

Case Study: Product Sales in Poland

Western businessmen dealing in Eastern Bloc nations must be sensitive to different thinking processes

BY H. A. RAASCH*

I do not believe the conclusion reached in many recent articles published that it is much harder to do business in Eastern Europe than it is any place else in the world. I have found in doing business in Eastern Europe that, despite the differences in systems, I inevitably deal with people who know how to convert meaningful business opportunities into something that can work within their system. It's much as we develop a sensitivity for converting such opportunities into meaningful programs under our own company structure. Therefore, I submit that the art of successfully concluding agreements in Eastern Europe is very often based upon the negotiator's ability to understand the negotiating partners' motivation.

To conclude that there is no difference between East-West trade and trade between Western countries would be erroneous. But to make of that difference a seemingly insurmountable barrier, or to develop the thesis that East-West trade belongs in the domain of a very few enlightened experts, would be equally unsupportable.

Some six years ago Koehring Company decided that it would make an important investment in time, effort, and expense necessary to open up serious contact with Eastern European countries. It was recognized that to plan for only short-term sales success or market penetration would be short-sighted. We were relatively unknown in the Eastern Bloc countries and knew little of these countries, their needs, their economic organization, and their way of operating.

Many will remember that at that time we still had an almost total export control program which required a complete screening by the U.S. government of every deal an American company developed with any of the Comecon countries. Typical of all bureaucratic processes, this screening process was slow — frequently taking months and volumes of paper, and there was always the hazard of unfavorable interpretation regarding end use as qualified under the law. Before we at Koehring were prepared to implement the decision to open up business dialogue with the Socialist countries of Eastern Europe, I went to Washington to request that we be given the opportunity to

"prequalify" those products that we would be discussing in East Europe. Through the enlightened intercession of two top businessmen who had volunteered their experience, energy, and capability in service to our government (Bob McLellan, then-Under-Secretary of Commerce, and Harold Scott, the then-Assistant-Secretary for Domestic and International Business) we completed an exercise which resulted in our being given "pre-clearance" by Rauer Meyer's Export Control Group. This left us free to proceed in making contacts and gave us the assurance that we could conclude on the spot any deals developed.

Thus armed, I traveled to Europe in early 1970. I was joined by a sales manager from our European marketing headquarters, and we proceeded to Warsaw. The timeliness and efficacy of our decision to go into Eastern Europe is well expressed in this excerpt from my trip notes:

"Rooms are at a premium in Warsaw despite the fact they have a number of new hotels. The place is crowded with businessmen from all over the world, and I *mean* all over the world, including the U.S. It is obvious that considerable business is already being done in these countries, and while it will be slow going developing a proper rapport with the right people and finding the right channels, it would appear that our efforts to establish such contacts now are timely.

"Patience, persistence, and a steady nerve will be the main ingredient, but an "incubation period" takes the same amount of time whether it would be now, or later. I believe we will yet be in the vanguard if we establish economic beachheads with the right people now. Certainly the need for the kinds of equipment we produce exists in considerable volume, and the desire to obtain such equipment is just as great as is our desire to provide it, but the matter of exchange remains the ever leavening factor." That last sentence covers one of the continuing hurdles.

Quoting further: "There is no counterpart in Poland, for example, of the type of trading companies with which we are familiar (operating as do the Japanese or Yugoslav trading companies which basically handle a number of commodities not necessarily related). Rather, the trading companies established under Polish legislation are separately housed government departments that specialize in specific commodity classifications." There ends observations I made over six years ago. Do they sound familiar?

Make Contacts

During that first trip we made contacts with the buying agencies and all the governmental departments that could, or would, be instrumental further establishing direct commercial relationships in our class of goods. Among these was the relatively new Bumar organization

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in Poland. Bumar is the Polish trade organization responsible for all the purchasing as well as the selling of construction machinery on an international basis. As such, Bumar has direct access to the Polish market in that they also do the purchasing of construction machinery for the Polish market. They also have the responsibility to market all of the construction machinery manufactured in Poland, both at home and abroad, which puts them in contact with the entire construction and machinery industry in Poland.

Parenthetically, it is important to point out that the Polish construction machinery industry has for many years been very active in the Eastern Bloc countries. Polish industry has supplied China, the Soviet Union, and many of the other Comecon countries with excavators, cranes, and a great variety of construction machinery.

