NOTES

INTERNATIONAL COMMODITY AGREEMENTS

I. INTRODUCTION

The United States announced on May 13, 1975, that it was prepared to attend a new preparatory meeting for an international energy conference. The Government indicated that it was willing at the same time to consider international arrangements covering the prices of raw materials other than petroleum.\(^1\) The announcement marked a significant departure from past United States policy, and may have set the stage for a series of international agreements on commodities, which have been called for and implemented, but which have been often unsuccessful a number of times in this century.

This Note will examine the economic reliance (or lack thereof) of countries, mainly "developing countries," upon the export sale of primary commodities. It will observe the price trends of the commodities and the reasons why countries desire to establish international commodity organizations. The problems involved in establishing such organizations, as well as the "developed" world's response to them will be noted. The most typical arrangements employed by the agreements will be examined closely, while a brief look will be taken at some less used commodity control schemes. The history of failures, and a few successes, of the organizations will be related. The economic arguments against such schemes as well as a number of guidelines will be presented.

II. THIRD WORLD RELIANCE UPON THE EXPORT SALE OF PRIMARY COMMODITIES

Primary commodities are the products of primary industries, which have been defined as "those industries which supply foodstuffs and raw materials by agriculture or mining in the form in which they are first exchanged internationally."\(^2\) All countries produce some primary commodities, but none are self-sufficient. Developing countries (members of the so-called

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\(^1\) N.Y. Times, May 14, 1975, at 1, col. 6. On September 1, 1975, the United States indicated an even greater willingness to work toward "global consensus and economic development." Included among the recommendations was one aimed at creating "consumer-producer fora" on every key commodity. Such fora would encourage discussion on how to "promote the efficiency, growth, and stability of each commodity market." Address by Daniel Moynihan, United States Representative to the United Nations, before the United Nations General Assembly, Sept. 1, 1975, in 73 DEP'T STATE BULL. 425, 437 (1975) (speech written by Secretary of State Henry Kissinger) [hereinafter cited as Moynihan Address]. The United States also indicated its willingness specifically to enter into commodity agreements, in addition to the discussions. Id. at 436-37.

\(^2\) J. ROWE, PRIMARY COMMODITIES IN INTERNATIONAL TRADE 2-3 (1965) [hereinafter cited as ROWE].

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"Third World") which have a surplus of one or more primary products must export the products in order to finance the import of other primary products or, especially, manufactured goods. Industrially developed nations similarly export their surplus manufactures or primary commodities in order to finance their own deficiencies, often of other primary products. Generally, the economic status of those developing countries which must rely on trade in primary products to finance their imports is disadvantaged in comparison to the economic status of developed countries. In developing lands, the rural sector represents 70 to 80 percent of all production, while in the developed nations the rural sector represents only 10 to 15 percent. Commodity exports of all types account for some 88 percent of the total foreign exchange earnings of the developing countries. Thus, the developing countries must rely primarily upon a sector which is plagued with low levels of productivity, extremely inadequate economic infrastructures, a productive community often unreceptive to new ideas, and insufficient expertise for research and marketing. It is contended by most authorities that this reliance upon earnings from the export sale makes developing nations quite vulnerable to market fluctuations, especially downward price trends. A wide range of factors in the areas of supply and demand lead to this instability in the export earnings from the sale of commodities:

Supply Variables
(1) Political crises, wars;
(2) Business cycle;
(3) Subsidies, export policy;
(4) Surpluses and disposal;
(5) Market information;
(6) Shipping rates;
(7) New technology, methods of production;
(8) New competition;
(9) Weather;
(10) Crop plagues;
(11) Crop production cycles; and
(12) Discovery of new resources.

Demand Variables
(1) Political crises, wars;
(2) Business cycle;
(3) Protection, import policy;
(4) Stockpiling and disposal;
(5) Speculation; and
(6) Synthetics, substitutes.

3 Id. at 2.
4 Cracknell, *The Slippery Path to an Oilseeds Agreement*, 4 J. World Trade L. 743, 753 (1970) [hereinafter cited as Cracknell]; see A. LAW, INTERNATIONAL COMMODITY AGREEMENTS 2-6 (1975) [hereinafter cited as LAW].
6 Cracknell, supra note 4, at 753.
8 Id. at 315.
For many developing countries, the transformation of raw material exports at home into processed semimanufactured and manufactured goods offers an opportunity for greater development and less reliance upon the sale of the commodities themselves. Tariffs in developed countries are, however, generally such that the often less efficient manufactures of developing countries are, or would be, priced out of the markets of the developed world. Developed countries have introduced “generalized trade preferences” aimed at reducing the tariffs upon all products of developing countries. But the developed lands have limited the thrust of the preferences by placing numerous nontariff restrictions upon the imports. These include restrictive licensing, quotas, subsidies, preferential purchasing arrangements, and other administrative requirements. As a result, developing lands have for the most part continued to rely heavily upon their earnings from the export sale of primary commodities.

Developing nations contend that the growth of their export earnings from increased production or prices over the years has been inadequate to sustain a satisfactory rate of economic development. The countries are said to have no means of cushioning the impact of a decline in the purchasing power of their exports of primary commodities, whether brought about by a decline in their export prices or by an increase in the prices of imported goods and services. Consequently, developing countries . . . cope with the rise in the prices of their imports of manufactured goods, occasioned by rapid inflation in the developed market economy countries, only by severely restraining essential imports or incurring greater indebtedness.

Some economists contend that there has not been a long run, downward trend in terms of trade of primary products. The United Nations Conference on Trade and Development (UNCTAD) asserts, however, that there has been a general increase in the price of imports to developing countries and a general decrease in the price of exports from developing countries from the mid-1950’s to the late-1960’s. The net deterioration in the terms of trade during that period was assessed by the Conference at approxi-
mately 12 percent. Despite a 70 percent increase in commodity export surpluses (excluding petroleum and petroleum products) from 1970 to 1974, the deficit in the trade balance of the developing countries more than doubled in that period, totaling about US$10 billion. Indeed, in recent years it has been other third world countries which have contributed most to the decline in the terms of trade of the developing countries. The non-oil-producing countries of Latin America had to expend some US$3.8 billion for oil imports in 1974. This amounted to about 37 percent of the monetary reserves and 23 percent of the export revenues of the countries in 1973.

Some commentators, however, sharply dispute the widely-held contention that the developing countries' reliance on the export sale of primary commodities is detrimental. Data has shown that export instability (short-term fluctuation in export earnings corrected for trend) has generally been greater among developing lands, but not to a significant degree. Indeed, "[o]n four different indices of instability Australia, Finland, and France, for example, have much greater export fluctuations than Brazil, Ceylon, or Panama." Through the use of simple correlation and multiple regression analysis, Alasdair MacBean contends that despite the apparent plausibility of expecting the exports of developing countries to be highly unstable, they are not. "Export instability appears to be hardly related to commodity concentration at all, to be very weakly, if at all, related to the proportion of exports which are primary goods, and to be negatively related, if anything, to geographic concentration." Some experts argue that the number of variables (i.e., the statistical method selected to correct for trends, the coverage of countries and commodities, and the time period examined) involved in such a study cast doubt upon such conclusions. MacBean admits the possibility of such statistical inaccuracy, yet attempts to show that the statistics are indeed accurate.

Evidence has also indicated that export instability does not retard economic growth. MacBean admits that short-term export instability has

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16 1972 UNCTAD PROCEEDINGS, supra note 14, at 73.
17 Wasserman, Interview with Gamani Corea, Secretary-General of UNCTAD, on the Problem of Production of Primary Commodities, 9 J. WORLD TRADE L. 15, 18-19 (1975) [hereinafter cited as Wasserman, Interview]. When petroleum and petroleum products are included, the export surpluses of developing countries rose 400 percent, while their import deficit of manufactured goods rose only 55 percent. Id.
19 A. MACBEAN, EXPORT INSTABILITY AND ECONOMIC DEVELOPMENT 34-36 (1966) [hereinafter cited as MACBEAN].
20 Id. at 34.
21 Id. at 34-48.
22 Id. at 48.
24 MACBEAN, supra note 19, at 48-56.
25 Schmidt, The Case Against Commodity Agreements, 28 LAW & CONTEMP. PROB. 313,
seriously reduced the ability of underdeveloped countries to achieve high rates of economic growth, but he contends that for underdeveloped countries, in general, export fluctuation has not been an important obstacle to economic growth and development.²⁶

