations and also the harmony between their economic interests shall be brought about, and the transmission of world market effects to the producing, commercial and service organizations shall be ensured". What legislative practice has translated of these principles – namely unity and transmission, and the mobility of contract-making required for these – into reality, may be presented by the following changes of major importance.

*(aa)* We have already mentioned that by the side of the foreign trade enterprises a number of *other enterprises may also have a share (direct participation) in foreign trade transactions:* several producing enterprises have been awarded the right of foreign trade, others got *ad hoc* authorizations for carrying into effect their long-term contracts of cooperation; the formation of inland economic associations with foreign participation has been admitted; the regulation on the economic associations (investments) of Hungarian enterprises abroad has been rewritten in the spirit of the new mechanism of foreign trade. All this has been mentioned and discussed. We recapitulate this in the present connection only because the principles referred to have become the organizational and legal elements of the realization of the unity of foreign trade and production at a possibly high level. But the source of law referred to have thrown the gates open not only to the organizational potentialities in question, they also have brought about the statutory regulation of several other new institutions. So e. g. the cooperation contracts and enterprise associations really got chances to real operation. The number of economic units pursuing foreign trade activities is well above one hundred, more than one half of which are producing enterprises and not foreign trade enterprises in the classical meaning of the term.[21] As to the number of *ad hoc* foreign trade authorizations granted for the carrying into effect of longterm contracts for cooperation, we have to rely on the number of such contracts (although not behind all of these contracts are the domestic partners invested with *ad hoc* foreign trade authorization. Reckoned from the beginning of thiscontract practice the figure is somehwere in the neighbourhood of one thousand. In 1977 the number of contracts of this kind in operation in Eas-West relations was about five hundred whereas in 1978 the total number of operating cooperation contracts and those under consideration by the parties increased

to 792.[22] To this number we have to add a by no means insignificant number of contracts made between Hungary and the socialist countries. In any event this is strong evidence of a development unfolding towards the unity of foreign trade and the production processes.

In this connection a few words may be said of the new system of the commercial representations in Hungary of foreign firms. Earlier, before the Foreign Trade Act, there were not many variants for the choice of the organization of such representations. We may even say that here a monistic, single-track system was predominant, with hardly any flexibility. Foreign enterprises could namely transact their business only through the mediation of domestic enterprises of commercial representation. The situation has changed substantially as from the 1st January, 1975. The change is partly due to the Foreign Trade Act and its enforcement decrees, partly to Decree No. 8/1975 of the Minister of Foreign Trade and Decree No. 18/1975 of the Minister of Finance, enactments which offer a complete channel-system (types and possible scope of action), of commercial representations of foreign enterprises in Hungary; they provided the legal means for an operative organization of this branch of foreign trade and so for the direct transmission of the effects of world economy and foreign economic processes. As regards the organizational variants the new regulation strictly speaking provides for seven forms of such representations: foreign firms may be represented by Hungarian state enterprises established for this purpose (commercial agency enterprises); within this enterprise the foreign enterprises may open separate business offices; the formation of a joint enterprise by a domestic enterprise and a foreign enterprise for the representation of the latter; in cases properly substantiated the foreign enterprises may open direct representations (accredited own business offices) in Hungary, etc. In addition to this variety of organization of representations the new regulation has also built up a system of state control of this part of foreign trade activities. Anyhow, it may safely be stated that for more immediate ties between world trade and national trade, or in other words for the unity of foreign trade and production, by these forms too momentous steps have been taken.

*(bb)* Decree No. 7 of 1974 of the Minister of Foreign Trade "On the enforcement of certain provisions of Act III of 1974 on foreign trade" imposes the obligation on the foreign trade enterprises that "in the course of preparation of the foreign trade contracts they invite the producing, commercial and service organization within as wide as possible a sphere to the negotiations with the foreign partner for the discussion of technical and economic questions which require the expertise of these organizations or their taking immediate decision." It is, therefore, an essential element of the new concept of foreign trade to *ensure the cooperation in contract-making* of non-foreign trade enterprises which in their productive activities have to take into account considerations of foreign trade, but are not in the position to transact foreign trade directly. An element of this policy is also the obligation laid down in section 10 of the decree

referred to above, that the foreign trade enterprises have to advise the producing, commercial and service organizations conerning the foreign trade ideas and plans of these organizations on the chances of the foreign markets of sales or purchases.