We had a special interest in selling machinery in Poland, since we had a further interest in gaining access to other Eastern Bloc markets. On the Polish side, we found that while Bumar had definite interest in buying Western construction machinery, Bumar was also strongly interested in developing reciprocal-cooperative programs with Western companies — such cooperative efforts to include the exchange of technical information. They were quite prepared to discuss certain licensing relationships, but only if the products covered could be included in some form of bilateral trade or marketing program.

Here we come to the first major consideration in connection with cooperative ventures in Eastern Bloc countries in general and with Poland in particular. Even though the territorial rights which Western manufacturers are generally willing to give Eastern Bloc manufacturers are substantial—and the potential sales volumes staggering, the vehicle for a neutralizing or a compensating balance of payments position with the Western countries must be clearly established. Hard currency trading necessitated by the relationship with the Western companies must somehow be brought into an equitable balance.

While in some cases this consideration may be overlooked in providing Polish industry with urgently required machinery or materials, and certain hard currency funds are available for such imports, mutually compatible efforts can only be made to penetrate the Eastern Bloc markets through and from Poland if a way can be found to purchase enough Polish goods to cover the purchase of required imported components and also to cover the necessary hard currency payments for engineering fees under a licensing agreement.

Access to Technology

Clearly then, the hope of Polish industry to have access to technology which would make their industry also a supplier to the Western markets is a logical one — and one which Western companies seeking to conclude cooperation agreements must logically understand.

Let us turn for a moment to the objectives that we at Koehring Company had in initiating discussions for a possible cooperative venture.

First, we wanted primarily to become a supplier of construction machinery to the Eastern Bloc countries. Our

original concept did not envision purchasing construction machinery in the East. Understanding Bumar's position, however, we were prepared to make certain sales efforts on behalf of Bumar (and some of their manufacturing operations) by offering products that might be complementary to our own product line in the West, but we were not prepared to offer guarantees on the amount of business or on the amount of hard currency sales we could generate.

And so we went in February 1971 to Warsaw to continue negotiations for significant quantities of our equipment, still prepared to offer our technology on hydraulic excavators to the Polish construction industry under our terms. After a few days of hard negotiating on a round-the-clock basis, we came up with a memorandum of understanding which did not include specific guarantees on our part for sales of Polish products in the West, but did offer an opportunity to do significant business for our own company in the East. We did not preclude the possibility of marketing Bumar products in the West, but we recognized and explained the obstacles — which were great. Bumar, being less sensitive to world market potential and the total productive capability of world suppliers, had difficulty in understanding the problem and the impact of manufacturing costs on competitive world pricing. The communications between Bumar and Koehring became more difficult and both parties agreed to just stay in continuous contact for a while and not to push for an ultimate conclusion of an agreement at that date.

Our ability to promote sales of Polish products globally was further inhibited by the fact that we had certain territorial restrictions imposed upon us under licensing agreements previously concluded in Great Britain, Spain, and Japan, which fact became a further impediment to our negotiating latitude.

At about that same time, Koehring was engaged in a thorough study of the market potential as well as the profit potential of a new hydraulic excavator line designed at Koehring's Menck subsidiary in Hamburg, Germany. This product line, fortuitously, embodied one of the most modern hydraulic excavator design concepts in the world. Menck, however, was a latecomer in the development of hydraulic machines and, as a result, Menck's market position was small. Furthermore, the profit potential on Menck's hydraulic line was limited by an already super-saturated market in Western Europe. Menck had designed and prototyped their model M250H, a 25-metric-ton deadweight hydraulic excavator with backhoe and front shovel attachment, their model M360H, a 35-metric-ton version of the same type of machine, and their model M500H, a 50-metric-ton version of the same family of machines. Menck successfully introduced and sold into the German market the M500H, the largest of the three models, because Menck had historically established a fine reputation as a supplier of large machines, particularly for quarry applications. Additionally, the market for the larger machines was not quite as saturated as was the case with the smaller machines of the M360H and M250H class.

As a result of our market study, it became abundantly clear to corporate management that, even though we believed the model M250H to be absolutely first-class in quality of design, we might yet not be able to "buy" our

way into our usual markets without significant losses. Therefore, a logical conclusion was reached not to add this model to the production program of our Menck Division in Hamburg even though we had designed, tested, and prototyped a fine machine.