Such statistics may validly represent the overall situation among developing countries, looked upon as an aggregate, since a number of underdeveloped lands, containing the majority of the world's population (India, Pakistan, Brazil, Indonesia, the Republic of Korea, Turkey, and the People's Republic of China), carry on very little foreign trade as a proportion of their gross national products.²⁷ In addition, a number of others enjoy only slightly more unstable proceeds than the average developed country does.²⁸ But such statistics do not alter the fact (indeed, the statistics presented by MacBean and others affirm the conclusion) that for a very large number of developing countries, commodity exports represent the largest proportion of their gross national products and that they are at the mercy of the marketplace.²⁹

III. Prices

Income fluctuations caused by price changes have distressed producers and their communities over the years.³⁰ A major reason for greater fluctuations in the price of primary products is the short run inflexibility of both output and demand for raw materials as compared to manufactured products. It may take a lengthy period (because of growing seasons etc.) to bring about a significant increase or decrease in production of many primary products such as coffee, cocoa, tea, natural rubber, or hard fibers. Even a change in output of annual crops lags behind the market. Most important production decisions are made months in advance of harvest. At best, new price levels affect only the plantings for the next season.³¹ The elasticity of supply and output to price changes is generally higher for mineral products, but is still not substantial. Major costs are usually fixed overhead. Mine operators tend to continue running as long as prices cover

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²⁴ MacBean, supra note 19, at 108-27.
²⁷ Id. at 86. Yet even for the large, highly populated lands, terms of trade have been "severely prejudiced" in recent years because of the rising prices of food, fertilizer, and manufactures, in the absence of equivalent rises in their export prices. Schachter, supra note 15, at 103. Again, the OPEC pricing policy has been a most significant factor in the increase of the price of manufactured goods to the developing countries. Wasserman, Multi-Commodity Approach to International Agreements, 9 J. World Trade L. 463, 464 (1975) [hereinafter cited as Wasserman, Multi-Commodity Approach].
²⁶ MacBean, supra note 19, at 86.
²⁹ Hager, supra note 7, at 314.
³¹ MacBean, supra note 19, at 23-24.
the operating costs. The closing and reopening of mines involve substantial costs. Further, most mines operate on a shift system of labor and are thus strictly limited in capacity to vary labor input. Therefore, in terms of output and supply of raw materials, as a general rule, price fluctuations do not lead to swift changes in supply.32

On the demand side, responses to changes in the prices of most food and raw materials are slight. Price elasticity for food and beverages has always been low. National custom, rather than relative prices, often determines "whether people drink coffee or tea or eat maize, wheat, rice, barley or potatoes as their staple food."33 The cost of commodities often represents only a fraction of the cost of a final product (e.g., raw cotton in a shirt or aluminum in an airplane), so that a substantial change in the commodity price will hardly be reflected in the price of the finished product.34

As a result, the low supply elasticity will mean that a change in demand will induce a disproportionately large fluctuation in the price of a product. Similarly, if the price elasticity of demand is low, a change in supply caused by exceptional weather conditions, political crises, diseases, or the like, will cause a sharp change in price also.35

There have been large price fluctuations over the years. By the early 1950's, commodity prices were 2 1/2 to 3 times above the depressed levels of the late 1930's, but only about 15 percent higher than the price of the pre-Depression years of 1924-1928. The Korean War brought about excess demand which led to a peaking of prices, followed by a declining trend for a decade. By the early 1960's, prices of many important foods and raw materials had reached relatively low levels. An upward trend in prices began in 1963 and accelerated throughout the decade.36 Of 77 developing countries and territories (excluding petroleum exporters) included in an UNCTAD study, only 15 benefited from a significant improvement37 in terms of trade over the whole of the period from 1954-1956 to 1968-1970. These 15 lands accounted for only one-sixth of the total population of the 77 countries in 1969. Forty-eight of the developing countries and territories, accounting for over three-fourths of the total population, suffered from a significant deterioration in the terms of trade. So, despite the number of peaks in commodity prices, the fluctuation as a whole has not led to an improvement, but rather to a deterioration of the buying power of the majority of developing lands.38 UNCTAD reports that during the same time span, the net barter terms of 24 developed countries included in the

32 Id. at 24.
33 Id.
34 Id. at 25.
35 Id.
37 A "significant" improvement or deterioration means more than 5 percent. Id. at 77 n.10.
38 Id. at 77.
survey increased 18 percent.39

The 1970's have shown extraordinary commodity price fluctuation, spurred by shortages and rampant speculation in commodity markets. Costs of copper, rubber, cocoa, coffee, platinum, and cotton rose sharply in 1973 and 1974—many doubled or tripled in price.40 In 1973, the price of wheat doubled, the price of rice more than doubled, and the price of zinc tripled. The aggregate price of non-ferrous metals exported by developing countries rose 85 percent in the same year.41 The dollar price index of all primary commodity exports rose by about two-thirds in 1973, and their actual value rose by 40 percent.42 However, after the oil crisis pushed the West into recession, commodity prices tumbled. Copper, for example, had risen nearly 300 percent in 17 months, peaking at US$1.40 per pound in 1974. In May 1975 the price had fallen to US$0.56 per pound.43 A number of developing countries contend, however, that the recent price boom did not benefit all developing countries. They also insist that the developed market economy commodity exporters had been benefited more than they had. They suggest that the gains of the developing countries were wiped out by the inflationary rise in the prices of manufactures and other essential imports such as fertilizer, (often caused by petroleum price increases) which served "not only to reduce the purchasing power of their exports but in some cases had precipitated a drastic fall in their standard of living."44

IV. OBJECTIVES OF COMMODITY AGREEMENTS

The excessive price fluctuations and the tendency of commodity prices to lose pace relative to industrial commodity prices, have led primary producers to a number of actions. The basic purpose behind all development activity is to improve the standard of living of the developing countries, mainly by altering "the regressive redistribution of income which has been taking place between developed and developing countries."46 This can be done in a number of ways: (1) by including third world lands in progressive, regional economic groupings; (2) by transferring technology, including know-how and patents, to developing countries; (3) by lowering trade barriers to their manufactured goods; (4) by promoting and expanding their industries through investment; (5) by increasing financing of third world projects through such agencies as the World Bank; (6) by increasing

39 Id. at 100. The phrase "net barter terms" may be used interchangeably with the phrase "terms of trade." Id. at 73.
40 TIME, May 26, 1975, at 71.
42 Id. at 598.
43 TIME, May 26, 1975, at 71.
44 1974 UNCTAD Report, supra note 13, at 23.
45 Secretary-General of UNCTAD, Toward A New Policy for Development 43 (1964) [hereinafter cited as UNCTAD, New Trade Policy].
the use of international commodity organizations. Although this study is concerned with the latter course, it is important to note that commodity agreements alone (except possibly in unusual cases, as with the OPEC nations) are probably not the solution to the problems of the developing world. They may form, however, a significant component of a comprehensive plan which, all parts working together, will eventually bring the standard of living of the third world to a closer level with that of the developed world.

The ultimate purpose of a commodity agreement is to secure adequate foreign exchange earnings for developing, primary-producing countries. UNCTAD, a strong proponent of the use of commodity agreements, suggests that the agreements are aimed at securing "prices for commodities which are equitable, stable and remunerative, as well as . . . [improving] the trend of the commodity export earnings of developing countries by such methods as the widening of access to the markets of the industrialized nations." Commodity agreements are designed to alleviate the problems of annual price instability, seasonal marketing difficulties, and pronounced price trends. The agreements are aimed not only at price stabilization, but also at price augmentation in order to better the economic position of the primary exporters. In order to bring about such a change, "[i]t is necessary . . . to face up squarely to the fact that the international price of commodities would, in general, have to be supported at levels higher than those which would prevail in the absence of international regulation." Developing countries aim to raise and stabilize prices at the highest possible level that will not incur excessive production growth or significant restriction in the expansion of consumption. The conservation of natural resources has recently become an objective of certain producers (especially the petroleum producers) because of the foreseeable exhaustion of the resources in the not so distant future.

Therefore, the general purpose of lands in the establishment of international economic organizations to control commodity prices is to improve their standard of living through the stabilization and augmentation of the prices of their natural resources.

