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DISSERTATIONES

COUNTERTRADE IN THE WORLD ECONOMY

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I. Summary

Barter, or countertrade, the direct exchange of one item for another, is a transaction form of great antiquity.[1] Before the existence of money as a tool for trade, the standard by which the relative value of goods was measured by a mutual exchange of goods. Some have even suggested that in certain early societies barter was not merely an economic transaction, but also an institution that helped to hold small communities together by encouraging ongoing relationships.[2]

Barter is often regarded as an old-fashioned means of exchange, only a piece of History that was superseded because money is far more efficient. In reality it can be a very complex transaction, with several benefits for small businesses inside boarders, as well as for big multinational companies and for states on the international level. It is certainly the oldest form of trade, but has gone through many changes throughout the centuries.

In a pure barter system the apple grower, when he needs pineapples, would have to find not just any pineapple seller but also one who happened to want apples at that time. In reality barter has many other forms, than its pure form, such as compensation transaction, counter-trade and offset. On the other hand, the use of money can cause just as many disadvantages as benefits. The world is in permanent monetary crisis, and this indicates the need of money-saving transactions, like barter contracts. There are many other reasons for the resurrection of barter, as more opportunities for exchanges through the internet for smaller companies, and in the international plane the liquidity problems of the post-soviet and the developing countries.

Barter has a very controversial life in many different ways. It is the oldest form of trade, nevertheless it is one of the newest in its novel forms through the Internet, using

[1] „interiores simplicius et antiquius permutatione mercium utuntur” (CORNELIUS TACITUS)

[2] DAVID LOCKE HALL and F. DOUGLAS RAYMOND: Economic Analysis of Legal Institutions: Explaining an „Inexplicable’ Rule of Roman Law. *Indiana Law Journal* 61(3) 495–519.

future money (barter dollars). It can be a contract for gigantic business transactions, as well as a money-saving cash flow increasing tool for small and middle size companies. Some economists see it as the solution for the international monetary crisis, still the World Trade Organization and the International Monetary Found looks at it as an agreement, which is „potentially distortive and disruptive to the growth of trade, inasmuch as it replaces the pressures of competition and market forces with reciprocity, protection and price setting."[3]

Much has been written on this subject but unfortunately only a small portion of this material actually concerns the legal aspects of these complex agreements, and there is none that would have a comprehensive, full list of all forms and uses of the different barter agreements. Most of the information to be found concerns accounting, marketing and the economical benefits (or lack thereof) of countertrade, without a legal scope. There would be a great need for a complete and inclusive legal analysis of this institution as well as for new legislation both on the state and on the international level that could fulfill the needs of the market and represent the changes and importance of bartering.

II. Terminology

The term, barter is itself already ambiguous. Both practice and scholarly works may refer to it, indicating different types of contracts. It can mean countertrade transactions in general, in which one party supplies goods, services, technology or other economic value to the second party, and, in return, the first party purchases from the second party an agreed amount of goods, services, technology or other economic value, or in its strict legal sense it means only exchanges which involve payment in full with goods rather than money.

Barter in its strict meaning is the direct exchange of goods or services without any transfer of money. In a typical barter transaction, the two parties determine the value of the goods and/or services to be exchanged. After the contracting parties decide upon the quantity of the goods or services to be exchanged and the delivery dates, each party fulfills its obligation. The time period for a barter agreement is usually short, typically less than one year, to avoid world price fluctuations favoring one party or another.[4]

In its wider meaning barter is analog with every form of countertrade,[5] and refers to the following meanings too:

Counterpurchase is a parallel barter transaction and the fastest growing and most common form of countertrade. The deal is usually done with two separate contracts, which are linked together by a protocol. Each party receives full payment in cash.

Compensation or *buyback* is a transaction, which requires a seller to purchase a specified amount of goods as a part payment. Terms are agreed for the buyback

[3] FRIEDER ROESSLER: Countertrade and the GATT Legal System. *J. WTO'. L.,* 1985/vol.19. 604–614.

[4] MICHAEL ROWE: Countertrade/Letters of credit, Euromoney Books, 1997.

[5] Uncitral Legal Guide on International Countertrade Transactions, 1993 (from now on: UNCITRAL) uses the term countertrade as a wider definition and barter as a variety of it.

period and the value of the payment, which is added to the price of the goods. Infra-structure projects often use this type of finance, but with far more complex financial arrangements. A build-own-transfer (BOT) arrangement is an example of this, where a project company is established to finance, construct and own the project for a specified period. At the end of the period, provided that all debts relating to the project have been repaid, the seller transfers ownership to the buyer.

Co-operative Venture is a form of buyback. Both parties own equity in production facilities. This is a long-term agreement usually involving capital projects or production sharing ventures in the refining of raw materials. Usually the western country supplies the equipment while the developing country produces the raw materials. Payment is effected from the results of the manufacture.[6]

Offset has traditionally been used by governments around the world when they made major purchases of military goods but is becoming increasingly common in other sectors also. There are two distinct types:

– direct offset: here the supplier agrees to incorporate materials, components or sub-assemblies which are procured from the importing country. In some large contracts, successful bidders may be required to establish local production. Direct offset has been particularly common for trade in defense systems and aircraft.
– Indirect offset: here the purchaser requires suppliers to enter into long term industrial (and other) co-operation and investment but these are unconnected to the supply contract and may be either defense related or in the civil sector.

The overall objective of offset either direct or indirect in the defense sector is generally to promote import substitution and to minimize the balance of payments deficit for military purchases by developing an indigenous industrial defense capability.

The objective of stimulating civil investments is to increase, diversify and support the industrial base. These investments may be made in manufacturing ventures, infra-structure, or training, and may be totally different in nature from the original sale (e.g. investment in a chipboard factory might be used to offset the sale of aero engines).

Technology Transfer is a transfer of technology mandated as part of a counter trade or offset agreement, other than co production or license production. It may be in the form of research and development, technical assistance and training, or patent agree-ments between manufacturers. This is central to many Third World enterprises, public and private, and is the focus of a large number of countertrade and offset deals.[7]

Tolling is a common tool in the Post Soviet countries, especially in Russia. Manufacturers in regions such as the Former Soviet Union may sometimes be unable to service customers because they lack the foreign exchange to buy raw materials. In a tolling deal, a supplier himself provides the raw material (steel ingots, say) and hires capacity of the factory to turn it into finished goods (e.g. steel tubes). A final customer who pays the supplier in cash then buys these – throughout the process the supplier retains ownership of the material as the factory processes it.

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[6] Kenton Elderkin: Creative countertrade: a guide to doing business worldwide (business in global environment). *Harper Business*, 1987. see also UNCITRAL.

[7] Dictionary of International Trade Terms. www.itds.treas.gov

Bilateral Clearing agreements are between two governments with foreign exchange controls and currency shortages that agree to purchase a certain amount of goods over a certain amount of time. Account balances are maintained in each countries national bank and after the time limit or when a certain level of trade imbalance is reached accounts are balanced and settled in the agreed currency upon.

Switch Trading is similar to bilateral clearing except that trade imbalances are settled with switch trade. The country with the trade surplus transfers all or a portion of its clearing account to a third party. The third party (often a switch trader) uses the surplus to buy goods from the deficit nation and trades them for cash. The surplus credit nation receives the cash minus the third parties commission.[8]

Evidence Accounts are umbrella agreements between exporters and a government agency in the importing country. The exporter sells to the government agency and agrees to purchase local goods. The government agency acts as a clearinghouse for all international sales. The buyers and sellers banks monitor the flow of trade and the evidence accounts are settled in cash after each transaction. The evidence account is an agreement between private exporters and foreign government agencies.