*(cc)* An important item in the regulation of foreign trade is the Decree No. 32 of 1967 (amended by the Decree No. 54 of 1978) of the Government on the domestic contracts of enterprises carrying on foreign trade activity. In this decree namely, that is in the new situation of the establishment of contractual relations, a new form of mediation and creation of unity manifests itself, which at the same time is directed to the reinforcement of enterprise autonomy and the freedom of enterprises to negotiate and make their contracts. The new system of economic management has resolved the contradiction of the restrictions of the earlier regulatory system as thesis, and the freedom from restrictions, i. e. the contract-making autonomy as antithesis by a new synthesis, which is more appropriate for a differentiated and more effective state control on the one hand and for the development of a flexible and efficient activity of the enterprises on the other hand. The thesis of earlier restrictions meant that the eeterprises acted with very limited contract-making autonomy. The choice of the type of contract was prefixed for them and the law defined even the partners with whom the enterprises were bound to contract. They had to sell their products to the foreign trade enterprise under conditions of rigorous contract discipline. The foreign trade enterprise was then expected to sell these products on the foreign market. At imports the enterprises were expected to live up to the same conditions just the other way round. Owing to this duplication of sales and the legal mechanism applied in the given economically uniform foreign trade transaction a legal-technical disjunction was brought about: what ought to belong together was split up into parts. A concerte consequence of this policy was the strong isolation of the domestic economy and the domestic production from international economy, resulting in a remarkably indirect way through which information of the world market reached national industry. The same may be said of the clumsiness by which international technological standards had reached Hungarian industry. For want of transmitting channels and of the elements and catalysers of the units as described above domestic economy was shielded off strongly with respect to the processes of world economy and international technological standards The autonomy of activities vigorously claiming independent responsibility was, accordingly strongly restricted. There is no need for an extensive discussion of the antithesis. This was given, in fact the desirable effects of the international economic environment and the new requirements of efficiency, the stronger efficiency-orientatedness have found their expression for long in the unity of the internal and external economic processes and in the greater dimensions of enterprise mobility.

The synthesis as formulated in the new Hungarian foreign trade mechanism was meant to materialize in the following elements: (1) Sec-

tion 8 of Decree No. 1 of 1967 of the Economic Committee and section 14 of the Foreign Trade Act have provided that the producing, commercial and service enterprises which do not possess the right of foreign trade, may freely choose the foreign trade enterprise through the mediation of which they want to transact their import or export trade. (2) Decree No. 32 of 1967 and No. 54 of 1978 of the Council of Ministers have abolished the obligatory contract-making between the foreign trade enterprises and their domestic partners. Section 1 and 2 provide that the parties taking part in the contract in addition to freely choosing their partners have free choice also concerning the type of contract applied. The mandatory contracting can be decreed only in cases laid down in statute or in the presence of conditions specified by statute, as discussed below. (3) The unity of the foreign trade and production processes, the direct interestedness of the domestic enterprises, the autonomy in making a foreign trade contract are in the regulation of the contracts in question expressed by two institutions. These two institutions are the contract of foreign trade association and the contract of commission (sections 5–12, 13–33 in the consolidated new regulation of the mentioned decrees). If the parties fail to agree on the type of contract the court will in its decision qualify it as a contract of commission (section 1). When to this we add the provision in section 14 according to which the agent (the foreign trade enterprise) is at the wish of the principal bound to sign the contract of commission, the statement may be made that, also as borne out by contract-making practice in these relations, the contract of commission is the principal form of contract. The by no means insignificant contract of foreign trade association and the contract of commission are in this way the two main channels in this field through which the new regulation has brought about the said unity, the cooperation of the parties and the autonomy claiming and calling for strong independent liability. The new regulation has acted justifiedly and in response to expectations, for these types of contracts are notionally, i. e. per definition inducing and enforcing contractual cooperation, mutuality of interests and the maximum of autonomy developing in the sign of mutual liability.

c) *The forms of state management in the new regulation*

11. Above an attempt has been made to cast light on the new mechanism of foreign trade by focussing on two principal questions. The one has been the organizational development of the foreign trade monopoly, the other the development of management, with special regard to the expanding autonomy of the enterprises. As could be seen the trend points to differentiation, to a reshuffling the complex totality of the possible competences with a direction towads the enterprises. In the mentioned equation: state management X plus the range of enterprise action Y equal greater efficacy in foreign trade. For a lower value of X this would mean a growing value Y. This is not, however, the whole story and and besides not quite accurate. The values Y have undoubtedly grown. The

values X, however have adapted themselves to the increasing values Y not only by becoming smaller, although obviously such a quantitative change could also de demonstrated. The case is rather one of qualitative change in the values X, even when we have a look at how direct state management is related to growing enterprise autonomy: where Y has become stronger there the value X has received decisively other values through the circumstance that as regards the competences transferred or 'released' the state reinforced its strategic position, the normative control. This is but one side of the matter, when we are looking for an answer to the question, how state management takes place under the new conditions. What is now the other side ?

