THE LAW GOVERNING THE INTERNATIONAL AGRICULTURAL COMMODITY TRADE AND THE NEW INTERNATIONAL ECONOMIC ORDER - WITH SPECIAL REFERENCE TO COCOA, COFFEE AND SUGAR.

SUBMITTED BY

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I certify that all materials in this dissertation which is not my own work has been identified and that no material is included for which a degree has previously been conferred upon me.

Signed.......................................

DEDICATION

THIS STUDY IS DEDICATED TO MY DAUGHTER, MAIYO, AND MY WIFE JEANETTE WHO HAVE GIVEN ME ENCOURAGEMENT TO PULL THROUGH.

PREFACE

This dissertation is an attempt to reflect the growing and substantial attention which the last two decades or so has given to international agricultural commodity trade. Much of the relevant law on this subject is embodied in treaties, both bilateral and multilateral, agreements, national legislations and international conventions. Efforts to regulate unstable international commodities markets have highlighted the conflicting interests of developed and developing nations.

The study analyses both the legal and policy issues and makes recommendations for future action. The emphasis is on the need for solid legal principles in this field and on cooperation between developed and developing nations. Not all the existing international commodity agreements are discussed. Instead the study only covers the cocoa, coffee and sugar agreements as illustrations of the agricultural commodity agreements now in operation. The agreements seek cooperation in assuring access to commodity supplies by recipient nations, while guaranteeing suitable prices at a sufficient level to support the economic development of the suppliers.

The study also discusses the evolution of developing countries' demands for change in international commodity markets under the new international economic order and the reaction of developed countries to these demands.

Chapter I deals with the general issues relating to commodity trade and gives a historical perspective to commodity trade through the United Nations and the General Agreement on Tariffs and Trade. Chapter II gives the legal framework under which demands for change are being persued. In a way this Chapter carries forward the discussion in Chapter I as reflected in the discussions of the United Nations Conference on Trade and Development for a new international economic order. Chapters III and IV deal with analyses of particular commodity agreements viz. cocoa, coffee and sugar. Chapter III introduces the various commodity control mechanisms now in use.

In Chapter V we reflect on the failure of these individual commodity agreements to stabilize commodity prices. The proposals under the New International Economic Order are discussed including the Integrated Programme of Commodities and the Common Fund established to supplement individual commodity agreements.

IN Chapter VI the conclusion that more remains to be done in setting up new legal institutions to deal with commodity problems is offered. It is hoped that this study will stimulate further interest in exploring the legal mechanisms that may be established to improve the commodity markets to the advantage of all parties concerned. In particular an international commodity council is suggested to implement the integrated programme of commodities.

I wish to express my gratitude to Dr. Verma, a colleague who has supervised this study and devoted so much of her valuable time to it. All errors, shortcomings and opinions are entirely my own and should in no way be attributed to her. My thanks are also due to Miss Jane Phiri who typed the final copy.

I have endeavoured to state the legal arrangements as at 30th June, 1983.

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CHAPTER I

INTRODUCTION

I. THE PROBLEM OF COMMODITIES

Developing countries have two major concerns in their primary commodity exports, viz., first, prices should provide a tolerable income on earnings and, second, developed countries' markets should be made more accessible to developing countries' exports. As a rule the term 'primary commodities' covers all agricultural and mineral products and goods which have either not been processed or only processed to an extent necessary and usual for transportation and trade.[1]

The fluctuations in raw material prices and export earnings on the international markets have more and more made raw material policy the developing countries' central interest in world trade. The developing countries of the world, being the principal suppliers of agricultural raw materials, are asking and pressing for a new legal and economic set-up that will reduce these fluctuations in prices and ensure reasonable export earnings for their economic development and enable them to diversify their economies.

Raising export earnings on agricultural raw materials implies an expansion of resource-transfer from developed to developing countries. This is succinctly expressed by Macbean thus:

> "In effect consumers in importing countries would pay a tax in the form of higher prices and the yield from this tax would accrue to underdeveloped countries through raised export prices."(2)

This study attempts to explore the legal framework within which policy objectives have been or may be transformed into principles binding upon the various parties through international agreements. It is submitted that the present arrangements have not served the commodity producers well and that new institutional arrangements have to be established in favour of the exporting developing countries. An international commodity council is suggested. This could then be directly responsible for all issues relating to commodity trade.

The study addresses itself only to agricultural commodity trade problems. But it will become apparent that the issues discussed here may well be found in other commodity trade. As pointed out above trade in agricultural commodities has its own special problems.

A. EXPORT INSTABILITY OF COMMODITIES

Export instability simply means the short-term fluctuation of export earnings. The reason for commodity export earnings fluctuations being greater than those of finished products is to be found in the short-term supply and demand rigidities on raw material markets.[3]

The short-term low price elasticity of the supply of agricultural raw materials is explained by the time needed to adapt production to market conditions. It takes relatively long time to expand capacity to take advantage of higher prices, and, moreover, these efforts can easily run into factor bottlenecks, e.g. the non-availability of labour or capital. Supply is also affected by non-economic factors, such as weather conditions, catastrophes, political and social disturbances such as war and strikes. These in turn give rise to uncontrollable supply changes.

On the demand side the price elasticity of raw materials is small. This is so because in respect of food stuffs and semi-luxuries it is often more habit than price which determines consumption.[4] Other demand-destabilizing effects emanate from cyclical fluctuations in the industrial countries, speculative demand changes in the primary commodity markets, changes of taste, changes of customs and tariff rates, synthetic substitutes and political factors such as war.[5]

Given low supply elasticity, changes in demand induce disproportionately strong price fluctuations. As it has been pointed out:

> "Low price elasticities combined with uncontrolled variability in demand, supply or both provide an entirely credible explanation for sharp instability in both prices and proceeds of primary products".(6)

The transmission of these effects to a developing country grows with the proportion of raw materials in overall exports. Of significance to the impact of export instability on a country, apart from the degree of instability itself, are its economic structure and its development status. So that in equally high instability, the economic and social consequences can differ.[7]

This stabilization, that is the levelling out of price fluctuations and the steadying of export earnings overtime, is regarded as a necessary prerequisite of the industrialization aspirations of the developing countries that rely heavily on commodity export earnings.

The agreements on commodities up to now have brought developing countries only moderate benefits.[8] This is clear from the efforts of developing countries in UNCTAD [9] and the United Nation General Assembly [10] for the creation of a new international economic order. The developing countries are pressing for a multi-commodity approach to raw material problems. This shows that all is not well with the individual commodity agreements now being used to avert price fluctuations and stabilize export earnings. Prices have continued to deviate from fixed price margins and excessive fluctuations of commodity prices persist. [11]

This then is the economic situation of the trade in commodities. But before going on to the discussion of the current international arrangements, it is necessary to put the whole commodity issue into a historical perspective.

B. HISTORICAL BACKGROUND

The present role of developing countries in International trade is that of suppliers of raw materials to the developed Western World. This role can only be explained in the context of specific historical process of colonialism. It is as a consequence of this historical phenomenon that the independent nations of Latin America, Africa and Asia remain tied up economically to the world markets in a position of dependence.

The process of colonisation has a long history. It all started in the seventeenth century when Western Europe was steadily drawing ahead of the rest of the world in the field of economic organisation and application of science and technology to production.[12] As a result of these inventions, industries grew up for the manufacture of machinery, which increased further industrial production. This process of increasingly systematic introduction of modern machinery and technology in all branches of the economy has become known as the Industrial Revolution, as put in the perspective of history of mankind.[13] The immediate result of this development was the mass production of commodities as labour power was replaced by machines.

This mass production led further to an increased demand for raw materials such as cotton, silk, sugar and minerals which the local supplies could not meet. The local markets were soon inundated with commodities they could not consume. A search was mounted both for raw materials and markets for finished products to help ease the pressure on bulging stocks.

(i) MONOECONOMIES

It was at this juncture that the idea of colonies as possible sources of raw materials and markets for goods emerged. There were, of course, several other reasons for the advent of colonialism [14] but economic reasons played a major part.

Land was abundant in the colonies. Its cost was almost nil as there were no land speculations among the indigenous people and there was cheap labour. Hence the colonies became areas with good conditions for the growth of raw materials to supply the industries in Western Europe such as cocoa, coffee, rubber and tea to mention but a few. The ease with which labour, land and capital were acquired for developing raw material production in the colonies gave credence to the cherished traditional theory of international trade based on "comparative advantage" which is based on the principle that a country should be encouraged to produce those products in which it incurs minimum costs but reaps most profits. Thus crops needed for Western Europe were only encouraged. The policy that evolved was to make, as far as possible, each colony to specialise in one crop. This was the origin of mono-economies which have been ever since a common feature of developing independent nations.

Examples are not far to find. Malawi and Ceylon (Sri-Lanka) specialised in the production of tea; Tanzania in Sisal; Kenya and Brazil in Coffee; Malaysia in Rubber; West Indies in sugar and bananas, and Senegal in groundnuts.[15] Monopoly companies of the colonial powers, like the British Lever Brothers Group of companies, pumped in money for these products. As has been pointed out, "......great plantation companies such as Lever Brothers could now depend entirely on the production of their large European managed plantations for supplies of palm oil, rubber and other goods".[16]

The results of this economic plunder are saddenning to this day. The local people were also encouraged to grow the same plantation product because it was this product which had a ready and well developed market created by the monopoly firms. In most cases they did this even at the expense of their staple foods.

Seen from this historical perspective, it is not an accident that the economies of developing countries are more agriculturally oriented than industrially. Another reason for this situation is that the industries in the Western Countries were involved in the mass production of goods and soon the home markets were flooded with commodities that had a poor turnover. New markets were needed. It was at that time inconceivable that the colonies could be encouraged to set up industries that would be competing with the home ones. Such competition was avoided at all cost. This was also to maintain employment opportunities in Western Europe. Only finished goods were sent to the colonies. The profits thus realised were repatriated to the home countries for reinvestment, in other areas of economic importance to the firms, such as, electronics and other fine goods industries. This meant that local people in the colonies had to continue to rely on plantation work and few skills were developed outside that.

(ii) ECONOMIC DEPENDENCE

It is clear thus that colonialism encouraged a situation of economic dependence by the colonies on the colonial power. It is this factual reality developed by the colonial system that the former colonies failed to overcome at the time of attaining political independence. The countries of Africa, Asia, Latin America inherited monoeconomies and remained dependent on the colonial power as a market.

By dependence is meant a situation in which the economy of one country is conditioned by the devailopment and expansion of another economy to which the former is subjected.[17] To a large extent, the trade pattern of the newly independent states has remained almost the same as it was left by the colonists. Trade exports are predomimantly characterised by products of primary commodities.

C. <u>The Problem of Commodities and International Action</u>

Several theories have been suggested with a view to tackling this problem of dependence. Product diversification is the one and industrialisation is the other. These, however, have met with formidable obstacles inherent in the historical maze of colonialism. Who will buy any new products if the Western countries have no use for them? Colonialism set the pace in the creation of markets for goods from developing countries and it is very difficult to create new ones. The possibility of creating industries depends on the availability of financial resources. Machinery for industrial production can only be brought in if foreign exchange is there. This is very scarce in developing countries. The fluctuations in the prices of primary commodities on the international markets mean that developing countries which rely on these commodities for their foreign exchange earnings cannot afford to buy these machines necessary for 'industrial take off.'

So the cyclical pattern emerges again. Industrialisation cannot be achieved without an export sector in the economy to earn valuable foreign exchange. In an effort to get this, developing countries find themselves perpetually involved in the preservation of the traditional export sector of raw materials. It is, therefore, not surprising to find outcries of grow more tea in Malawi, more coffee in Brazil, more rubber in Malaysia and more sugar in the West Indies, thereby, consolidating backward relations with monopolies of the West.