Blocked Currencies is a term that refers to an agreement where the exporter sells goods and is paid in the local currency of the buyer. The currency must be used within the country and cannot be exchanged.[9]

As shown above, a barter agreement can take on many forms, but all these agreements can be divided into two major groups, based on the number of contracts involved: Those involving one single contract and those which are based upon a multi-contractual solution. On the other hand two other main categories can be constructed based on the nature of the actors, barter contracts through barter houses,[10] usually via the Internet, or '*traditional ways*' of bartering, without involving these barter-houses, between states and companies, in the various forms mentioned above.

III. The Barter Agreement

The barter contracts as mentioned above, can be separated into agreements involving only one single contract, and ones that deal with a multi-contractual situation. A barter contract, that involves more than one single contract is very usual, based on the complexity and value of the traditional barter agreements, which often require insurance contracts and bank guarantees to underwrite the performance of the obligations. In a multi-contractual situation there are at least two contracts, often more. The situation is also often complicated by the fact that third persons may be involved in one contract, or the performance of a part of such a contract, as independent contractors or agents.

The multi-contractual situation can be broken down into three separate parts:[11]

- The countertrade agreement that can preceed or can be concluded at the same time as the export contract.

[8] KENTON ELDERKIN, see also UNCITRAL

[9] WILLIS BUSSARD: An overview of countertrade practices of corporations and individual nations. 1987[1].

[10] These have their special legal rules, see from page 12.

[11] JERZY RAJSKI: Countertrade. In *Transactions in International Trade*. 1998[1]. 337.

– The contract (or contracts) through which the primary exporter fulfils her or his counterpurchase obligations.

The countertrade operation is often framed by an additional legal instrument, a protocol or a framework agreement, in which the parties agree to enter into both the exportation and counterpurchase agreements. The basis of the barter legally is the link between the separate legal obligations, and this contractual link is the barter agreement. Without this link, this obligation between two (or more) separate contracts, the parties have entered into another type of commercial contract other than a barter agreement.[12]

The exact legal nature of this link can be seen in two ways; either as a framework agreement or as a preliminary contract. In either case there is a tendency to omit precise details, lack of detail can result in difficulties when interpreting the exact content of the obligations between the parties. Therefore the link between the initial sale of the exporter and the counterpurchase obligation should be clearly expressed in the contract. Otherwise it can cause many difficulties, while each side tries to create a contract, which gives rise to the least amount of obligations while binding the other party who is struggling to achieve the exact opposite situation.[13]

A problem can arise with the lack of cash consideration too. Not all legal systems accept a contact of sale if the price is not expressed or can be worked out. While the English Sale of Goods Act, 1979 which works by analogy as does American law, the Hungarian Civil Code (1959*)* does not require a price to be fixed nor does the United Nation Convention on Contracts for the International Sale of Goods (Vienna 1980), article 55*,* require the price to be fixed. The French law (Commercial Code articles 1583 & 1591) does however requires that the price be fixed or at least a method of ascertaining it otherwise or the contract will become void. This controversial legislation can cause many difficulties, especially in the case of by barter agreements; therefore a comprehensive harmonization would be needed in this matter.

IV. The UNCITRAL regulations

The need of a harmonization of the regulations and laws, concerned about barter agreements was first recognized by the United Nations Commission on International Trade Law (UNCITRAL), which has as its objective to „...further the progressive harmonization and unification of the law of international trade, and in that respect to bear in mind the interests of all peoples, and in particular those of developing countries, in the extensive development of international trade..."[14]

In 1993 the UNCITRAL published its Legal Guide on International Countertrade Transactions. The authors of the guide see that countertrade is of growing importance to world trade, and they also realize that the lack of legal research and development

[12] Leo Welt: *Trade without money: barter and countertrade*, 1984[1].

[13] Rajski: i. m. 337.

[14] *The goal of the United Nations Commission on International Trade Law*, see at http://www.un.org/documents/ga/res/42/a42r152.htm

in this area has caused confusion and they hope that with this guide they bring order to an international situation by publishing a guide that parties can agree on. The Guide uses instead of the word barter, the term countertrade as the broadest definition, and barter as the simplest form of it. However, it refers to its wider use by its Terminology section.[15]

The guide begins in Chapter I by defining what is specific for countertrade agreements. Still, when describing the various types of countertrade arrangements the guide only states that there are many different types but only mentions the simple version of *bar*ter (Chapter I, paragraph 14), the counter-purchase (Chapter I, paragraph 15), the buy-back (Chapter I, paragraph 16) and the *offset* (Chapter I, paragraph 17). This simplification leaves the complex terminology still unresolved.

The Guide also – as many previous authors – stresses the significance of the contractual link between two contracts. „...Without expressing such a link between them, the contracts...cannot be distinguished from straightforward independent transactions." (Chapter I, paragraph 1).

It further attempts this legal terminology in Chapter II, which describes possible contracting approaches to structuring a countertrade transaction. It states that Parties may embody their obligations in regard to the shipments of goods in the two directions in a single contract or in separate contracts. A single contract may take the form of a barter contract, which is a contract involving an exchange of goods for goods, or the form of a *'merged contract'*, an arrangement in which the two contracts, one for the delivery of goods in one direction and the other for the delivery of goods in the other direction, are merged into one comprehensive contract. The difference between a barter[16] contract and a merged contract under the definition of the Guide is that, under a barter contract, the delivery of goods in one direction constitutes payment for the delivery of goods in the other direction, while, under a merged contract, each delivery of goods gives rise to a monetary payment obligation (paragraphs 1–10).

The Guide in Chapter III analyses the *'countertrade commitment'*, which is an undertaking to conclude a future contract or a series of supply contracts in one or in both directions (paragraph 1). Chapter IV. is considered about general remarks on drafting, and it advises the Parties the written form and to define certain key expressions or concepts that are frequently used in the countertrade agreement or in the supply contracts (paragraphs 21–24). Chapter V. deals with the type, quality and quantity issues of countertrade agreements and underlines that the freedom of the parties to agree on the type of goods may be affected by government regulations (paragraphs 3–6).

Chapter VI. is concerned about the methods for determining the price of goods that will be the subject matter of the supply contract to be concluded pursuant to the countertrade commitment. It also deals with certain pricing questions encountered in

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[15] *UNCITRAL*, Chapter I., E. 14: „In practice the term barter is used with different meanings. The term may refer, for example, to countertrade transactions in general, to an intergovernmental agreement addressing mutual trade in particular goods between identified partners, or to countertrade in which trans-border flow of currency is eliminated or reduced or where a single contract governs the mutual shipment of goods."

[16] The Guide uses barter in its „strict legal sense', so not in the wider meaning.

the specific contexts of supplying services and the transfer of technology. In addition, it discusses the choice of the currency in which a price is to be expressed, and the revision of a price.

Chapter VII deals with cases in which a party committed to purchase or committed to supply goods, instead of itself purchasing or supplying goods, engages a third party to do so (sections B and C). Section D deals with '*multi-party*' transactions that are distinct from the cases discussed in sections B and C.

Chapter VIII notes that Parties to a countertrade transaction may decide to link payments for the supply contracts in the two directions in such a way that the proceeds generated by the supply contract in one direction are to be used to pay for the supply contract in the other direction. This may allow the transfer of funds between the parties to be avoided or reduced (paragraphs 1–8).

