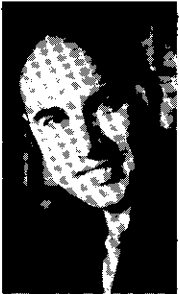


Negotiating Agreements in Poland

Doors of Poland are wide open for trade; but there are many pitfalls

BY L. J. LAMM*

Cooperation between Poland and the U.S.A. started before there was an U.S.A.. On statues of our revolutionary heroes and in textbooks covering our war for independence, we find the names of many Polish



generals who gave so much of their talent and time to transform a group of colonist farmers into an effective military organization. You will also find many Polish names on the rosters of U.S. industry and government. In fact, it has been said we have more U.S. citizens of Polish descent than we have of almost any other group, including those who claim Irish descent on St. Patrick's Day. Now however, we have a reverse migration and many of those who immigrated to the U.S.A. are after retirement returning home to Poland. It is therefore, not unusual that trade between our two countries should progress rapidly with little misunderstanding.

Clark Equipment Company, a producer of material moving equipment has fully and partially owned manufacturing subsidiaries in most of the industrial areas of the world, and its International Division has worldwide sales and engineering activities. It would therefore, not seem unusual for Clark to be very actively engaged in trade with the various Polish Foreign Trade Enterprises. Clark has been trading with Poland since the early fifties, but up until four years ago, our activities in Poland were limited to sales from West European-based manufacturing subsidiaries. We have however, now increased our sales activities in Poland manifold, and have a quite large and active cooperative manufacturing and marketing endeavor.

1. AGREEMENTS FOR THE MANUFACTURE AND SALE OF AXLES

Clark in addition to its well known forklift trucks, manufactures a fairly complete line of construction equipment including front-end loaders, motor graders, motor cranes, elevating scrapers, and like items under such trademarks, as Michigan, Austin-Western, Lima, and Hancock. As part of our vertical integration program, we

**Mr. Lamm is Director, East-West Trade, Clark Equipment Company, Buchanan, Michigan. This paper was presented before the World Trade Institute.*

manufacture the large-drive and drive-steer axles used on these Clark construction equipment products. We also sell these axles to almost all of our competitors.

Clark does not manufacture these axles in Europe, nor did it have in 1971 a licensee for their manufacture.

In the latter part of 1971, Mr. Tadeusz Kaminski, the Polish Commercial Consul located in Chicago, visited Clark to discuss the possible manufacture of these axles in Poland and for the Polish construction equipment industry and for their sale elsewhere in Socialist Republic countries.

This visit was soon followed by Polish visits to Clark manufacturing and engineering facilities and Clark visits to Polish facilities all in an effort to determine the technical and economic feasibility of expanding Clark trade activities in Poland, particularly the feasibility of manufacturing axles of Clark design by the Polish Bumar organization factories in Stalowa Wola and Radomsko. Following these initial visits, discussions were entered into which ultimately led to the present agreements to manufacture under the Clark trademark, heavy-duty drive and drive-steer axles in Stalowa Wola and Radomsko, Poland, and the marketing of these axles by the Bumar Foreign Trade Enterprises in the Comecon areas, and for the furnishing of these axles to Clark subsidiaries and customers elsewhere through Clark's International marketing subsidiary.

Negotiations Start

In April 1972, the negotiations leading to these agreements were initiated in Poland with Clark's interest represented by George Michel, Clark's Automotive Division, international sales and engineering manager, and myself. Polish interests were very ably represented by two officials of the Bumar Foreign Trade Enterprise, assisted by legal, engineering and manufacturing experts as required. We confined our request for provisions in the agreement to those which we considered fair and reasonable and were agreeably impressed by the equal fair and reasonable attitude on the part of the Polish negotiators.

While these negotiators were fair and reasonable, they were also very hard negotiators and it was only after eight quite long and tough negotiating days we had sufficient long-hand notes to make a first draft of the agreements.

I might say however, that due to the attitude of both parties, our problems were less than expected. For example, expected problems due to difference in political environment and language, failed to materialize. In fact, the language difference was a major aid in the drafting of a series of quite complex agreements, which were precise, definite and covered the intention of the parties.

The complex legal language which we lawyers are so fond of using, had to go, and the legal phrases, hard to ex-

plain in commercial language had to be re-written so they could be easily translated into the Polish language. All negotiations were in the English language and the Polish negotiators' linguistic ability was so good that in many discussions we forgot that they were negotiating in their second language. However, many times a word would be interpreted differently by the parties, and in these cases we searched for a word or phrase which exactly represented what we intended. We always had an English dictionary and a translation dictionary close at hand, so that early in the negotiations we learned to avoid words having special meaning to lawyers and realized that any contract negotiated was not meant for lawyers, but was for the operating people as a representation of their intentions.

