Chapter - IV

THE ECONOMICS AND POLITICS OF COMMODITY NEGOTIATIONS
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Having clarified the principal objectives of contemporary commodity agreements against the background of a historical review of commodity control schemes, before turning to their legal and institutional framework, it is necessary to briefly examine the major economic and political factors which inweigh the negotiations of commodity agreements. Such an examination will, firstly, help one understand why, while the Integrated Commodity Programme envisaged commodity agreements in all the eighteen commodities, it today appears to be a distant goal. In other words, why as the Programme of Action on the Establishment of a New International Economic Order had recommended, commodity agreements are not being expeditiously formulated. Secondly, it will place in perspective the legal and institutional framework which commodity agreements establish; conceptually speaking, commodity agreements institutionalise, within a formal legal framework, a continuous system of negotiations which begins with the proposal to have a commodity agreement. Thirdly, since the seed of success or failure of an agreement are often sown in the negotiations, it is useful to be acquainted with the problems which are confronted with in the negotiations. Lastly, an analysis of the political economy of commodity negotiations is extremely relevant from the
point of view of international accountability. If international Instruments of the character of the Programme of Action on the establishment of a New International Economic Order and the Charter of Economic Rights and Duties of states are to have any meaningful impact it is necessary that there is a process of evaluation to which states are held accountable. If the concerned states are not adhering to the spirit of the provisions contained in these documents then the international legal process should be brought to bear upon them.

Given these concerns the first part of the present chapter portrays the economics of commodity negotiations, while the second part indicates the important political factors which play a role in these negotiations. The last section briefly posits the role of international law in bringing about greater accommodation in commodity negotiations.

I. THE ECONOMICS OF COMMODITY NEGOTIATIONS

Commodity agreements are exceedingly difficult to negotiate as they seek to harmonise the diverse interests of numerous producers and consumers. These differing interests give rise to not only conflict between producers and consumers but between producers as well. The final agreement usually represents a compromise based upon a
minimum commonality of interests of the participating states. Often, therefore, the agreement possesses congenital defects which render the agreement ineffective, or inhibit its operation, in the face of hostile market forces. For instance, at the insistence of developed countries, in particular the United States, exclusive reliance has been placed in recent commodity agreements on buffer stocks, a significant reason for their failure in the commodity crisis which afflicted commodity markets between 1980-82. The lengthy and arduous negotiations which precede the establishment of an ICA can, therefore, be traced to the necessity of establishing an effective agreement, which, at the same time, takes into account the divergent interests of the participating states.

Rangarajan has usefully summed up the factors which determine commodity negotiations. They are formulated in the form of questions, as follows:

1. **Overall attitude of a participating state:**
   (i) Is it a developed or a developing country?
   (ii) What is its attitude to commodity agreements in general and to the resource transfer objective in particular?
   (iii) Is the country an exporter or an importer?

2. **State of the Market:**
   (iv) What is the level of prices - high or low?
   (v) Which way are prices expected to move in the near future?
(vi) What are the total stocks of the commodity? Are they adequate, overhanging or insufficient?
(vii) Is there a prospect of a downturn in production due to natural calamities or production cycles?
(viii) Is there a likelihood of political turmoil in a major producing or consuming area?
(ix) Is the market threatened by synthetics or substitutes?

3. A country's situation in respect of the commodity?
(x) What is the degree of dependence on exports or imports?
(xi) What is the economic interest in the commodity?
(xii) If an importer, does it protect home production?
(xiii) If an exporter, how large? Is it an established or new exporter?
(xiv) What is the level of stocks in the country in relation to its holding power?
(xv) What are the relative strengths of different domestic pressure groups - producers, processors, importers, consumers?
(xvi) What is the degree of control over production and marketing?
(xvii) Who are its political allies? Adversaries?
4. In functioning agreements:

(xviii) What importance do importers attach to the agreement?

(xix) Who is most likely to break away?

(xx) Who is most likely to follow suit?

Each state arrives at its negotiating position taking a holistic view of these factors. It then seeks to coordinate its position with similarly situated states. For instance, if it is an exporter, it will try and assume a common position with other exporter states. This is no easy task and in fact a major obstacle to concluding new ICAs. As the UNCTAD VI policy paper on 'Commodities' notes, "in many of the individual commodity negotiations, the developing countries have not always succeeded in evolving and presenting common proposals for international action, and this has contributed to delays and ineffectiveness".2

Having arrived at a consensus on the major elements of the proposed commodity agreement the group of exporter states proceeds to negotiate with the importer countries, which will have in the meanwhile undergone the same process of arriving at a common negotiating position.