First of all we have to point out that the decreasing of the value of one member of the equation and rise of the value of the other cannot be appraised in a routine form, that is by simple pressing down a pushbutton on the computer, or to move a certain lever to and fro, and thereby we may blend the values X and Y in the optimum form. Neither X no Y are ends by themselves. The value is on the other side of the eqation: to produce the appropriate and possible optimum in foreign trade within the given historical processes of development. And this has stood for the reformulation of the lefthand values of the equation in question.

And if now we should like to get closer to the possible whole answer to the question, to the question namely how state management operates under the new conditions, then there is still a lot of which we have to speak. Above all the question has to be put in its totality: how can by the side of the greater independence of the enterprises and the differentiated development of the state foreign trade monopoly the state economic policy and economic management be preserved, in particular when so far the case has been one of the reshuffling of competences and in the equation state management has seemingly suffered losses ? The explanation of the answer should be ventured hereafter.

*(a)* Already the elements themselves on the left side of the equation, that is enterprise autonomy as related to state management originate in the state as sovereign depositary of economic policy. But let us stay at the values X and Y for another moment. Just to state it clearly again: What was the main concern of the new mechanism of foreign trade ? The clear answer: Resources of larger values Y have to be mobilized. This answer was the outcome of many-sided deliberations to find and formulate historical and economic necessities and the conclusion was: the said answer is rational and its substantiation may contribute to the increase of the values on the right side of the equation. The state which has now formulated the particular values of the equation in this way, is always in the position to reorganize the equation, carry out modifications in it, to transgress the self-restrictions given in its present formulation. That the state in its law, like e. g. in the code of state enterprises, protects the enterprise even againts the state, when in section 24 it states that the assets of the enterprise can be withdrawn only in the presence of specified conditions, implies a contradiction in a formal outlook only. This

conditionedness has however been defined by the state and in this definition of the conditions obviously aspects of national economy have been decisive, and not some sort of a fetishization of enterprise independence of any kind. Or in other words: *the relations between state and enterprise as established at present is by itself a form of state management.*

*(b)* What, however, has to be stressed specially are two facts, viz. (1) In the wake of the qualitative modification of the values X substantially new methods of management have appeared. (2) There are also *other means of state management,* and such have in the new system of economic management come into being also as regards foreign trade. In other words we may say that the left side of the equation does not consist only of the elements so far reviewed. Considering all possible elements of state management, and accepting this as complete state management, we have to know that the means of this beyond doubt constitute a unity and cannot be segregated from one another rigidly. Therefore, in the following we shall try to sum up the particular elements of state management without integrating them in to the one the other 'mathematical' category of the so far used equation-simile in a forcible manner. The following classification is rather pragmatic. It should be emphasized that in addition to the values Y these elements of central management render the totality of the mechanism, eventually the whole left side of the equation which in its effect is meant to produce the achievements of the said objective on the right side, i. e. efficient foreign trade.

*(aa)* First the means have to be enumerated by which the state – as sovereign and the proprietor of the major part of the economic units – *directs and controls economy in its totality and within it also foreign trade.* In addition to general legislative activity and in particular to the one relating to economy briefly the following are the legally defined central competences and institutions of control:

(1) The national economic plans, that is the long-medium-and short--term plans in which the state defines its economic policy at any time. (2) A corollary of these plans are the investment policy and the system of investments in which the corresponding superior governmental agencies decide over the major investments of the state and also other investments to be financed from budgetary means, which then define the principal tendencies of economic development. (3) This investment policy is served by the state's rights and obligations which find expression in the creation of new economic units. In addition to the new economic units established by enterprise association (joint ventures) this is the principal form of the creation of new enterprises. (4) For the needs of the national economic interests defined by the national economic plans the competent agencies of governmental management may exceptionally impose the obligation of contract-making from above (mandatory contracts). (5) The interests of national economy may justify the issue of direct instructions and the institution of measures, which is of moment even when these can materialize only under the conditions specified above. (6) The state may interfere in the enterprise sphere also by reorganization,

termination, or liquidation, if this interference is justified by interests of national economy. (7) The state or the founding agency may within the framework of the founder-proprietary rights, so e. g. in the event of a company limited by shares in the corresponding organs of the company, though indirectly yet with efficacy influence the carriage of business by the enterprises. (8) Several acts of the enterprises presuppose the agreement of the appropriate managing agencies of the state (so e. g. the formation of joint enterprises) within the scope of which there again an opportunity is offered for the enforcement of the general national economic policy. (9) Among the means of the state management in particular the economic means are of significance by which the enterprises cannot though be directed in a definite path yet can be influenced efficiently in their operations. Such are the methods of taxation, credit, subsidy and price policy both in restrictive or preferential way.