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46 1968 UNCTAD PROCEEDINGS, supra note 12, at 387-408.
47 Wasserman, Towards an International Cocoa Agreement?, 2 J. WORLD TRADE L. 521, 537 (1968) [hereinafter cited as Wasserman, Cocoa Agreement]. For a discussion of 11 different goals of commodity agreements see LAW, supra note 4, at 75-81.
48 Ahooja-Patel, UNCTAD, 3 J. WORLD TRADE L. 231 (1969) [hereinafter cited as Ahooja-Patel].
49 Fisher, supra note 5, at 404.
50 Hager, supra note 7, at 310.
51 UNCTAD, NEW TRADE POLICY, supra note 45, at 44.
52 1968 UNCTAD PROCEEDINGS, supra note 12, at 236.
53 See E. MASON, CONTROLLING WORLD TRADE 140-41 (1st ed. 1946) [hereinafter cited as MASON]. See also LAW, supra note 4, at 76.
V. DIFFICULTIES IN THE ESTABLISHMENT OF COMMODITY AGREEMENTS

Following the overwhelming success of the OPEC cartel, numerous countries have made renewed efforts to establish similar agreements. Establishing such an agreement and succeeding are two different problems. (Here the discussion does not concern the effectiveness of established agreements, but rather the establishment of agreements.) The OPEC success will be hard for other commodity groups to match. An effective commodity organization will need a good deal of economic "clout." OPEC's power, in that respect, has not been approached by any other group of primary products producers. Most of the commodity countries are not protected against economic retaliation from importers to the extent that the oil lands are. This is due to the oil producing countries' small populations and lack of dependence on imports. The oil exporters are few in number, while those offering other commodities are usually numerous. While it is not necessary to control the entire world production of a commodity in order to stabilize and augment the price, the more comprehensive the coverage (i.e., the greater the number of nations which join), the more effective the agreement should be. Certain lands may be unwilling to join the organization. There may be enormous differences between the needs and views of the large producers and those of the small producers. Small producers are often afraid to join, believing that their interests will be sacrificed for the sake of agreement between the large exporters. New producers and small producers which are expanding their production may fear to enter into an agreement which may set up production formulae based on past production levels. Some countries may not be willing to shoulder the heavy financial burden with which they would be confronted in order to build up stock reserves.

Thus, those countries wishing to establish a commodity organization face numerous obstacles. The nature of commodity agreements is such that in order to be effective, a large percentage of all production of the commodity must be controlled. These obstacles may prevent such controls and must be overcome before a worthwhile (from the producers' point of view) commodity organization can be established.

N.Y. Times, May 14, 1975, at 5, col. 1. Recent attempts have included those by the producers of copper, bauxite, iron, and coffee. Franck & Chesler, supra note 41, at 597-98.

Wasserman, Multi-Commodity Approach, supra note 27, at 466-67.

Wasserman, Multi-Commodity Approach, supra note 27, at 466-67.

Id. There are other exceptions, however. Chile, Peru, Zambia, and Zaire export 80 percent of the world's copper; Malaysia and Bolivia export 70 percent of the world's tin; Guinea, Guyana, Jamaica, and Surinam export 95 percent of the world's bauxite. Franck & Chesler, supra note 41, at 588.

Gerhard, Commodity Trade Stabilization Through International Agreement, 28 LAW & CONTEMP. PROB. 276, 286 (1963) [hereinafter cited as Gerhard].

Id.


Wasserman, Cocoa Agreement, supra note 47, at 526. For a discussion of these and other difficulties see Law, supra note 4, at 81-83.
VI. THE DEVELOPED WORLD'S RESPONSE TO COMMODITY AGREEMENTS

The developed world has traditionally opposed the establishment of commodity agreements. Such agreements have been called "charity in disguise." Fundamental economic principles, it is said, demand that prices be related to the cost of production. "If commodity control is to be used in this way to stabilize prices at an artificially high level, the result will be disastrous to the world's economy and to the growth of the world's wealth at the maximum rate." The contention is that if supply and demand are not allowed to regulate prices and production, then land, labor and capital will be left unused or misapplied. Developed lands long opposed any sort of a program which would include efforts to deal with the problems of price fluctuations of all commodities. For that reason, the preparatory meeting for an energy conference broke down in Paris in April 1975. Developed countries insist also that commodity agreements, if they must exist at all, should always take into account the interests of both producers and consumers.

In recent years developed lands have begun to move away from their traditional total opposition to commodity organizations. They have urged, for example, that:

(1) Where prices of primary commodities are clearly not reasonably remunerative to producers, appropriate efforts should be made to strengthen such prices to the greatest extent possible;
(2) Excessive price fluctuations should be eliminated;
(4) Product prices, *inter alia*, should contribute to providing producing countries with financial resources necessary to implement a policy of economic expansion, including a commodity policy that helps over-all development . . . .

Present announcements by the United States indicate a new willingness (forced by the realities of the petroleum situation) to attempt to solve the problems concerning commodities. This and other developments (such as the Lomé Convention, to be discussed later) demonstrate that the developed world is coming to the conclusion that it must support the quest of the developing countries to increase their standard of living, even if it means a misallocation of resources, and perhaps, a reduction of their own standard of living. Actions like the OPEC price increase and embargo seem

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62 Rowe, *supra* note 2, at 215.
63 Id.
64 Id.
65 N.Y. Times, May 14, 1975, at 1, col. 6.
68 See note 1 *supra* and accompanying text.
69 N.Y. Times, May 14, 1975, at 1, col. 6.
70 See notes 114-23 *infra* and accompanying text.
to be forcing the developed world into a position of a greater accomodation to the developing world.

The developed world’s “free market” attitudes toward commodity agreements are often opposed by developing lands as inconsistent with certain policies of the developed world:

If consistency is a measure, however, it is significant that neither ICA [International Coffee Agreement] benefits accruing to developed producer countries (or to developed consumer countries under the multi-lateral contract schemes), nor domestic farmer price supports are commonly referred to as “aid.” Furthermore, ICA benefits may be distinguished from governmental grants in at least three important respects; (1) except in compensating schemes, the burdens fall on individual consumers, rather than governments; (2) depending upon the producing country’s tax policy, the benefits accrue to individual producers; and (3) especially in the production of raw materials, foreign investors from the developed countries may benefit in the form of increased profits.7

Protective tariffs in Western Europe enable domestic producers to receive prices far higher than those prevailing on the international market. Subsidies often allow Common Market producers to keep prices at a low-level.72 The United States has had until very recently a broad system of agricultural price support. In Canada, a governmental agency exerts monopoly powers over the marketing of wheat.73 In addition, a number of restrictive business practices are allowed by the laws of many developed countries. The most common of these are export cartels.

Export cartels of firms in developed market-economy countries may in theory affect the export interests of developing countries in three ways. First, they can discriminate against developing countries, in terms of price or otherwise, in the sale of such products or they can refuse to sell to the developing countries production equipment, vital raw materials or intermediate goods which they need for their export industries. Secondly, adverse effects on the export interests of developing countries may occur when exporters from developing countries are confronted in their export markets with powerful export cartels of firms in developed market-economy countries. These firms may apply monopolistic practices, such as predatory prices, to exclude developing countries’ exporters. Thirdly, export cartels of firms in developed market-economy countries may be detrimental to the export interests of developing countries where such cartels allocate export markets and where this allocation includes subsidiaries of the parties located in developing countries.74

Other practices often allowed by the developed lands are restrictive licensing agreements, which often limit the exportation of products made

7 Hager, supra note 7, at 320.
72 UNCTAD, NEW TRADE POLICY, supra note 45, at 12.
74 UNCTAD SECRETARIAT, RESTRICTIVE BUSINESS PRACTICES 36 (1971).
under the licenses.\textsuperscript{75} In addition, there are certain less-used practices such as: (1) import cartels (often set up to force lower prices);\textsuperscript{76} (2) rebate cartels (agreements that require the seller to rebate a certain amount of the purchase price in exchange for the purchase);\textsuperscript{77} and (3) agreements on standards (product standards set up by trade associations, and competitor agreements, sometimes on discriminatory bases).\textsuperscript{78}

Thus, the developed world’s approach has been one of both ideological opposition to, and a sometimes reluctant embracing of, commodity agreements. At the same time, the states utilize or fail to outlaw a number of interferences with the free market system which affects the ability of countries to export.

VII. SCHEMES USED BY INTERNATIONAL COMMODITY ORGANIZATIONS

A number of schemes have been used by the commodity organizations to regulate the inflow of income from commodity export sales. Three of the most common forms will now be examined in some detail and a number of others will be briefly listed. It is important to keep in mind that the main schemes are almost always used in conjunction with one or both of the other two.