The negotiations between the exporters and the importers eventually culminate in an agreement. However, the entire process is extremely complex, and as stated at the outset, marked by exporter-importer and intra-exporter conflicts. The chief factors which give rise to these conflicts may therefore be discussed under the following two heads: (1) Exporter-importer conflicts, and (2) Intra-exporter conflicts.

A. Exporter-Importer Conflicts

The conflict between exporters and importers is central to the failure of commodity negotiations because some of their interests, particularly in the short-run, are mutually contradictory. The issues of potential conflict *inter alia*, are (1) the ideological attitudes; (2) price trends in commodity markets; (3) the initial price range; (4) the adjustment of the price range; and (5) the financing of the buffer stock mechanism. The differences relating to the choice of mechanism to be used to stabilise prices has been discussed at length in the previous chapter.

1. Role of Ideology

Ideological attitudes are of considerable importance in as much as they determine the first response to the problem and the broad contours of policy prescriptions within which the commodity problem is approached. For
instance, the fact that many of the developed countries, in particular the United States, subscribe to an ideology of free market manifests itself in a negative attitude towards commodity agreements which are conceived as instruments of market control. Free-market ideology with its adverse implications for commodity agreements appears in a more concentrated form in countries which happen to be ruled by conservative governments. Comparing the attitude towards commodity agreements under the Carter and the Reagan administrations, Gordon-Ashworth well illustrates this point:

the more generally sympathetic attitude of the Carter Administration towards international commodity agreements led to US participation in the 1977 Sugar Agreement. With the accession of the Reagan Administration, in contrast, and its commitment to the virtues of 'free market forces', US support for international commodity agreements weakened considerably....

3. For the impact of ideology on US Commodity policy, see generally, J. Robert Vastine Jr., "United States International Commodity Policy", Law and Policy in International Business, Vol. 9, No.2 (1977), p. 401. According to Vastine the United States was committed to the fundamental principle that "the operation of free and fair markets is the most efficient way to increase production, improve efficiency, and stimulate growth. Attempts, should be made to improve the efficiency of international markets, not further impair their operation by adding new restraints or controls, either governmental or private", p. 474. Also see pp. 409 and 436.

The ideological attitude also limits the specific policy options which are prescribed to attack the problem of, say, price stabilisation. The developed countries, for instance, are hostile to the export quota mechanism, for it is said to "misallocate" world resources. That is the reason why the Carter administration, while showing a great flexibility to ICAs (given Bergsten et al6), continued to be hostile to any proposal relating to production and/or export controls on the ground that these impede the operation of market forces, create market inefficiencies and eventually lead to the misallocation of resources. Such an attitude renders it difficult for the developing countries to incorporate into commodity agreements the export-quota mechanism even as a supportive measure.

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5. The United States considers "buffer stocks to be preferable to export controls because they work within the market mechanism", Vastine, n. 3, p. 451.

6. Bergsten had pleaded for the "desirability of an international rather than a purely national approach" and noted that there was "a firm basis for a wide range of commodity agreements which would promote the economic security and welfare of both the producing and consuming countries...." C. Fred Bergsten, Toward a New International Economic Order: Selected Papers of C. Fred Bergsten 1972-1974 (Lexington Books, Lexington, Mass, 1975), pp. 408 and 409.
The International Cocoa Agreements of 1975 and 1980 are cases in point. The United States participated actively in negotiating the 1975 Cocoa Agreement but refused to sign the Agreement on the ground that "the new agreements's price defense provisions are too rigid and that it contains too few protections for consuming nations". The State Department officials believed that "the agreement is too dependent on the quota system, using the buffer stock in an ancilliary role to rigidly absorb quota cuts". The US proposal wanted the buffer stock mechanism alone performing the role of price defence, and despite the fact that the developing countries went a long way in meeting the criticism by relying less on export quotas, the United States refused to sign the Agreement. And subsequently, under pressure from it, the 1980 Agreement relies almost exclusively on the buffer stock mechanism, with the result that it was helpless in the recent commodity crisis. Similarly, in the INRA, on the insistence of the United States and other countries, sole reliance is placed upon an international stock in stabilising prices. And the develop-

8. Ibid., p. 565.
9. See Chapter IX under the heading "International Cocoa Agreements".
ing countries, in the face of obdurate ideological lobbying, are thus faced with the choice of either no agreement or an agreement which is defective at its inception.

The role of ideology is manifested in commodity negotiations in another respect as well, that is, through defining attitudes towards various international economic institutions and their functions. An instance is the refusal of the developed countries to actively pursue several necessarily integrated measures within the framework of commodity conferences. For example, while in all ICAs there are certain obligations stated with respect to improving market access, they are usually statements of intent because the developed countries insist that concrete steps be negotiated under the appropriate multilateral trade negotiations system of the GATT. In other words, the ideological hostility of the industrialised world towards international institutional processes in which the developing countries can play a significant role often intervenes and obstructs the devising of more effective commodity agreements.