Unable to overcome this cyclical pattern, the economies of the developing countries have remained tied up to the export sector of raw materials. In turn Western countries continue to pour in finished products at exhorbitant prices. The developing countries are reduced to impotence. They cannot but pay for these goods to survive. Political independence could not break this well entrenched historical phenomenon. In these circumstances one cannot but agree with Kamarck when he says "The existing economic structures of the African states were influenced, shaped, and sometimes created by colonial regimes...... The export trade and production, the systems of transport, the commercial, financial, monetary, tax and administrative structures all were created during African colonial period and have not been greatly modified since" [18]

It should, however, be stated here that the situation is not as helpless as it may seem to be at first sight. The developing countries have of late made major contributions in bringing about a new order of economic relations. The demands for a New International Economic Order which were expressed at the Sixth-Special Assembly of the General Assembly of the United Nations in May, 1974, [19] represent the culmination of years of attack on the international trading system that emerged after the second World War. That system, embodied in the principles and rules of the General Agreement on Tariffs and Trade (G.A.T.T.) and the International Monetary Fund (I.M.F.), aims at freer international trade. Since its inception at Bretton Woods in 1944, it has seen enormous progress towards the liberalisation of trade and finance. This progress has, however, been concentrated on manufactured products mainly produced in the industrialised Western countries. No comparable progress has been made in either agricultural trade or trade in manufactures of special interest to the developing countries.

The new economic order, now being negotiated, calls for changes in the inequality in trade between developed and developing countries; Specific areas of interest are, among others:

(i) generalised tariff preferences for goods from developing countries

(ii) easy terms on transfer of technology to developing countries; and

(iii) establishment of multilateral commodity arrangements to stabilise the fluctuations in the prices of commodities on the international markets. (20)

D. THE INTERNATIONAL TRADE ORGANISATION AND THE GATT ON COMMODITIES

In the 1947-48 period, a United Nations conference was called in Havanna, Cuba, to establish an International Trade Organisation (I.T.O.) with a code of rules, the Havanna Charter, to regulate international trade during the post-war period.[21] The Charter was duly established as an intergral part of the ITO. The ITO was intended to be the parent body of the General Agreement on Tariffs and Trade (GATT).[22]

The ITO Charter included provisions for the establishment of inter-governmental Commodity Agreements to solve the special problems often encountered in connection with certain primary commodities, such as price declines and the accompanying severe distress to the producers.[23] Such agreements would have been limited to 5 years in duration and would have been accompanied by programmes of economic adjustment designed to remedy the underlying difficulties. The producers and consumers alike would have had an equal voice in the operation of such agreements.[24]

The ITO Charter in particular provided in Article 57 the objectives for intergovernmental commodity agreements (ICAs) resembling these found in current ICAs. The ITO Charter also contained in Article 60 general principles on commodity agreements including the requirement that such agreements should provide for the participatinn of all parties interested in the production, exportation, consumption and importation of the commodity in question. It is these provisions that were referred to in the United Nations Economic and Social Council resolution in New York in 1947 below.

E. THE INTERIM CO-ORDINATING COMMITTEE FOR INTERNATIONAL COMMODITY ARRANGEMENTS

At the time that negotiations for the GATT were going on in 1947, a parallel meeting of the United Nations Economic and Social Council (ECOSOC) took place in New York which adopted a resolution recommending that there be established by the United Nations an "Interim Coordinating Committee for International Commodity Arrangements to facilitate intergovernmental consultations and action on problems connected with commodity trade.[25]

The ECOSOC resolution recommended that

> ".........members of the United Nations adopt as a general guide in intergovernmental consultation or action with respect to commodity problems the principles laid down in Chapter VII as a whole" (26)

The final draft of the GATT adopted this resolution and the same then appeared, after some modifications, as exception (h) to Article XXH in the GATT. Article XXH in its original form reads as:

<u>General Exceptions</u>

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(h) "undertaken in pursuance of obligations under intergovernmental commodity arrangements, conforming to the principles approved by the 'ECOSOC' of the United Nations in its resolution of March, 28, 1947, establishing an Interim Coordinating Committee for International Commodity Arrangements"

Thus the draft of GATT incorporated, by this reference to ECOSOC resolution, the substance of the then current draft ITO Charter Chapter on commodity arrangements.[28] This draft exception was embodied in identical language in the original 1947 General Agreement.[29]

The language of this clause was changed, however, in the 1955 amendments to GATT to its present form, eliminating the reference to ECOSOC resolution and thus also eliminating all reference to the ITO Charter as it was clear by now that the ITO Charter was dead.[30] There was, however, added to GATT an Interpretive Note to this clause that reintroduced the same references and, thus, the same principles.[31]

The present GATT Article XX(h) which is a general exception to GATT obligations reads as follows:

> (h) "Undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the Contracting Parties and not dissapproved by them or which is itself so submitted and not so dissapproved."

Not much happened on the Commodity problems after the 1955 Amendment until the 1957 GATT Session when an expert group was appointed to examine the problem of price fluctuations in commodities.

F. THE HABERLER REPORT AND FOLLOW-UP ACTION OF THE GATT

At the 1957 GATT Session in Geneva, Ministers of less-developed member countries expressed concern at the lack of orderly marketing arrangements of primary commodities, on which so much of their export earnings depended. Consequently, the GATT decided to appoint an expert examination team on the problem of price fluctuations in commodities, taking into account, among others, the following:[32]

> "........the failure of the trade of less-developed countries to develop as rapidly as that of industrialised countries; excessive short-term fluctuations in prices of primary products and wide-spread resort to agricultural protection."

After the study was completed, the team of experts concluded that the dissatisfaction of primary commodity producers with the present rules and conventions about commercial policies was justified. It also found that the protectionist rules in the developed countries worked to the disadvantage of the developing ones. But further progress on these matters depends on the willingness of the developed and developing countries to negotiate on a wide-range of financial and economic policies, it concluded.

G. THE GATT'S REACTION

The GATT's reaction to the Haberler Report was to call for a Special Session of the Contracting Parties in November 1964 to draft a new Trade and Development Chapter of GATT and to draft an amending protocol which was opened for signature in February 1965.[33] So that a new Chapter to GATT was added as Part IV, dealing specifically with the problems of trade peculiar to developing countries. Part IV came into force as an amendment to GATT on June 27, 1966 for those countries that had accepted it.[34] Part IV requires that a developed country should not expect any reciprocity in dealing with developed countries in the matters of tariffs reduction or other trade barriers.[35]

In an interpretive note to Part IV, it is added that developed countries should not expect developing countries to make contributions which are inconsistent with their individual development; financial and trade needs in all trade negotiations.[36]

This is a welcome provision for developing countries. What should be remembered, however, is the fact that Part IV is not binding on the contracting Parties. It only urges members to give effect to the provisions therein to the fullest extent possible.[37]

All this flury of activity in the GATT to try and accommodate the interests of developing countries took place at a time when the United Nations was also working on a United Nations Conference for Trade and Development (UNCTAD). It was intended to be a forum for discussion of developing countries' problems in international trade. The first meeting of UNCTAD took place in early 1964,[38] in Geneva.

At the time when in 1974 the United Nations adopted resolutions on the New International Economic Order, there already existed some legal framework under GATT and UNCTAD through which the NIEO could be implemented with commitment from both the parties.

The Haberler Report further recommended that in order to ease the pressures on economic development problems wrought by the instability in commodity prices, developed countries should find means of encouraging developing countries' exports of industrial goods and processed and semi processed goods. Such measures include reductions in tariffs on manufactures exports from developing countries into developed countries' markets and encouragement of processing industries in developing countries.

It is important to note that agricultural raw commodities were allowed without duties in the developed countries' markets but very high tariffs were imposed on finished products. It was this trend in international trade that the Haberler Report sought to correct between developed and developing countries.

As a result of this report, UNCTAD formed a Committee on Manufactures. This committee is one of the other committees of UNCTAD which were assigned the function of improving conditions and terms of trade in particular areas of trade of great economic interest to developing countries. This commiittee on commodities has played a leading role in the negotiations on commodity problems as discussed in Chapter V. hereof.

FOOTNOTES

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31. Ibid, GATT, Annex 1, Ad Art. XX

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35. GATT Art. XXXVI (8)

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CHAPTER II

THE LEGAL FRAMEWORK FOR COMMODITY TRADE: THE DIFFERING APPROACHES TO COMMODITY PROBLEMS.

1. MOVES TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER

Starting from the early 1960s, international trade in commodities has been a major element of the heated debate between developed and developing countries.[1] The developing nations, determined to improve their position in the international economic order, called for action by emphasizing what they viewed as "deteriorating terms of trade."[2] These nations were convinced that trade consistently worked in favour of developed countries. The under-lying theory being that the prices of manufactured goods were constantly rising while those of primary commodities, the main exports of developing countries, were relatively constant or declining, resulting in mounting trade deficits and an inevitably increasing, frustrating dependence upon the industrialized countries.

The idea that developing countries are victims of an unfair economic system is an old one. It dates back at least as far as a report prepared by Raul Prebisch in the late 1940s, on Latin America.[3] This document became the underlying theme of various United Nations economic reports. Prebisch an economist concluded that the prices of Latin American exports and imports between 1870 and World War II had declined continuously.

The United Nations Economic Affairs Department subsequently expanded on the report to include its observations on other developing countries. It found a 40 percent decline during the same period.[4] A later study showed further decline of 10 percent in developing countries' terms of trade between 1950 and 1964.[5]

The developing countries considered this trend as a constraint on economic development, and viewed it to be the result of an international economic system created and operated for the benefit of industrialized nations. They began to view trade, aid and growth as closely interrelated elements of the general development problem. All their attempts inside and outside the United Nations were aimed at changing this situation. They wanted a special forum for considering their trade problems.

2. THE CREATION OF UNCTAD

(a) Economic and Social Council of the United Nations

The idea of setting up a special representative body for considering economic, and related problems in the new world organisation - the United Nations of 1945 - may be traced back to the Dumbarton Oaks Conference. The American proposal, for the United Nations body, contained a plan for a small co-ordinating body for economic and social activities which would presumably be subordinated to the General Assembly.[6] Although this plan was supported by the British and Soviet governments, there was no agreement to make such a body a principal organ of the United Nations. This plan finally crystallised into the United Nations Economic and Social Council (ECOSOC). At the San Francisco Conference it was the 'small states' that succeeded in upgrading the status of the Council to a principal organ of the United Nations. Considerable debate ensued over membership to the Council. It was agreed that all members of the United Nations be represented on this body.

(B) THE ROLE OF NEWLY INDEPENDENT STATES IN THE UNITED NATIONS

The processes leading to the creation of the UNCTAD started in early 1957 after the admission of many Asian and African states to the United Nations. This tilted the political balance within the United Nations and the ECOSOC. The newly admitted states viewed the Council as an unrepresentative and outmoded body so far as developing countries' economic problems were concerned. They called for new economic bodies that would offer a proper forum for developing countries' problems. In this regard the new states were supported by Latin American States and the Soviet block, and as a group managed to obtain the passage of a General Assembly Resolution calling upon ECOSOC to consider the advisability of convening a United Nations Trade conference.[7] After some consultations at national level. ECOSOC authorised the convening of such a conference and asked the Secretary-General of the United Nations to assemble documentation for a preparatory committee. The Committee was duly established and held intensive discussions with governments and interested intergovernmental organisations such as the General Agreement on Tariffs and Trade (GATT), the Food and Agricultural Organisation (FAO), the International Bank for Reconstruction and Development (IBRD), and the International Monetary Fund (IMF). The General Assembly of the United Nations endorsed the Councils action and recommendations in favour of the Conference and passed a resolution calling for an International Conference on Trade and Development in 1962.[8] This conference led to the creation of the United Nations Conference on Trade and Development (UNCTAD).