*(bb)* From the point of view of foreign trade of particular significance is the element of management realized in international public law channels, the *international regulatory system established with the accession and cooperation of Hungary*, the regulatory system namely which the state extends to the enterprises to assist them in their foreign trade operations, the system which facilitates the foreign trade activities of the enterprise, encourages or restricts them, as the case may be. Earlier we have already discussed this system. It is, as well known, a complex system of rules of public international law, such as e. g. the CMEA, still to this we have to add all conventions of economic nature, agreements and protocols on the annual or long-term foreign trade commodity turn-over and other interstate agreements.

*(cc)* As regards the *management of foreign trade relations in particular and concretely*, in addition to what of the above relates as a matter of course to foreign trade, *there operate several institutions of municipal law.* The outstanding elements of this municipal regulation are: (1) The foreign trade policy to be submitted by the Minister of Foreign Trade and approved by the Council of Ministers which all state managing agencies are bound to observe and enforce and directly is binding on foreign trade enterprises and such awarded the right of foreign trade. This foreign trade policy embraces the system of economic contracts, customs policy foreign exhange policy, price policy (sections 16 – 19 of the Foreign Trade Act, sections 5 – 7 of the Decree No. 1053 of 1974 of the Council of Ministers on the enforcement of the Foreign Trade Act.). The enterprises have in their foreign trade activities to pursue this policy. It is this end for which they are vested with privileges and legal capacity by the competent governmental agencies (in general by the Ministr fof Foreign Trade). And to this end they are under state control and influence by the application of administrative ad economic means. Their legal capacity and autonomy presupposes, as a rule, mostly economic means from above, since they will follow the foreign trade policy by their own function and interest-system as natural requirement. But in addition to this, under sections 12, 19 – 20 of the Foreign Trade Act exceptionally defi-

nite instructions may be issued to them. Similar provisions have been taken up also in sections 2, 11 – 12 of the Government Decree on the introduction of the Foreign Trade Act. (3) By virtue of the Foreign Trade Act "The economic organizations are bound to perform obligations undertaken in international treaties and agreements". The enterprises should be encouraged and induced to the performance of these obligations by extending to them financial benefits above all, of which the state managing agencies have to take care in the preparatory state of the international instruments in question. If on the grounds of financial interestedness the international obligations cannot be met the Foreign Trade Act and the enforcing Government Decree attached to it provide that then the competent agency, in this case the Ministry of Foreign Trade may instruct the foreign trade enterprise to sign the corresponding contract, i. e. decree forced contract-making, although here too on the understanding that the enterprise in question would be recompensed for any loss arising from the transaction (sections 21 – 22 of the Foreign Trade Act, and sections 13 – 17 of the enforcing Government Decree"). (4) The formation of an economic association with the participation of foreigners requires the agreement of the Minister of Finance. This at the same time gives expression to the state management in the branch of industry in question (Decree No. 28 of 1972 of the Minister of Finance as amended by Decree No. 7 of 1977). The participation of a Hungarian enterprise in the formation of an enterprise abroad, or the participation of a Hungarian enterprise in foreign enterprises requires the consent of the Ministers of Finance and Foreign Trade as provided for by the Joint Decree No. 4 of 1975 of the two ministers. It is a subchapter of this that for the operation of foreign commercial representations in Hungary in like way governmental licence is required within the scope of which provision is made for the state management or control of such representations. (5) It is of importance that for each foreign trade transaction a licence of the Foreign Trade Ministry is required (individual or group licence applying accordingly to an individual deal or more deals concerning a group of commodity). This applies to both import and export deals. Here the Ministry will in the first place examine whether the transnaction in question is in agreement with the foreign exchange and procuremant policy, the interstate agreements and other provisions of law of general validity. The Ministry of Foreign Trade will check such transactions for rationality, technical justification and commercial terms only when this appears to be necessary for the maintenance of the balance in the home market or for other interests of national economy (section 20 of the Foreign Trade Act, Decree No. 2 of 1967 of the Economic Committee, decrees No. 3 and 28 of 1967, No. 6 of 1969, No. 7 of 1974 of the Ministry of Foreign Trade). (6) In addition to the direct and indirect (economic) means applied in state management we have to speak also of a few other intermediate economic means relating to foreign trade enterprises or to enterprises vested with the right of foreign trade. These are the state refund, the price multiplier and the import deposit. The function of the first two is – in