Where alternative institutions like the GATT are either not relevant or do not exist the attempt is somehow to stop the matter in issue from being discussed in the commodity conference. Take the case of negotiations on phosphate. It is well known that transport costs
are a significant factor in the determination of price and thereby the export earnings of developing countries. Yet the United States stated in the Preparatory Meeting that the question of marine freight should be discussed in the UNCTAD Committee on Shipping.\textsuperscript{11}

In effect, ideology is used by the developed countries as a defence against an unpalatable agreement. Therefore, it comes as no real surprise that the rhetoric is overcome when either a country has a substantial economic stake in the commodity or it needs to meet certain political imperatives. While the political factors are discussed shortly, an example of the former is the participation of the United States in the wheat agreements; "The United States has not only been a loyal member of the International Wheat Agreements but an active promoter, but only because it is the most important exporter of that commodity."\textsuperscript{12}

2. \textit{Price trends}

The conflicts between exporters and importers is to a great extent determined by the price trend in commodity

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  \item \textsuperscript{12} Rangarajan, n. 1, p. 258.
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dity markets. Whereas a boom has always dampened the incentive of the exporting countries to establish ICAs, a downward trend in prices coupled with market conditions of oversupply has usually seen the producer countries take initiative to contract commodity agreements. In the latter situation, it is the importers which lack enthusiasm for regulation, as they can benefit from the low prices prevailing in the market. In other words, both for exporters and importers, short-term advantages often tend to take priority over long-term objectives.

The impact of price trends can clearly be seen, for instance, in the period of the Korean war boom, as well as in the first fifteen years after the war, when agreements could be established only in wheat, tin and sugar, because, among other things, the price situation was favourable to the exporters in world commodity

13. "The Inter-American Coffee Agreement was liquidated in 1948 and negotiations were not revived for six years, i.e. until after the boom had abated. The first post-war UN Conference on Sugar was only held in 1953. A proof of the reluctance of exporters to delay concluding an agreement until the boom was about to spend itself was the failure of the 1950 UN Tin Conference. The negotiators at this Conference agreed on the mechanisms of control including the creation of a buffer stock and the role of the buffer stock manager. The Conference was unable to reach full agreement partly because of the attitude of the United States and partly because of exporters' hesitations. By 1953, when the International Tin Study Group met again, the boom was over and the First Tin Agreement became possible". Rangarajan, n. 1, p. 210.
Similar has been the situation after the UNCTAD IV (1976) till the beginning of the recent crisis in commodity markets:

...the market prices of the majority of primary commodities increased substantially, as did the foreign exchange earnings of developing countries from their commodity exports. In addition, foreign exchange flows into several large commodity-exporting countries rose during this period as a result of the fast growth of exports of manufacturers and/or petroleum, and of heavy borrowing from international capital markets. These favourable developments reduced the foreign exchange constraint on domestic development in these countries, which did not require to give high priority to the regulation of commodity markets or to reforming the structure of international commodity trade.

Currently the exporters have changed their stance and the need for international remedial action has assumed high priority. But the consumers, in particular the developed countries, see in the crisis the prospects of not only reducing inflationary trends within their economies, but a way out of the recession.

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15. TD/273, n. 2, pp. 18-9.

3. **Price range**

The most crucial question to be addressed in commodity negotiations is the specific price at and around which stability should be sought. Historically, arriving at the appropriate price range to be defended by stabilization action has been among the chief stumbling blocks in the way of setting up commodity agreements; in a situation of over-supply, the exporters will seek a floor price which will cover their costs as well as normal profit margins, while the importers will resist, if in such situations in the past, prices had been lower than the floor price now demanded.17 Where the sectarian interests of the importers as well as exporters do not overwhelm their sense of international responsibility a compromise generally emerges. Ultimately, it is the realism on the part of consumers which helps narrow down the differences between the two sides. In other words, more often than not the price objective is "essentially a political compromise between opposing positions".18 However, the compromise is not easy to achieve in practice.

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17. In December 1982 that "the recession has hindered the development of new commodity pacts... common fund... has been put back..." Vol. 299, No. 7689.