(C) UNCTAD AS A PERMANENT ORGAN OF THE UNITED NATIONS

The first U.N. Conference on Trade and Development was held from March through June 1964 in Geneva. It recommended for the institutionalization of UNCTAD as a permanent organ of the United Nations General Assembly.[9] In December 1964, the UN General Assembly passed a resolution establishing UNCTAD as a permanent organ of the Assembly and created the Trade and Development Board (TDB) as a permanent organ of the Conference.[10] The TDB soon established a series of committees to carry out its work including a committee on Commodities. The Final Act of the Geneva Conference in 1964 stated in part: [11]

INTERNATIONAL COMMODITY ARRANGEMENTS

The Conference,

Recognising that commodity arrangements serve to secure overall stabilization in primary commodity markets, stresses the special role they should perform in stimulating the economic development of the developing countries. 12 With reference to this role,

Recommends that commodity arrangements should have the following objectives, principles and scope: 13

A. Objectives and Principles

(i) A basic objectives of international commodity arrangements is in general to stimulate a dynamic and steady growth and ensure reasonable predictability in the real export earnings of developing countries, so as to provide them with expanding resources for their economic and social development, while taking into account the interests of consumers in importing countries. 14

(ii) To achieve this objective, international commodity arrangements should be: 15

(a) remunerative, equitable and ensure stable prices for primary commodities having due regard for the import purchasing power of the commodities exported.

The report of the Secretary-General of the Conference was an eye-opener to the problems faced by developing countries. After referring to the international economic system which had preceded World War II as the "old order," Raul Prebisch noted in his report that:

> "It is imperative to build a new order with a view to solving the serious problems of trade and development that beset the world, especially the problems that affect the developing countries." (16)

In particular the Secretary-General found that developed countries' restrictions on primary commodity imports and their export subsidies designed to protect domestic interests particularly agricultural interests - compounded the problems of developing countries. The GATT rules and the series of post-war trade negotiations had not resolved the problem. [17]

(i) The Prebisch Approach

The report of the Secretary-General of UNCTAD suggested the use of commodity agreements which would set higher prices and facilitate access to developed markets or compensatory financing. He pointed out that to successfully counter the deteriorating terms of trade in commodities would require

> "a decision to transfer, in one way or another, to the countries exporting primary commodities the extra income accruing to the industrial countries as a result of the deterioration in the terms of trade." (18)

An "integrated programe of measures" was further suggested to deal with these problems as part of a comprehensive policy of international cooperation for economic development. These measures were as follows:

1. Quantitative targets for developed countries' imports of developing countries' exports of primary commodities and a global value target

for developing countries' imports of industrial goods.

2. A generalised system of tariff-free preferences for manufactured goods, special preferences for the least developed countries and the termination of reverse preferences, i.e. preferences granted by LDCs to developed countries.

3. A guarantee of the purchasing power of exports of primary commodities through improved access to industrial markets. This access could be facilitated by import quotas and import commitments, a gradual reduction of support prices, production policy coordination among importing and exporting countries in order to assure exporters of a reasonable share of importing nations' growth in consumption and commodity agreements. (19)

The commodity agreements were to be designed in such a way as to establish minimum prices or improved prices, as the case may be, by maintaining price parity with those of manufactures.[20] This is known, in modern parlance, as the indexation of the value of primary exports to the cost of manufactured imports. According to this formular, ceiling prices would be set whenever the temporary shortage of a primary commodity leads to price rises that adversely affect producers and consumers, and rules for the disposal of surpluses and non commercial stocks would be established. The Report further provided for:

4. Compensatory financing of losses due to previous and future deterioration in the terms of trade, possibly through a fund administered by international credit institutions.

5. Readjustment of repayment periods and terms of the external debt of some countries. (21)

These five suggestions in the report have since become the cornerstone of developing countries' demands. Although emphasis has at times shifted, developing countries have continued to call for commodity agreements, indexation of prices, preferences, compensatory financing and debt relief as a means of solving the problem of deteriorating terms of trade.

(ii) COMMITTEE ON COMMODITIES AND UNCTAD II

The Committee on Commodities was created at the first UNCTAD meeting in 1964 and was responsible for finding a workable solution to the problem of the relative decline in the purchasing power of primary commodities. This problem is at the root of developing countries' failure to maintain or increase their export earnings. Although this Committee has made some progress in negotiating for international commodity agreements-notably in sugar and rubber-a lot remains to be done.

By 1968 when UNCTAD II met in New Delhi the committee on commodities had already identified the commodities which required close attention with a view to establishing international commodity agreements or other measures for the same. This committee recommended the use of a pragmatic commodity-by commodity approach instead of an attempt to devise universal solution for commodity problems.[22] Prior to UNCTAD II, a number of conferences and meetings had taken place on some commodities, several of these under UNCTAD auspices.[23] These included tin, coffee, sugar, cocoa and olive oil. Although some earlier agreements were revised during this time new ones were required.[24] The creation of new commodity agreements, and government intervention in international commodity markets to correct the inefficiencies of the market for the developing countries' benefit certainly did not reflect a generally agreed principle of economic relations. The United States, as a champion of laissez-faire economies, was among those who most strongly resisted the idea. Not much headway was achieved at UNCTAD II. With respect to commodity problems it was merely recommended that efforts be continued to achieve agreements for specific commodities and further work in the Committee on Commodities on a general agreement on commodity arrangements be continued.[25]

(iii) UNCTAD III AND ITS RESOLUTION ON COMMODITIES

The third UNCTAD Conference took place in Santiago, Chile, 1972. Developing countries took a truely cohesive stand in their demands. While keeping and maintaining pressure on developed countries for tariff and non-tariff standstill, non reciprocal trade concessions and generalised system of preferences for manufactures, the group of 77 approached the third UNCTAD Session with the aim of obtaining specific commitments from the developed countries.

This group had caucused in Lima, Peru, in 1971 and developed a Declaration and principles for an Action Programme.[26] With respect to commodities, the Group of 77 pressed the point that the Multilateral Trade Negotiations that were due to start in Tokyo under the GATT auspices should not be used to delay commodity discussions under UNCTAD. The Conference ended with an agreement to call a special session of the UNCTAD Committee on Commodities.[27]

UNCTAD III resolved to establish a working group to draw up a draft Charter on the economic rights and duties of States, drawing upon a number of sources including the Lima Declaration.[28] The developed countries, including the United States, opposed the verbatim adoption of the Lima Declaration although they showed some support for the working group for a draft Charter. The Nordic countries and the Netherlands actively supported the proposals.[29]

At the UNCTAD IV Conference in Nairobi in 1976, the UNCTAD Committee on Commodities presented its report as directed by the UNCTAD III Conference and the same was adopted.[30] The resolution adopting the report formally created the Integrated Programme of Commodities (IPC) and the Common Fund.[31] (as proposed for under the New International Economic Order (NIEO) adopted by the General Assembly of the United Nations.)[32]

But the IPC was also a result of many other factors besides the deliberations of the UNCTAD as will be seen below.

(IV). THE NEW ERA ON THE COMMODITY SCENE

The success of OPEC price hikes in 1973 seemed to spur developing countries into considering agricultural commodity cartels. For example, in October 1973 - following the breakdown in 1972 of the International Coffee Agreement[33] - Brazil, Colombia, the Ivory Coast and Portugal formed Cafe Mundial, designed to defend the high coffee prices that resulted from the frost in Brazil.[34] These cartels did not succeed in reaching their fundamental goal of raising prices above market trend. Dissatisfied with the result of the cartels, developing countries called for a Special Session of the United Nations to address the "problem of raw materials and development." Two major documents emerged from the Session:

(a) the Declaration on the Establishment of the New International Economic Order, (35) and

(b) the Programme of Action.[36]

The declaration was in many respects a restatement of principles formulated at the UNCTAD I meeting in 1964, principles which were not in the main accepted by the developed countries. The declaration also took into account the work of UNCTAD on a draft Charter for Economic Rights and Duties of States as a follow up measure to UNCTAD III meeting.

Although the Sixth Special Session of the United Nations was specially supposed to deal with the problem of raw materials and development, other economic demands were pressed by developing countries including trade policy, monetary policy, and development assistance. The United States of America, together with several other developed countries made a number of reservations to the latter issues.[37]

(V) THE CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

Work on the Charter of Economic Rights and Duties of States had been undertaken by UNCTAD before the United Nations finally adopted the Charter in 1974.[38] The success of the Group of 77 during the Sixth Special Session of the U.N. gave new impetus to negotiations for the Charter. Several negotiating Conferences had been unable to find a compromise between the demands of the developing countries and the positions of most industrialized countries. Among the issues was the key issue of nationalization of private investments.[39] The developing countries wanted language that gave the host country absolute freedom in expropriating foreign private investments without reference to international law or obligations.[40] The other issue was the support given by Group of 77 to producer associations without the participation of consumers.[41]

(VI) PRICE INDEXATION

The other issue was one of price indexation. The developing countries favoured the requirement that industrialized countries help them raise the prices of their raw materials exports in proportion to increases in the price of their imports. These controversial provisions were opposed by the U.S., West Germany, the U.K., Belgium, Luxembourg and Denmark. The other industrial nations merely abstained during the vote on the Charter.[42] The issue of indexation is based on the logic that while import costs are rising in third world, their earnings from commodity exports are falling constantly. It was, therefore, thought necessary to keep commodity prices in proportion to import costs of manufactures.

The Charter reiterates the requirement that developing countries should participate fully on equitable basis in the expansion of world trade to improve the standards of living of their people. In particular, it is provided that states should cooperate in achieving adjustments in the prices of exports of developing countries in relation to prices of their imports so as to promote just and equitable terms of trade for them.[43]

These provisions are, of course, not welcomed by developed countries, who view them as interference in the open market forces.

(VII) REACTION OF DEVELOPED COUNTRIES TO THE CHANGES

The developed countries have reacted differently to the advances for change. The U.S. opposes the use of these commodity agreements as a means of resource transfers while supporting the creation of buffer stocks. On the other hand, European countries share the view that the complaints of developing countries against the volatile nature of commodity prices are justified and require quick action to save the agricultural commodity producers.[44]

From this discussion it should be clear that the problem of raw materials is being dealt with in various international fora, particularly in the United Nations bodies. The traditional Prebisch's commodity-by-commodity approach in negotiations is being supplemented by the multi commodity approach supported by a Common Fund under the integrated programme of commodities.

But before discussing this new approach it is important to look at the structure of existing international commodity agreements in the next chapter. This will give a proper setting to the discussion of the NIEO in later Chapters.

Footnotes CHAPTER II

1. In this study the developing nations will be referred to, in whole or in part, as the Third World, the South, Less Developed Countries (LDCs) and the Group of 77 in UNCTAD. The developed nations will be referred to as the industrial countries, the North, Group B (their UNCTAD negotiating group) or the Organisation for Economic Cooperation and Development (OECD) nations. The Group of 77 of UNCTAD are those countries that issued the "Joint Declaration of the Seventy-Seven Developing Countries" at the conclusion of the 1964 Geneva Conference on Trade and Development. This Group currently has 118 nations.

2. See UNCTAD, 2 Policy Statements 9, UN DOC.E/Conf.46/141 (1964).

3. ECOSOC, Economic Development of Latin America and Its Principal Problems, UN DOC.E/CN 12/89 (1949).

4. U.N. Dept of Econ. Affairs, Relative Prices of Exports and Imports of Underdeveloped Countries 7. (1949)(Sales No. 11 B.3)

5. U.N. Dept. of Econ. Affairs, World Econ. Surv. 1963 pt. 1, at 7, U.N. DOC.E/3908 ST/ECA/84 (1964).

6. Walter Sharp. The United Nations Economic and Social Council (ECOSOC), Columbia University Press (1969) p.3

7. See Ass. Res. 1707 (XVI) 19 Dec. 1961.

8. Gen. Ass. Res. 1785, (Supp. No. 17) 14 UN. DOC A/5217 12 Sept, 1962).

9. See B. Gosovic, UNCTAD: Conflict and Compromise p. 35-44 (1972).

10. Gen. Ass. Res. 1995 19 UN Supp. No. 15, UN. DOC. A/5815, 6th March, 1964.

11. UNCTAD, 2 Policy Statements 9, U.N. DOC. E/CONF. 46/141 (1964) p.3

12. UNCTAD Policy Statements, supra note 11, p. 5

13. Ibid p. 9 -12

14. Ibid. p. 12

15. Ibid. p. 61

16. UNCTAD, 1 Report on the Second Sessions, 5, U.N. DOC. TD/97 (1968) referred to as UNCTAD II report.

17. Trade and Development, Final Act and Report of UNCTAD meeting, Geneva, 1964.

18. Ibid, p. 13

19. Ibid.

20. Ibid.

21. Ibid.

22. UNCTAD II Report, op. cit. note 16, p. 35

23. See note 37, post, p. 407. These included conferences on tin, (Mar. 1, 1954, 256 UNTS 31); Coffee (Sept. 28, 1962, 469 UNTS 169, a Second one on Mar. 28, 1968, 647 UNTS 3) Cocoa (Nov. 15, 1972 U.N. DOC.TD/Cocoa. 3/8; Olive Oil (Apr. 20, 1963 495 U.N.T.S. 3)

24. UNCTAD II Report, op. cit, note 16, p. 37

25. UNCTAD II Report, Ibid, pp. 34 - 37

26. Ministers of the Group of 77, the Declaration and Principles of the Action Programme of Lima, U.N. DOC. TD/143, Nov. 12, 1971.

