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Article — Digitized Version

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Intereconomics

Suggested Citation: Wolf, Alfred (1975) : License trade with COMECON states, Intereconomics, ISSN 0020-5346, Verlag Weltarchiv, Hamburg, Vol. 10, Iss. 11, pp. 353-355, <https://doi.org/10.1007/BF02929323>

This Version is available at:

<https://hdl.handle.net/10419/139294>

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License Trade with COMECON States

by Dr Alfred Wolf, Aachen *

The present article, which is based on some chapters of the author's doctorate thesis¹, investigates why the trade in licenses between the Federal Republic of Germany and state-trading countries is at present still negligible. For this purpose the policy of the state-trading countries in regard to licenses is explained, the causes which impede this trade are pointed out and suggestions made for their removal.

Official statistics clearly show that the license trade between the Federal Republic of Germany and the state-trading countries is still rather insignificant. In 1973 Germany's total income from royalties amounted to DM 567.6 mn, of which no more than DM 18.1 mn (i.e. 3.1 p.c.) came from state-trading countries. On the other hand, Germany had to pay other countries for the use of licenses a total of DM 1,438.9 mn, of which a mere DM 1.4 mn (0.1 p.c.) had been earned by state-trading countries². These figures clearly demonstrate that the state-trading countries are, as far as Germany is concerned, at present of little account as licensees or as licensors.

License Policy of State-trading Countries

For the state-trading countries, which are members of COMECON, the "socialist international license trade is an important part of the scientific and technical cooperation between COMECON states"³; this means that the license-trade relations of the individual state-trading countries with other socialist countries are quantitatively and qualitatively vastly more important than their license trade with Western countries.

The license trade between member states of COMECON in the technical field is to avoid double expense and at the same time promote the economic integration of these countries⁴. Characteristic for

the license policy of the state-trading countries was for a long time that licenses from Western entrepreneurs should be acquired only if these were leading in a special technical sector and if it was impossible to obtain the particular know-how from a socialist country.

Only since the 23rd Party Congress, which was held in Moscow in April 1966, have the COMECON countries been pursuing a more positive license policy vis-à-vis the industrial countries of the West. The Soviet Prime Minister Kosygin expressly called on the East European partners to intensify their trade with the West and especially that in patents and licenses in order to save the Eastern economies development costs and at the same time overcome the barriers imposed upon them by the insufficient foreign trade potential of the East⁵. One of the main reasons that prompted the call for an intensified exchange of licenses with the West was undoubtedly the insufficient cooperation between the members of COMECON. Yet, despite the state-trading countries' efforts since 1966, their license trade with the Federal Republic has on the whole remained insignificant.

Ideological and Practical Obstacles

That the preconditions for an extensive exchange of licenses between the Federal Republic and the state-trading countries do not (or not yet) exist,

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¹ Cf. A. Wolf, Analyse und Beurteilung der Patent- und Lizenzbilanz der Bundesrepublik Deutschland (Analysis and Evaluation of the Patent and License Trade of the Federal Republic of Germany, Doctorate Thesis, Technical University, Aachen 1975, Internationale Kooperation (International Cooperation), vol. 16, Baden-Baden 1975.

² Cf. German Federal Bank (publishers), Zur Entwicklung des Patent- und Lizenzverkehrs mit dem Ausland in den Jahren 1972 und 1973 (On the Development of the Patent and License Trade with Foreign Countries in the Years 1972/73, in: Monatsberichte der Deutschen Bundesbank (Monthly Reports of the German Federal Bank), vol. 26, Frankfurt/Main 1974, No. 10, p. 36.

³ F. Zschermig, A. Spier, Zu einigen Problemen des Standes und der Entwicklung des Internationalen Lizenzhandels der DDR (On a Few Problems Concerning the Present Level and the Future Development of the International License Trade of the German Democratic Republic, in: Sozialistische Außenwirtschaft (Socialist Foreign Trade), vol. 23, East Berlin 1973, No. 2, p. 12.

⁴ Cf. Neue Basis für die technische Zusammenarbeit im Rahmen des COMECON (New Basis for the Technical Cooperation within the Framework of COMECON), in: Handelsblatt, Düsseldorf, 5. 12. 1968.

⁵ H. D. Schoen, Systemkonvergenz durch Lizenzkooperation zwischen Ost- und Westeuropa? (Convergence of the Systems through License Cooperation between East and West Europe?), in: Wirtschaftspolitische Blätter, vol. 17, Vienna 1970, No. 3, p. 174.

is mainly due to the differences in the economic, political and legal systems in East and West which impede cooperation in all sorts of ways. These obstacles to cooperation with state-trading countries can be divided into two broad groups — the ideological ones and those arising in actual practice⁶.