Sometimes, however, a heavy price may be paid to arrive at an agreed price range - the compromise solution could mean unrealistic price objective. The International Cocoa Agreement, 1972, is most often cited to illustrate this point. After years of negotiations, the agreement was concluded in 1972 and provisionally brought into force in October 1973. The price range which was adopted (23-32 US cents per lb) was completely unrealistic for in 1973 the cocoa prices averaged 51 cents per lb. rising to 71 cents per lb in 1974 and falling to 56.5 cent per lb in 1975. The same year-1975, therefore, saw the negotiation of a new agreement. Therefore, the matter is of not only finding a solution satisfactory to both exporters and importers but also to adopt a price range which is realistic.

4. Adjusting the price range

The provisions regarding the adjustment of the price range also prove extremely difficult to negotiate and operate, given the conflicting interests of the producer and consumer countries. The negotiations which

led to the inclusion of the price revision provisions in the INRA illustrate the conflicting interests.\textsuperscript{20} The producers were in favour of granting greater discretion to the International Natural Rubber Organisation (INRO) in revising the reference price, since they felt that it should be constantly under review. Secondly, it was felt that a rule-oriented mechanism would not be able to take into account complex factors affecting the price of natural rubber such as the cost of production and the price of synthetic rubber.\textsuperscript{21} The initial proposal submitted by the Association of Natural Rubber Producing Countries (ANRPC) contained a provision which permitted review of prices at any time and revision when the Council deemed it appropriate.\textsuperscript{22} The consumer nations were, however, not in agreement with the ANRPC proposal. They were concerned that the buffer stock assets would be expended by attempts to defend a price that was outside the long-term natural rubber price trend or that it would unduly manipulate the market.\textsuperscript{23} The consumer view

\textsuperscript{20} For a discussion see O'Grady, n. 10, pp. 622-4.


\textsuperscript{22} TD/RUBBER/PC/L.1, Draft International Natural Rubber Agreement (1978).

finally prevailed and the agreement incorporated an automatic reference price revision provision, granting a discretion to the INRO only when extraordinary market conditions prevail.\textsuperscript{24} Indicative price revisions were restricted by the following requirements: the revision are to be based upon market trends and/or net changes in the buffer stock;\textsuperscript{25} and the revisions can only be made by a special Council vote. Furthermore, the opportunities

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\item The reference price under the INRA is to be reviewed by the Council every 18 months after the entry into force of the agreement. The circumstances under which the price revision could take place were defined in detail. For instance, article 32(1) lays down the following rules:

(a) If the average of the daily market indicator prices over the six-month period prior to a review is at the upper intervention price, at the lower intervention price or between these two prices, no revision of reference price shall take place;

(b) If the average of the daily market indicator prices over the six-month period prior to a review is below the lower intervention price, the reference price shall be automatically revised downwards by 5 per cent of its level at the time of the review, unless the Council, by special vote, decides on a different percentage adjustment downwards of the reference price;

(c) If the average of the daily market indicator prices over the six-month period prior to a review is above the upper intervention price, the reference price shall be automatically revised upwards by 5 per cent of its level at the time of the review, unless the Council, by special vote, decides on a different percentage adjustment upwards of the reference price.

\item According to article 32(5) "The Council shall ensure that any revision of indicative prices is consistent with evolving market trends and conditions".\textsuperscript{25} 
\end{enumerate}
for revision are extremely limited. In 1981 when the producers sought a total review of the price trends and the raising of the lower intervention price to 180-200 per kilo the Council noted that "legal constraints in the Agreement" inhibited such changes.26

5. **Financing buffer stocks**

Producer-consumer differences occur inevitably on the question and extent of financing the buffer stocks. It is a truism that if a buffer stock is to operate effectively in the market, a pre-condition is that it be provided with adequate resources.27 In the past, finance has been the major hurdle in the establishment of buffer stock type of commodity agreements: "a large part of the reason for the failure of past efforts to establish stocks under the aegis of commodity agreements was the difficulty of overcoming the very vital, central and crucial factor of the financing of these commodity stocks."28 In fact until the proposals for an Integrated Programme

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27. What resources will be adequate in achieving the price stabilisation objective will hinge on the width of the price range to be defended and the amplitude of the price fluctuation which would occur in the absence of market intervention; for any given amplitude of price fluctuation, the wider the price range to be defended, the smaller will be the stock that the stock agency will require. TD/9/C.1/224, n. 17, p. 10.

28. See statement of the UNCTAD Secretary-General TD/8/IPC/CF/4: Report of the First Preparatory

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for Commodities the principle of a common sharing of stocks was not a universally acceptable one. In recent years, however, the principle of joint responsibility in financing stocks has been accepted in some commodity agreements like the INRA and the ITA. Yet the financing of stocks is still an area of conflict. It is in this context that the Common Fund for Commodities acquires special significance. On coming into operation, it will assure advance access to finance on advantageous terms and thus facilitate the negotiation of commodity agreements. 29

B. Conflict Amongst Exporters

Commodity negotiations often fail because of conflict amongst exporters themselves, and not due to the classic exporter-importer conflict. The intra-exporter conflict has its genesis either in quantity or price objectives, with each exporter state attempting to maximise its gain in the short-run. A compromise is usually difficult to evolve, given the unique situation of each exporter state, and unwillingness of each country to sacrifice some of its interests.