We were also realistic in the substantive material in the agreements. We asked for fees which we considered fair, reasonable and appropriate under all the conditions involved, and although there were differences of opinion as to what was considered fair and reasonable, these differences were not great and we were able to resolve them without difficulty.

After we returned to the U.S.A. with an arm load of longhand notes from our first meeting, we prepared what we hoped would be an approximate final form of the agreements. We returned to Warsaw in June, 1972 for a second round of discussions. During the second round we were joined by representatives of the Ministry of Machine Industry as well as representatives in the manufacturing facility of Huta Stalowa Wola and by other Polish officials having an interest in the agreement. As a result of this very complete participation on the part of Polish officials, and the question and answer periods on word meanings and the goals of the parties participating, we were able to put in final form and sign a series of agreements which were considered fair and equitable by all parties. Although in the English language, they were easily understood by all.

Agreement

One agreement is between Clark Equipment A.G., the international engineering and licensing subsidiary of Clark Equipment Company, and is for the transfer to Bumar, for use at facilities in Stalowa Wola and Radomsko and elsewhere in Poland, and all the technical information necessary for the manufacture of Clark axles identical to those produced in U.S.A., and to keep this information up-to-date throughout the 10-year period of the agreement. This updating included all engineering changes, improvements and modification to the various axles. It also provided for making application studies and approving axles suitable for use of various Polish vehicles. The agreement provided for training of Polish personnel in Clark's U.S.A. plants and for Clark personnel to aid in start-up problems in the Polish licensee's plants.

Clark Equipment A.G. is compensated for this technical aid by receiving an initial disclosure fee and by engineering fees based on the U.S. ex-factory price of the axles that are produced in Poland.

A short time after signing the agreement, a series of interchanges of technical and management delegations were initiated. Since that time these exchange delegations have worked very closely with each other, with Polish visitors to Clark U.S.A. plants being grouped so as to have a common interest in a particular technology in order to concentrate on that technology. Clark visitors to Poland, on

the other hand, had to be scheduled according to the particular problems under study. Representatives from Clark and Poland worked together on the layout of the plant, and on the processing of the components, so that the manufacturing in the Stalowa Wola and Radomsko plants, will closely approximate the procedures used by Clark in its U.S. plants.

Production Under Way

The new plant at Radomsko has now been completed and most of the equipment installed. The problems we expected, due to language and processing differences, have failed to materialize. The problems experienced have been those inherent with the start-up of a new plant, particularly those problems due to delay in equipment deliveries which, as you know, have been in short supply over the past few years. However, these problems are now behind us and production is rapidly increasing.

The first group of Polish technicians visiting the U.S.A. and first group of Clark technicians visiting Poland were agreeably surprised when their apprehensions evaporated in the very friendly reception received when they landed. The Polish technicians and specialists were without exception of very high caliber, well trained, and qualified. The language barrier appeared to be no deterrent in the development of friendships and good close working relationships.

Since Clark does not manufacture or have a previous licensee manufacturing these axles in Europe, provision was made, by way of a marketing agreement for the Clark international marketing subsidiary to purchase axles from Bumar and resell them to Clark subsidiaries and customers in West Europe. One Clark subsidiary purchased Bumar-produced axles during 1974 and this will be increased considerably in 1975. It is anticipated that other Clark subsidiaries will be buying axles from Bumar and Clark will furnish axles to the European subsidiaries of present Clark customers by 1976.

Identical Products

In order for Clark subsidiaries and customers to have an interest in purchasing these axles, they had to be manufactured in all respects identical with those produced in the U.S.A. It was therefore necessary that we negotiate an agreement whereby the quality standards of Polish-produced axles would be identical to those produced in the U.S.A., and all axles would carry the Clark trademark. Thus far, the components produced and the axles assembled have all met this high-quality requirement.

However, we have had an abnormally late delivery of equipment and I must admit some components required from Clark have been in short supply due to demand over-running supply in the last few years. Radomsko has, however, manufactured axles with an ever increasing Polish content and the present 60 percent U.S. content will no doubt be down to 10 to 15 percent by the end of 1975, when the final equipment will be installed at the Radomsko plant. As the U.S. content goes down, and the number of axles increases the dollar value of components purchased from Clark will stabilize and then decrease. However, the annual volume of components purchased from Clark will be quite high for several years to come.

By the end of 1975, Clark will be able to furnish its European subsidiary requirement from Bumar and will be able to take care of the request for axles originating from European subsidiaries of present Clark customers.