27. Ibid.

28. UNCTAD III Report, U.N. DOC. TD/180, Aug. 10, 1973, p. 58

29. Ibid.

30. Res. 93(IV) TD/Res/93(IV) (1976)

31. See Chapter V, post, for detailed discussion of the IPC.

32. U.N. Y.B. Vol. 28 Res Nos. 3201(S-IV) and 3203 (S-IV) May, 1974.

33. 647 UNTS 3 (1968)

34. N.Y. Times, Sept. 4, 1973, p. 54, Col. 4. For a discussion of the formation and break-up of the coffee cartel, see Busted-Robusta, Economist, Mar. 29, 1975, p. 102.

35. G.A. Res. 3201, U.N. DOC. A/9559, May, 1974. See Chapter V, post, for a full discussion of this resolution.

36. Ibid. G.A. Res. 3202. See Chapter V. post,

37. Ibid.

38. G.A. Res, 3281. U.N. DOC A/9631, May, 1974.

39. Ibid, i.e. in commodity production and export

40. The present international law rules require that where expropriation takes place, the foreign investor must be given

    (a) adequate and effective compensation and

    (b) prompt compensation

    Adequate compensation is understood to refer to the amount to be paid as compensation for the expropriated property; effective compensation refers to the currency in which payment is to be made and prompt compensation refers to the time within which payment is to be made.

41. Op. cit. note 31

42. Ibid. Austria, Canada, France, Ireland, Israel, Italy, Japan, Netherlands, Norway and Spain.

43. Ibid., Art. 28

44. Law and Pol'y Int'l Bus Vol. 9, no. 2, p. 421 at 426.

CHAPTER III

INTERNATIONAL COMMODITY AGREEMENTS

The need for price support is all important for developing countries particularly in periods of random excess supply and cyclical demand shortfalls, when prices and producers' incomes decline sharply. The other important factor is the need to reduce excessive fluctuations of commodity prices and supplies. All these points have been raised in the previous Chapter. It is important here to examine the various techniques used in trying to overcome the above problems. This Chapter and the next one illustrate these techniques in operation through the examination of particular international commodity agreements on cocoa, coffee and sugar. These techniques take various forms, viz., export quotas, production controls, buffer stocks and national stocks which will be discussed in the following pages:

1. CONTROL MECHANISMS UNDER EXISTING AGREEMENTS

In all the control mechanisms, the crucial issue is one of establishing reasonable floor prices and ceiling prices above which the latter should not move and this is done in various ways.

A. EXPORT QUOTA MECHANISM

This is the most widely used of all control mechanisms. It is to be found in the formal international agreements on Coffee,[1] sugar[2] and tin.[3]

Both in shortage and surplus situations, an essential criterion for the success of the export quota mechanism is the <u>quantum</u> of shortage or surplus respectively. No amount of regulation can prevent the rise in prices when there is a critical shortage in supplies of the commodity. Export-quota-type of agreements provide a trigger mechanism by which changes in market price cause changes in the quotas allocated to the exporters, The operation of quota adjustment is simple:[4]

(i) When the market price is above the maximum of the price ranges fixed, quotas are suspended by the authority of the agreement. All available export surplus is allowed to enter the market without any restrictions. In this way an artificial situation of oversupply is created and the price may come down.

(ii) Quota arrangements provide for a middle range when quotas are effective; between the top of the middle range and the ceiling, specified percentage increases in quotas may be provided for; likewise between the middle range and the floor, specified reductions can be affected in the quotas;

(iii) below the minimum of price ranges, substantial cuts in quotas are made.

In the three agreements mentioned above, the authority established in each agreement sets up a global quota each year. This in turn is allocated to individual exporting countries in accordance with their basic annual quotas set out in the agreement of the particular commodity. These may be varied according to circumstances of the global market and individual exporters.

B. PRODUCTION CONTROLS

As explained above, export quotas can be effective only within a limited range. In this respect production control offers an alternative mechanism.

Producers agree to adjust their production each year in accordance with the prescribed goals of the agreement. Targets are set for each producer and each is required to report progress and/or failure to implement the targets.

Unfortunately, this mechanism is difficult to achieve in commodity negotiations. The mechanism involves acceptance on the part of producers of international supervision over a country's internal economic policies. This sort of control entails difficult political and economic decisions by producers. So far in the history of commodity agreements only the International Coffee Agreements have made attempts at production control mechanisms without success.[5]

C. NATIONAL STOCKS

The object of holding a regulatory stock at national level is to control the flow of the commodity into the market. The current international coffee and Sugar agreements use this method of control.[6]. The former agreement provides for the verification of national stocks as per agreement and the granting of waivers in specific cases to relieve the burden of holding excess stocks which may involve a lot of costs. On the other hand, the International Sugar Agreement provides for a compulsory holding of national stock at certain minimum levels related to the export quotas of the exporting members. In other words, the Sugar Agreement uses both export quotas and national stocks mechanisms.

Nationally controlled and financed stocks play an important role in commodity negotiations and commodity markets. They are intended to assure security of supply to importers and to support supply commitments of exporters embodied in "supply commitment" provisions. Under such a provision, suppliers are obliged to give priority to the needs of member consumers in times of shortages.

D. <u>BUFFER STOCKS</u>

The most discussed type of regulatory stockholding is the 'International Buffer Stock.' It is simply the holding of commodity Stocks financed by more than one country that holds back supplies from the actual user market in times of excess supply, stores it and releases it in certain proportions when there is shortage.

Thus it moderates fluctuations in supplies and stabilizes prices.[7]

Purchases are made on the open market when the price of the commodity is low and sold when the price is high. The International Cocoa Agreement,[8] the International Tin Agreement[9] and the International Natural Rubber Agreement[10] all use buffer stock control mechanisms.

These agreements provide for minimum floor prices and a maximum price. The fixed prices are coupled with lower and upper intervention prices at which the buffer stock authority can intervene on the market either by sales from the buffer stock or by purchases from the open market respectively. The market prices are ideally supposed to operate between the two intervention prices.

The buffer stock may be combined with quotas as is the case under the tin agreement where they have worked fairly well.[11] The International cocoa, coffee and sugar Agreements are examined below as illustrations of these various mechanisms.

2. INTERNATIONAL AGREEMENTS ON COFFEE AND COCOA

A. COFFEE

Coffee is a tropical and subtropical crop. The coffee tree takes some five years to reach maturity and may remain productive for over thirty years.[12] Brazil is the largest exporter, closely followed by Colombia. The EEC and the

USA are the largest importers - some 20 million bags per annum (one bag equals 60 kilogrammes of green coffee or 132.276 pounds).

Coffee prices in 1973-74 ranged between 60-70 cents per pound. This figure rose to over 300 cents in 1977 following a disastrous year due to frosts in Brazil. It has since gone below 100 cents in 1981, and 1982.

(i) THE INTERNATIONAL COFFEE AGREEMENT

The International Coffee Agreement, 1976, [13] like its predecessor agreements of 1962 and 1968, attempts to influence prices by means of export controls. It is for a period of six years and may be renewed for any period by the International Coffee Council. Membership is open to, beside governments, intergovernmental organisations such as the EEC also, but voting however, is limited to the member states.[14]

Seventy five countries are members of this Agreement including the USA and the EEC. This membership covers almost the entire group of exporting and importing countries of coffee. Group membership of states is allowed where such countries have a common coffee policy, in which case they are represented by a single country or organisation.[15] One such group is the Organisation Africaine et Malgache du Cafe (OAMCAF). The advantage of group membership is that the countries are regarded as one member and the quota allocated may be redistributed according to short falls and surpluses within the group.[16]

(ii) INSTITUTIONAL FRAMEWORK

The previous Coffee Agreements established the International Coffee Organisation and the 1976 Agreement carried it forward. All the members of the Agreement are represented on the Organisation which has, as its highest authority, the International Coffee Council.[17] It meets twice a year. Like in other UN sponsored commodity agreements, the Coffee Agreement's voting is based on groups. Exporters and importers are each allocated 1000 votes which are distributed on the basis of volume of exports and imports in each group respectively. These allocations are reassessed every year.[18] The Council has power to set aside many of the rules contained in the Agreement if it deems it necessary to do so.[19] The agreement's objectives include avoiding excessive fluctuations in supplies, stocks, and prices.[20]

There is also established an Executive Board[21] consisting of eight exporting and eight importing members elected each year. Each member on the Executive Board has a maximum of 499 votes in decision-making. The Board is headed by an Executive Director.[22]

(iii) QUOTAS

The Coffee Agreement attempts to influence prices by means of quotas on exports of member producers to consumers. The quotas are introduced whenever the average price remains for twenty days at or below a ceiling fixed by the Council.

If no ceiling is fixed, there is a fall back formula which operates to establish a critical price on the basis of average prices in the recent past. The formula is a complicated affair and by 1979, it was recognised that its application would result in a critical price (of 77 cents per pound) which did not take into account the contemporary inflations. The exploration of this formula remained an academic exercise until 1980 because prices of coffee remained well above the critical price and above any level which consuming members were then prepared to accept as a ceiling price.

Most of the developed countries accepted the Coffee Agreement from its inception although it was not until 1980 that the US passed legislation to permit the implementation of the quota system.[23]

Each year the Council sets out a global quota taking into account such factors as consumption and existing inventories.[24] The member exporters are then allocated a basic quota,[25] based on the average volume of a country's exports in either 1976/77 or 1977/78, (being the years when there were no problems on Coffee production), whichever is the higher.[26] The country's basic annual quota is then divided into quarterly parts.

The Council is given wide discretion to modify national quotas, provided it acts without discrimination. It is envisaged that the Agreement can achieve this by tying reductions in quotas to price movements in relation to a price range.[27]

This mechanism was put into practice in 1980 when quotas were introduced for the first time since the 1976 Agreement came into force. The global quota was initially set at 57.37 million bags. For the 1980/81 Coffee year there was fixed a three-part successive reduction of 1.4 million bags in the quarterly quota, if the average price (a) fell below 120 cents per pound, (b) remained there for twenty days and (c) rose above 120 cents. A corresponding set of increases and reductions were to be applied if the price first rose and then fell. The critical price levels were set at 150 and 155 cents as it rose and 130 cents as it fell. Quotas were to be removed if the price rose above 155 cents, and reintroduced if it fell below 135 cents. The Council may add to these mechanisms of control by withholding the release of export stamps used to administer quota movements. In 1981 when the price fell below 115 cents, the full reductions discussed above were implemented. A similar system was imposed for the 1981/82 Coffee year. For countries with low levels of exports the basic quotas do not apply to them. Instead a special scheme applies which ensures them regular increases in export levels, with a maximum of 400,000 tonnes.[28]

All exporters are under an obligation to inform Council of their anticipated shortfalls from their export entitlements to enable Council to redistribute the shortfall anticipated.