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29. For a discussion of the Common Fund for Commodities see Chapter X.
1. Quantity conflicts

For exporter countries, quantity objectives "have an independent validity of their own based on current exportable surplus, future production plans and the preservation of market shares". The quantity objectives are, moreover, integrated in the domestic economy compelling the exporting governments to take into account a complex mix of social and political factors like farmer's income, the ability to diversify, the threat to the stability of the incumbent regime, etc. The critical dependence of a large number of countries on the export earnings from one or two primary commodities is a significant factor in shaping this objective.

Quantitative conflicts are of two types: conflict between large and small exporters and conflict between established and emerging exporters. In the first type of conflict, the large exporter seeks to maintain the share it has been exporting previously, while the small exporter seeks to ensure that it is easily able to dispose of its own exportable surplus. In the second case, the emerging exporter, in particular the low cost producer, seeks to expand its market share at the expense of an

30. Rangarajan, n. 1, p. 112.
31. Ibid.
32. Ibid.
established producer. These groups not only have different interests at stake but they also possess different bargaining powers. The bigger producers are at an advantage in view of their dominant position in the trade. The dilemma of the small countries is explained thus by Gwyer: "for large producing countries, the choice is between an agreement and no agreement since their exclusion from the agreement would make it incoherent. For small countries, the choice is membership in the agreement or non-membership, since their membership may not be essential for the continuation of the agreement. Thus, large producing countries can force an agreement upon small countries, which, if they had the choice, would prefer no agreement but are presented with a membership-non-membership alternative. In practice, there may be no alternative to membership, since if all the consuming countries are party to the agreement there are no alternative markets."33 The small producer countries are often the emerging exporters, who would not want to have any constraints in their growth by an agreement which allocates quotas on the basis of past export performance.

rather than current exportable surplus. 34

It is the quantitative conflict which has obstructed for years the establishment of an international tea agreement. The African tea producing countries like Kenya, which have a lower cost of production, have been seeking to augment their role at the expense of India and Sri Lanka:

As a result of lower production costs, rising relative prices and lower fiscal imposts, profits (both pre-tax and post-tax) are substantially higher in East African tea estates than in Asia. And the disparities in profitability have jeopardised the prospects of a supply management scheme despite sustained efforts, spread over the last twenty years or so, to stem the secular decline in the real prices of tea.... Moreover, as the individual African countries have only a minor share of the total world market for tea (although collectively they have a share large enough to thwart an export quota scheme), the price-elasticity of demand confronting the individual supplying countries is typically very high. Therefore, they find their advantage lies in unrestricted expansion of the volume of exports (and hence their market shares) at prevailing prices rather than in joining a quota pact. 35

34. In recent times, it will be seen, in order to minimise this conflict legal mechanisms have been introduced to safeguard to some degree the interest of the small and emerging producers. See Chapter VI under the sub-heading "Principle of Equitable Treatment and Export Entitlements".

The UNCTAD VI policy paper on 'Commodities' correctly, therefore, lists the problem of quantitative conflict as an important factor for the lack of success in negotiating new ICAs: "where the principle of export regulation has been accepted, difficulties have arisen in agreeing on the allocation of global quotas among the various producing countries". 36

2. Price conflicts

The classic illustration of price conflicts between exporter states is of course presented by the disarray of the Organisation of Petroleum Exporting Countries (OPEC) over the price question. And not too long ago the OPEC was to blaze the trail for producer cartels in other commodities. The lesson clearly is that countries which do not think that the price objectives suit their interests would normally refuse to join control schemes. A relevant illustration of this is the refusal of Ivory Coast to join the ICCA and the refusal of Bolivia to join the ITA; the Ivory Coast did not join the ICCA, because it considered the price range incorporated in the agreement was too low. Similarly, Bolivia felt that the price range incorporated in the ITA was likely to cause "irreparable damage to the extractive tin industry". 37

37. See Gordon-Ashworth, n. 4, pp. 229 and 126.
II. THE POLITICS OF COMMODITY NEGOTIATIONS

The politics of international commodity negotiations provides interesting insights into the world of international diplomacy. It underlines the political interests which cut across simple economic calculations; signifies the importance of historical (colonial) and strategic-power links; indicates the strength of regional links; and, in general, reveals the inextricable linkages between political and economic interests. Further more, it exposes the influence and role of domestic politics in the framing of foreign policy. More specifically, it enables an understanding of the political exchanges between governments and their constituent interests viz., in the case of a consumer country they are the processors, brokers and the final consumers. Finally it emphasises the significance of an international policy perspective conducive to international economic cooperation. Some of these aspects may be examined further.