the event of the presence of economically exaggeratedly prejudicial or exaggeratedly advantageous price conditions abroad, or notwithstanding them – to keep the neterprises on the track of rational bisiness activity, putting them in the general economic profitable environment of the national economy as a whole. The institution of the import desposit in domestic currency mainly in the initial period was meant to put a check on a too liberal recourse to investments effected through imports, or in other words enterprises should resort to imports only when they are in possession of the necessary funds for the economic utilization of imports and otherwise manage their business in solid grounds. The import deposit namely meant that the enterprises could not buy foreign exchange for financing their imports unless they had deposited funds of their own corresponding to the value of the imports at the bank. Such funds were blocked for a definite term and they did not, as following from above, represent the price of the import goods (for that the enterprises had to pay the foreign exchange sum bought normally from the bank under the import-desposit-tie attached). The purpose was the enterprises should even void of the funds so blocked prove their ability to carry on sound business. The funds so blocked had then been restored to the production process on the expiration of the specified term. In a closer look to the practice of the import deposits the conclusion can be reached that the number of such deposits, their volume and the funds tied down were decreasing. In the latter years import deposits have lost much of their significance. The reason was that reasonable enterprise business policy could be achieved without recourse to this restrictive means.[23]

### 6. Concluding remarks

12. As conclusion to the survey and analysis so far made the following remarks may be added.

*(a)* The structure here outlined may perhaps justifiedly be regarded as a historical experiment to give expression to the principles of the reform of economic management, outlined in the introduction, in a coherent system with regard to foreign trade. The new regulation itself, and so also foreign trade partice, demonstrate that *(aa)* Hungarian trade policy operates with relative mobility and elasticity; *(bb)* a relatively efficient unity of domestic and international economic processes could be achieved; and *(cc)* to this end in the relations of state management and enterprises a relatively well-balanced relationship could be developed.

*(b)* In other socialist countries, notwithstanding similar or identic principles and ends of the economic policy, different historical and economic conditions will in all certainty result in different forms, a legal structure suiting the given conditions will take shape. While the ends and the economic and general legal foundations are the same, the organizational and legal solutions and the rate of autonomy and state management may differ in the various countries. These differences will no doubt tend to

change in the harmonizing processes of the economic integration within the CMEA.

*(c)* Naturally, the regulation here outlined is historically conditioned by the objective circumstances which in a decided form have shaped and still shape Hungarian development. In this connection we have to refer in the first place to the character of the previous Hungarian economic mechanism, to its achievements and development, to Hungarian economic conditions before 1968 and at present, and in general to the international political and economic processes in which Hungary also has a share.

*(aa)* Since the case is a historically defined process we have to look at the reform of economic management and its new system of norms in their historical development. Although as we have referred to at the particular phases of the legislative process, as regards the legal-codificatory forms and scopes in its principal traits and critical parts the system of norms has reached a relatively high stage of completion, this does not want to say as if the phenomenon, i.e. the reform and its regulation, were some sort of a closed world, and that Hungarian economic policy – and in connexion with it, the science of economy and jurisprudence – did not consider the reform an organically developing phenomenon. Although this study was not meant to search for the following paths of the further ways of this organic development, we still could witness that after the introduction of the reform in 1968 the permanent refining of the reform and its legal structure, its adjustment to its general perspective objectives and to the new conditions has been considered as selfevident necessity. Coherent larger adjustments have been made and towards further development taken in 1976 and 1979[24] Here international experience has a great role, above all thato of the socialist countries, the experience namely they have acquired within the scope of their economic reform and its legal regulation. *(bb)* While the natural exigencies of the further development of the economic mechanism and the objective demands manifesting themselves in connection with it call for their constant translation into the mainstream of the reform, it seems justified to say that the Hungarian economic reform, and within it the reform of the foreign trade mechanism have in the new economic regulation outlined above reached a stage of relative high stability, a source of its endogenous claim to longer historical perspectives. With the application of the means of the new-type state management, economic and administrative means, and the relatively quick response of the enterprises, which, however, still calls for reinforcement, the new mechanism has stood the challenge with not greater difficulties than the average, the challenge namely which has been produced by the enormous price movements in foreign trade during the latter years, challenges which, e.g., called for a fast and flexible change in the product-structure of the Hungarian economy, i.e. a fast and immediate reaction-process of the enterprises to this end: to put products on the market whose price and profit is more beneficial than that of the earlier product-structure. The autonomy and loadcarrying capacity of the enter-

prises have been exposed to a relatively high stress in this situation. But it is well known that stress in general produces or provokes a high degree of creative energy. To be sure, besides differentiated and high level state management and state responsibility there are large latent assets in the so generated creative power of the enterprises even with regard such situations, the creative power which was the prime factor in the search for the new mechanism of foreign trade to the peculiarity of the recent international economic situation. It is perhaps interesting to note here that as regards socialist countries Hungary has developed a positive trade balance and that until the drastic priceeruption on the world-market Hungary's balance of payment has improved even in capitalist relations.[25] And a very important other output: "The new system of economic management has substantially contributed to the consolidation of socialist democracy."[26]