2. SALES TO POLAND

Clarks' foreign sales from U.S. plants are quite large, while its imports are very low. Thus, on a worldwide basis Clark's contribution to a favorable balance of trade in U.S.A. exceeds \$100 million on an annual basis. While Clark has sold in Poland for many years, the volume of these sales has not made a great contribution to this favorable balance of trade.

As a result of our license agreement and the visits of Polish nationals to Clark, and visit of Clark personnel to Poland our personnel and products have become much better known in Poland and I believe this agreement has given us a considerable advantage in making sales in that country.

As you know, before a sale can be made the end user must have knowledge of your product and be desirous of obtaining same. Getting your product known in Poland is not too different than getting it known in the U.S.A. The Polish end user must have knowledge and confidence in your product, your company, and most of all in the representatives of your company with whom he does business. It is our experience that a license agreement aids immeasurably in the marketing of other products of a licensor in Poland.

With or without this licensor-licensee advantage, the U.S.A. vendor must get his message to the end user in order that the end user may request the desired product be purchased by his Foreign Trade Enterprise. The end user has no responsibility for the purchase of products, but can only request and advise the Foreign Trade Enterprise on the purchase. The ultimate decision is that of the Foreign Trade Enterprise. In order to get your product known, you may reach the end user through participation in industrial shows, by holding symposiums, by word of mouth, or by advertising in trade journals or by any combination of these. U.S. magazines and trade journals are read quite widely in Poland by these end users, so advertising in a U.S. technical magazine may result in a request for a quote on your product from Poland.

Hire Company

The U.S. vendor may also hire a Polish export-import company to sell its product, but I am not personally too enthusiastic about such a method of marketing, since it places another link in the communication chain between the U.S. selling company and the Polish end user. However, one of Clark's divisions does use this method of marketing in Poland. Many companies, including Clark, handle sales to Poland through a West European subsidiary. This is particularly convenient when the product is produced in West Europe, as in the case of Clark, and it is geographically convenient in any case. Clark has during the past year made substantial sales of forklift trucks to Poland through U.S. companies who have contracted to build turn-key plants in that country. In the turn-key plant situation Ex-Im bank financing was used which required the forklift trucks to be of U.S. origin. In two particular

cases, the Polish Foreign Trade organization specified Clark forklift trucks influenced by our cooperating with a Polish Foreign Trade organization on axle production and the forklift trucks were actually sold in the U.S.A. to the turn-key plant contractor and shipped to Poland by that contractor.

The ideal way to simultaneously acquaint a large number of end users and Foreign Trade organizations with a U.S.A. product is by holding a symposium. These symposiums can reach all the right people and be highly successful only if they are sponsored by a Polish ministry or Foreign Trade organization. Permission can be obtained for holding a private exhibition and symposium to which the company involved invites interested potential customers. Most of these private showings are not too successful since they do not have specific Polish backing.

International Fairs

Probably the best way of getting a product known in Poland, if a Polish sponsored symposium is not available, is to exhibit at one of the two international fairs held at Poznan, Poland. The Poznan fair originally was a single fair held for about a ten day period in June. This fair has now been divided into two fairs and the June fair is for industrial products and a second fair is held usually in September for consumer products. These fairs are well attended by the proper people, but of course, you do not have the captured audience as is the case with the symposium. However, the Poznan fair permits the U.S. company to exhibit quite large products, such as frontend loaders, cranes, etc., and the fair also gives the potential customer a chance to compare products. These fairs are international fairs and most of the space is used by East European exhibitors. However, the U.S. Department of Commerce has a large pavillion set aside for the exhibition of U.S. products. The U.S. area includes outside space for large products.

My personal preference in handling sales from U.S. companies, is for the company to have someone specialized in East Europe sales and make the sale contracts direct with the Polish Foreign Trade Enterprise involved. While licensing should be handled directly from the U.S. company, there appears to be no objection to handling sales through a foreign subsidiary or through a sales employe, having his office in Europe. Most Polish Foreign Trade Enterprises prefer to do business with an employe of the vendor company and not through a distributor or other independent representative. However, in the case of small companies, the Polish enterprise understands that economic considerations may dictate the use of a distributor.

Complete Trust

The Polish Foreign Trade Enterprise must have complete trust in the U.S.A. representative for either a sales or license agreement, since the enterprise usually does not have firsthand knowledge of the U.S. company or its officers. In the U.S.A. a sales representative or license negotiator has developed a reputation through years of contact with a variety of companies and this reputation is quite well known in the industry where he does business. When dealing in Poland the same man starts out almost

unknown and his effectiveness increases only as his reputation for integrity is developed. We have the saying in U.S.A., "If you don't know your diamonds, know your jeweler", and this can be paraphrased for the Polish to, "If you don't know your supplier, you must know your salesman".