A. Historical Links

In a recent article on the politics of international commodity regulation with reference to cocoa agreements, Finlayson and Zacher make the following observation in examining the process of negotiating the 1972 Cocoa Agreement:
the fact that African countries are the major cocoa exporters, whereas Latin Americans are more prominent in the coffee market, meant that broader foreign policy considerations played a much smaller role in US thinking in the case of cocoa, and thus worked against US ratification of the agreement.

For the West Europeans "the situation was just the reverse". According to Short:

It is probable... that British and European ties with Africa, originating in the colonial period, have fostered greater sympathies for an Agreement to regulate the trade of a product largely produced on that continent, much as US-Latin American ties certainly helped to foster the Coffee Agreement.39

These observations underline the significance of historical links between exporters and importers of a specific commodity in the successful conclusion of commodity agreements. Undoubtedly the continuance of these links, which are usually between the former metropolitan country and its ex-colonial countries, are dictated by the continuation of the economic imperative which has governed

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38. Finlayson and Zacher, n. 19, p. 401.
their relationship in the past. Yet it cannot be denied that the factor of historical association induces an affirmative motion of the former metropolitan country towards a more sympathetic consideration of commodity agreements whose beneficiaries will be countries with which it shares a long-standing relationship. This, apart from bringing certain material benefits to the metropolitan country, strengthens mutual political ties to its advantage.

B. Strategic - Power Relationship

The fact of historical association is often coupled with what Rangarajan terms as 'strategic power relationship' which is perhaps best exemplified in the relationship of the United States with Latin America. After the termination of the Inter-American Coffee Agreement in 1948, the United States enunciated a "hands off" policy towards an international coffee agreement. Its response to the efforts to join a new agreement was categorically negative. A change was, however, discerned.

Rangarajan aptly observes that "Colonialism established economic interdependencies which have an imperative of their own. Achievement of political independence could not change these overnight. The erstwhile metropolitan countries still remain the major trading partners of the former colonies", n. 1, p. 253.
in the attitude of the United States in 1959 when the then Secretary of State, John Foster Dulles, stated that

The United States Government realizes the potential consequences of violent fluctuations in the prices of Latin America's exports and is daily searching for ways and means to contribute toward a solution. [...] This policy represents a considerable amount of new ground.41

This changing attitude was accentuated by the Cuban revolution, and soon the Latin American Task Force set up by President Kennedy, concerned at the spread of "Castroism", recommended, as one of the measures, that the United States cooperate in establishing commodity arrangements. The process was helped by the fact that even "the large publicly held corporations, such as General Foods, were aware of the consequences for US security if the market should break and Latin America went Communist".42 In March 1961, in his famous Alliance for Progress speech, President Kennedy observed that,

The United States is ready, however to cooperate with the Latin American and other producing


42. Ibid., p. 22.
country governments in a serious case-by-case examination of the major commodities and to lend its support to practical efforts to reduce extreme price fluctuations. 43

Thus, in 1962 the first International Coffee Agreement was concluded. In other words, strategic compulsions made the United States to support the Agreement. The United States, in the words of Krasner, "was interested in transforming the domestic political, social, and economic situation in the countries to which it offered aid. The International Coffee Agreement was seen as a device which would, by stabilising coffee prices at moderate levels, contribute to domestic tranquility in producing nations". 44 It thereby hoped to prevent the spread of communism and Soviet influence in Latin America. 49

More recently, the political advantage of strengthening ties with the ASEAN countries was an important factor for the United States joining the INRA; four members of ASEAN i.e. Indonesia, Malaysia, Singapore and

43. Ibid., p. 28.


45. Krasner writes that "The American government perceived the International Coffee Agreement as an economic instrument which would further its strategic aims. These objectives were partly directed at thwarting Soviet initiatives in Latin America". Ibid., p. 243.
Thailand represents 88 per cent of the world's supply of natural rubber. The United States which has a vital interest in the area saw the INRA as an instrument for achieving its strategic ends.46

So significant is the strategic factor that Krasner concludes that "The actions of the United States and other consuming nations do not appear to have been fundamentally motivated by economic objectives".47 In his view, "In the case of coffee, and of other primary commodities, central decision-makers in industrial nations have offered economic concessions to secure political aims."48