The declarations of shortfalls are rewarded, if made within the first six months of the crop year, by an increase in the member's quota for the following year, up to 30 per cent of the declared shortfall. But this means that those numbers who had benefited from the previous shortfall have to lose the redistributed quota. Exceeding a quarterly quota is penalised by a corresponding 110 percent reduction in one or more subsequent quarters. If such excess production is repeated for the third time then such member loses voting rights.[29]

(iv) PROCEDURE FOR EXPORT

Certificates of Origin are required for all Coffee exports and when quotas are in effect even re-exports require properly authorised certificates. The quotas themselves are administered by means of 'export stamps' issued by the ICO. Non-Government agencies which are authorised to control the issue of certificates are themselves subject to the supervision of the Council which may at any time remove their powers. Whenever quotas are implemented members are not allowed to import coffee which is not accompanied by an appropriate certificate.[30] This is a measure intended to stop or prevent imports of coffee from non-members. The Council is, however, authorised to make rules to 'control' trade involving non-member countries. Evasion of the Agreement through exports to non-member countries may be the subject of penalties.

Coffee involved in such evasions has been termed 'tourist coffee' and was a significant factor during the application of quotas under earlier agreements.[31]

(v) THE COFFEE PROMOTION FUND

The Agreement also takes care of promotional campaigns. To this effect, a Promotion Fund financed by a levy on Coffee exports of 25 cents per bag (smaller exporters pay less) is established.[32] Regulations in Member States that require the mixing of other products with coffee for resale as coffee are prohibited. Any product which contains less than 90 percent of green coffee cannot be sold as coffee.[33] A Special Fund is created to permit the Organisation to adopt and finance the additional measures required to ensure the implementation of the system of certificates of origin, and of verification of stocks etc. This Special Fund is financed by a 2 cent per bag on exports to importing members of the Agreement.[34]

The corollary of the system of export quotas is an obligation upon importing countries, when quotas are in effect, to restrict their imports from non-members to the volume of their annual average imports from those countries in either 1971-74 or 1972-74.

As will be seen shortly,[35] the scheme of export quotas is also used in the International Sugar Agreement. It is the most widely used of all control mechanisms. Although the mechanism seems to be favoured by most agreements, it should be pointed out that the essential criterion for the success of the export quota system is the quantum of surplus or shortage. In 1974, for example, when the world shortage in sugar was not within controllable limits, no amount of regulation could have prevented the rise in prices. In addition to the quotas, the Coffee Agreement also provides for verification of national stocks and the granting of waivers in specific cases to relieve the burden of holding excess stocks.

B. <u>COCOA</u>

Cocoa is a tropical product of critical importance to several developing countries in Africa. Its chief use is in the making of chocolate. About 1.5 million tonnes are produced annually and about two thirds of this comes from Africa. Ghana and the Ivory Coast produce about a quarter of all world cocoa exports. The largest cocoa importer is the European Economic Community, taking about 45 percent of world trade while the United States takes about one half of the European Community imports.

(i) <u>THE INTERNATIONAL COCOA AGREEMENT (1980)</u>

The 1980 Cocoa Agreement is the most recent and one that is in operation. The first (1972) and the second (1975) have since lapsed and replaced by the 1980 Agreement which is the third in the chain of cocoa Agreements.

This third Agreement[36] came into force provisionary in 1981. It has an initial life of three years and may be extended by agreement among members for a further period of two years.[37] The Agreement uses the buffer stock mechanism.

Its basic objectives are set out thus:[38]

(a) assisting in the adjustment of production and consumption

(b) preventing excessive price fluctuations

(c) stabilizing and increasing export earnings of producers

(d) ensuring adequate supplies at reasonable prices and

(e) facilitating expanded consumption.

Intergovernmental organisations (the EEC is specifically mentioned) may participate in the same way as governments.[39] A similar provision is found in the Coffee Agreement.

The EEC and the Soviet Union have accepted the 1980 Agreement but the Ivory Coast, the largest producer, and the US have refused to participate. The US position reflects a traditional posture in keeping the market as free as possible, from all intervention. But most important, the US felt that the price range provisions are too rigid, and that the balance of concessions and obligations was too heavily weighted in favour of producers.[40]

The US in particular objected to the use of buffer stocks and export controls at the same time. Instead it advocated for the use of buffer stocks alone. Although the 1980 cocoa Agreement is now in force the US has kept its distance to date.[41]

On the other hand, the Ivory Coast has refused to join the cocoa Agreement of 1980 not because of the buffer stock provisions but due to its complaint that the price range is too low, favouring in particular a higher intervention price of U.S. $1.20 instead of the current U.S. $1.10.[42]

(ii) INSTITUTIONAL FRAMEWORK

The Cocoa Agreement carried forward the International Cocoa Organisation (ICO) established by the 1972 Agreement with headquarters in London.[43] The highest authority is the International Cocoa Council which consists of all members of the ICO and meets twice a year. The voting system in the Council follows the pattern of other UN Economic Institutions: for exporting countries, 1000 votes are divided equally among themselves, 900 votes are divided in proportion to members' level of exports; a corresponding system is used for importing members.[44]

There is also established an Executive Committee, headed by an Executive Director, consisting of eight exporting and eight importing members[45] elected each year by the corresponding group of council.

(iii) BUFFER STOCK ARRANGEMENTS

The Agreement aims at the creation of a buffer stock of 250,000 tonnes, and this may be increased to 350,000 tonnes if the life of the Agreement is extended.[46] Finance for the buffer stock is provided by a one US cent per pound levy on cocoa sales which is chargeable on a consignment of cocoa when it is first exported by a member or, failing that, when it is first imported by a member. The rate may be altered by Council.[47] Payment of the levy is checked by a system of certificates of contribution and control documents.[48] Such financing of the Stock may also be done by commercial borrowing by Council.[49]

Sales and purchases by the buffer stock are governed by the rules made by the Council. In the event that the price remains outside the intervention band for more than twenty days after intervention a special meeting of the Council is to be convened and also at the time when the Stock rises to 80 per cent of the capacity or becoming exhausted. The Council may revise the price levels.[50] When changes in the size of stocks occur then there is an automatic change in the intervention prices. If the stocks rise by 100000 tonnes within twelve months of the previous revision, the intervention price is raised by 4 cents (table below). A further 4 cents are added if another 75000 tonnes is acquired within the following twelve months. If the provisions for price rises cannot be applied because the stock has reached its maximum the 4 cent increase is nevertheless made if the price remains above the upper intervention price for sixty consecutive days. There is a limit, however, on the price changes. The Agreement states that no more than two consecutive price changes may be made in the same direction during the first three years of the Agreement.[51]

When the two changes are made then the price is left to be fixed by market forces.

Unlike previous cocoa Agreements, this Agreement does not make provision for export quotas or restrictions on national stocks. Exporting members undertake to endeavour, within the limits of the constraints of their development, to pursue sales and export policies which will not artificially restrict the offer for sale of available cocoa and which will ensure regular supplies to importing members.[52]

PRICE RANGES

160 cents	....	Max. Price
150 cents	sell from buffer stock	Upper Intervention Price
110 cents	No Net Sales or Purchase	Lower Intervention Price
100 cents	Purchases for buffer stock	Min. Price

Source: International Cocoa Agreement (1980)

Footnotes: CHAPTER III

1. London, 3 Dec. 1975, in force, 1 Oct, 1976
OJ L309, 1976, p. 28

2. Geneva, 28 Oct., 1977 in force prov.
1st Jan., 1978, def. 2 Jan, 1980, TIAS 9664

3. Geneva 21 Jun. 1975, in force prov. 1 Jul, 1976.,
def. 14 Jun. 1977, OJ L222 (1976)

4. Ibid.

5. See discussion below on International Coffee Agreements.

6. See Notes 1 and 2 above. For the discussion on coffee
See below and for Sugar see Chapter IV, p.

7. Rangarajan, L., Commodity Conflict. London, Croom Helm,
1978, p. 92

8. Geneva, 19 Nov. 1980, in force prov. 1 Aug. 1981,
UNCTAD TD/Cocoa, p. 617

9. See note 3, supra.

10. Geneva, 6 Oct. 1979, in force prov. 23 Oct. 1980
OJ L213, p. 23

11. Fox, W., Tin: The Working of A Commodity Agreement;
Mining Journal Books Limited, London, 1974 Chap. 3

12. See Generally House Ways and Means Committee,
Hearings on the International Coffee Agreement Act of 1979,
Sev. 96-41 (1979)

13. London, 3 Dec. 1975, in force 1 Oct. 1976:
TIAS 8683; OJ L309, 1976, p. 28.

14. Art. 4

15. Art. 5

16. Art. 6

17. Arts. 8 to 12

18. Art. 13

19. Arts. 13 and 56

20. Art, 1

21. Art. 20

22. Ibid.

23. International Coffee Agreement Act, 1980, 19 USC 1356(K)

24. Arts. 29 and 33

25. Art. 35

26. Art. 30(4)

27. Arts. 36 to 39

28. Art. 31 and Annex 1

29. Arts. 40 and 42

30. Art 43; U.S.: 19 USC 1356 K FR 18427, (1981); EC: Reg. 2436/79, OJ L282, 1979, p. 1

31. Art. 44; Fisher, E., Enforcing Export Quota Commodity Agreements: The case of Coffee, 12 Harv. Int'l. Law Journal. (1971) p. 401

32. Art. 47

33. Art. 49

34. Art. 55

35. See Chapt. III hereof p. 39

36. Geneva, 19 Nov. 1980, in force prov. 1 Aug. 1981, UNCTAD TD/Cocoa 6/7. For A full history of this Agreement See Wasserman, F., UNCTAD: The International Cocoa Agreement, 1980, 15 JWTL 149 (1981)

37. Art. 71

38. Art. 1

39. Art. 4.

40. Finlayson, J., and Zacher, M., The Politics of International Commodity Regulation, Third World Quarterly Vol. 5 No. 2 (1983) p. 386

41. Ibid. p. 388

42. Ibid.

43. Cocoa Agreement, Note 36 supra, Art. 5

44. Art. 10

45. Arts. 15 and 16

46. Art. 30

47. Art. 35

48. Art, 43

49. Art. 31

50. Arts. 36 and 37

51. Art. 27

52. Art. 46

CHAPTER IV

THE INTERNATIONAL SUGAR AGREEMENT

Sugar cane is a tropical and subtropical crop. It takes between twelve and eighteen months to mature, and it can be harvested again in twelve months. It is milled within a day of cutting to produce raw cane sugar. Beet sugar is an annual temperate crop. The World Market price for sugar is notoriously volatile. In 1974, the price (per pound) rose from about 10 to over 50 US cents. By mid-1975 it had gone below 15 cents and thereafter it slowly declined to below 10 cents. It rose again at the end of 1979 reaching 40 cents within a year before falling to about 15 cents in the middle of 1981.[1]

(A) INTERNATIONAL REGULATION

The International Regulation of sugar was already underway by the early twentieth century.[2] Substantive international agreements were concluded in 1937, 1953, 1958, 1968 and lately 1977. The 1953, 1958 and 1968 Agreements had objective price ranges which were to be maintained by way of automatic export quota adjustments.[3] There were maximum and minimum stock-commitments by members. The European Economic Community (EEC) and the United States of America (USA) did not join the 1968 Agreement. The EEC did not join becaude of difficulties in reconciling the requirements of the Agreement and those of the Common Agricultural Policy, discussed below.

The US stayed out for purely political reasons saying that the Agreement is too favourable to the USSR and Cuba. Although its quota provisions lapsed in 1973, the Agreement was kept in force as a means of providing information on the sugar market.[4] During the existence of these Agreements, sugar prices were often below but occassionally well above the objective range.[5]

(i) THE INTERNATIONAL SUGAR AGREEMENT, 1977

The International Sugar Agreement (ISA) of 1977 [6] has over seventy members, the US having joined definitively in 1980 when legislation was passed by congress authorising financial contributions and the imposition of quotas against non-members.[7] The EEC did not accept the export restrictions contained in the text and has not joined the Agreement to date. The International Sugar Council, however, has been empowered to make special conditions for the EEC's entry.[8] The Agreement is meant to last for five years (until 1983), with a possible extension of two years.[9]

(ii) OBJECTS

The objects of the ISA include:[10]

(a) raising the level of trade with a view to increasing the export earnings of developing exporting countries;

(b) providing and ensuring adequate supplies;

(c) promoting and increasing consumption;

(d) promoting equilibrium between supply and demand; and

(e) achieving stable and fair prices.