Ideological obstacles appear whenever the rulers of the Soviet empire think fit to insulate ideologically their policy of *détente* from their concurrent propaganda for a worldwide intensification of the class struggle while increasing their pressure against any opposing elements at home. As long as they persist in this attitude, they are bound to keep awake the mistrust of many potential partners in the West and thus harm their own economic interests⁷. Consequently, particularly the taking over of technologies from state-trading countries still meets with a good deal of emotional reluctance in Western countries.

Practical obstacles are mainly the following:

□ *Insufficient legal protection in state-trading countries*: Technical inventions are also protected by law in state-trading countries⁸, but the protection is not as comprehensive as in Western countries. In the Eastern countries no protection by letters of patent is granted for chemical products, food and drugs; for certain other inventions no letters of patent are issued, but mere copyright certificates (or inventor's certificates). In the latter case only the state in question has the right to exploit these inventions in its own state factories. The inventor himself receives only an indemnity (which the state fixes at its sole discretion) provided the invention has proved to be of practical value. It follows that from the point of view of the foreign inventor, this kind of protection is practically useless.

□ *Absence of double-taxation agreements*: There are no double-taxation agreements between the Federal Republic and the state-trading countries. As a result, no unambiguous arrangements exist governing the taxation of license fees. The state-trading countries, anxious to maximise their foreign-exchange earnings, have been trying to receive from the West any license fee due to them free of any tax deductions, while, loath to give anything away to foreigners, they have been apt to

deduct tax at source from any license fees due to the West before paying them⁹. This is why every license agreement with the East contains a clause, in regard to the taxes, that will become payable under the agreement in the country acquiring the license. In most cases the parties agree to pay any taxes and other dues levied in their own country. The disadvantage of such arrangements is, however, that they do not eliminate the possibility of double taxation because of the difficulties that arise when the German firm wishes to deduct tax paid in a state-trading country from its own income and corporation tax liability in the Federal Republic.

□ *Administrative obstacles*: Transactions requiring cooperation from state-trading countries take a relatively long time to develop because of the slowness of the administrative machinery in such countries. In every state-trading country, to conclude a license agreement with foreign firms is the job of a special license board. But more often than not other boards, ministries, foreign trade associations, etc., have also a hand in negotiating and concluding license agreements. Plainly, because of the cumbersome and bureaucratic working methods of the numerous state authorities, whose approval is required before the factory needing the license can have it, much time is generally wasted in negotiating such deals.

□ *Shortage of information*: What ultimately decides whether cooperation is at all possible is often the knowledge the potential partners have of each other. And here lies another obstacle to cooperation, for on both sides — East as well as West — information is sparse and slow-flowing. As far as Western firms are concerned, the most important gap in the available information is without a doubt the lack of details published by the centrally administered countries about their long-term economic plans. For from such detailed plans it would be possible to infer what possibilities for license deals exist.

Surmounting Political Obstacles

The difficulties obstructing economic cooperation between East and West are indeed great; they are primarily caused by the efforts of the East to keep politically apart and ideologically independent¹⁰. On the other hand, the relaxation of tension which set in during the early sixties gives rise to the hope that, as time goes on, the political obstacles will become progressively less formidable.

⁶ Cf. K. Kleps, *Perspektiven der Ost-West Kooperation* (Prospects for East-West Cooperation), in: WIRTSCHAFTSDIENST, vol. 53, Hamburg 1973, No. 9, p. 468.

⁷ Ibid. p. 468.

⁸ Since 1970 the state-trading countries — the Soviet Union, Bulgaria, Czechoslovakia, Poland, Romania and Hungary — are members of the "Paris Association Agreement for the Protection of Industrial Property" (Stockholm version). Cf. Review of the present state of the international property as of Jan. 1, 1972, in: Gewerblicher Rechtsschutz und Urheberrecht (Internationaler Teil) — Legal Protection of Industrial Property and Copyright Law (International Section) —, vol. 74, Munich 1972, No. 4, p. 124.

⁹ H. Debatin, *Fiskalabgaben sind in das System der Planwirtschaft eingebettet* (Fiscal Dues are Embedded in the Planned Economy System), 2nd Part: Ostblockstaaten aktivieren Steuerrecht (The States of the Eastern Bloc Activate Their Tax Laws), in: Die Welt, Hamburg, 31. 1. 1974.

¹⁰ K. Kleps, *Prospects for East-West Cooperation*, op. cit. p. 468.