47. Krasner, n. 44, p. 302.

48. Ibid. That the political factor plays an important role is further illustrated by the actions of other industrialised states like, for instance, France. From UNCTAD I itself the French Government displayed support for commodity agreements. At UNCTAD III, Giscard D'Estaing (then Minister of Finance) even extended support for the principle of co-financing of buffer stocks. The French interest in taking this positive attitude was essentially political and lay in a continued dialogue with the developing countries. William Fox, the former Secretary of the International Tin Council, has observed in the context of the tin agreements that "France, amongst the consuming countries, had perhaps the clearest philosophy on

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While agreeing with Krasner that the political motive is often the moving force behind a developed consumer country joining an agreement - as was the case with the 1962 Coffee Agreement - it is difficult to endorse his conclusion that economic objectives always play a secondary role. There is little doubt that the consumer nations also stand to benefit substantially from commodity agreements; it provides them assured access to supplies at stable prices allowing them to plan with certainty their own economy. So, more often than not, economic considerations are as important as political/strategic motives.

C. Regional Solidarity

Among the factors which help the conclusion of commodity agreements is the factor of regional solidarity which enables the participants to expeditiously formulate an effective strategy. It is well known that the initiative taken by the Latin American countries has been

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commodity agreements and the developing countries...

The government of France aimed not only in the Tin Council at being an essential link between the industrialised and the developing countries, an essential link which would bring France status and prestige and might help developing countries to act within the limits of economic reason".

crucial to the successful negotiation of the coffee agreement. In the case of the INRA, all four of the main members of the Association of Natural Rubber Producing Countries (ANRPC) were members of the Association of South East Asian Nations (ASEAN) and shared a common perspective and goal. However, "[e]ven where regional co-operation is tenuous, the fact that major producing countries all belong to the same region is helpful in tackling commodity problems".\textsuperscript{49} In this context, it is hoped that the accelerated process of regional co-operation being witnessed today will go far to smoothen the course of commodity negotiations.

D. Role of Domestic Forces

For an adequate understanding of the politics of international commodity negotiations, it is extremely important to lift the veil of state sovereignty and look at the diverse interest groups which exist in both the importer and exporter countries. Generally speaking, at least three interest groups may be identified in the importer countries: domestic producers, processors and merchants, and individual consumers. Whereas the principal interest groups in the exporter countries are,

\textsuperscript{49} Rangarajan, n. 1, p. 260.
the Government, plantation owners, small holders, and processors and merchants.\textsuperscript{50} The intra-interests of the groups in both the importing and exporting countries are often at variance. For example, the merchants and processors in the consuming countries often tend to support commodity agreements for the reason that "they gain from two sources: they face a lower cost of information about future supplies and thus lower risk of losses due to inventory shortages; they can use their established channels of trade within the quota system to ensure that new entrants and potential competitors are excluded."\textsuperscript{51} However, domestic producers may oppose an agreement if it means foregoing to a certain extent its own domestic market. The picture is further complicated by the existence of transnational links among the producer, consumer and marketing industries.

The role of domestic politics in the negotiation of commodity agreements can perhaps be best seen at work in the negotiation of international sugar agreements. The EEC countries have never been enthusiastic to join a

\begin{footnotesize}
\footnote{50. This is a modified version of Alan Rufus Walter's list in his "The Economic Reason for International Commodity Agreements", Kyklos, Vol. 27 (1974), p. 784.}
\footnote{51. Ibid., p. 786.}
\end{footnotesize}
sugar agreement as this would mean dismantling the protection which is given to the farmers who represent a strong lobby within some of these countries. The Common Agricultural Policy (CAP) of EEC which regulates the production, consumption and trade of sugar in the entire Community has been examined elsewhere. It may suffice to note here that the Community's sugar policy is an example of indefensible economics, necessitated by domestic political compulsions. Paradoxically, it is this indefensible economics which has forced the EEC to negotiate seriously for the new agreement; the huge subsidies to farmers took its toll on the EEC budget as well as of the organisation and made it turn to the next best alternative of commodity agreement. They are of course seeking to rewrite the agreement in their favour.

III. INTERNATIONAL LAW AND COMMODITY NEGOTIATIONS

The reasons for the lack of a large number of commodity agreements, both in the past and in the present, can

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52. See Chapter IX; also see generally, John H. Marsh and Pamela J. Swanney, Agriculture and the European Community (George Allen and Unwin, London, 1980) p. 57.

be traced to the vast array of complex economic and political factors which are involved in the negotiations, some of which have been examined above. While the reality of conflicting interests between producer and consumer countries and between the producer countries themselves cannot be wished away, greater willingness needs to be shown by states in arriving at commodity agreements, particularly effective agreements. In this context, international law can play a persuasive role by emphasising those aspects of law and equity which dictate greater accommodation in the negotiations.