(iii) INSTITUTIONAL FRAMEWORK

The Sugar Agreement of 1977 has carried forward the International Sugar Organisation created by previous agreements with its headquarters in London. The International Sugar Council is the highest authority of the Agreement comprising all members of the International Sugar Agreement.[11] The latter include all exporting and importing nations.

Like the International Cocoa Agreement the ISA divides 1000 votes between the members of each group according to their share of world trade in sugar.

The two groups in the Council elect an Executive Committee to administer the Agreement. This Committee consists of twenty members, ten from each group and the Council may delegate considerable responsibility to the Committee.[12] The Committee is headed by an Executive Director elected by the Council.[13] The Agreement utilizes both quotas and national stocks. The system is complicated. But it should be remembered throughout the discussion that the Council in most cases has powers to deviate from the specific rules described here.

The Agreement seeks to maintain the free market price (per pound) of sugar within a range of ten US cents. The initial range was 11 to 21 cents per pound[14] but the Council has power to alter these and other prices in the Agreement provided it maintains the ten cent range. In 1981 for example, the basic range was 13 to 23 cents.

(IV) EXPORT QUOTAS

Export quotas are the first means used to keep the price within the range. Exporters are given basic export tonnages. In the first two years of the Agreement the largest tonnage was given to Cuba. After the first two years the tonnages were subject to renegotiation on the basis of a list of factors to be considered, with a fall-back formula, to be applied in the event of no agreement being reached. The formula involved takes into account a country's average relative export performance in the open market in the previous year.[15]

Each year the Council estimates the net import requirements of the free market. Exports from non-members are deducted from the estimates to arrive at a global quota. If no agreement is reached on this estimate, then the previous year's estimate is applied. The global quota is distributed to the exporting members pro rata to their basic export tonnage.[16] The quota allocated is the maximum permissible net exports to the free market for the year in question. Failure to use the quota results into a penalty. The short-fall is deducted from any amounts which would otherwise have been allocated as a result of a quota increase in a subsequent year. The Council may waive this rule if the failure to meet the quota was a result of force majeure. When a short-fall is anticipated the member should inform the Council and failure to do so may result into penalties.[17]

Several members have in the past temporarily lost their voting rights under this provision. Quotas may be exceeded by the lesser of 10000 tonnes or 5 per cent and by any amount of sales made before the reduced quotas came into force. Such amounts are, however, deducted from the following year's quota.

Quotas may be changed in the course of the year if the figures on which the global quota is based change. In such an event the Council may decide on a new global quota which also affects national quota distributions. There have been several such decisions in the current Agreement. In 1979/80 all price figures were increased by 2 cents following a sharp rise in market prices. The events which led to this situation were as follows: In 1978 the price of sugar was below 11 cents per pound. For purposes of the Agreement this was treated as a fall through the 13, 12 and 11.5 cent levels (Chart below)

Price/lb	Action to be taken
21 cents	Release 1/3 stocks
20 cents	Release 1/3 stocks
19 cents	Release 1/2 stocks
15 cents	No Quotas Permitted
14.5 cents	Quotas Discretionary
14. cents	Increase Quotas 5 p. ce
	Quotas Discretionary
	Increase Quotas 5 per cent
13 cents	Quotas Mandatory Increase Quotas 5 percent
12 cents	Decrease Quotas 5 per cent
11.5 cents	Decrease Quotas 5 per cent
11 cents	Decrease Quotas 5 per cent
	Cut Quota 2.5. - 3.5 per cent 1978/79.

International Sugar Agreement

(The significance of the 11 cent level is explained below). The Agreement *requires a 5 percent reduction in quota as the* price falls through each of these levels so that on the basis of this rule, a reduction of 15 percent in quotas is immediately imposed. When the price rises these reductions are successively removed as it crosses the 13, 14 and 14.5 cent levels. This clearly shows that quotas are reduced when the price falls through the lower range and increased when it rises through the upper range. It should be remembered that these changes are superimposed on any additional quotas to each country which result from the adjustment of the global quota.[18]

All quotas are removed when the prevailing price moves above a top level (initially 15 cents). When the price is within the next two levels (14 to 15 cents originally), the Council has a discretion whether or not to employ quotas. Thus quotas were removed when prices rose in 1979, and were reimposed (at the now higher level of 17 cents) when they fell in 1981.

(V) NATIONAL STOCKS

The Agreement also makes use of National Stocks. These are special national stocks which are released into the market. This should be done in stages when the price rises through the three levels discussed above. The Principal exporting countries are to have aggregate stocks of 2.5 million tones apportioned according to a country's basic export tonnage. This level should be achieved at the beginning of the Agreement and in three trenches after every release in three year periods of 40 per cent and 20 percent successively. No stocks are accumulated during the period when export quotas are inoperative. It will be noted that the stocks that were accumulated in 1978 and 1979 were depleted during the period of high prices in 1980. Failure to maintain these stocks results into penalties.[19]

These Special Stocks are supported by a Stock Financing Fund to which contributions are made by a levy imposed once either on exports or imports of sugar by members.[20] There is a provision allowing the Fund to accept voluntary contributions and to engage into short-term borrowing.[21] The Fund makes interest-free loans to members equivalent to 1.50 cents per pound of the minimum obligatory level of their stocks. These loans are solely for the purposes of defraying expenses in maintaining the special national stocks. The levy was set at 0.28 cents per pound in the Agreement although it was not in force until 1980. The Council imposes a small export levy to meet the administrative expenses of the Fund.

Like in the Coffee Agreement, the members of the Sugar Agreement are obliged to limit their imports from non member states to 75 percent of their level in the previous years and 55 percent when the prevailing price is below the minimum target figure but the International Sugar Organisation has said that these rules are usually not followed.[22]

The Agreement contains an assurance by exporting members to continue to offer sugar to importing members consistently with their traditional trading patterns and to give priority to members over non-members.[23] Subsidies, both production and export, are not allowed without prior discussions with other exporters.[24]

B. THE LOME CONVENTION AND CUBAN EXPORTS

The Agreement contains exceptions relating to exports of sugar by the African, Caribbean and Pacific Countries to the EEC under the Lome Convention.[25] These exports are not to be taken into account in determining export quotas.[26] This same rule applies to the Cuban Exports to Eastern Europe and the Soviet Union and a part of its exports to other Communist countries in the world.[27] Special provision is made limiting Soviet Exports and the GDR to members of the Agreement.[28]

C. THE GATT RULES ON SUGAR:

The Cases of Australia and Brazil against the European Economic Community (EEC)

There are no special rules relating to sugar trade in the GATT. But GATT members have used the General provisions on subsidies to attack certain practices of the EEC. Australia and Brazil attacked the EEC subsidies on sugar in terms of Article XVI of GATT to prevent it from obtaining more than an equitable share of world trade in sugar contrary to Article XVI(3) of GATT.[30]

The panels that were set to consider each case did not reach any conclusive decisions. They noted, however, that the EEC practices on subsidies complained of contributed to a depression of prices in recent years and that as a result, serious, albeit unquantifiable, prejudice had thereby been indirectly caused to the complaining countries.[31] These GATT panels' decisions do not amount to any legal obligation on the EEC to stop the export refunds and the latter remains a permanent threat to world sugar markets.

D. United States Sugar Policy

The United States is the largest sugar importer in the world, topping 5 million tonnes in recent years.[32] From 1934 to 1974 sugar imports in the US were regulated by quotas in such a way as to maintain a certain maximum domestic sugar price under the Agricultural Adjustment Act of 1933, section 22.[33] The Act introduced loan and purchase schemes to support domestic producers of sugar in the U.S.[34] Import fees are imposed to supplement the program under the 1933 Act. In addition, the President used his power in 1977 to impose import duties under Schedule 4 of the 1974 Trade Act,[35] when the prices fell, to support domestic producers.[36] The formular used to determine the levels of duties and fees change from time to time. This is done to maintain the right level of the domestic price in line with world sugar market prices. Under the 1974 Trade Act, tariff schedule 4 sets an overall import quota of some 7 million tonnes each year.

In 1977, the United States International Trade Commission (ITC) recommended import relief on sugar imports for five years. Although the President did not comply, he, nevertheless, put the measures described above into effect. Convinced that the EEC was subsidizing its sugar exports, the President imposed countervailing duties of over 10 cents per pound on sugar imports from the EEC in 1978. This was reassessed in 1981 and put at 3.5 cents per pound. The measures did not end there. In 1979 anti-dumping duties of over 100 percent (less countervailing duties) were imposed on imports from a number of producers in West Germany, France and Belgium which benefited from the EEC's Common Agricultural Policy (CAP) export refunds. These actions, combined with those described above, led to a cessation of EEC sugar exports to the US.

E. THE EUROPEAN COMMUNITY SUGAR POLICY

The EEC support system for sugar is based on a standard CAP regime of intervention prices, import levies and export subsidies.[37] Added to this is a system of production quotas and levies designed to keep within reasonable bounds the community's chronic problem of overproduction, which resulted in the GATT dispute described above. The levies are imposed to the extent that it is necessary to provide funds for the export subsidies.[38]

A special feature of the EEC sugar regime is its extension to the production and marketing of isoglucose (known in the US as high fructose corn syrup). The production of isoglucose is controlled by production quotas, and levies, and its import is subject to levies.

Tied up with this regime is the EEC's commitment under the LOME Convention. Under this Convention, the EEC has agreed to import 1.3 million tonnes of cane sugar annually. The Convention allocates quotas to individual ACP countries and in a separate agreement has undertaken to import a further 300000 tonnes from India.[30] These imports enter the Community levy-free and receive a guaranteed price derived, after lengthy annual negotiations, from a formula which relates such price to that received by EEC sugar producers.

These current commodity agreements have not solved the producer countries' problems. It is true that occassionally price booms bring temporary benefits to many producers of commodities. But as the Secretary-General of UNCTAD points out, the longer-term commodity problem remains basically unresolved.[40] This problem is largely constituted by the unfavourable long-term trends in prices of many commodities in relation to prices of manufactured goods, resulting in a deterioration in the terms of trade of developing countries heavily dependent on primary commodities for their export earnings. It is also constituted by the tendency of excessive short-term fluctuations in prices of many commodities. Clearly international action on a commodity-by-commodity basis can no longer be relied upon to produce swift and effective results. It is in this respect that a multi-commodity approach is favoured to supplement the earlier approach on a commodity-by-commodity basis. The next Chapter, therefore, examines this new multi-commodity approach. But it should be pointed out here that the former commodity-by-commodity approach is not to be discarded entirely. The new approach is merely an attempt to devise arrangements for a group of commodities jointly. Common techniques are to be applied such as buffer stocks and diversification measures.

Moreover, the multi-commodity approach still needs to be tried.

FOOTNOTES

CHAPTER IV

1. Smith, E., EC Sugar Policy in an International Context, 15 JWTL 95 (1981)
2. Ibid. p. 98
3. Ibid., p. 96
4. Ibid, p. 101
5. Ibid
6. International Sugar Agreements, Geneva 28 Oct, 1977. in force prov. 1 Jan., 1978, def. 2 Jan. 1980, TIAS 9664; Cmnd 7159
7. International Sugar Agreement, (1977) Implementation Act, 1980, P.L. 96 - 236.
8. Note 6, supra, Art. 76
9. Ibid. Art 83
10. Art. 2
11. Arts, 7 and 8
12. Art. 17 to 19
13. Art. 22
14. Art. 44
15. Art. 34 (2)
16. Art. 40
17. Art. 42
18. Art. 44(A)
19. Arts. 46 and 47
20. Art. 51
21. Art. 52
22. International Sugar Organisation Annual Reports, 1979 and 1980.
23. Art. 60

24. Art. 64

25. This is a treaty envisaging a wide range of economic cooperation between the European Communities, and a number of developing countries in Africa, the Caribbean and the Pacific signed at Lome, Togo, 1975, to run for a period of five years. The Courier No. 31 Special Issue, March 1975. The first treaty expired on 31 March 1980 and a new one, also for a five-year period became effective, The Courier, No. 58 Special Issue, 1979.