13. It is certainly hardly possible to offer an at the same time accurate, descriptive, analysing and summarizing picture in all its interrelatons in this the subject-matter. For a more trustworthy and more complete picture we would, therefore, refer to the sources on which this chapter has relied and which in foreign trade relations are available partly in foreign languages too.[27] We should specially refer to the volume published also in English on problems of the economic reform in the socialist countries.[28] In this volume such experts have discussed the legal aspects of the reform as the Soviet professors Bratus and Yoffe. The Hungarian reform has been treated by professor Gy. Eörsi, the legal aspects of the Polish reform by Nadey and Rybicky. The well-known professor Such has dealt with the economic reform of the German Democratic Republic.

Without these sources in bakcground this chapter is often hardly more than a simplification of what it claims to reflect, i.e. of total reality. This is sad but still more than the non-existent total picture of everything, the lack of which should be excused on the account of the limited space in this chapter and on the something still offered here.

NOTES

[1] To the notion and forms of management in the more recent literature see **V. P. Gruzinov,** *The USSR's Management of foreign trade.* M. E. Sharpe, Inc. White Plains, NY, 1979, 243 pp (a translation of the Russian original *Upravlenie vhneshnei torgovlei: tseli, funktsii, metody,* Moscow, Mezhdunarodnye otnosheniia, 1975), see especially Chapter "Theoretical foundations of the Management of foreign trade", p. 36 et seq.; **V. V. Laptev,** *Socialist enterprises.* Vol. XVII (State and Economy), Chapter 16 of the International Encyclopedia of Comparative Law, 1978, especially Chapter "Management", p. 47 et seq.

[2] Changes of major importance, in any case in conformity with the character and objectives of the new system of economic management, have come into operation in 1967. The respective provision of law have been promulgated in the November issue of 1975 and 1979 of the Official Gazette. The provisions relating to the management and particularly concerning the mechanism of foreign trade will be reviewed in the study.

[3] Works of Hungarian literature published also in foreign languages are *Progress and Planning in Industry,* ed. **Z. Román,** Akadémiai Kiadó, Budapest, 1972, 417 pp.;

*Law and Economic Reform in the Socialist Countries*, ed. **Gy. Eörsi, – A. Harmathy** Akadémiai Kiadó, Budapest, 1972, 224 pp.

[4] Works dealing with the topic published in foreign langaages are *East-West Ralations* in vol. 5 (1974) of Annales d'Etudes Internationales, Geneva; *Abbau zwischenstaatlicher Handelshemmnisse und neue Wege der Wirtschaftskkooperation zwischen Ost und West* in Ost-Panorama, Sonderausgabe 1971; **D. K. Loeber,** *East-West Trade*, Bd. I – IV, Oceana, Dobbs Ferry N. Y., 1976 – 1977; **F. Mádl,** *Über den rechtlichen Mechanismus der europäischen wirtschaftlichen Kooperation auf Unterbehmensebene.* Acta Iuridica Nos. 1 – 2, Bd. 1976 pp. 19 – 72; **D. Pfaff,** *Die Aussenhandelsschiedsgerichtsbarkeit der sozialistischen Länder im Handel mit der BRD*, Verlagsgesellschaft Recht und Wirtschaft, Heidelberg, 1973, 887 pp.; **I. Meznerics,** *Law of Banking in East-West Trade*, Sijthoff-Oceana, Leiden-Dobbs Ferry N. Y., 1973, 427 pp.; **S. Pisar,** *Transaction entre l'Est et l'Ouest*, Dunod, Paris, 1972, 335 pp.; *Quellen des internationalen Einheitsrechts*, Bd. I – III. Herausgegeben von **K. Zweigert** und **J. Kropholler,** Sijthoff, Leiden, 1971 – 1973; *East-West Business Transactions*, ed. by **R. Starr,** London, 1974, 577 pp. (The author of the chapter on Hungary is **J. Varró,** pp. 219, 249.)

[5] From this literature we would refer to the follosing: **M. N. Bogulsawski,** *Aktuelle Rechtsfragen der Wirtschaftsbeziehungen sozialistischer Länder.* Staatsverlag, Berlin, 1973, 271 pp.; **F. Mádl,** *Juristische Fragen der Entwicklung einer wirtschaftlichen Integration in den Comecon-Ländern*, Enke Verlag, Stuttgart, 1971 96 pp.; **F. Mádl,** *Internationale wirtschaftliche Assoziationen – gemischte Unternehmungen in den Comecon Ländern*, AWD, Juni 1976, pp. 257 – 264; **I. Meznerics,** *Banking Transactions between Socialist Countries*, pp. 403 – 427 in the work quoted in note (4); **I. Szász,** *Uniform Law on International Sales of Goods – The CMEA General Conditions*, Akadémiai Kiadó, Budapest, 1976, 240 pp.; *Sozialistische ökonomische Integration – Rechtsfragen*, ed. **W. Seiffert,** Staatsverlag, Berlin, 1974, 235 pp.; **E. Ustor,** *Decision-making in the Council for Mutual Economic Assistance*, Recueil des Cours, vol. III, 1971, pp. 165 – 295.