Chapter IX deals with the issue of the restrictions on resale of countertrade goods, on what the parties can agree on, or it can be a resale restriction by states. It awares the Parties that many legal systems contain mandatory rules on restrictive business practices, and the parties should ensure that a resale restriction they contemplate applying is not in contravention of those rules.

Chapter X is concerned about liquidated damages and penalty clauses, while chapter XI about security for performance. It highlights that the parties to a countertrade transaction may agree to use a guarantee to cover the fulfillment of the countertrade commitment. Chapter XII discusses remedies for non-fulfillment of the countertrade commitment (section B) and circumstances in which a party is exonerated from liability for a failure to fulfill the countertrade commitment (section C). Also discussed is the effect of a failure to conclude or perform a supply contract in one direction on the obligations of the parties to conclude or perform supply contracts in the other direction (section D).

Chapter XIII focuses on the choice by the parties to a countertrade transaction of the law applicable to the countertrade agreement, the supply contracts in the two directions, and the contract by which a party committed to fulfill a countertrade commitment engages a third party to fulfill that commitment. The chapter considers also the question whether the countertrade agreement and the contracts forming part of the transaction should be made subject to a single national law or to different national laws (paragraph 1). It highly recommends the parties in order to avoid uncertainty that they choose expressly the applicable law to govern the countertrade agreement and the supply contracts (paragraphs 8–11).

Chapter XIV is concerned about the settlements of disputes, and it advises that the parties agree on the method by which future disputes arising out of the countertrade agreement and the related supply contracts would be settled.[17]

The UNCITRAL *Legal Guide on International Countertrade Transactions* is the first international recognition of the importance of barter, or so-called countertrade agreements, but still it leaves many concerns and questions about the topic. It only limits the description of countertrade agreements to the traditional ways of barter, and does not deal with the new forms of it.

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[17] Dispute-settlement methods include negotiation, conciliation, arbitration and judicial proceedings.

V. The new forms of barter

The use of barter has risen dramatically over the last several years. Due to its bilateral and often secretive nature, experts estimate of the magnitude of barter in global trade vary widely from 8% (GATT)[18] to 20%–30% (US Department of Commerce).[19] Another source[20] states the years following the collapse of Communism, the number and value of barter deals have grown consistently and considerably since the late 1970s. Barter is generally examined from two levels: micro (firm) and macro (country). Industrial firms are frequent participants in bartering, in business-to-business or business-to-government deals. The needs of the revival of barter are different by regions, but could be put into two categories, o the *'Reform barter experiments'* and to the '*Survival barter*'.

5.1 Reform barter experiments

Theoretical foundations

The resurrection of barter in every level and not only in international trade is the fruit of economic scholarly works put into real life in the *'Western World'*[21] and the lack of money and ineptness in some post-communist countries and in the developing countries.

The need of barter in our modern World is based on the need of cash-saving transactions. The world is in permanent monetary crisis, which is the outgrowth of the Bretton-Woods Monetary system and the key-role of dollar in the international market. Instead of the bancor, the dollar served as the international reserve upon which other currencies could pyramid their money and credit. The dollar was tied to gold at the pre-war par of $35 per ounce. For two decades, the system seemed to work well, as the U.S. issued more and more dollars, and they were then used by foreign central banks as a base for their own inflation. For years the U.S. was able to *'export inflation'* to foreign countries without suffering the ravages itself. Eventually, however, the ever-more inflated dollar became depreciated on the gold market, and the lure of high priced gold they could obtain from the U.S. at the bargain $35 per ounce led European central banks to cash in dollars for gold. The U.S. gold reserved diminished and dollar reserved outside of the United States increased. Questions concerning the convertibility of gold and dollars led to the deterioration of confidence in the dollar. The house of cards collapsed when President Nixon, in an ignominious declaration of bankruptcy, slammed shut the gold window and went off the last remnants of the gold standard 1971.[22] The dollar could not stay a World currency and a national currency at the same time (Triffin Paradox). [23]

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[18] http://www.wto.org/english/docs_e/legal_e/33-dnotf_e.htm

[19] http://www.countertrade.org/resources.htm

[20] www.irta.org

[21] The term is old, and incorrect but still represents the difference between developed and developing countries. The Western group includes the USA, EU countries, and non-western countries too, like Japan, etc.

[22] RICHARD DUNCHAN: *The dollar crisis: causes, consequences, cures.* Wiley, John & Sons, 2003.

[23] DUNCHAN i. m.

In spite of the surprising U.S. decision in 1971 to take the dollar off the gold standard, the world still clung to the old system. In attempts to set more realistic exchange rates, the U.S. dollar was devalued and stronger currencies, like the German mark and the Japanese yen, were revalued. But even after two devaluations, the flight from the U.S. dollar continued. No new set of exchange rates could be sustained. Finally, in early 1973, fixed exchange rates based on gold were abandoned altogether and currencies were left to float. Although governments continued to intervene, market forces determined exchange rates.[24]

The fluctuations caused problems for businesses, particularly in long-range strategic planning and long-term investing. To lower the risk of these fluctuations the members of the European Community set up a fixed exchange rate system. The European Monetary System members also created a new index currency, the European Currency Unit (EMS, a weighted 'basket' of currencies). While the EMS was helpful in curbing inflation and in promoting intra-EU investment, it has also been adjusted many times due to differences in EU members' monetary policies.[25]

Today, there is a new major currency, the Euro, which has been adopted by twelve of the Em's 15 members. The Euro became an important factor at the international market place. Still, most of the international transactions are made in dollars and it is still the '*World currency*'. The 'problem' is that global economic growth is primarily driven by the US trade deficit, principally as a result of the strong dollar.[26] The rest of the exporting world reinvests the US receipts back into the US to avoid selling dollars and appreciating their own currency (this would make their exports less competitive).

At the end of 1998, money-market instruments denominated in the euro's predecessor currencies accounted for just over 17% of world issues, compared to 58% for dollar-denominated instruments. By mid-2003, the share of issues in dollars had fallen to 30%, while the share of euro issues had climbed to almost 46%. As a reserve currency, the euro accounted for almost 15% of official reserves in 2002.[27] Admittedly it still played a much smaller role than the US dollar, whose share amounted to 65%. By holding large amounts of US dollars, the European Central Bank itself contributes to the prevailing role of the US currency as an official reserve currency.

The dollar is still the reserve currency of the World, and most of the international transactions are made in US dollars. Also the dollar is the world's premier medium of illicit exchange. Every year the U.S. ships foreigners $15 billion in cash (about 0.2% of GDP), and gets real goods and services in return. In Russia most of the trade transactions are set in US dollars, especially the illegal ones.

The dollar became the currency of Russia in the every day life too, it is possible to pay with it in restaurants, shops, etc., and still the taxes are paid in rubel. The amount of dollar in the World trade is unknown. The dollar is overvalued, and the value to fit in the international markets is unknown.[28]

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[24] Paul Emil Erdman: *Tug of war: today's global currency crisis.* Palgrave Macmillan, 1997.

[25] http://www.eu-ems.org/de/i-impressum_de.htm

[26] Percy L. Greaves: *Understanding the dollar crisis.* Free Market Books, 1984.