The following example may be given in evidence to prove that the improvement in the political climate is being maintained; it concerns the agreement of May 19, 1973¹¹ between the Soviet Union and the Federal Republic of Germany concerning future economic, industrial and technical cooperation between the two parties. In this agreement the signatories agree *inter alia* to extend and intensify the exchange of patents, licenses, know-how and technical information. Agreements like this are, however, practically valueless unless they are followed by the total, or at least partial, removal of the practical obstacles.

As the attitude of the state-trading countries in the matter of legal protection impedes in many cases the license trade (and also the exchange of commodities), the West has been demanding that the threefold discrimination practised by the East should cease, or at least be reduced, i.e.

- ☐ the limitations imposed on the exploitation of licenses should be lifted,
- ☐ protection should be extended to cover chemical inventions, and
- ☐ the method of paying and indemnity to the holders of copyright certificates should be changed¹².

Problems arising over the taxing of license fees could be solved by concluding bilateral agreements between the Federal Republic and each individual state-trading country. The matter was first broached in 1971 in negotiations with Poland and Romania — negotiations which have since culminated in the signing of agreements to this effect (with Poland on December 18, 1972 and with Romania on June 29, 1973)¹³.

Removal of Administrative and Informal Obstacles

The state-trading countries could reduce impediments of an administrative nature by "relaxing the rigid bureaucratic form of their planned economy and by a greater measure of decentralisation in the field of decision making"¹⁴. Factories participating in cooperation should be allowed a greater say in the negotiations for a license agreement. This would reduce the possibility of frictions resulting from the cumbersome and bureaucratic handling of the matter by the higher authorities.

One way of improving the flow of relevant information would be to hold license-seminars or sym-

posia in which interested government agencies and enterprises could exchange their experiences and discuss the peculiarities and possibilities of the license trade with state-trading countries. The first special symposium of the kind suggested was held in Cologne from September 19 to 22, 1972; its subject was "The Soviet Patent and License Law". A second one, dealing with the same subject, took place in Düsseldorf, from March 20 to 22, 1974¹⁵. Apart from such special seminars, there are other types of meetings at which information of the kind required can be communicated. It would also be desirable, if each of the state-trading countries installed in the Federal Republic a branch-office of its License Board with a view to giving German firms the possibility of currently keeping themselves informed about the license trade with state-trading countries. As of now, only the Soviet Union has opened such an office in Germany.

License Exchange — a Promising Way of Cooperation

In conclusion, a few words about the possible future development of the license trade between Western Germany and the state-trading countries. There are sound reasons for the belief that it will be possible to dismantle the barriers which still stand in the way of this trade and that this type of cooperation will in future become steadily more important. There is for instance the result of a comprehensive inquiry held in 1973 among relevant West German firms. The inquiry showed that the majority of firms regarded the exchange of licenses with state-trading countries as relatively promising because license agreements have proved to be a comparatively uncomplicated form of cooperation, if only for the reason that such agreements require only limited contacts with socialist authorities¹⁶.

Another reason why an optimistic view of the future development of the license trade with the East seems justified is the fact that not only is there an increasing demand from the state-trading countries for German licenses, but German firms are beginning to show a keener interest in licenses from the state-trading countries. The effect of this on the Federal Republic's patent and license trade is likely to be twofold: license revenue from the state-trading countries should rise absolutely and relatively; and so should payments to the state-trading countries.

¹¹ Cf. Bulletin des Presse- und Informationsamtes der Bundesregierung (Bulletin of the Press and Information Office of the Federal Government), Bonn, No. 59, 22. 5. 1973, pp. 565-572.

¹² E. Jucker, "Ungleiches Ost-West-Geschäft (Unbalanced East-West Trade) 2nd Part, in: VDI-Nachrichten, Düsseldorf, 27. 12. 1972.

¹³ Cf. Stand der Handelsabkommen am 1. 1. 1975 (The State of the Trade Agreements as of 1. 1. 1975), Supplement to Nachrichten für Außenhandel (Foreign Trade News), Frankfurt/M., 9. 1. 1975.

¹⁴ K. Kleps, op. cit. p. 466.

¹⁵ Cf. Deutsch-Sowjetisches Patent- und Lizenzsymposium in Köln (German-Soviet Patent and License Symposium in Cologne), in: Nachrichten für Außenhandel (Foreign Trade News), Frankfurt/M., 6. 9. 1972; also: Symposium über Patentrecht der UdSSR (Symposium on Soviet Patent Law), Düsseldorf, 22. 2. 1974.

¹⁶ K. Boitz, Erfahrungen Deutscher Unternehmen mit der Ost-West Kooperation (Experiences of German Firms with East-West Cooperation) in: WIRTSCHAFTSDIENST, vol. 53, Hamburg 1973, No. 12, p. 655.