A. General Pricing Mechanisms

There are three traditional pricing mechanisms. The first is the “automatic” scheme in which a control body sets maximum and minimum prices, and within this range the market price finds its own level. The advantage of the automatic scheme is that

the control operates openly and all concerned know where they are, so that merchants can continue their business in much the ordinary way. It may even be possible to maintain a certain amount of organized speculation with its facilities for hedging. The job of the control is then obviously much easier as long as its resources enable it to hold the price at the fixed limits with absolute certainty. On the other hand, the price is controlled only within the range—the bigger the range, the easier the control, but the less the stability of the price.\textsuperscript{79}

The International Wheat Agreement,\textsuperscript{80} of this type, established the price
range for one quality of wheat (No. 1 Manitoba Northern in storage at Fort William/Port Arthur), with formulae for deriving the minimum and maximum prices for other wheats and ports of export from the base type. Although prices were always maintained above the minimum until 1967, difficulties arose whenever the minimum was approached. After 1967, the control was unable to keep wheat prices above the minimum, because of exporters' disposal of supplies in the face of an overall decline in requirements, and because of increasing competition from nonmember countries. In recent years the price of wheat has soared over the maximum prices because of crop failures in different parts of the world.

The second mechanism is an arbitrary scheme in which the control is free to fix the price where it will and to adjust products or quotas accordingly. The third mechanism is a compromise scheme, where the control is free to act between maximum and minimum prices, but must sell or buy a buffer stock at these prices to the limit of its resources and adjust production to hold the market price at these limits. Through the utilization of both of these pricing schemes,


81 1949 Wheat Agreement, supra note 80, art. VI.
84 Rowe, supra note 2, at 195.
greater stability of the price may be obtainable, for the control can put up the price appreciably to choke a market scramble, or put it down to encourage buying. On the other hand, such arbitrary schemes are likely either to bring ordinary normal merchanting and speculative activities to an end, because it is too difficult to guess what the control may be going to do next; or, on the other hand, if doubts as to the control's powers arise, large-scale speculation may be stimulated and give rise to a situation which the control may find is very difficult to remedy. The element of secrecy has its advantages, but it means that the control must be very strong.\footnote{Id.}


when they are in the upper or lower ranges, he must intervene. At different times, however, the manager has been unable to keep the prices below the maximum.

Developing countries recently have propounded a system whereby the level of minimum prices for commodities would be related to changes in the prices of manufactured goods imported by developing countries. The price range would also be set to achieve a minimum rate of growth of export earnings. The developing countries desire that this system of "indexation" should cover as wide a range of commodities as possible. Such a scheme has been vigorously opposed by the developed world.

B. Buffer Stocks

A second scheme used quite often in connection with one of the aforementioned pricing mechanisms is the buffer stock. UNCTAD has recommended that buffer stock techniques be used as one of the methods for market stabilization. In fact, the buffer stock is one of the most widely advocated stabilization measures.

Such a scheme involves fixing a price range within which commodity prices are left free to vary but which is maintained by the stock agency's purchases and sales. When price falls to the lower limit, the [buffer] agency stands ready to buy the excess supplies at the floor price. Provided the agency has sufficient funds, price can be held at the lower limit by purchases for stock. If the price rises above the upper limit, the agency sells the commodity from its stocks at the ceiling price, and so long as its stocks last, the price can be held at or below the ceiling. The effectiveness of the scheme... depends on the size of the gap between the ceiling and the floor price and the ability of the agency to defend these. This latter in turn depends on the resources of the scheme in the form of cash as well as stocks of the commodity in the desired grades.

Since the scheme requires storage, only commodities which suffer insignificant deterioration in storage may be used, thereby eliminating a large number of agricultural commodities.

In principle, the mechanism has great merit.

It interferes as little as possible with the free workings of the price mechanism as an allocative influence on producers and consumers. Moreover, when it does interfere, it does so minimally, avoiding such distasteful

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90 Wasserman, Fourth International Tin Agreement, 5 J. WORLD TRADE L. 355 (1971).
91 1968 UNCTAD PROCEEDINGS, supra note 12, at 236.
93 Id. at 25.
94 Ahooya-Patel, supra note 48, at 232; see LAW, supra note 4, at 71-73.
95 MacBean, supra note 19, at 269.
96 Id.
97 Warmington, supra note 30, at 302-03.
features as destruction of crops or restriction of output. It allows free entry and exit to and from the industry, thus enabling the more efficient producers to grow and the less efficient to decline. These features make it as nearly as possible a neutral influence on the efficiency of the industry and in most cases neutrality is likely to be preferable.

The use of buffer stocks can prevent unemployment or underemployment because there is less need to cut production in times of low demand, because of purchases by the buffer stock manager.

However, there are a number of disadvantages to use of the buffer stock. As already mentioned, perishable products (most fruits) cannot be used. Another disadvantage is:

[T]he size of the stockpile required to offset strong increases in demand is probably prohibitive, as is the amount of reserve funds required to stem price declines occasioned by severe demand contractions or supply increments. Such schemes are effective in dampening the consequences of minor shifts of supply and demand but not those of substantial changes.

If a scheme is to be successful in reducing price instability, the range of price movements must be kept fairly level. A very large initial fund of stock would be required for an agency to keep prices within a narrow range. For example, a relatively modest stock of 200,000 metric tons of natural rubber would represent an investment of around US$100 million at 1964 prices. Once a stock is obtained, the financial and physical costs of holding large stocks are usually heavy. Liquidation may involve serious financial loss.

The tin agreements which used a buffer stock found that the scheme was often ineffective, as well as costly, in altering strong trends in market prices. Regardless of the funds at the manager's disposal, the buffer stock was acutely vulnerable to strong, sustained buying by speculators. In times of shortage, there was often simply not enough metal to make an effective contribution. Representatives of developing countries have proposed that the financing of the buffer stock be equitably shared by the producers and the consumers. The developed lands reacted differently to the suggestion. Some accepted the proposition, but indicated that the criteria for cost-sharing should be determined on a case-by-case basis; others rejected the proposal while urging strong reliance on private and international financial institutional financing by the developing countries.

In summary, the buffer stock is most effective when used:

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88 MacBean, supra note 19, at 269.
89 Rowe, supra note 2, at 189-90.
100 3 G. Myrdal, Asian Drama 2198 (1968) [hereinafter cited as 3 G. Myrdal].
101 MacBean, supra note 19, at 270.
102 Rowe, supra note 2, at 191.
103 Agreements cited note 88 supra.
104 Edwards, supra note 89, at 245.
105 1968 UNCTAD PROCEEDINGS, supra note 12, at 235.
(1) where the main cause of price fluctuations lies in speculative changes in demand and where speculators are often wrong;
(2) where production periods are relatively fixed and long;
(3) where the sensitivity to price changes in demand and/or production is low, so that it takes relatively strong price impulses to bring about an adjustment in quantities; [and]
(4) where the long-run market trends are comparatively stable.\textsuperscript{104}

C. Quantitative Restrictions

The third major form of regulation is that of quantitative restrictions, or quotas.

Regulation of export quantities by adoption of quotas forms another method of moderating fluctuations in commodity prices. The over-all permitted quantity of exports is determined at a level which will satisfy current and expected demand at prices approximating to informed estimates of long-run equilibrium price. Individual country quotas are usually determined on the basis of historical market shares. Ideally, however, they should take into account differences in cost structures in the exporting countries and should allow frequent adaptation to alterations in productivity—increasing the quotas of the more efficient and decreasing those of the less efficient. Adaptable quota schemes could achieve the same aims as international buffer stocks without the high initial capital outlay, the risks of financial loss, or the storage problems.\textsuperscript{107}

The coupling of buffer stocks and quotas may provide the most effective regulation of prices.\textsuperscript{108}

There are, of course, certain disadvantages to the use of quota systems. Producers outside the control scheme are stimulated to increase their output, resulting in an even greater need for output restriction by organization members.\textsuperscript{109} A freezing in the existing pattern of production may occur, which stifles technical progress.\textsuperscript{110} Quota allocation schemes often do not allocate production on the basis of cost or efficiency. Rather, the allocation may depend upon “extraneous matters, ranging from the prior volumes of exports of individual countries to the skill, persistence, and eloquence of the country representatives.”\textsuperscript{111} As a result, misallocation of resources and inefficiencies in world production may occur.\textsuperscript{112} Thus, the quota system also has advantages and disadvantages.

D. Other Schemes

A number of other commodity control schemes have been presented.

\textsuperscript{104} Gerhard, supra note 58, at 285-86.
\textsuperscript{107} MacBean, supra note 19, at 273.
\textsuperscript{108} Rowe, supra note 2, at 191; see Law, supra note 4, at 73-74.
\textsuperscript{109} Rowe, supra note 2, at 192.
\textsuperscript{110} Id.
\textsuperscript{111} Schmidt, supra note 25, at 320.
\textsuperscript{112} MacBean, supra note 19, at 274.
1. Price Stabilization-Financial Compensation Schemes

One proposal is a system of international commodity price stabilization with some form of international financial compensation paid selectively by developed countries to the primary producing countries whose foreign exchange earnings from a commodity in a specific year fall below a certain percentage of their own trend in earnings.