[27] Rahim Panjwani: *Can euro become a global reserve currency?* http://www.dawn.com/2003/03/17/ebr15.htm

[28] Andrew Berg & Eduardo Borensztein: Full Dollarization: The Pros and Cons*, Econ. I.* 2001/24.

Morgan Stanley's Steve Roach is one of many economists to have noticed what might be called the *'dollar bubble.'*[29] The dollar is overvalued relative to fundamentals. Net investment from abroad (the difference between U.S. assets purchased by foreigners and foreign assets purchased by U.S. investors) is rising. As a result, foreign investors are accumulating an ever-increasing amount of U.S. assets relative to the GDP of the USA. „The Teflon-like resistance of the US dollar is yet another manifestation of this pervasive sense of denial. Currencies, of course, are relative prices. And in a synchronous global recession everyone gets hurt. Yet if a US-centric world tumbles into recession, goes the logic, the dollar is still viewed as the 'tallest pygmy'".[30]

With the collapse of the dollar the whole monetary system of the World would fail and it would cause a bigger crisis than the great depression did in the 1920s. Still, this is what many economists are afraid of, saying that the overrated value of the dollar and the current situation can not stay for long, the *'money balloon'* will *'hurt everyone'* when it bursts. To prevent this crisis the economists were searching alternative money-saving resolutions, and one of the alternative solutions for this crisis is bartering.[31]

5.2 The future of money-reform barter in real life

The recurring of barter is granted on the theoretical foundations, but came to alive thank to the new technologies arising in the last decades. At the beginning of the new millennium, instead of disappearing, barter is gaining new ground in our modern economies. While it is estimated that in 1999 U.S. domestic barter volume has reached $11 billion, economic and legal literature has focused mainly on compensatory practices in international trade, and only occasionally on barter among companies in industrialized countries.

Originated in the 1950s in the United States, organized barter among companies has recorded a dramatic growth in few decades, giving rise to a completely new and still growing industry. At present, the barter industry is spreading in almost all industrialized countries, attracting an increasing number of businesses.

By imposing tax payment on barter transactions, the Tax Equity and Fiscal Responsibility Act promulgated by the U.S. Congress in 1982 can be considered as the deciding factor for the development of the barter industry. By clearly regulating on the matter and deciding to treat barter income as equivalent to cash income, the U.S. Congress gave to the barter industry a measure of legitimacy. Moreover, by classifying trade exchanges as third-party record keepers with the same fiduciary obligations as banks, the 1982 Act legalized the barter industry, allowing it to pursue its growth.

Furthermore, as since 1982, barter activity didn't disappear, the promulgation of the Fiscal and Responsibility Act implicitly proved that firms do not engage in barter

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[29] www.morganstanley.com/GEFdata/ digests/20020603-mon.html

[30] http://www.morganstanley.com/GEFdata/digests/20020118-fri.html

[31] See for example TERRY L. NEAGAL

for tax evasion purposes. Indeed, to avoid the suspicion of barter to be a tax evasion tool, Canada, New Zealand, and Australia have followed the example of the United States, by formally establishing as well that barter transactions are assessable and deductible to the same extent as similar cash transactions. In this way, these countries have allowed the birth of a domestic barter industry and facilitated its rapid development.

According to the International Reciprocal Trade Association (IRTA), the official spokesman of the industry, now 65% of the 'Fortune 500' engage in barter, among which PepsiCo, Pizza Hut, IBM, Xerox, and Good Year. At present, it is also estimated that in North America there are already approximately a quarter million firms bartering through specialized barter networks.[32] Basically, it is possible to distinguish two forms of barter, that is, corporate and retail barter, which together constitute the two sectors of the industry.

The *corporate barter* sector is made up of corporate barter companies, which are a sort of brokerage houses, helping large companies to exchange their products for other desired services or goods. However, transactions are not settled on a pure barter basis, but usually require part of the payment in cash.

Retail barter or commercial trade exchange on the other hand deals with small and medium businesses. This sector is made up of barter networks, known as trade exchanges, or barter clubs, coordinating barter trade among their members. The technology advances in computer science gave the possibility to trade exchanges to organize barter on a multilateral basis since the end of the 1970s, giving thus birth to what nowadays is known as electronic barter or *E-barter*.

The Internet is reviving bartering, and has made it a multibillion-dollar industry. „This is the biggest business that nobody ever heard of," says Mike Edelhart, chief executive of BarterTrust.com. „The Internet is going to make it much bigger."[33] The three biggest barter houses on the Internet right now are BarterTrust.com, Ubarter.com, and BigVine.com, all allowing indirect trading by using private currencies as the medium of exchange.[34] These sites have powerful investors. Barter Trust raised $70 million from General Electric Equity, General Motors Investments and Deutsche Bank. Big Vine has raked in $50 million from the Carlyle Group of Washington and Silicon Valley firm Kleiner, Perkins Caufield & Byers. Big Vine's biggest investor was American Express, which empowered the network and is marketing BigVine to its 2.4 million small-business cardholders.[35]

All three sites earn revenue from commissions – about 10 percent of the value of goods flowing through them. BarterTrust and Ubarter charge both the buyer and the seller a 5 percent fee. Big Vine charges each party 3 or 4 percent, depending on the value of the transaction. All have created their own electronic currencies – called Barter Trust dollars, Trade dollars and Ubarter dollars – which companies earn when they sell and spend when they buy from other members. The currency makes barter

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[32] http://www.irta.com/

[33] Leslie Walker: The old Give and Take. *The Washington Post*, 6 April 2000.

[34] See: http://www.bartertrust.com, http://www.ubarter.com, http://www.bigvine.com

[35] Walker i. m.

sites different from eBay, the Internet auction where people use cash or credit cards for their transactions.

Trade exchanges act as neutral third record keepers and charge a membership fee and a transaction fee in cash for their services. Usually, a trade credit is equivalent to a unit of the official currency of the country where the network is located. In the barter market, prices are the same as in the cash one: sales are officially made at full retail selling price.

Bartering became big business and companies are using barter to advertise as well as trade services or products. Throughout the U.S. and Canada, there are about 400 trade exchanges. They represent 350,000–400,000 businesses and do $4.3 billion a year in trade activity, according to Tom McDowell, executive director of the Cleveland-based National Association of Trade Exchanges.[36]

During the last decade, the value of transactions in North America completed via barter has more than doubled. The Corporate Barter Council, an association of barter companies located in New York, estimates that businesses bartered $8.2 billion of goods and services in 1997, up from $3.5 billion 10 years earlier. Businesses that have used corporate barter include such recognized and established names as IBM, 3M Co., Ocean Spray Cranberries Inc., and AT&T Corp.[37]

While the purchases through barter networks are made in '*trade credits'* and are earned through making sales to other exchange members (all items are priced at retail value.), no company accumulate interest on its own account, neither other companies have to pay any interest on your line of credit dollars. In effect, bartering can function as a no-interest loan you can use to purchase everything from business supplies to real estate.[38] The range of goods and services offered by barter exchanges runs the gamut from professional services – such as legal and accounting services – to big-ticket items, such as jewelry, appliances and vacations.