Fortunately, Koehring's vice-president who had been involved in the negotiations with Bumar was struck with the thought that, if the right product quality could be achieved in Poland, it might be possible to reach cost parameters within which we could competitively market these machines in the West, as well as in the East. Bumar was appraised of our thinking and we were immediately invited to come and discuss the possibilities of such a program.

It was about February 1972 when Koehring again went to Warsaw to discuss in detail the aforementioned opportunity as we saw it for ourselves as well as for Bumar and Poland. Under the new approach, we were prepared to offer worldwide exclusive manufacturing rights for the Menck M250H to Poland, and at the same time we offered a nonexclusive license for the M360H and M500H, giving Bumar the Eastern Bloc countries as their exclusive territory and providing them access to mutually agreed upon nonComecon countries through the Koehring Company global distribution system. We also went further this time and agreed to commit — given competitive conditions on quality and price — that we would introduce the M250H, produced in Poland, to the markets of Europe, Africa and even South America. With that concession, we broke through the hard currency trading balance hangup which had caused our initial talks to go dormant.

Conclusion

To illustrate, the negotiations following our new approach started in February 1972. On the 22nd of April 1972, Mr. Olesik of Bumar and Roger Regelbrugge of Koehring signed a Cooperation and Reciprocal Sales Agreement, complete with supplemental agreements covering technical service backup and other considerations. It should be noted that Mr. Regelbrugge did not spend the entire time between February and April in Warsaw! Only one week of negotiation in February and one week of negotiation in April (with some mail exchange in between) were needed to arrive at an acceptable agreement with Bumar. This shows how quickly a meaningful venture can be put together, even in the Eastern countries, once common interests are understood, met, and served.

Many negotiations in which I have personally been involved with companies in Europe as well as in Japan have taken much more total time to conclude. I also have encountered many situations where the issues were not as clearly defined and where, as a result, the contracts ultimately concluded took much more time to finalize, became much more complex, and eventually became less commercially viable. As we look back on these negotiations, it would probably be useful to single out some of the more important issues which needed to be considered and needed, somehow, to be resolved in order to come up with a mutually acceptable agreement.

First, there was the issue of the hard currency exchange needed to pay for imported components and the engineering fee due Koehring.

Second, there was the collateral need to find a way to help develop this exchange, possibly by sales in hard currency of Bumar products through Koehring's worldwide sales network.

Identifying the scope of the exchange of technical information was not a major problem, but obviously needed to be precisely documented. The territorial issues, exclusive-versus nonexclusive, and who would be responsible for sales in various markets, had to be discussed. But they posed no problem. Engineering fees were of course of major importance to us, and we ended up differentiating between fees payable on machine sales to Eastern Bloc countries, fees payable on machine sales within Poland, and fees payable on machine sales by Bumar to our own sales organization for distribution in the West.

The issue of force majeure needed definition and common understanding, and it was somewhat difficult to arrive at an interpretation of force majeure that was acceptable to both parties, but it was done.

Court of Jurisdiction

It was also difficult to settle on a court of jurisdiction and, while we ultimately arrived at arbitration, it was then difficult to agree on which arbitration court both parties could accept. But agreement was reached!

Pricing on machinery to be purchased by Koehring from Bumar was another factor that required considerable discussion, but was resolved.

Other hurdles that needed to be considered were approval by both the Polish government and the U.S. government of our technical exchange agreement — and payment terms for sales by Koehring to Bumar, and for sales by Bumar to Koehring, also had to be settled.

The usual covenants of a licensing agreement defining the scope of the product line involved, the scope of the technical information to be exchanged, etc. were somewhat more complicated to create in this negotiation than was the case with other license agreements we had negotiated in the Western world. I believe this was because there appeared to be certain propensity on the part of the Polish government to spell out in great detail all the documents which would conceivably become part of the technical exchange, including but not limited to such things as manufacturing bills of material, labor routing, and procedures of that nature. We would, of course, consider such manufacturing backup as part of a licensing agreement, but might not go into the detail they expected in itemizing it quite so precisely. However, there was no long hangup on this point. It was just a matter of agreeing to go the more tedious route of spelling it all out rather than generalizing that we were in fact granting license for production that would be supported by everything that they would require to successfully produce the products covered.