26. Note 6, supra, Art. 30

27. Art. 31

28. Arts. 32 and 33

29. Australia: 26 BISD 290 (1980)
Brazil: 27 BISD 69 (1981). For a fuller discussion on the cases see Smith, E., GATT: EEC Sugar Export Refunds Dispute, 15 JWTL 534 (1981)

30. This Article provides that GATT parties should seek to avoid the use of export subsidies for primary products. If nevertheless these are used so as to increase exports, they should not be applied in a manner which results in the contracting parties having more than an equitable share of world export trade, account being taken of the shares of contracting parties in such trade during a previous representative period, and of any special factors which may have affected or may be affecting tradein that product. This provision is also found in the subsidies Code, 1979, Art. 10(1)

31. Smith, E., op. cit. note 29, p. 539

32. Ibid, p. 544

33. Gerber, L., The US Sugar Quota Programme: A Study In the Direct Congressional Control of Imports, 19 JL and Econ. 103 (1976).

34. Ibid ., p. 105

35. Trade Act, 1974, 19 USC 2461-65

36. Ibid., Sched. 1, part. 10A

37. See Smith, op. cit., note 29, p. 537

38. Ibid., p. 541

39. Harris, G., and Hegelberg, M., Effects of the Lome Convention on the World Cane Sugar Producers, 20 ODI Rev. (1978) p. 38

CHAPTER V.

THE NEW INTERNATIONAL ECONOMIC ORDER (NIEO) AND THE CREATION OF THE INTEGRATED PROGRAMME FOR COMMODITIES (IPC)

The commodity agreements described in Chapters III and IV are illustrations of the sort of agreements that have been used in commodity trade to try and stabilize prices in the markets.

These Agreements have not worked as well as might have been expected at their inception. Price swings have persistently gone beyond the price ranges agreed despite the application of the appropriate control mechanisms.[1] This in turn has affected the export earnings of the developing countries producers and disrupted long-term plans for development of their economies.

The price trend in any individual commodity agreement is of crucial importance to its effectiveness. If the price is decisively on the upswing or downswing, producers and consumers respectively are less likely to be receptive to attempts to stabilize it despite the clear provisions of an agreement on the same. When the negotiations for a new International Cocoa Agreement started in 1979, the cocoa prices were very high on the international markets. So that in staking out their positions, the producers looked at the level of market prices in formulating their suggested price range instead of taking an average over a period of years. The consumers, on the other hand, looked at the lowest price that the emerging over-supply would push the market.[2]

The failure of the individual commodity agreements has prompted developing country producers to seek for a new arrangement that would provide price support meahanisms to improve their terms of trade. This price support would, it is hoped, reduce excessive fluctuations of commodity prices. Financially unable to maintain stocks and in urgent need of foreign exchange, the developing countries are compelled by circumstances, beyond their control, to sell competitively on a falling market as it is difficult for them to adjust quickly to changing demand due to the nature of their produce.

It is in the background of these considerations that developing countries have called for a new approach to commodity trade under the NIEO proposals. This new approach is embodied in the Integrated Programme for Commodities and the Common Fund. The task of working it out was entrusted to the United Nations Conference on Trade and Development, (UNCTAD).[3]

(A) PROPOSALS

Proposals by developing countries for a New International Economic Order were first registered as far back as 1972 at Santiago, Chile, during the Third United Nations Conference on Trade and Development (UNCTAD) meeting.[4] The issues raised related to such matters as easier access to industrial markets of goods from developing countries; higher export prices for their goods, an integrated commodity programme, and monetary issues.

The latter includes increased financial aid and the debt burdens of developing countries.

At the United Nations, the debate on the establishment of the NIEO was initiated by the Algerian Representative who asked for a Special Session of the General Assembly to consider the problems affecting trade in raw materials in January, 1974.[5] Following this request, a Special Sixth Session of the General Assembly of the United Nations was convened on 9th April 1974.[6] It adopted two resolution on a Declaration and Programme of Action for the establishment of a NIEO.[7]

In May 1974, the plenary session of the General Assembly adopted the report of the Special Session and thereby formally bringing into being the necessary declaration and steps leading to the NIEO. The UN Resolution on the NIEO contained twenty principles on which the NIEO is to be based. The principle on prices of raw materials intended to achieve -

> "just and equitable relationship between the prices of raw materials and goods exported and imported by developing countries with the aim of improving their unsatisfactory terms of trade and expansion of the world economy." 8

The Resolution on the Programme of Action for the NIEO contained ten sections. Section one dealt with raw materials, commodities and trade problems. The relevant subsections provided as follows:

> "(c) to facilitate the functioning and further the aims of producers' associations, including joint marketing arrangements, orderly commodity trading and improvement in the income and terms of trade for producing developing countries;

(d) evolve a just and equitable relationship between the prices of exports (raw materials, commodities etc) and imports (raw materials, commodities, food and manufactures) of the developing countries and to work for a link between these prices;

(e) take measures to reverse the continued stagnation or decline in the real price of several developing country export commodities

(f) take measures to expand the markets for natural products (rubber, sisal etc) in relation to synthetics and

(g) take measures to promote the processing of raw materials in the producer developing countries."[9]

It is clear from these resolutions that the NIEO requires the international community to take a more vigorous approach to the problems of developing countries and those relating to international economic cooperation. The Programme of Action for the NIEO describes the measures necessary for tackling the problems relating to raw materials and primary commodities of essential export interest to developing countries as outlined above.

As a follow up measure, a Seventh Special Session of the General Assembly was convened in September, 1974. A Resolution was adopted on the formation of an Integrated Programme for Commodities (IPC).[10] The IPC is to establish: international stocking and market intervention arrangements to support prices; a special international Common Fund to support the market intervention arrangements and a system of multilateral commitments on imports and exports. Hence the IPC formed a key component of the NIEO.

(B) UNCTAD AND THE IPC

The responsibility of working out the agreement for IPC was entrusted to UNCTAD. The matter was discussed at the Fourth UNCTAD meeting in Nairobi, Kenya in 1976. UNCTAD's involvement in commodity problems is legendary. It goes as far as back as 1964 when UNCTAD was created.[11] In response to the Programme of Action adopted by the General Assembly in 1974, the Committee on Commodities drew up a draft proposal on the IPC involving some eighteen commodities including sugar, cocoa and coffee. The idea of the IPC is to negotiate for commodity agreements based on internationally held buffer stocks which would be financed by an international fund.[12]

(i) THE INTEGRATED PROGRAMME FOR COMMODITIES (IPC) UNDER THE NIEO

The proposals of the UNCTAD Committee on Commodities were finally considered and adopted by UNCTAD at its Nairobi Conference,[13] thereby formally creating the IPC as poproposed for under the NIEO. The objectives proposed for are typical of those found in international commodity agreements;[14]

1. To achieve stable conditions in commodity trade, including avoidance of excessive price fluctuations at levels which would

   (a) be remunerative and just to producers and equitable to consumers;

   (b) take account of world inflation and changes in the world economic and monetary situations;

   (c) promote equilibrium between supply and demand within expanding world commodity trade;

2. To improve and sustain the real income of individual developing countries through increased export earnings, and to protect them from fluctuations in export earnings, especially from commodities;

3. To seek to improve market access and reliability of supply for primary products and the processed products thereof, bearing in mind the needs and interests of developing countries;

4. To diversify production in developing countries, including food production, and to expand processing of primary products in developing countries with a view to promoting their industrialization and increasing their export earnings;

5. To improve the competitiveness of, and to encourage research and development on the problems of natural products competing with synthetics and substitutes in developed countries with the supply of natural products in developing countries;

6. To improve marketing structures in the field of raw materials and commodities of export interest to developing countries;

7. To improve marketing, distribution and transport systems for commodity exports of developing countries; including an increase in their participation in these activities and their earnings from them.

The programme includes eighteen products: bananas, bauxite, cocoa, coffee, copper, cotton and cotton yarns, hard fibres and products, iron ore, jute and products, manganese, phosphates, rubber, sugar, tea, tropical timber, tin and vegetable oils including olive oil and oil seeds. These were listed as commodities requiring international agreements under the IPC. The measures that may be used include international buffer stocks; harmonized national stocks; price ranges, supply management measures such as export quotas, production policies and multilateral long-term supply and purchase commitments; information and consultation procedures; compensatory financing facilities; improvements in market access and in generalized preference schemes; improvements in infrastructure and industrial capacity enabling developing countries to engage in manufacturing and processing; research and development regarding synthetics. In all these arrangements, special measures are to be taken regarding the least developed countries. These arrangements are to be supported by a Common Fund.

The principal successes of the programme have been the conclusion of the International Natural Rubber Agreement in 1979 and the signing of the Common Fund Agreement in 1980.

(ii) THE COMMON FUND

The Agreement Establishing the Common Fund for Commodities[15] will come into force when ninety states ratify it. These States should represent two-thirds of the Directly Contributed Capital (below). Membership is open to all States. Regional intergovernmental economic organisations with appropriate competence may become members but they cannot be put under financial obligations and they do not have any votes.[16]

The objectives of the Fund are to serve as a key instrument in attaining the objects of the IPC, and to facilitate the conclusion and functioning of international commodity agreements (ICAs), particularly those concerning commodities of special interest to developing countries.[17] Each member appoints one Governor to the Governing Council, which is the principal body of the Fund.

The voting power of members corresponds to their shares in the Directly Contributed Capital and Guarantee Capital (see below), and to a distribution between the UNCTAD blocks of:[18]

Group B: 42 percent of votes

Group of 77: 47 percent of votes

Group D: 8 percent of votes

China: 3 percent of votes

Important decisions require special majorities. The conduct of the Fund's operations is in the hands of an Executive Board consisting of twenty-eight Executive Directors elected by the Governing Council. The Staff of the Fund is headed by a Managing Director appointed by the Council. He chairs the Board.

(iii) FUND ACCOUNTS

The Fund consists of two distinct Accounts, often known as the First and Second Windows. The First Window contributes to the financing of international buffer stocks and internationally coordinated national stocks. The second Account is for the financing of commodity development measures aimed at improving the structural conditions in markets and enhancing the long-term competitiveness and prospects of particular commodities. Such measures are to be jointly sponsored and followed up by producers and consumers within the framework of an international commodity body.[19]

(iv) RELATIONSHIP WITH ICAs

International Commodity Organisations (ICOs) conclude Association Agreements with the Fund for purposes of First Account Financing. Only those buffer-stock ICAs which rely on joint financing by producers and consumers are eligible for association status.[20]

(v) CAPITAL RESOURCES OF THE FUND

The capital resources of the Fund comprise Directly Contributed Capital (47000 shares having a par value of $10000 each) and Guarantee Capital (below). The shares are of two kinds: 37000 Paid-in shares and 10000 payable shares. Their numbers may be increased by the Governing Council. Each member subscribes 100 paid-in shares and, in proportion to its economic strength, a number of payable shares and a further number of Paid-in shares.[21] Thus the US has 5012 Paid-in shares and 2373 Payable Shares, whereas Zaire has only 147 Paid-in shares and 22 Payable Shares.

A member may allocate to the Second Account a part of its subscription for the basic 100 Paid-In Shares. The aim is to at least secure allocations amounting to $70 million. Members may also make voluntary contributions to the Second Account. The target for the Second Account has been put at $280 million for initial contributions.[22]

Payments for Paid-In Shares are made in stages: 30 per cent in cash initially, 20 percent in cash and 10 percent in irrevocable promisory notes after one year, and 40 percent in promisory notes after a further year.