Technology advances have made barter transactions simpler, faster and friendlier than ever so that now, for the first time in history, barter can be preferred to cash transactions even when the latter are affordable. In fact, some U.S. barter networks provide members with a dual credit card, which gives users the possibility to decide if settling payment in kind or in cash. In fact, the card can automatically distinguish between barter and cash transactions, and so correctly note and process them.[39]

In a typical transaction, the barter company purchases the unwanted products with trade credits redeemable for media. Because barter companies buy media in such large quantities, they can negotiate favorable pricing for it. The barter company then sells the goods at a price that covers the cost of the media and also leaves a profit. However the companies using barter may have many other benefits from it too.[40]

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[36] http://demo.evalues.net/statistics.barter0916.html

[37] www.irta.com

[38] CHARLES GIBSON: The Business of Bartering*, ABC Good Morning America*. 6 July 1999.

[39] *BarterNews,* TradeBanc- cover story. 1999/49.

[40] KAREN M. KROLL: What Works: Tricks of the Trade, *Bus. Wk.,* 11 November 1999.

Barter can be a way for a company to cost-effectively enter a new market. Camera manufacturer Konica U.S.A. Inc., a client of New York-based Tradewell Inc., may structure a barter deal that directs the products to states where the company lacks a good distribution channel.[41] Barter can also help a manufacturer translate excess production capacity into a boost to its advertising budget. Icon International worked with a soft drink manufacturer that was able to increase production at a minimal incremental cost and use the extra soda in partial payment for additional media placements.

Though barter firms can do what banks cannot do because they can engage in barter trade. In barter trade one firm gives a trade credit to another firm, which is repaid in goods rather than money.[42] First barter does not attempt to improve the overall creditworthiness of firms (as in bankruptcy) but rather restores the creditworthiness of the firm for one special deal. In a barter trade a deal-specific collateral is created in the form of the future goods payment. Depending on the degree of the credit problem of the debtor, the creditor can choose the value of the collateral relative to the trade credit that he gives to the debtor. This way the debtor's creditworthiness is restored for one specific deal. Giving a trade credit in the form of a barter deal is available to firms only, since banks are not allowed to engage in the trading business. The option of improving a debtor's creditworthiness by doing a barter deal is therefore not available to banks, which explains why firms are able to give loans when banks are reluctant to do so.[43]

Although the most of barter transactions deal involve products, companies also have been looking at barter as a way to handle real-estate holdings that no longer fit their needs. When Heineken U.S.A. Inc., wanted to move from its offices in New York's Rockefeller Center to a location outside the city, it had to find a tenant to sublet the space. However, rates for office space had softened in the time since Heineken had signed the original lease.[44] Heineken worked with Icon, which found a media company to occupy the space. The media company paid Icon in radio time, which Icon put into its *'inventory'* of media credits. Icon in turn paid Heineken in a mix of media time that was worth nearly the face value of the lease. Heineken continued to pay the landlord in cash. „It was an innovative way to get something of value" says Dan Tear no, vice president of corporate affairs with Heineken.[45]

Corporate barter isn't a new idea. For example, in 1935, US pharmaceutical giant Monsanto sold saccharin to a company in China.[46] When the company was unable to pay in cash, Monsanto took frozen mackerel in exchange, and acquired an export market in the world's most populous country. In 1972, PepsiCo did a deal with the government of the USSR to supply the first western consumer product on sale in the

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[41] KAREN M. KROLL: Corporate Barter: Out of Dark. *Indus. Wk.,* 18 May 1998.

[42] DALIA MARTIN & MONIKA SCHNITZER: *Contracts in trade and transition.* 2002.

[43] MARTIN & SCHNITZER i. m.

[44] http://www.findarticles.com/cf_dls/m3601/5_49/91568125/p1/article.jhtml

[45] KROLL i. m.

[46] TIM PHILLIPS: Barter: an Alternative Currency. *Guardian*, 27 February 2003.

Soviet Union. Instead of roubles, Pepsi was traded for vodka, and PepsiCo acquired distribution rights to Stolichnaya in the US.[47] Today, massive barter deals still happen. In November 2002 the Thai government agreed to arrange a swap of 60,000 tonnes of excess rice for 300,000 South African cattle, avoiding a plunge in rice prices and solving its beef shortage in one trade.[48]

Barter between firms, is based on the idea that corporate companies resort to corporate barter to overcome liquidity constraints, enter new markets, and gain both marketing and competitive advantages is also supported by specialized publications like BarterNews, promotional materials by corporate barter companies, and official documents by both IRTA and the Corporate Barter Council (CBC).[49]

According to the specialized press, the IRTA and CBC official documents, barter is a marketing and financial tool that corporations and businesses adopt to move excess inventories, and exploit under-utilized plant capacity in order to finance the cost of production. Barter became a tool for big and small corporations, for households, and a possible reform solution to the existing monetary crisis in the developed World.

VI. Surviving barter

Barter became an important tool in corporate trade, between international companies and between states, but more than that that through the Internet in the USA, Europe, Australia and many Asian countries it became a part of every day life. In other countries, like Argentina, Russia or Ukraine barter is also a part of every day life, but as a way of survival.

In the communist ages, especially in the 1980s, it was common to barter among countries in Eastern and Western Europe. In those days, there were frequent reports of such transactions in the press: countries like Peru repaid Soviet hard currency credit lines with plane loads of frozen chickens; ship loads of Romanian farm equipment (shovels, etc) were used to partly pay for Western imports; a German power turbine was shipped to China in exchange for payment in coal.

There were government-to-government deals, too, such as Russian oil shipments in exchange for Cuban sugar destined for the Eastern Bloc countries, and the UK's Al-Yamamah deal to sell Tornado fighter planes to Saudi Arabia in exchange for oil. Behind all this were countless, and often nameless, small trading companies that knew how to offload a building full of old office furnishings in exchange for coffee beans.

In those days, however, pure barter was comparatively unusual; much more widely used were part-barter deals put together under such terms as compensation trade, countertrade and offset and switch, among others. What they had in common was that at least one of the partners was operating from a country with little or no access to

[47] www.atimes.com/global-econ/AG31Dj02.html
[48] bizbb.com/GlobalBarterThailand/a/registerRequest
[49] http://www.trade4it.com/corporate.html

convertible currency. This was most apparent in trade between Western Europe and the Warsaw Pact countries of Eastern Europe and the then-Soviet Union.

Much of the trade was done out of Austria and to a lesser extent out of Germany, Switzerland and Finland. Austria was then a neutral country, whose bankers had long experience of dealing with the centralized economies of the Soviet Bloc. With oil price inflation destabilizing economies around the world, London also began to emerge as a place where know-how could be found to structure tied trade deals.[50]

The London Countertrade Roundtable (LCR) was established in 1988 as a focal point for all those involved in countertrade, offset and related activities. Its main objective is „to bring together companies and individuals engaged in the profession of countertrade in its broadest sense" and to promote co-operation, exchange of information, and opportunities for networking. It achieves this via regular meetings, with guest speakers, and, more recently, via the LCR website, and on which all members are entitled to have their own individual entry. The LCR also seeks to represent the interests of all those involved in countertrade, and of the industries in which it operates, to Government and other peripheral but influential parties.[51]

The UK Department of Trade and Industry official in London said that the collapse of the Berlin Wall and of the Soviet Union eventually led to a sharp reduction in the amount of bartering with Eastern Europe. That was after a panic surge in bartering: a decade ago, it was estimated that 60%-70% of all Russian trade was undertaken by barter. As the former Soviet Union countries have developed into market economies (many in preparation for joining the EU, which will welcome 10 new members in 2004), there has been a reduction in the forms of barter to which the region had become accustomed since the Russian Revolution.