When we first visited Poland, Clark products were known, but not the Clark company and we knew little of the Bumar Foreign Trade Enterprise or its method of doing business. The Bumar representatives did not know us and we did not know them. Thus, a period of developing trust was necessary. In our case this was a very rapid process and we soon found out we were "friends who had never met". Mutual trust soon developed that has continued making our present dealings very pleasant, although, we may at times represent different viewpoints of a problem. Referring to our license agreements, the problems have been those which are the result of circumstances and not companies or people. They have been mutual problems on which we could both work for common solutions.

I feel that doing business in Poland either licensing or selling products is subject to the same set of economic rules with minor variations as we experience in the U.S.A. The difference is the influence of national objectives on the relationship. For example, there is stress on exports from Poland to Western countries in order to obtain hard currency with which to buy needed Western products and technology.

3. FACTORS AND COMMENTS ON DOING BUSINESS IN POLAND

At the risk of being repetitious, but in the interest of emphasis I will mention a few factors which I feel are important in doing business in Poland:

1. The most important item in negotiating a sales agreement and particularly a license agreement is the integrity and honesty of the man having direct contact with the Polish negotiators. Equally important, the Poles must believe in the representative's integrity and honesty. While the former is character and inborn with a person involved, the latter may be considered as reputation and is only gained by the representative conducting his business relationship so as to leave no doubt as to his honesty and integrity.

2. There is no need to open the order book or to have a signed copy of a license agreement in the briefcase for the first visit, nor for that matter the second visit. Many U.S. salesmen have been unsuccessful in Poland, because as the Poles point out, they rush in with an order book in one hand and pen in the other.

3. Do not expect a sales bid with public opening of the bid and an immediate award of a contract to the lowest bidder. I believe such a procedure will come, but at the present time, the lower bidders are normally called in and their bids discussed and this in some cases results in delay, frustration, and confusion.

4. Since the Polish Foreign Trade Organizations are willing to negotiate a license and sales agreements in the English language, you must always remember they are working in their second language. Many of the words which you use may have a different meaning in the dictionary than that which you intend. Therefore, it is very necessary to be careful that the words used are understood

or if not understood, substitute words used to make sure they mean the same thing to both negotiators.

5. The paragraphs of any agreements either sales or license should be short, easy to understand and written for the use of the operating people, not as a document between lawyers.

6. Realize that Poland must have hard currency with which to purchase technology and products, so if possible an arrangement should be made for the purchase of Polish products to help provide this hard currency requirement. Ideally, this product should be the one for which the technology is being provided, since Polish Foreign Trade Enterprises have somewhat localized interest and wish to promote those products for which they have responsibility.

7. Make sure the technical assistance and marketing agreements as first presented contain fair and equitable provisions equally protecting the proposed Polish partner. The initial discussions will probably be held with business executives, but before signing an agreement will be approved by legal experts. The U.S. executive will not be forgiven for intentionally proposing one-sided contracts. The U.S. executive must in all cases understand the Polish economic conditions and government position.

8. Do not ask more than is reasonable for a license fee, expecting to negotiate downward. Ask what you consider fair and reasonable, giving consideration to what competition may offer, what profits are available by reason of the agreement and what time and expense would be required to engineer the product by Polish engineers. Remember the Polish partner has probably already done his homework well and knows these factors. Asking an abnormally high fee will indicate the U.S. company is either not interested or that he believes he can mislead the Polish partner into paying a greater than reasonable fee.

9. Remember in all cases, that any agreement to be successful must have approximate equal advantages to both partners and that if the agreement is to both partners interest, even a poorly drafted agreement will survive. But if it is a one-sided agreement, even the best drafted one will fail.

10. All technical assistance agreements should be considered as living documents and should the situation change in a manner not foreseen by the parties, then the agreement should be reopened for amendment to provide for these unforeseen circumstances.

11. Above all, the U.S. partner should be sensitive to and sympathetic of any of his Polish partners problems which may have a bearing on the agreement and its execution. For example, the Polish partner may have manufacturing problems, aid for which is not covered by the contract, but which may be in the power of the U.S. partner to give. These problems should be considered mutual problems and full cooperation in their solving should be volunteered by the U.S. partner. In many cases, extra aid costing the U.S. partner very little can be of great benefit to the Polish partner and granting such aid can pay great future dividends in the relationship between the parties.

While trade with Poland may initially seem to take a lot of time, with a disproportionate return in tangible results, it is an investment in the future and handled properly can in a few years be very profitable to your company. The doors of Poland are wide open to trade and those companies which are active within the next few years will have a tremendous advantage in 1977, 1978, and beyond.