These notes may be cashed as and when the Executive Board decides.[23]

Each Association Agreement between the Fund and an ICO specifies a Maximum Financial Requirement (MFR) which is the maximum amount of funds that the ICO may draw and borrow from the Fund. The MFR is set at a figure corresponding to the cost to the ICO of acquiring stocks.[24] Each ICO makes deposits to the Fund up to one-third of the amount of its MFR. The remaining two-thirds is contributed by the participants in the ICA. It is these contributions which constitute the Guarantee Capital of the Fund. The ICO deposit is made in the form of cash or stock warrants. The form of the participants contributions is not stated. The amount of any First Account loan to ICO is limited to the value of the uncalled part of the ICO participant's contributions.[25] To the extent that an ICO withdraws its cash deposits or borrows from the FUND to purchase commodities it must pledge as security the stock warrants relating to those purchases. If the commodities so purchased are sold the proceeds must be returned to the Fund.[26]

(vi) DEFAULT BY AN ICO

In the event of default by an ICO the Fund may have recourse to cash deposits of that ICO held in the Fund to pro-rata contributions from uncalled Guarantee Capital of its participants, and to the ICO's pledged stock warrants, in that order. The Fund, however, does not have access to assets held by other ICOs.

But in the event that the Fund itself cannot meet its liabilities resort may be had, in this order, to the Special Reserve, to the proceeds of subscriptions to Paid-In Shares allocated to the First Account, to the proceeds of subscriptions to Payable Shares, and to Guarantee Capital and Guarantees, possessed in other ICOs by participants in a defaulting ICO. If these resources prove insufficient, the Council must increase the Directly contributed Capital.[27]

The Fund may borrow on international financial markets up to the limits of its uncalled assets and its Special Reserve. This Reserve, which is not to exceed 10 percent of Directly Contributed Capital allocated to the First Account, is established from the earnings of that Account.[28]

The First Account is to charge interest on loans made to ICOs at rates as low as are consistent with its ability to obtain finance and with the need to cover costs of borrowings. Interest is paid on cash deposits and other cash balances of ICOs. Associated ICOs may not borrow from other sources without the permission of the Fund.[29]

Although the Agreement on the Common Fund for commodities is not yet in force, it is hoped that more and more countries will ratify it in the near future. At that time it is further hoped that more ICAs will be concluded with backing from the Fund.

(vii) <u>DISPUTE SETTLEMENT</u>

The Agreement provides for a mechanism for settling disputes between the Fund and its constituent members and the associated ICOs. All such disputes shall be submitted to arbitration. Elaborate and specific time limits within which the arbitrators should be appointed are provided for.[30]

The arbitral tribunal shall consist of three arbitrators with each party entitled to appoint one arbitrator. The two arbitrators in turn appoint a third one. Where the parties fail to appoint arbitrators within the specified time limits or the third arbitrator is not agreed on then either of the parties may request the President of the International Court of Justice or such other authority as may be prescribed by the Governing Council to appoint an arbitrator. The majority decision of the arbitrators shall be final and binding upon the parties. The arbitrators determine all issues of procedure.

For ICOs, the Association Agreement may provide for the arbitral procedure. Otherwise the provisions of the Fund Agreement, as laid down above, apply.

FOOTNOTES

CHAPTER V

1. World Bank: Commodity Trade and Trends, 1981, p. 34

2. Finlayson, J., and Zacher, M., The Politics of International Commodity Regulation, Third World Quarterly Vol. 5, No. 2 (1983) p. 386

3. See Chapter II, p.22.........

4. Foreign Affairs Reports Vol. XXV, No. 8 Aug., 1976, p. 1123

5. U.N.Y.B. Vol. 28 p. 305, May, 1974,

6. Ibid.

7. Ibid. Res. Nos. 3201 (S-VI) and 3203 (S-VI) respectively

8. Ibid. p. 307

8.(a) Ibid

9. Ibid., p. 309

10. U.N. Y.B. Vol. 29, p. 325

11. See Chapter II, p......22..

12. Law Pol'y Int'l Bus. v. 9, No. 2, p. 421

13. Res. 93(IV), TD/Res./93(IV)

14. Ibid.

15. Geneva, 27 Jun, 1980, UN DOC. TD/IPC Conf./L15 and Corr. 1; 19 ILM 896 (1980)

16. Ibid, Art. 4

17. Art. 2

18. Group A is the Group of 77 countries, now over 115, consisting of all developing countries; Group B consists of the developed industrial nations of West European countries including the United States of America, Australia, New Zealand, Japan and Canada; Group D is the Soviet Union and its Socialist allies.

At the original UNCTAD meeting in 1964, Group A was composed of African and Asian countries and Group C was Latin American countries. Group B and D were as they are today. Later Group A and C merged to form the Group of 77. China belongs to no group. For a detailed discussion on the Group System of UNCTAD see JWTL, Vol. 12, No. 3, p. 241 (1978).

19. Arts. 3 and 18

20. Art. 7

21. Arts. 9 and 10

22. Arts. 10 and 13

23. Art. 11

24. Art. 17 (c)

25. Art. 17 (10)

26. Art. 14

27. Art. 17(F) and (G)

28. Arts. 15 and 16

29. Art. 17: B and D

30. Art. 53

CHAPTER VI

AN APPRAISAL

The reference to the NIEO in this study has been concerned with the implementation of the Programme of Action on restructuring commodity trade arrangements. The Common Fund has finally been established as Part of this programme of action.[1] It is hoped that the Fund shall function as a vehicle for the transfer of resources from developed to developing countries, through the allocated contributions. The Fund should also be regarded as a window through which to observe the political will of developed countries to assist the developing countries.

The examination of agricultural commodity trade arrangements reveals a vast gap between verbal assurances of price stabilization, a fair share of markets and earnings to bring it about. The developing countries require a review of the entire price structure of primary commodity markets so as to eliminate the obtaining disproportions which lessen the developing countries' earnings. On the other hand, developed countries wish to retain the freedom of market relations. This is the biggest challenge facing the creation of a new international economic order. It is also the problem facing the integrated programme of commodities and the common Fund.

A comparison of the international commodity agreements discussed in Chapters III and IV with the I.P.C. shows that the latter is not revolutionary at all in this area. The programme largely repeats the main features of commodity agreements that have already been concluded on sugar, cocoa and coffee. In particular it calls for the conclusion of a series of agreements by building up the international raw materials' stocks; the co-ordination of national stocks; an agreement on prices subject to periodic review depending on inflation and currency exchange rate fluctuations; internationally co-ordinated measures of control over deliveries of raw materials as well as multilateral undertakings on long-term deliveries and purchases.[2]

The crucial factors in all these well-intentioned objectives is the lack of commitment on the part of the developed countries to assist developing nations. This attitude is clearly seen in the protracted negotiations on ICAs and the IPC and the numerous reservations put by developed countries in ICAs. It is not surprising therefore to see that the International Cocoa Agreement was signed without the United States of America, the largest importer of cocoa, accepting it. The same attitude was reflected in the first international Coffee Agreement.

It is true perhaps to say that the establishment of the Fund cannot be hoped to completely overcome the existing market irregularities so long as the developed countries are convinced that the free market structure has served and continues to serve the world well.

The fear towards change among developed countries is their traditional belief that a successful implementation of intergovernmental programmes such as the IPC could inevitably substantially restrict the impact of certain aspects of market competition in commodity trade upon which the developed countries' economies rely so much.

Bernard Chidzero, the former Director of the Commodities Division of UNCTAD, summed up the essence of the differences in the approaches to the IPC in the following words:

> "A comprehensive and integrated approach is essential, but clearly to those countries which are opposed to radical changes in the structure of international trade, the idea of an integrated programme suggests to their mind, the thin end of the wedge. Doubtless, an effective integrated programme based on a Common Fund for financing Stocks and on complementary measures relating to price stablization, in real terms.......rationalisation or reform of the marketing and distribution system and assured access to markets, only means greater intervention at the level of governments......"

and asked the question,

> ".......is a new order possible without governmental action?[73] "

Clearly it is this government intervention in markets that developed countries resent as major consumers of developing countries' commodities exports.

One may wonder that after all what has been said here there appears to be no set of rules or laws to be properly referred to as "The Law Governing International Agricultural Commodity Trade." Such worries are justified. There is no Constitution type of document on commodity law.

All that is there is an isolated set of multilateral agreements, UN Resolutions, some provisions of the GATT and economic cooperation agreements. These form the corpus of agricultural commodity rules. Like Public International Law, trade law relies for its enforcement on the will of the member states to observe them. Perhaps the United Nations Commission on International Trade Law (UNCITRAL) could some day come up with a Code of Conduct on Agricultural Commodity Trade in conjunction with UNCTAD. This, of course, will require a lot of time and full participation of the producers and consumers. Failing this, an International Agricultural Commodity Trade Council could be established under the IPC. Its work would be one of overseer over all I.C.A.s and responsible directly to UNCTAD. Again precedents of the International Coffee Council could be followed. The Common Fund could be administered by such a Council.

The main objective of I.C.A.s is to provide an orderly marketing method through which patterns of production and trade can best be adjusted to the requirements of world demand. It must be borne in mind, however, that the stabilization of prices and the securing of reasonable terms of trade to bring consumption and production into balance under the proposed structure calls for the coordination of national policies and legislations of the consumers and producers. Such a responsibility should be given to the International Commodity Council proposed above. This may be resented by some countries as interference in or threat to their national sovereignty.

in all negotiations people must be ready to give ground
e and gain another elsewhere.

SUGGESTIONS FOR CHANGE

The GATT, the World Bank and the I.M.F. have all
cerned themselves continuously with the commodity problems
the problems still live. Through collective action, the
eloping countries must continue to focus the attention of
richer nations upon the deepening economic troubles they
facing. This must be done in an extremely diversified
ner combining requests for more direct aid with a large
iety of trade measures through various international fora.
international community must have a genuine desire to bring
out general and wide-spread commodity control. This desire
present is only being given lip-service by developed coun-
ies.

As long as developed countries maintain their intrasigence
vards change in international economic relations the call for
new order will remain a far cry from reality. At this time
e cannot but agree with the lament of the Commonwealth Secre-
ry when he says "The advantaged do not see what is wrong with
e world; the scene from Washington is not same as that from a
te plantation of Bangladesh. But this view of the World in the
ght of the two-thirds of mankind that is disadvantaged is itself
e of the realities of the contemporary scene. If it is at
ast acknowledged as such it will become easier to understand
y the developing world calls for a new international economic
der."[4] To be established as an independent international
ency, endowed with substantial powers of intervention in commo-
ty markets, the Common Fund will need to have sufficient resources

at its Command subscribed by governments and available for use promptly as the need for market intervention arises. In addition, the Fund should have the authority to independently intervene in a broad range of developing countries' export markets and related activities. Such vast resources could then be extended as an assistance in necessary cases to commodity organisations e.g. the International Coffee Council, a country or a group of countries, such as ACP commodity exporters, as the need arises. Under the NIEO, the Fund is expected to be strong and able to respond to the distress signals of all developing countries. The Fund's Agreement should contain provisions now not present, on safeguards under which the amounts transferred should be seen to be put to good use. There is no fixed list of economically possible types of commodity agreements; nor is there a fixed list of their objectives, consequently there are no fixed criteria of their success.

Intergovernmental commodity agreements should be seen as supplementary to market forces in alleviating severe short-run fluctuations in prices and export proceeds where they persistently arise. If seen thus, they may be more readily acceptable to the developed countries whose cooperation is invaluable in such arrangements.

CHAPTER VI

Footnotes

1. See Chapter 5, p. 84

2. Obminsky, E., Co-operation on an Equitable Basis, Sweet and Maxwell (London) (1978) p. 41

3. 12 JWTL No. 5, 1978, p. 375.

4. Ramphal, S., Times of Zambia Newspapers Ltd. Saturday 17th Nov., 1979, Lusaka, Zambia, p. 4.

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