The reduction in the need for barter meant that the great dream that London would become a countertrade center faded and City banks that were beating the drum for barter business in the late 1980s now scarcely specialize in it. As Europe was stabilizing; so were Latin America and Southeast Asia, which, through market-opening programmers, began to attract swathes of foreign investment. In the mid-1990s, Brazil's currency was stronger than the US dollar and in Argentina all the talk was of a *'dollarised'* economy.[52]

6.1 Surviving barter in Argentina

Since 1997, the Asian and Latin American currencies have again been in a state of profound destabilization, something that is grist to the mill of the barter expert. A recent example of this is Argentina, where the peso has collapsed against the dollar, leaving the country unable to pay for its import needs in the usual way. After the monetary crisis in 2002, the unemployed, workers in the informal economy, retirees, the poor and people from the middle-class were bartering goods and services to survive, in some 4,000 Global Barter Network clubs scattered throughout the country.

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[50] http://www.fdimagazine.com/news/fullstory.php/aid/458/Countertrade_still_thrives.html

[51] www.londoncountertrade.org

[52] http://www.fdimagazine.com/news/fullstory.php/aid/458/Countertrade_still_thrives.html

The movement first emerged in 1995, on the initiative of a group of environmentalists who wanted to return to a subsistence economy that would do without pesos, the local currency.[53] The system has not stopped growing since then. All kinds of things are bartered today, from real estate and cars to professional and tourist services. The new Pyre Barter club, which groups small and medium businesses that have gone bankrupt, even rescued firms with using '*honor loans'* for example the group reopened Lourdes, a factory that produces regional products from the central-west province of Mendoza, which was forced out of business by the economic meltdown.[54] The loan granted by the Pyre Barter club enabled Lourdes – which at its peak employed 100 workers – to reopen, by paying the construction workers, electricians, plumbers and mechanics. The owner of the company promised to pay for the assistance through credits to employees and suppliers.

The difference in the value between a product or service traded for another is paid with *'credits'*, a new *'social currency'*, which has a value that is more certain than the Argentinean pesos'.

The Global Barter Club is now functioning in all of Argentina's 23 provinces, each of which has hundreds of clubs. Clubs have also been opened in schools, where students trade school materials, clothes, books, and even tickets to football games. Some clubs contact barter clubs in other parts of the country to offer hotel rooms and other tourist services.[55]

Still one of the most novel aspects is the decision by local authorities in a number of Buenos Aires municipalities, like Chacabuco, Quilmes and Avellaneda, to accept bartering credits in payment for taxes. Small town mayors in other provinces have followed their example, and say the credits easily return to the taxpayers through meals in schools and in hospitals.[56]

As the pesos and the Argentinean economy became more stable, people are making less and less transactions through barter clubs. From the 4000 Barter Clubs that grew in the time of the economic collapse, already only the biggest ones exist, around 1000 clubs. Through they are still very relevant in the Argentinean economics, the role of them was more to survive, than to reform the already existing forms of trade or to create a new, alternative currency.

6.2 Barter in Russia

In Russia barter transactions are also forms a survival. In a country with a sick economy, an unstable currency and a sea of debt, barter accounts for more than two-thirds of all transactions.[57] In the West, 'cashless society' conjures 21st century images of 'smart' credit cards and high-tech cash registers, instant electronic debits from a bank account and e-moneys, barter credits; Russia's cashless society is from a century in the other direction, but using the same tool.

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[53] argentina.indymedia.org/news/2002/11/62851.php

[54] RUTH PEARSON: Argentina's Barter Network: New Currency for new times, *Bulletin of Latin American Resarch*, Volume 22. Issue 2. 2003.

[55] http://www.stable-money.com/Barter_Club_links.htm

[56] PETER KATEL: Argentina: The Post-Money Economy, *Time*, 5 February 2002.

[57] OLIVER BLANCHARD: *The Economics of Post-Communist Transition*. 1997.

Failing banks, the falling ruble, government corruption and an oppressive tax system hamstring the Russian marketplace. The result is survival-by-barter from the corner fruit stand to the highest levels of industry. Every Russian province, even in the relatively prosperous capital, Moscow, has examples of barter. Workers get paid in toilet paper and T-shirts. Companies stay in business by wrangling supplies and swapping their products to pay their utility bills and taxes. Barter now accounts for about 70 percent of trade in Russia[58] and the figure is growing amid the current economic crisis, according to Yaroslav Lisavolik, a Moscow economist.

One of the world's largest enterprises, Russia's natural gas monopoly, Gazprom, conducts 80 percent of its business in barter, according to the government. „There is no cash and the chain begins from there. Everybody uses electricity and everybody uses gas ... Enterprises couldn't make their payments, so they started bargaining," said Andrei Laptev, financial director for Sapkon/Neftemash, a company in the southern city of Saratov that manufactures equipment for the oil and gas industry.[59]

Several arguments have peen put forward to explain the surge of barter. Among these explanations are: soft budget constraints, delay in restructuring, tax avoidance, and the virtual economy. Delay in privatization and inefficient governance structures are seen to lead to quantity targeting rather than profit maximization.

The absence of hard budget constraints leads managers and workers to avoid the costs arising from restructuring by maintaining production in inefficient activities. Barter is seen to help to conceal the true market value of output. Furthermore, barter is seen by many experts to allow avoiding paying taxes by distorting the true value of profits.[60] There is a tax on cash payments because in many countries of the FSU the banking sector is used as a tax collection agency by transferring firm's incoming cash on bank accounts to the state to pay for outstanding tax arrears. A payment in goods allows circumventing paying taxes. Finally, the virtual economy argument of barter claims that barter helps to pretend that the manufacturing sector is producing value while in fact it is not.[61]

Of these explanations only the tax reason for barter is weakly supported by the data of a survey of 165 barter deals in Ukraine in 1997. The tax argument for barter can, however, not explain why barter exploded from 5 percent to 60 percent within four years. Something else and big is at work here and from our survey data in the Ukraine the following picture has emerged. Barter is mainly driven by financial reasons. Firms lack the cash to pay for their inputs and banks refuse to provide capital at reasonable interest rates. This has led to the phenomenon of inter-firm arrears in which firms extend trade credits to each other. These firm arrears allow producers to deal with the problem of trust in the economy.[62]

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[58] http://english.pravda.ru/cis/2002/12/20/41117.html

[59] http://www.newsfromrussia.com/main/2003/06/19/48424.html

[60] Simon Commander & Christian Mumssen: Understanding Barter in Russia. *EBRD Working Paper*, 1998/37.

[61] David M. Woodruff: *Money Unmade: Barter and the Fate of the Russian Capitalism.* 2000.

[62] Paul Seabright: *Vanishing rouble, barter networks and non-monetary transactions in post-soviet countries*. 2001.

Two major factors inherited from the Soviets have given the Russian economy access to barter technology: shortages in the official economic system, and the payment system. Circumventing Shortages in the Official Economy. Barter is not new to enterprise managers in Russia's' transition economy.