[6] For economic policy and economic considerations see **J. Biró,** *Magyar külkereskedelmi politika a gazdaságirányítás új rendjében* (Hungarian foreign trade policy in the new system of economic management), Közgazdasági és Jogi Könyvkiadó, Budapest, 1973, 327 pp.

[7] The compilation of laws here referred to has been published by the Ministry of Foreign Trade in 1975. On the collection of the provisions relating to foreign trade published in foreign languages see. **I. Szász,** *Hungarian Statutes Concerning Foreign Trade*, ed. Hungarian Chamber of Commerce, Budapest, 1971, 242 pp.

[8] Sections 7, 9 of the Foreign Trade Act; decisions Nos 1, 21, 36 of 1967 of the Economic Committee; decrees No. 17 of 1967, Nos 3 and 23 of 1970, instructions No. 13 of 1969 and No. 7 of 1974 of the Ministry of Foreign Trade.

[9] Section 31 of Law-Decree No. 19 of 1970 on Economic Associations (in the recodified Law-Decree No. 4 of 1978 on the Economic Associations the corresponding section is 49); Decree No. 28 of 1972 of the Minister of Finance as amended by Decree No. 7 of 1977 on Economic Associations with foreign Participation; On this see, **F. Mádl,** *Die Neuregelung wirtschaftlicher Assoziationen mit ausländischer Beteiligung in Ungarn*, AWD, März 1973, pp. 121 – 129

[10] Section of the Foreign Trade Act; joint decree 4/1975 of the ministers of foreign trade and finance.

[11] On this see Resolution No. 36 of 1967 of the Economic Committee on the award of foreign trade rights, among others also to cooperatives.

[12] On this section 3 of the Decision of the Council of Ministers on the enforcement of the Foreign Trade Act states that natural persons can be awarded the right of foreign trade in exceptional cases only for the performance of tasks of a special character.

[13] Decisions Nos 1, 21, 36 of the Economic Committee and Decree No. 17 of 1967, No. 1 of 1968 and No. 3 of 1970 of the Minister of Foreign Trade.

[14] Sections 3, 6 – 8, 17 and 19 of the Foreign Trade Act; Sections 1 – 2, 5 – 11 of Government Decree No. 1053 of 1974 on the enforcement of the Foreign Trade Act; resolution No. 1 of 1967 of the Economic Committee among others on the managing and controlling rights of the Minister of Foreign Trade concerning the productive and commercial enter-prises engaged in foreign trade still coming within the competence of other de-

partments section (5); Decision No. 2052 of 1967 of the Council of Ministers on the functions, rights and organization of the Ministry of Foreign Trade.

[15] See Decree No. 1 of 1960 and Instruction No. 49 of 1964 of the Ministry of Foreign Trade on the regulation of foreign trade contracts and certain questions of foreign trade, further on the functions of the department; the same questions have been dealt with also by Government Decree No. 2052 of 1967.

[16] Section of Decree No. 1053 of 1974 on the enforcement of the foreign trade code.

[17] The list of obligations and rights of management among others embraces the authoritative and economic means of the enforcement of foreign trade policy; occasionally with the cooperation of other departments it has a decisive role in the enforcement of the customs and foreign exchange policies, the formation of the price policy, quality control, the award of foreign trade rights, etc.

[18] **Meznerics,** *Pénzügyi jog a szocialista gazdálkodásban és nemzetközi kapcsolatokban* (Financial law in socialist economy and in international relations) Közgazdasági és Jogi Könyvkiadó, Budapest, 1977, 686 pp., in particular the chapter on foreign exchange economy in the new system of economic management, pp. 573 – 588.

[19] As regards the data see *Statisztikai Évkönyv 1978* (Statistical Yearbook 1978), Ed. Központi Statisztikai Hivatal, Budapest 1979, p. 339 and **M. Timár,** *Gondolatok gazdaságirányítási rendszerünkről* (Thoughts of our system of economic management) Közgazdasági Szemle, 9/1978, pp. 1025 – 1033, P. 1030

[20] On this I. Meznerics's work quoted in Note 18 pp. 541 et seq.