In exchange for the advantages of commodity price stabilization, industrialized countries would in this way agree to contribute selectively to filling the worst of the troughs in earnings suffered by exporting countries because of crop failures and similar circumstances. Governments of exporting nations would be better able to plan schemes of development on the basis of a reasonable guarantee of minimum levels of foreign exchange earnings.  

The Lomé Convention, recently completed between member states of the European Economic Community (EEC) and 46 African-Caribbean-Pacific (ACP) states, fits partially into this category. The Convention includes, inter alia, provisions for trade cooperation, industrial cooperation, financial and technical cooperation, and provisions for export earnings from commodities. With regard to the latter, the Convention states:

With the aim of remedying the harmful effects of the instability of export earnings and of thereby enabling the ACP States to achieve the stability, profitability and sustained growth of their economies, the Community shall implement a system for guaranteeing the stabilization of earnings from exports by the ACP States to the Community of certain products on which their economies are dependent and which are affected by fluctuations in price and/or quantity.  

The EEC pledges to make noninterest-bearing financial transfers to ACP states whose export earnings (from exports to the Community of any of 12 product groups) show a significant decrease in a particular year.

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113 Warmington, supra note 30, at 307.
115 Id. title I.
116 Id. title III.
117 Id. title IV.
118 Id. title II.
119 Id. art. 16.
120 Id. art. 19, para. 5.
121 Id. art. 21, para. 1.
122 Id. art. 17. The groups include: (1) groundnut products; (2) cocoa products; (3) coffee products; (4) cotton products; (5) coconut products; (6) palm, palm nut, and kernel products; (7) rawhides, skins and leather; (8) wood products; (9) fresh bananas; (10) tea; (11) raw sisal; and (12) iron ore. Id. It should be noted that, except for iron ore, decreases in export earnings from mineral products are not included. Special treatment is given to sugar. See notes 166-68 infra and accompanying text.
from a reference level to be determined by the EEC Commission. The Convention does not speak, however, to the question of price stabilization or supply commitments. The EEC is not gaining any of the advantages of the stabilization-compensation scheme under discussion. The export earnings of the ACP states are to be protected from depreciation. The EEC is not protected from appreciation. Nevertheless, the Lomé Convention does provide an illustration of the way that the financial compensation segment of a stabilization-compensation system may be implemented.

2. International Marketing Organization Scheme

Another solution involves a single international marketing organization created with an effective monopoly in the purchase and sale of the commodity. A multiple pricing system would be established. The agency would purchase the whole of each season's output at purchasing prices determined so as to stabilize total export earnings or foreign exchange earnings of producers around a defined trend in revenues—prices which might vary considerably from region to region of the world. It would then set a selling price and sell any quantity demanded, but only at the one uniform price.

Selling price and purchasing prices in any given year might be widely different but would have to remain closely related to each other over the course of the trend period as a whole, and would never get permanently out of step.

This system, so long as it could confidently be seen to reflect the market trend over the defined period, would avoid restriction of output, raising of prices and distortion in the direction of trade, and yet would satisfy the main criteria needed by each party.

3. Long-Term Contract Schemes

A third, and fairly frequently used form is the multilateral or bilateral long-term contract. When prices fall below an agreed floor, importing countries purchase prearranged quantities of the commodity at the floor price. When prices rise above an agreed ceiling, importing countries purchase prearranged commodities at the ceiling price. Between the limits, trade remains free. Such a contract (assuming it is enforced) assures exporters of an acceptable income, and guarantees importers that they can obtain a quantity of the commodity at a reasonable price. While prices outside the contract are free to fluctuate to any degree, thus serving as a

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123 If there is a decrease of 7.5 percent in total earnings from these exports (5 percent for sisal and 2.5 percent for any export from a "least developed, landlocked, or island" state) from one year to the next, then an ACP state may request an examination by the EEC Commission. The Commission is to determine whether the decrease for one year represents a similar decrease from the "reference level," which is the component of export earnings during the four years preceding the year of application. Lomé Convention, supra note 114, arts. 17, 19. If there is such a "significant change," then the Commission shall authorize a transfer. Id. art. 19, paras. 4, 5.

124 Warmington, supra note 30, at 307-08.
guide for renegotiation of the agreement floor and ceiling, price fluctuations within the scheme are moderated. As no quotas are imposed, easy entry and exit of producers is allowed. Such a contract requires a relatively homogenous product or one with grades of which differentiations remain fairly constant. The scheme must have coordination of national production and consumption policies in order to ensure long-term equilibrium. The residual free market may be made much more instable as a result of the controlled share of the market.\textsuperscript{125}

4. Hybrid Schemes

Lastly, developing nations have proposed schemes which involve a number of these ideas, including price indexation, cooperative actions among producers, wider usage of buffer stocks, and compensatory payments.\textsuperscript{126}

It is evident that there are many possibilities which may be utilized in a commodity organization. What system, or combination of more than one, would be most effective is a question unanswered in this Note. Some authors have suggested recently that a "collective bargaining" approach will (or should) be used to determine what kinds of commodity agreements are reached. The agreements ("contracts") would be arrived at by negotiations of groups ("unions") of states facing other such groups, the resulting agreements would represent the balance of economic power held by the two groups.\textsuperscript{127} All of the benefits and detriments which are seen in the employer-union relationship could be expected to arise if such bargaining comes into wide use. It remains to be seen whether many groups of countries will be able to band together as effectively as employees have today. Much of the power of unions today (at least in the United States) is derived from rights given under various federal statutes.\textsuperscript{128} Absent an international legislature to create and enforce such rights for groups of countries, it is less likely that the producer-unions will be able to emulate the status of labor unions today.

VIII. Commodity Agreements—A Historical Record

At this point the history of commodity organization until World War II will be examined generally. The record of several of the more important commodity agreements since the war will then be examined specifically.

\textsuperscript{125} MacBean, supra note 19, at 275-76; see Law, supra note 4, at 70-71.

\textsuperscript{126} 1974 UNCTAD Report, supra note 13, at 26.

\textsuperscript{127} See M. Olson, The Logic of Collective Action (1965); J. Pincus, Trade, Aid and Development (1967); Franck & Chesler, supra note 41; Hager, supra note 7; Randolph, A Suggested Model of International Negotiation, 10 J. Conflict Resolution 344 (1966).

A. Pre-World War II Commodity Agreements

Prior to World War I there was only one large-scale attempt to control commodity prices—that of the Brazilian coffee producers who controlled 80 percent of the world supply at that time. The scheme entailed a fairly simple regulation of the coffee supply. It was not a success, though not a complete failure. After the war, a fairly large number of private cartels arose, including rubber, sugar, copper, cotton, and tin. Most of these relied on quantitative restrictions and price controls. The cartels were generally successful in preventing an oversupply in a period of high demand during the 1920's. Prices were maintained or increased throughout the period. During the Depression, both private and governmental commodity agreements were concluded. The major schemes covered sugar, tea, wheat, rubber, copper, and tin. Of these, only the tin agreement, which made use of a buffer stock and quantitative restrictions, was successful in maintaining the commodity prices at a reasonably profitable level to the producers. The remaining agreements were largely unsuccessful, plagued by very small demand, often excessive production, and very low prices. World War II brought an end to the organizations, replacing them with direct governmental control. As a whole, the experience of primary producers was not a pleasant one before World War II. By the end of the war, there was broad agreement that commodity policy should have three

1. To develop an expanding world economy with an increasing production and consumption of material wealth.
2. To preserve a reasonable stability of prices about the current long-period trend.
3. To establish and preserve reasonably appropriate and stable incomes to primary producers.

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139 Rowe, supra note 2, at 122; see Law, supra note 4, at 35-37.
140 Rowe, supra note 2, at 120-29.
142 The tea agreements were concluded by the tea trade associations of India, Ceylon, the Dutch East Indies, and the British East African colonies. Rowe, supra note 2, at 149-50.
133 E.g., Final Act of the Conference of Wheat Exporting and Importing Countries, done Aug. 25, 1933, 141 L.N.T.S. 71. While the United States took part in the Conference and initialed the agreement, it never was ratified by the Senate. However, the United States did follow the terms of the agreement. See Rowe, supra note 2, at 152.
135 The copper agreement of 1935 was signed by the copper producers of Chile, Peru, Rhodesia, and the Belgian Congo. Rowe, supra note 2, at 154.
136 E.g., Agreement on the International Tin Control Scheme, done Jan. 5, 1937, 7 International Legislation 618 (M. Hudson ed. 1941).
137 Rowe, supra note 2, at 136-55.
138 Id. at 155.
139 Id. at 157.
B. Post-World War II Commodity Agreements

Since the war, a number of international commodity agreements have been established. The OPEC cartel has been an extremely successful commodity organization because of the ability of the producers of a commodity vital to the developed world to act in unison in raising the price and restricting the production of petroleum. The enormous economic power held by the oil exporters has been sufficient to ensure success, even without two major producers (the United States and the Soviet Union) as members. Other commodity agreements have not been so successful.