The matter of visits by Bumar technical and marketing representatives to our plants became a relatively important point. We were concerned that they might send delegation after delegation, thus interrupting work flow at

our Menck plant. They were concerned that we might not offer full disclosure of technology. So we agreed on a certain number of man-days per year that was not to be exceeded, except by mutual agreement. We were interested in cooperating to the fullest, but there had to be some control to avoid unnecessary visiting that would affect our production program. This is an issue, for example, which we normally would not have had encountered in dealing with Western companies. Some of our reluctance to provide open-ended visitation was based on our relative uncertainty of the length of time it would take our Polish licensees to become self-sufficient and independent of us as they assimilated the know-how and technology we agreed to convey to them under the license agreement.

Engineering Fees

The matter of possible massive sales to some of the Eastern Bloc countries, particularly the Soviet Union, and how to deal with engineering fees in the case of such large deals should they develop was another situation which was different from our normal experience in setting up licensing agreements in the West.

There was a very strong effort made by Bumar to directly link engineering fee payments to Bumar's ability to sell its products through Koehring for hard currency in the West. We found a way around this, even though we could not give positive assurances in principle on Bumar's sales to the West through us. It is worthy of mention that we found the Polish negotiators to be much more flexible on this point than we had originally expected they might be. We were fortunate in that the people with whom we dealt understood Western business concepts well. They understood that, under the competitive free enterprise system, positive guarantees on sales volume could not conscientiously be given. On the other hand, engineering fee minimums had to be a part of the agreement, so without question the open-mindedness of the Polish negotiators helped greatly to overcome what could have been another impasse.

Diligence clauses incorporated in most licensing agreements were a little more difficult to work out, and the "hold harmless" clause covering possible technical deficiencies of the machinery was also somewhat difficult to develop. Nevertheless, we found language which we believe most U.S. companies would accept was acceptable to the Polish negotiators.

Our Polish "partners" wanted a five-year agreement. We concluded a ten-year agreement. It is our belief that for capital goods five-year agreements are not beneficial to either the licensor or the licensee. This is particularly true considering the propensity to withhold certain information close to the end of the duration of the licensing agreement. This had to be acknowledged and had to be taken into account by both negotiating partners. The ten-year agreement was a feasible compromise between the fifteen-year contract we had originally wanted, and the five-year agreement the Polish negotiators originally wished. Because of the sincere belief of both parties that this was a good venture, an automatic renewal agreement was worked into the contract without much problem.

As stated before, our agreement package included a technical service agreement and a cooperation and reciprocal sales agreement. The two agreements run simultaneously under the same expiration and renewal dates and a clause linking termination of one agreement to automatic termination of the other.

Now that we can look back over a couple of years it would appear that the belief of the original negotiators in the efficacy of our cooperation agreements has been fully justified.

With some understandable delays, Bumar has through their Warynski works succeeded in developing a manufacturing program for the Menck model M250H. Economic problems, particularly in the German market, have caused us to take fewer machines from Bumar than we had originally anticipated. However, we have found ways and means to be flexible in allowing the Bumar organization certain deviations in territorial coverage as defined in the agreements in order to compensate for a drop in sales volume to the West. These deviations are provisionally made on a temporary basis to cover whatever period of time our own sales activities might be less successful than we had anticipated them to be originally.

Let me underscore that we have sold a number of Bumar-built M250H machines in the West.

Meanwhile, the M500H manufactured by our Menck Division in Hamburg has become the large excavator standard in Poland. We have supplied a number of these machines and hope to supply many more, not only to Poland but to other Comecon countries.

Significant progress is being made in negotiations between the Soviet Union and Poland for the sale of Warynski-built Menck machines to the Soviet Union. We are giving our Polish partners all of the support we can in their selling efforts in the Soviet Union.

A major exchange problem, caused by continuing purchases of parts, materials, and components from the West when sales of Polish machines to the West have been reduced because of economic conditions, is gradually being worked out. It is good to note that a universal businesslike approach is being taken by both parties to overcome problems of this kind.

Koehring's image in the Eastern Bloc countries has been firmly and positively established.

The details of our relationships in Poland are well known to the trade organizations in the Soviet Union as well as in the other Socialist Republics, and we believe that the relationship we enjoy with our Polish partners will be of benefit to Koehring with reference to our total product line in the Eastern Bloc.