[21] *Directory of Hungarian Foreign Trade Companies 1976*, Hungarian Chamber of Commerce, Budapest, 1976, 256 pp.

[22] On the data see Gerd Bíró, *Ungarns Wirtschaftsbeziehungen mit den nichtsozialistischen Staaten*, West-Ost Journal, Wien, Mai 1978, pp. et seq., for the 1978 data see Magyar Nemzet, Der 26, 1978.

[23] See to this development **J. Bíró** (*supra* note 6).

[24] A detailed and elastic regulation has been introduced on these institutions specifically relating to foreign trade; on this see Note 7 and the provisions of law referred to in it and in note 2 (*supra*).

[25] On the foreign trade balance and its development see M. Timár's work quoted in Note 19, pp. 1030 – 1031

[26] *Ibid.*, p. 1030

[27] Of the literature (which in generality and as regards a number of concrete issues deals with the system of economic management, among others with the experience accumulated in ten years, hereincluded ideas of its further development) the following works of political economy may be quoted: The work of M. Timár quoted above in Note (19); **I. Friss,** *10 év gazdasági reform* (Ten years economic reform), Valóság, 7/1978, pp. 1 – 14; **T. I. Berend,** *10 év után – Mérleg helyett* (After ten years – instead of a balance sheet), ibid., pp. 15 – 26; **B. Balassa,** *A magyar gazdasági reform 10 év után* (The Hugarian economic reform after ten years), ibid., pp. 27 – 41; works of legal literature: *Jogi kérdések az új gazdaságirányítás köréből* (Legal question from the sphere of the new economic management) ed. **J. Szilbereky,** Közgazdasági és Jogi Kiadó, Budapest, 1967, 324 pp; **Gy. Eörsi:** *A gazdaságirányítás új rendszerére áttérés jogáról* (On the law of the transition to the new system of economic management) Közgazdasági és Jogi Könyvkiadó, Budapest, 1968, pp. 291; experiences gained in a highly essential question of the regulation of foreign trade relations have been summed up, together with ideas of further development, by **Harmathy – Mrs Náray – Sándor – Vörös,** *A külkereskedelmi vállalatok belföldi szerződései* (Inland contracts of the foreign trade enterprises) Közgazdasági és Jogi Könyvkiadó, Budapest, 1978, 410 pp.; **L. Ficzere** and **T. Sárközy,** *A KGST országok nemzetközi gazdálkodó szerveinek alapvető jogi kérdései* (The fundamental legal problems of the international economic organizations of the CMEA countries), Közgazdasági és Jogi Könyvkiadó, Budapest, 1978, 472 pp. This work deals not only with the problems of these organizations at CMEA level, but among others discusses also their relationship to Hungarian municipal law of associations, the development of this relationship with the legal structure of the CMEA international associations, in conjunction with further ideas of development.

[28] *Law and Economic Reform in the Socialist Countries*, ed. **Gy. Eörsi – A. Harmathy,** Akadémiai Kiadó, Budapest, 1971, 224 pp.

## DIE NEUREGELUNG DER AUSSENWIRTSCHAFTSBEZIEHUNGEN IN UNGARN

von

Professor DR. FERENC MÁDL

ZUSAMMENFASSUNG

In 1968 wurde in Ungarn ein umfassender Reform der Wirtschaftsleitung eingeführt. Die Abhandlung bearbeitet den Aussenwirtschafts-Teil dieses Reforms. Zunächst werden die wirtschaftspolitischen Motive betrachtet, dann die internationalen wirtschaftlichen und rechtlichen Bedingungen, wonach die bis heute dauernden Etappen der Neuregelung beschrieben werden. Die Hauptteile der Abhandlung analisieren dann die wesentlichsten Elemente dieser Fragen: das staatliche Aussenhandelsmonopol in der Differenzierung und Unstruktuierung der Kompetenzen der Leitung in Aussenhandels- und Aussenwirtschaftsprozessen; die grössere Selbständigkeit der Betriebe in den Aussenwirtschaftsprozessen; neue Formen der staatlichen Leitung in der neuen Regulierung.

## LA RÉGLEMENTATION NOUVELLE DES RÉLATIONS ÉCONOMIQUES INTERNATIONALES EN HONGRIE

par

Professeur DR. FERENC MÁDL

RÉSUMÉ

En 1968 une réform économique était introduite accompagnie par l'introduction de les memes principes dans les processus du cummerce exterieur. Cette étude s'occupe de la réglementation juridique de cette réform, des questions comme: la rédistribution des competences dans la direction du commerce exterieur, l'expansion de l'independance et de la responsabilité de les enterprises dans les transactions commerciales en commerce exterieur, les formes nouvelles de la direction publique effectuées par les organes centraux de l'-État.