1. The International Wheat Agreements

The 1949 Wheat Agreement\(^4\) was a multilateral contract between the governments of four wheat exporters (United States, Canada, Australia, and France) and the governments of 42 wheat importers.\(^1\) Developed lands are the main exporters of wheat;\(^2\) however, this is not true of most commodities. The Agreement provided that when prices prevailing in the international market reached or exceeded the equivalent of US$1.80 per bushel of No. 1 Manitoba Northern wheat, the exporters would supply the quantities allocated to each importer only at the maximum price.\(^3\) The Agreement was a bargain for the importers because most of the time world prices outside the contract were substantially above the maximum.\(^4\) While a minimum price was also set,\(^5\) the price did not fluctuate between the extremes, but stayed near the maximum.\(^6\)

In subsequent years the Agreement was renegotiated. The 1953 Wheat Agreement\(^7\) raised the maximum to US$2.05,\(^8\) causing the world’s largest importer, the United Kingdom to withdraw.\(^9\) Remaining out of the 1956 Wheat Agreement,\(^10\) the United Kingdom reentered in 1959 when the exporters agreed to supply, within the price range of US$1.50 to US$1.90 per bushel, “quantities sufficient to satisfy the commercial requirements of those countries.”\(^11\) The importers agreed to buy, within the price range, specified percentages of their commercial wheat import requirements.\(^12\) The 1959 Wheat Agreement’s major “success” was that it gave the members some assurance that nonmember exporters (especially the USSR)

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\(^{10}\) Note 80 supra.
\(^{11}\) Wheeler, supra note 73, at 392.
\(^{13}\) 1949 Wheat Agreement, supra note 80, art. V.
\(^{14}\) Wheeler, supra note 73, at 392.
\(^{15}\) 1949 Wheat Agreement, supra note 80, art. VI.
\(^{16}\) Wheeler, supra note 73, at 392.
\(^{17}\) 1953 Wheat Agreement, supra note 80, art. VI.
\(^{18}\) Wheeler, supra note 73, at 393.
\(^{19}\) 1956 Wheat Agreement, supra note 80.
\(^{20}\) 1959 Wheat Agreement, supra note 80, art. 4, para. 2.
\(^{21}\) Id. para. 1.
would not obtain an undue share of the world wheat trade. The USSR became a party to the 1962 Wheat Agreement. The 1967 Grains Arrangement raised the price range and established a high level Price Review Committee empowered to make temporary adjustments in minimum prices under exceptional market conditions which prevented a member from making sales at the minimum. These agreements, despite the many adjustments, have not had much influence in stabilizing the prices of wheat. For instance, in 1969 the prevailing market price of reference wheat had fallen from the official minimum price of US$1.73 to US$1.42 per bushel, leading all exporters to refuse the "honor" of having their wheat declared "reference wheat." The price mechanism has simply been inadequate to withstand the pressures placed upon it. In 1971, the provisions relating to prices were removed. The 1971 Wheat Agreement became merely a forum for international cooperation and consultation and as an information bureau. The price of wheat has since risen to dramatic levels because of crop failures. The failure of the agreements has been attributed to the internal agricultural policies of the exporters. The agreements have always applied to commercial transactions only, while a significant portion of the wheat trade has involved "concessional" transactions by governments, which interfered with the system.

2. The International Sugar Agreements

United States law regulates the production of sugar (cane and beet) in the United States and sets quotas for a limited number of foreign suppliers who are allowed to import sugar. The United Kingdom has had a similar policy whereby sugar is imported from Commonwealth lands. The EEC has agreed indefinitely to purchase and import, at guaranteed prices, specific quantities of cane sugar originating in ACP sugar exporters. The Lomé Convention establishes the specific quantities allotted to

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152 Wheeler, supra note 73, at 394.
153 Note 80 supra.
154 Note 80 supra.
155 See id. art. 6; 1962 Wheat Agreement, supra note 80, art 6.
156 1967 Grains Arrangement, supra note 80, art. 31.
157 Id. art. 8.
158 MacBean, supra note 19, at 287.
159 Wasserman, International, supra note 83, at 361.
160 Note 80 supra.
161 Wasserman, Interview, supra note 17, at 16; see Law, supra note 4, at 54 (figure).
162 MacBean, supra note 19, at 287.
163 International Grains Arrangement 1967, supra note 82, at 236.
165 The Commonwealth Sugar Agreement was an agreement made between the Ministry of Food of the United Kingdom and Commonwealth sugar producers on December 21, 1951. The United Kingdom's sugar regulations are found in the Sugar Act, 4 & 5 Eliz. 2, c. 48 (1956), as amended, European Communities Act, c. 68, § 4(1), sched. 3, pt. II (1972).
166 Lomé Convention, supra note 114, art. 25, para. 1.
each ACP state\textsuperscript{167} and the guaranteed price.\textsuperscript{168} Several other lands (e.g., Portugal and the USSR) have similar special arrangements.\textsuperscript{169} The residuum of the world sugar supply (about 40 percent before the Lomé Convention) has been covered since 1953 under the International Sugar Agreement.\textsuperscript{170} The Agreement operated under an export quota system, aimed at keeping the price within the range of US$0.0325 to US$0.0435 per pound.\textsuperscript{171} The control was rather unsuccessful in controlling sugar prices,\textsuperscript{172} they ranged from about US$0.03 to US$0.05 between 1953 and 1960.\textsuperscript{173} In the early 1960's sugar prices soared for the following reasons: (1) Cuban production plummeted; (2) the United States began its boycott of Cuba; and (3) the United States readjusted its quota scheme.\textsuperscript{174} The 1968 Sugar Agreement\textsuperscript{175} assigned to each member a “basic export tonnage” and adopted a minimum price of US$0.0325 per pound and a maximum of US$0.0525 per pound.\textsuperscript{176} Importers agreed to limit their imports from non-members,\textsuperscript{177} and exporters undertook to supply specific quantities of sugar to their traditional trading partners at a maximum “supply commitment price,” of US$0.065 per pound.\textsuperscript{178} Prices fluctuated wildly throughout the 1960's but have remained at a fairly high level in the 1970's because of short supplies. In spite of the shortages, the dominant world market importers, Canada and Japan, were able to obtain the bulk of their supplies.

\textsuperscript{167} Id. protocol No. 3, art. 3.
\textsuperscript{168} Id. annex.
\textsuperscript{169} Southgate, \textit{World Trade in Sugar}, \textit{1 J. WORLD TRADE L.} 595, 601-06 (1967) [hereinafter cited as Southgate].

\textsuperscript{171} 1953 Sugar Agreement, supra note 170, art. 20.

\textsuperscript{172} Of course, the labels “unsuccessful” and “successful” are very much related to the time frame from which the particular phenomenon is viewed.

\textsuperscript{173} MacBean, supra note 19, at 289-90.
\textsuperscript{174} Southgate, supra note 169, at 608-09.
\textsuperscript{175} Note 170 supra.
\textsuperscript{176} Id. art. 48.
\textsuperscript{177} Id. art. 28.
\textsuperscript{178} Id. art. 30.
at the supply commitment price, even though the price on the free market was US$0.10 per pound. A major reason for this extraordinary instability in the free market price of sugar is the narrowness and residual nature of the free market. Comparatively small changes in supply will produce enormous price changes. In 1974, the phenomenon was observed at its worst. Since the expiration of the last agreement in 1973, sugar producers and importers have not been able to conclude another. Until a sugar agreement can control a larger share of the world market, there is little hope of attaining a high degree of success in stabilization of sugar prices.