In the simplest view, the Soviet economy was a barter economy, with Gosplan and Gossnab acting as mediators between ministries. Quinquennial plans designated the flow of materials and goods, with little regard to financial aspects. Above-plan production in the Soviet economy was frequently traded between firms in barter arrangements (Berliner 1976).[63]

Moreover, failures in vertical linkages caused persistent and pervasive shortages in the Soviet economy that were overcome by unofficial horizontal linkages through the establishment of barter trade between firms to obtain the requisite materials that the planning authorities failed to deliver.[64]

Makarov and Kleiner (1996) estimate that between 2% and 6% of transactions between firms prior to perestroika were established by the firms themselves in order to smooth out plan fulfillment, and in many instances, local party officials acted as a clearinghouse for barter transactions, thereby reducing the time and energy required to establish a double coincidence of wants. Woodruff (1999) documents explain the use of barter transactions by local, regional and provincial leaders as a means of extending their control over resources (tradingfood, fuel, paper, tires, construction materials, and consumer durables), and of diminishing control exerted by Moscow.[65]

This activity intensified during perestroika, as more goods were siphoned off from the official economy. New forms of ownership like cooperatives, leased firms, and joint ventures were legalized. These firms were not part of the planned allocation of materials, thus had to compete for resources with state organizations. Efforts to increase the independence of firms from planning authorities without changing the price formation system increased the demand for materials, but without establishing a corresponding mechanism to meet that demand. The resulting shortages caused firms to resort to trading in-kind: cars, building materials, and video equipment replaced rubles as the currency of exchange. Provincial leaders, seeking ways to prohibit scarce goods from leaving their region, used commodity transactions to circumvent planned allocations, and formed interregional alliances to facilitate commodity transactions. Indeed, Yeltsin signed special decrees in 1990 and 1991, which granted provincial leaders rights to 10% of enterprise production in their region for barter purposes, as well as partial rights to exports and hard currency earnings.[66]

Soviet state-owned firms typically settled accounts with one another through the payment order system. At the time the contracted goods were shipped, the supplying enterprise sent a payment order to the bank of its customer, which would then pay it

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[63] J. BERLINER: *The Innovation Decision in Soviet Industry.* Cambridge, Massachusetts, The Mitt Press, 1976.

[64] www.rusimpex.ru/content_e/ economics/econom/prognoz00.htm

[65] http://www.yandex.ru/cgi/yandsearch-f?sub=nini&text=barter

[66] Yeltsin tried to reverse this trend at the end of 1991. (see Presidential order 143, 269)

automatically from the funds on the customer's account. When the customer had no available funds, unpaid bills accumulated in a card file number 2 *and were paid in the order of arrival*.[67]

In short, producers automatically extended customers short-term credit. The Russian state-owned firm counterparts kept this payment system during the first stages of the transition process. Thus, once the privatization process was undertaken, the newly privatized firms had at their disposal the production chains and supplier-customer relationships inherited from the Soviets, that is, the necessary network to conduct barter transactions.

Indeed, during the high inflation episode between 1992 and 1995, despite the significant increase in accounts in arrears, producers did not worry much about whether their customers paid. Enterprise directors formed a strong political lobby enabling them to secure the continuation of credits and subsidies, and thus continued producing. Cash received was frequently hoarded for speculative purposes, especially in the foreign currency market, rather than paying for materials or wages, and was rarely deposited in banks since often it was difficult to withdraw and bank accounts were raided by tax authorities. When large amounts of debt accumulated and debt obligations were clarified, Russian authorities sanctioned debt offsets (zachety), using a procedure available since the Soviets, and payments could be made in-kind rather than in cash.[68]

Barter trade has exploded in Russia from 8 percent in 1994 to 53 percent in 1998.[69]

One of the most common forms of barter is inter-firm exchange, as an answer to the high debts. Some scholars[70] argue that barter helps to create the image that the manufacturing sector in Russia is a production value, while it is not. (so called Virtual Economy theory).

Barter allows parties to pretend by allowing the manufacturing sector to sell its output at a higher price than its market value and the value-adding natural resource sector (Gazprom for example) to accept this high price because of a lack of other sources. This way the manufacturing sector survives by drawing resources from the natural resource sector. Therefore barter can be not only a surviving tool, but a market manipulating way of trade too.

Barter helped surviving Russian firms, but it is such a high percent of national trade, that it is already a dangerous tool. While the *'Western'* economists see a solution in barter for the money crisis, a cash-saving tool, an alternative currency, the Russian economists try to find a way to lower the number of barter transactions. The resurgence of barter during crisis times contributes to reinforce the inefficiency belief as well as the idea that traders wouldn't yield to barter if it was not for the crisis. Actually, it is just sufficient to look at the Russian economy to find proof of the in-

[67] Donald Mark Woodruff: Erratum: It's Value That's Virtual: Bartles, Rubles, and the Place of Gazprom in the Russian Economy. *Post-Soviet Affairs*, 15, no. 3 (July–September)

[68] Barry White Ickes & Randi Ryterman: Roadblock to Economic Reform: Inter-enterprise Debt and the Transition to Markets*, Post-Soviet Affairs*, 9, no. 3 (July–September)

[69] Dalia Marin & Monika schnitzer: *Contracts in trade and transition,* 2002.

[70] Marin & schnitzer i. m. 112–113.

efficiency of barter. Even if it is recognized that Russian firms affected by a severe lack of liquidity and confronted with an imperfect capital market environment may find in barter a way to restore their creditworthiness as indebted countries do, the practice is not expected to help the recovery of the Russian economy.[71] Indeed, the International Monetary Found does not hesitate to clearly denounce the negative impact of barter on the Russian economy.[72]

VII. WTO, IMF and countertrade

The WTO – and its predecessor organization, the General Agreement on Tariffs and Trade (GATT) – condemns countertrade because it distorts the evolution of an equitable trading system, is bilateral (and thus exclusive) by nature and lends itself to corruption through the use of offsets, which often obscure the true value of the goods transacted because of political considerations, and contributes to destabilization in importing countries.

The WTO acknowledges that, its condemnation notwithstanding, some of its biggest members are the biggest arms exporters and, in any case, the proscription does not apply to countries undertaking bilateral defense deals for *'national security'*. It particularly objects businesses like the Al Yamamah deal, in which the UK provided exports of Tornado fighter planes to Saudi Arabia for payment in oil (undertaken at a time of soaring Middle Eastern oil prices in the 1980s).[73] It has called for the release of a confidential UK National Audit Office report into the Al Yamamah deal, which was supposed to have been made public in 1992 but was not disclosed because, says, Robert Sheldon, chairman of the public accounts committee in Great Britain, claimed that „the Saudis would have been upset".[74]

However, purely private countertrade, that is countertade not practiced, mandated or stimulated by government, is not contrary to the GATT or any of the codes negotiated under its auspices. With the exception of the Government Procurement Code, none of these legal instruments specifically mentions countertrade. Through, the general rules of GATT and the codes on measures that restrict import or subsidize exports appear to be sufficiently broad to cover also those cases in which import protection or export subsidization results from governmental practices, requirements or inducements to engage in countertrade.

According to Article I of the GATT,[75] the *'Most Favored Nation Treatment'* article, in 1973 a GATT working party discussed the question of whether tariff reductions for goods imported in he framework of corporation contracts were unconditional in the

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[71] DAVID M. WOODRUFF: *Money Unmade: Barter and the Fate of the Russian Capitalism*. Cornell University Press, 2000.

[72] www.rusimpex.ru/content_e/ economics/econom/prognoz00.htm

[73] http://www.fdimagazine.com/news/fullstory.php/aid/458/Countertrade_still_thrives.html societies, 2000

[74] http://www.fdimagazine.com/news/fullstory.php/aid/458/Countertrade_still_thrives.html societies, 2000

[75] „With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with

sence of Article I. The GATT secretariat, asked by the working party for a legal opinion on this matter, stated „that the prerequisite of having a co-operation contract in order to benefit from certain tariff treatment and would therefore, not appear to be compatible with the General Agreement”.[76] The working party noted this without taking a position on it.[77]

According to Article XI: 1, restrictions of any product,[78] whether made effective through import licenses or other measures, are in principle prohibited. This regulates countertrade transactions too, but there is no GATT precedent, which could clarify this issue.