Looking Ahead

As we look ahead we can see the time when Polish industry will be much more self-sufficient. They will be manufacturing many of the components which they now still purchase from the West, particularly from West Ger-

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International President's Message

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and LES France will hold an International Licensing Forum on Tuesday, June 10 in cooperation with Inova '75. The meeting theme is "Licensing and Promotion of Research Results: An International Comparison". Speakers will be from LES France, LES UK, LES Scandinavia, and LES U.S.A. The Inova '75 licensing meeting is another example of the health and vigor of Member Societies of LES International in organizing effective educational formats for disseminating information about licensing and the transfer of technology—a subject of ever-expanding importance in our increasingly complex and interdependent world.

Finally, under the auspices of UNIDO and LES, plans are going forward for a licensing conference in Yugoslavia during late October 1975, and a number of LES members noted for expertise in certain phases of licensing, have been contacted by UNIDO to help prepare and present this conference.

As can be readily seen, from the foregoing, there is an enormous number of important activities taking place in what is now the very large and complex organization known as LES International. Already it has almost become too much for any one person to hope to direct and supervise. With the formal admission of LES Switzerland and LES España, we will have our tenth and eleventh Member Societies.

Accordingly, at the Paris meeting we took steps to investigate the idea of having two or three regional vice-presidents of LES International who could coordinate the affairs of the Member Societies in their respective parts of the world, and be responsible for attending major conferences. Such an organization could help solve problems of communication and coordination among our many and widespread Member Societies.

Meanwhile, LES International is a vital, active, and growing organization that is becoming ever more varied and interesting in its scope and long-range possibilities. It also is clearly an important force in promoting mutual good will among people of many nationalities. It is a promoter of international understanding in a practical and productive way.

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many, and as they do so they will alleviate the problem of equitable currency exchange. This will also enable them to reduce costs of product and to more aggressively pursue business opportunities in the Eastern Bloc markets. The needs of Comecon markets are great! The machinery produced under license from Koehring is very well suited for the general applications within that market, so there is little doubt as to the ultimate success of the Koehring/Bumar cooperation venture. To further demonstrate our confidence in this regard we are now discussing certain other product lines in which our Polish partners have indicated an interest, an interest we also are eager to develop jointly with them.

As you may know, Koehring was the first U.S. machinery manufacturer to conclude an agreement with the

Polish heavy machinery industry. We are proud of that fact. And I believe our Polish partners also appreciate the efforts we made helping to find the language which brought our halting, initial exploratory meetings into a meaningful, mutually beneficial business relationship. We are told the language and format developed by us was helpful to them in negotiating a number of other cooperation agreements which were subsequently concluded.

Negotiating Technology in Romania

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owned Romanian enterprises. There is a lot that has been done but even more remains to be resolved, as this is truly pioneering ground and I feel that preciseness, exactness, the truthful statement of each party's desires, and the striking of compromises are the prime tasks that will refine joint ventures to a true "win-win" combination.

In joint ventures, incentives have to be shared equally by both parties. A true understanding of each party's *modus operandi* by the other and the patience required to acquaint one another in detail with these things are the only actions that will assure continuous improvement in the success of joint ventures. Some ten trips to Romania have demonstrated to me unequivocally the unbiased appreciation and welcome that is extended to American businesses there. The American traveler and businessman is without exception received by the man on the street in Bucharest, as well as in the highest governmental offices, with warm hospitality and unprejudiced openness, being judged only by his own personal behavior and performance.

This attitude, coupled with the potential of the country, I feel, can only encourage continually increasing trade between Romania and the United States.

An evidence that these assumptions are true just crossed my desk a few days ago in the form of the latest trade statistics published by the U.S. Commerce Department, which included data for the first three-quarters of 1974. A quick analysis of U.S. trade relations with the 10 Socialist countries shows that the most solid growth over the past two years has been evidenced in trade between the United States and Romania. Our exports to Romania have in 1973 grown 69 percent over the previous year and for the first nine months of 1974 are up by 70 percent over the entire previous year. Our imports from Romania have grown at an even greater rate — in 1973 by 90 percent over 1972, and in the first nine months of 1974 by 73 percent over the entire previous year. Our exports to Romania are more balanced. They do not consist of principally one commodity such as food. The Romanian balance of trade, in spite of the still outstanding Most Favored Nation treatment, has improved considerably over the past two years.

We are just now completing our fourth year of the difficult but very rewarding curriculum in "how to do business in Romania" and though at times we may have had differences of opinion our work together has continually prospered, our collaboration has been most congenial, and we look forward to a long-continued and growing partnership between General Tire International and Romania, in the years ahead.