3. The International Coffee Agreements

Coffee is among the more logical candidates for a commodity agreement. It is an object of relatively inelastic demand, is produced solely in developing countries, and has no close substitutes. It is the most important agricultural product in the world in volume of sales, second only to petroleum in all primary commodity trade. The United States accounts for about one-half of all world consumption, and the EEC accounts for another one-fourth. Superseding a number of regional coffee organizations of the 1950's, the International Coffee Agreement was concluded in 1962. The Agreement established three different quota systems. First, there was a basic export quota assigned to each country, representing the member's share of the world market. The second quota was the annual export quota, based on an estimate of total world imports and probable nonmember exports for the year. The last was the quarterly quota, aimed at ensuring orderly marketing throughout the coffee year. In 1965, a price mechanism was added which established a ceiling and floor for the price of coffee. Certain defects were encountered and partially corrected as noted in a previous section. When the Agreement entered into force, signed by 32 exporters and 22 importers, it represented 95 percent of world production and consumption. The control of such a large percentage of the market promised effective regulation, assuming the Agreement was to be observed. The duty was placed upon exporting lands to send certificates of

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179 Smith, Sugar Markets in Disarray, 9 J. World Trade L. 41, 48 (1975) [hereinafter cited as Smith]; see Law, supra note 4, at 50 (figure).
180 MacBean, supra note 19, at 289.
181 Smith, supra note 179, at 45.
182 See id. at 43-44, 61.
183 Fisher, supra note 5, at 403-04.
184 International Coffee Organization, supra note 87, at 360.
185 1962 Coffee Agreement, supra note 86.
186 Id. art. 28.
187 Id. art. 30.
188 Id. art. 31.
189 Fisher, supra note 5, at 406-08.
190 See note 87 supra and accompanying text.
191 International Coffee Organization, supra note 87, at 368.
origin with all coffee shipments. Each importing member had the duty to prohibit the entry of any shipment of coffee from any member which was not accompanied by a certificate. Sanctions were to be imposed upon the exporter in the event of overshipment. The sanctions included: (1) reduction of the future quotas of a violator by the amount of overshipment for one or more quotas; (2) double penalties for second violations; and (3) quadruple penalties for third offenses.\footnote{102} The system was easily evaded as certificates were often delayed or forged and there were no sanctions placed upon importers who failed to enforce the Agreement. Another problem was the weak regulation of imports from nonmembers.\footnote{103} In 1966 there was a 20 percent rise in the price of coffee. Millions of bags evaded regulation.\footnote{104} The African producers were very much unwilling to limit their growth and often exceeded their quotas without effective sanctions being enforced against them. Exporters routed coffee through “new markets” and non-member lands (certificates of origin were required of neither) to the importers who were often more than willing to purchase the less expensive nonregulated coffee.\footnote{105} With time, however, the exporters tightened up the certificate procedure, prohibited rerouting through nonmembers and new markets and increased its membership to 99 percent of the world production.\footnote{106} The 1968 Coffee Agreement\footnote{107} further toughened the requirements. The United States passed legislation to enforce the import controls.\footnote{108} The 1968 Coffee Agreement has been fairly successful in terms of price maintenance and stabilization and has significantly improved the foreign exchange earnings of the coffee countries.\footnote{109}

At the end of 1972 the International Coffee Organization lifted all export restrictions on coffee.\footnote{200} Fourteen countries, representing 90 percent of the world production, subsequently established a new agreement among themselves, depriving consumer countries of any say in the regulation of prices and supplies.\footnote{201} The countries then agreed to the 1973 Coffee Agreement.\footnote{202} At the end of 1974, seven Central American coffee producers agreed to withhold portions of their crops in an effort to bolster coffee prices.\footnote{203} Despite these gyrations, the countries have been successful in maintaining the price of coffee;\footnote{204} the Agreement has been renewed twice since 1973.\footnote{205}

\begin{footnotes}
\item[102] Fisher, \textit{supra} note 5, at 409-10.
\item[103] Id. at 410-11.
\item[104] \textit{International Coffee Organization, supra} note 87, at 368.
\item[105] Fisher, \textit{supra} note 5, at 413-14.
\item[106] \textit{International Coffee Organization, supra} note 87, at 368-69.
\item[107] Note 86 \textit{supra}.
\item[109] Fisher, \textit{supra} note 5, at 431; see \textit{LAW, supra} note 4, at 43 (figure).
\item[202] Note 86 \textit{supra}.
\item[203] Franck & Chesler, \textit{supra} note 41, at 600.
\item[204] Wasserman, \textit{Interview, supra} note 17, at 19. This conclusion is not shared by all. Despite
\end{footnotes}
4. The International Tin Agreements

The 1954 International Tin Agreement has been renewed four times. The Agreement includes both consumers and producers. It uses the pricing mechanism discussed previously, which includes maximum and minimum price levels, the use of a buffer stock when the limits are approached, and quantitative restrictions if necessary. Throughout the 1950's and 1960's (except for 1967 and 1968), the price of tin generally rose above the maximum, a result of short supplies and high demand. Buffer stock actions were ineffective in controlling the prices. This trend has continued into the 1970's the 1975 price being at £3,740 per metric ton, up from approximately £700 per ton in 1956. These prices have brought significant benefits to the tin producers (all of whom are developing nations), but present tin resources are being exhausted at a rapid rate. The Tin Agreement has shown that even highly complex and coordinated measures may not be able to control prices in the face of extraordinary demand.

IX. Economic Disadvantages

The history of commodity agreements has been one of few successes. Regardless of the scheme employed, the agreements tend to break down. This Note has already examined the benefits to be gained from an effective commodity agreement as well as some of the disadvantages. This section will examine a number of economically oriented arguments made against the use of the organizations.

A. General Disadvantages

The objections to commodity organizations are numerous. The main ideological objection is that the system interferes with free enterprise and encourages inefficiency. The agreements are said to maintain the status

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203 The United States has not been a party to the tin agreements, although the country has announced its intention to join the latest agreement. Moynihan Address, supra note 1, at 437.
204 See notes 89-90 supra and accompanying text.
205 Edwards, supra note 89, at 243-46.
206 3 G. MYRDAL, supra note 100, at 2194-95; see LAW, supra note 4, at 60 (figure).
207 Wasserman, Interview, supra note 17, at 21.
208 Edwards, supra note 89, at 244.
209 3 G. MYRDAL, supra note 100, at 2195.
210 For a preliminary analysis of the problem see notes 62-67 supra and accompanying text.
211 Hager, supra note 7, at 318.
The Coffee Agreements have indeed frozen market shares, yet they have allowed a significant shift in production capacities. From an economic point of view, inefficiency is said to be inherently "bad." Even so, commodity agreements may partially make up for the inefficiencies they engender by contributing to some of society's other economic goals, such as growth, stability, and equitable income distribution.

It is often argued by proponents of commodity agreements that sharp price fluctuations produce uneconomical patterns of investment by inducing heavy investment in periods of high prices, followed by low returns and uneconomical use of capacity in subsequent periods of low prices and demand. Some commentators dispute this contention, insisting that the incentive to increase production during periods of high prices and to reduce output when prices are low leads to a higher level and value of output over the whole economic cycle and is thus desirable. Commodity agreements would eliminate these incentives in many cases and would be harmful.

The use of buffer stocks has certain disadvantages for those commodities which are suitable for buffer stocks, (i.e., nonperishable goods). The cost of acquisition and storage can be quite high. Liquidation may also involve serious financial loss.

Some contend that even the price stability which commodity agreements are intended to bring is self-defeating. A certainty of proceeds because of stable prices provides an incentive for some producers to increase output, thus tending to lower the price. If product demand is relatively unresponsive to price changes, the lower price will mean lower total proceeds.

It is argued that consumer countries have an immense amount of bargaining power. This power may be used by the developed world if confronted with unreasonable demands by producers. Concerted actions by consumer nations are likely to force the price of a given product below that which would exist in a competitive market, to the detriment of the producers.

Commodity agreements are said to aid the wrong persons, such as rich producers, without increasing the general economic level of the society.

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217 Galloway, The International Coffee Agreement, 7 J. World Trade L. 354, 368 (1973) [hereinafter cited as Galloway].
218 Id. at 369.
219 Id. at 369.
220 Hager, supra note 7, at 318.
221 Mikesell, Commodity Agreements and Aid to Developing Countries, 28 Law & Contemp. Prob. 294, 296 (1963) [hereinafter cited as Mikesell].
222 Schmidt, supra note 25, at 313-14.
223 Id. at 314.
224 Rowe, supra note 2, at 191.
225 Schmidt, supra note 25, at 315.
226 Id. at 318-19.
227 Galloway, supra note 217, at 370.
Such a problem can be remedied through an effective system of marketing boards, export taxes, or a requirement in an agreement that part of the funds received must be channelled into economic development, perhaps by the commodity organization itself. Commodity agreements are said also to help primary producers in the developed world, countries which are not in need of economic assistance (e.g., a lead agreement would benefit Australia and Canada; copper, Rhodesia and Canada; and cotton, the United States).

It is argued that commodity agreements are no more than forms of foreign aid. That being true, the developed world, since it is committed to such aid, should use it effectively not by helping all countries which happen to export primary products, but by helping only those nations which show a willingness and potential to use the aid in a beneficial manner.