According to the interpretative notes to Articles XI, XII, XIII, XIV and XVIII of GATT, the term *'import restrictions'* includes restrictions made effective through state-trading operations.

Under Art. XI:1 countertrade practices by state- trading enterprises that have the effect of import restrictions- such as restrictive countertrade practices by governmental import monopolies- would therefore be in contrast with Article XI. Such practices would be consistent with the General Agreement only if they were to fall under one of the expections to Article XI.[79]

Discriminatory import restrictions are in principle prohibited by Article XIII.[80] Countertrade requirements applicable only to the trade with some interacting parties but not to that with some contracting parties but not to that with others – for instance requirements aimed at the balancing of bilateral payments deficits- are contrary to this provision.

Article XVI:1 of the General Agreement contains one of the exceptions to the principle of non-discrimination. According to this provision a contracting party invoking the GATT's balance-of-payments exception may deviate from the provisions of Article XII[81] in a manner having equivalent effect to the restrictions on payments and transfers for current international transactions which that contracting party may apply under Article VIII[82] or XIV[83] of the Articles of the Agreement of the International Monetary Fund.[84]

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respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”– *General Agreements on Tariffs and Trade*, GATT, 1947 (from now on GATT)

[76] BISD, 20th Suppl., p. 36

[77] Frieder Roessler: Countertrade and the GATT legal system, *J.W.T.L.,* 19

[78] „No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.” Art. XI.1. GATT

[79] M. M. Kostecki: *State trading in international markets*. St. Martin's Press, 1982.

[80] Art. XIII. GATT: *Non-Discriminatory Administration of Quantitive Restrictions*

[81] Article XII of GATT: *Restrictions to Safeguards the Balance of Payments*

[82] Article VIII of GATT: *Fees and Formalities connected with Importation and Exportation*

[83] Article XIV of GATT: *Exceptions to the Rule of Non-discrimination*

[84] http://www.imf.org/search97cgi/s97is_eng.dll/search97cgi/inetsrcheng.ini?action=filtersearch&filter=spquery.hts&QueryText=imfeng&NewQuery=barter

The right to introduce bilateral trading agreements under the General Agreement thus depends on the right to introduce bilateral payments arrangements under the Articles of the Fund. In its 1983 report on Exchange Arrangements and Exchange Restrictions the Fund states that bilateral payments arrangements maintained between Fund members constitute restrictions under Article VIII of the Fund's Articles of Agreement to the extinct that they involve exchange restrictions or multiple currency practices.

Governments can require or stimulate countertrade through exchange controls. The allocation of foreign exchange to an enterprise can be made dependent on the enterprise's export earnings. Exchange taxes and other forms of multiple currency practices can induce importers to avoid the use of foreign exchange by engaging in barter operations or other forms of countertrade. Such exchange controls fall primarly under the jusrisdiction of the International Monetary Fund, all members have to obtain the approval of the Fund before introducing new exchange restrictions in accordance with Article VIII.

Exchange controls requiring or stimulating countertrade that unexpextedly eliminate or curtail the competitive opportunities arising from a tariff concession, could even if they were consistent with GATT law, give rise to claims for corrective or compensatory action. No such case has however so far arisen in the GATT practice.[85]

One major problem about barter is, that the prices are not expressly stated in money. According to the Agreement on the Implementation of General Agreement on Tariffs and Trade,

– the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods sells other goods to the seller of the imported goods, or
– the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on the condition that he will receive a specified quantity of the finished goods.

If for one of these reasons the transaction value rules does not apply, customs authorities must use one of the other methods of valuation provided for in the Agreement, in the sequentence specified in the Agreement. The Technical Committee on Customs Valuation, in an Advisory Opinion on the Treatment of Barter or Compensation Deals under the Agreement, distinguished the case of pure barter from the case of barter expressed in monetary terms. The opinion of the Technical Committee as to the case of pure barter was the follows:[86] „Disregarding the question as to whether a sale has occurred in cases of pure barter, where the transaction is neither expressed not settled in monetary terms, and there is no transaction value or objective and quantifiable data for determining that value, the customs value should be established on the basis of one of the other methods set out in the Agreement, taken in the sequence prescribed."[87]

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[85] FRIEDER ROESSLER: Countertrade and the GATT legal system, *J.W.T.L.*, 19

[86] ROESSLER: i. m.

[87] Customs Co-operation Council, GATT Agreement and Texts of the Technical Commitee on Customs Valuation, Advisory Opinion 6.1.

As to barter expressed in monetary terms, the Technical Committee found that „under the legislation of some countries barter transactions expressed in monetary terms can be regarded as sales. Such transactions however will of course be subject of the provisisons of Article I." The Technical Committee also noted that this would apply in regard to cases of partial barter where part of the transaction involves a money payment.[88]

The GATT provisions are most concerned about offsets in international trade. As the World's preeminent supplier to foreign governments of weapons, civil aircraft, and high-cost technology hardware, U.S. corporations are highly vulnerable to offset demands. In a global environment of budgetary constraints, fierce competition, and declining business opportunities, the ability of suppliers to meet offset requirements and/or to provide their clients with financial packages that can best those of competing bidders is a major competitive edge. The suppliers' consent to offset impositions is also a clear sign of the governments' apparent inability or lack of will to enforce a ban on offsets across industrial sectors and on a global scale, notwithstanding language in Article XVI of the GATT's 1979 Government Procurement Code, now known as the WTO's Agreement on Government Procurement, that proscribes impositions of offsets in nonmilitary procurements. Article 4.3 of the GATT's 1990 Agreement on Trade in Civil Aircraft further states that the Signatories agree that the purchase of products covered by this Agreement should be made only on a competitive price, quality and delivery basis.[89]

In sum the conflicts between GATT and countertrade only occur when the countertrade is government sponsored if two private companies countertrade the GATT cannot be breached. Having said this the problems are far from solved. F. Roessler in his article *'Countertrade and the GATT legal system'* explains in some detail how countertrade can breach: Art I, Most favored nation, Art XI Import licensing, Art XVII & XIII Non-discrimination, to name a few.

VIII. Conclusions

Barter has a very controversial life in many different ways. It is the oldest form of trade, but still it is one of the newest in its novel forms through the Internet, using future money (barter dollars). It can be a contract for gigantic business transactions, as well as a money-saving cash flow increasing tool for small and middle size companies. It is a way of reforming the current monetary situation, and to find a solution for the *'dollar bubble'* crisis, and in the other hand it is the only way of surviving for many companies in Argentina, Russia and in other countries with indebtness and soft currencies, in national and in international transactions. Still the scholary literature pays a very little attention on barter and on the new ways of it. If we consider that the barter industry has developed two different sectors, it seems reasonable to wonder if it is correct to assimilate all modern barter practices, from countertrade to offsets, corporate barter, and commercial E-barter, all together as

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[88] Roessler i. m.

[89] http://www.countertrade.org/Pompiliu'sReport.doc

barter as the current legal and economical literature does. There would be a great need for a complete and inclusive legal analysis of this institution as well as for a new legislation both on the state and on the international level that could fulfill the needs of the market and represent the changes and importance of bartering.