Many producing countries are said not to be prepared to accept the amount of discipline and self-restraint needed to limit stock and production. Many nations have scattered production, weak and ill-informed administration, and inadequate facilities for holding stocks. Low cost producers or small producers have an added incentive to break agreements, especially in years of good harvest and in cases of inadequate storage space.

All of these objections have some degree of validity. Some may present problems which cannot be eliminated, but would have to be accepted by the parties to a commodity agreement. Others may be avoided or minimized through carefully planned schemes. And others may simply be based upon residual feelings of superiority and paternalism towards the poorer nations by some in the developed world.

B. The Problem of Substitution

A major disadvantage, not heretofore discussed, which may constitute an absolute bar to the effective control of some commodities and a threat to all controls, is the problem of substitution.

The imposition of a higher price upon any good can only be an incentive to eliminate reliance upon that good. A number of primary commodities are competitive with, or are close substitutes for, commodities or synthetics produced by the industrialized world (e.g., cotton, rubber). The increase in price of such a primary commodity will almost inevitably lead to substitution.

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277 Id.
224 Schmidt, supra note 25, at 320.
279 See id. at 321.
236 MacBean, supra note 19, at 299.
231 Schmidt, supra note 25, at 317.
232 Mikesell, supra note 220, at 297; see Law, supra note 4, at 61-63.
233 The United States is making extraordinary efforts to decrease its need for petroleum through the development of other energy sources.
Even in the case of commodities like coffee, there are limits upon the level to which prices should properly be raised, even from the standpoint of the long-run interest of the producing countries themselves. Not only is there some elasticity of demand, as was indicated by the consumers' reaction to the sharp rise in coffee prices during the mid-1950's, but high prices would stimulate efforts to develop and market synthetic coffee.

The high price of lead resulted in its replacement by aluminum and polyethylene in sheathing for electric cables. Synthetic chocolate coating has been developed and widely used in reaction to the price of cocoa butter. Copper and aluminum compete with each other and with some plastics. Wool and cotton have also lost ground to synthetic fibers. Although bananas have no near substitute, the consumer reaction to their high price is to eat other fruits.

Sometimes substitutions are made almost immediately if price relations change. This would clearly be the case, for example, with respect to different grades of ore; in such a case, prices would have to move together or one grade of ore would lose out completely. Typically, however, substitution involves costly development of new products and/or costly adaptation in processing and manufacturing by the user. Hence, within limits, users are often reluctant to make substitutes. However, once the substitution is made and the costs incurred, there is the same cost-inspired reluctance to shift back to the original product. Hence, substitution is encouraged if artificial supports maintain prices too high for too long, and it becomes difficult to re-establish the original market.

The recent drive in the United States to conserve energy and to develop alternative sources of energy is in direct reaction to OPEC's price increases.

The developing countries view the large-scale production of pure substitutes for natural materials as a waste of resources. They feel that heavy expenditures on research and development connected with synthetics would be more usefully devoted to the production of better and cheaper machines, equipment, and other goods needed for the development of the third world. Representatives of developing lands also feel that the problems of producers of natural products experiencing competition from synthetics and substitutes were aggravated by the existence of excess capacity for the production of synthetics, unfair trading practices by synthetic producers, captive markets, dumping and trade barriers inhibiting exports of natural products in their raw and processed forms.

Representatives of developed lands argue that developments in the field

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234 Mikesell, supra note 220, at 297.
236 Id.
237 1968 UNCTAD PROCEEDINGS, supra note 12, at 237.
238 Id.
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of synthetics and substitutes are an integral part of technological progress, a necessity for the economic growth and welfare of all countries, and an important factor in promoting demand for primary commodities. Developing countries have called for restriction on the output of synthetics which merely replace natural products. They further propose that a number of barriers to natural products that are in competition with synthetics be eliminated.

X. GUIDELINES

The experience of commodity agreements in this century has made the following guidelines incumbent upon all countries intending to establish such an agreement:

a. The commodity contemplated as the subject of an international agreement should be one for which there are few substitutes over the long run as well as the short run.

b. The commodity should be one for which there is a moderate inelasticity of demand.

c. The commodity should be a major component of the export expenditures of the developing country.

d. The commodity should be a minor import expenditure of the importer.

e. The product should not be exported or even produced by the industrial nations.

f. The price level should not be set so high as to initiate severe economic repercussions in the developed countries.

g. The timing of the agreement may be important. Commodity controls should be initiated at a time when prices are tending downward to establish a better claim for sympathetic treatment by the importers.

h. A relatively static distribution of production within the industry will create a greater chance for cooperation and success among the producers than does an industry where growth rates and efficiencies differ widely between the countries.

i. A united front by producers is of upmost importance. As the situation may be one of power confrontation, a strong political base is necessary to counteract the power base that the consumers will have.

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239 Id.
240 Id.
241 MACBEAN, supra note 19, at 295.
21 The less significant the cost is to the importer, the less likely that he will seek alternate sources or substitutions.
242 Id.
243 Id.
244 This may drastically reduce the demand for the product.
245 MACBEAN, supra note 19, at 295.
246 Id.
247 Hager, supra note 7, at 321-22.
j. The smaller the number of producers of the commodity, the greater the possibility that a united front can be maintained.

k. The maximum possible percentage of all production in the industry should be obtained in order to prevent nonmembers from effectively negating the price controls.

l. Strict controls should be placed upon the mechanism by which export quotas are determined and regulated, including the use of sanctions.

m. Discrimination in price with regards to different consumers should be avoided to prevent greater consumer incentive to undermine the agreement.248

n. Careful technical control should be placed upon the operations of the pricing mechanism or buffer stock, as well as upon the quota system.

o. Flexible quantitative restriction mechanisms should be aimed at allowing growth of, and preventing stagnation of, production methods.

p. The greatest chance of success (absent an enormous amount of economic "clout") in establishing an agreement may well be to include consumers in the decision-making process. The developed world is increasingly recognizing the needs of the developing world. An appeal to the consumer's desire for price stability and an appeal to his sympathy, especially when backed by unity on the part of the producer, may well lead to cooperation and a successful agreement.

q. All of the preceding guidelines have been aimed toward the producer nations in the establishment of commodity agreements. The consumer nation which wishes to prevent the establishment of a commodity agreement (or the consumer nation which desires to undermine such an agreement) may simply attempt the reverse of what is recommended for the producer. For example, the consumer nation may attempt to develop more substitutes, produce greater amounts of the commodity, develop consumer unions, or appeal to the pecuniary interests of individual producers in order to weaken the framework.

Obviously, no commodity organization would be able to meet the criteria of all of these guidelines. Most of the commodity agreements discussed have been ineffective because of a failure to meet one or more of these guidelines. To the extent that one criterion is not met, a greater effort should be made to meet another criterion. It is extremely important for the developing lands to realize that the industrialized nations are moving in the direction of the third world's goals (witness the Lomé Convention and United States' recent announcement that it was willing to consider international arrangements covering the prices of raw materials). This greater understanding by the developed countries of the needs of the developing countries, combined with a united, coordinated bloc of exporters, may be all important for the success of most agreements. The desire of developed

248 Rowe, supra note 2, at 186.
249 See note 1 supra and accompanying text.
nations for price stability, coupled with economic "clout" and persistence on the part of the exporters may be quite effective in the stabilization and augmentation of producer income. Of course, in times of extraordinarily excessive supply or demand (whether high or low), almost any scheme is likely to break down. However, this does not detract from the possibility of success over the general course of events.

A commodity agreement can be beneficial to both the producer and the consumer. If the consumer realizes that he can rely on a constant source and a reasonable price, he may avoid the investment required to develop synthetics; he may avoid the use of substitutes; he may decide not to resort to measures which may undermine the agreement. While direct confrontation may be successful for the consumer in some instances, it will also be successful for the producer in other instances. The collective bargaining approach, while still a form of confrontation, is an approach of greater reasonableness than direct confrontation and is certainly a step forward. But a cooperative approach may in the long run be most beneficial to all concerned parties. The commodity agreement can be established to allow planning by both producers and consumers. Such planning could enhance the development of producers without significantly harming the economies of consumers.

XI. Conclusion

The developed world is not yet ready for the "new world order" called for by developing lands. It is moving in that direction. Commodity agreements alone will not attain the goals of the third world. Commodity agreements do not end the reliance by a country upon the export sale of a few primary products; indeed, in some instances they may increase that reliance. But the revenues obtained from the agreements can, if used properly, aid in the economic development of the developing countries.

A recognition of the needs and goals of the other parties, a realization of the economic and political power that each holds, and a resulting cooperation by the parties will be the most successful method to achieve effective international commodity agreements, as well as the "new world order," which may be inevitable.

Kenneth Klein