It may be recalled that the Programme of Action on the establishment of a New International Economic Order ("Programme of Action") states that all efforts should be made towards:

- Expeditious formulation of commodity agreements where appropriate, in order to regulate as necessary and to stabilise the world markets for raw materials and primary commodities.

Article 6 of the Charter of Economic Rights and Duties of States ("Charter") goes further and states that

- It is the duty of States to contribute to the development of international trade of goods, particularly by means of arrangements and by the conclusion of long-term multilateral commodity agreements, where appropriate, and taking into account the interests of producers and consumers.
This is not the occasion to review the legal basis and effect of the instruments containing the Programme of Action and the Charter. Two general observations are however in order. Firstly, even if the cited provisions are considered manifestations of soft law they are not without legal impact.\textsuperscript{54} In the least, it is expected that the states will take their content seriously and show them due respect by abstaining from conduct which violates their essence. Secondly, while the developed countries may not be willing to undertake a legal duty to arrive at commodity agreements they are not averse to negotiating them on a case-by-case basis. For instance, in its statement of reservations to the Programme of Action the United States noted that, "skepticism about commodity agreements is well known, but we are prepared to consider them on a case-by-case basis".\textsuperscript{55} The Federal Republic of Germany also expressed its willingness to consider commodity agreements on a case-by-case basis.\textsuperscript{56} Speaking on behalf of the EEC

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\begin{enumerate}
\item For a discussion of the concept of soft law see Chapter XI. It may, however, be made clear that in the perspective of this study the Programme of Action and the Charter are not manifestations of soft law.

\item Although the Programme of Action was adopted by consensus a number of countries did make statement of reservations. "Reservations Entered by the United States", \textit{International Legal Materials}, Vol. 13 (1974), p. 747.

\item "Reservations Entered by the Federal Republic of Germany", ibid., p. 750.
\end{enumerate}
\end{footnotesize}
the representative of Federal Republic of Germany further stated that buffer stocks, within the framework of commodity agreements, "are in themselves favourable to all countries". Moreover, since then the developed countries have accepted the Integrated Programme for Commodities in 1976, a major component of which are commodity agreements. Finally, they have before and since participated in commodity agreements and agreed on an Agreement Establishing the Common Fund for Commodities. The chief purpose of the Common Fund will be to promote more and effective commodity agreements.

In brief, the developed countries are willing to negotiate new agreements and re-negotiate those already in operation. In this respect, it is submitted, that the Programme of Action and the Charter place on states a minimum obligation to negotiate in good faith. Such a duty to "bargain in good faith", according to Franck, is a 'preemptive' norm of international customary law. The contours of the obligation were laid down by the International Court of Justice in the North Sea Continental Shelf case where it noted that

57. Ibid., p. 752.
the parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation... they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them坚定不移 upon its own position without contemplating any modification of it....

To put it differently, with reference to commodity agreements, the duty to negotiate in good faith can be said to establish a *pactum de negotiando* between the producer and the consumer countries. It implies a "willingness for the purpose of negotiation to abandon earlier positions and to meet the other side part way".

Such a perspective would, for instance, militate against the position of the developed importing countries that commodity agreements should not be promoted because they violate the ideology of free market. Not only is such a position unnecessarily rigid but it has also little basis in reality. The perspective also indicates that states participating in commodity negotiations should...


not subvert it in order to seek short-term gains: consumer countries seeking to take advantage of falling prices while producing countries wanting to cash in on a boom.

A second implication of the provisions contained in the Programme of Action and the Charter is that the framework of negotiations must be in harmony with the content of a NEMO. That is to say, commodity agreements should not be viewed as isolated instruments of multilateral cooperation but as elements of the overall strategy of the international community to bring about a new economic order. A fundamental principle of international economic relations, the Charter notes, is the promotion of international social justice. And the principal legal tool through which international social justice can be achieved can be said to be the principle of equity. 61 The International Court of Justice has understood the principle thus:

The term "equitable principle" cannot be interpreted in the abstract; it refers back to the principles and rules which may be appropriate in order to achieve an equitable result. 62


In other words, in commodity negotiations, states should seek to ensure that the final agreement incorporates measures which promote the objectives of a new economic order. Concretely, this would, firstly, mean that effective price stabilisation mechanisms are written into the agreement; the need to support buffer stocks through the use of export quotas, the firm acceptance of the principle of joint responsibility in financing the buffer stock etc. Secondly, it would mean that the long-term commodity development objectives which commodity agreements set themselves are backed up by appropriate, precise and binding measures. As shall be seen elsewhere contemporary agreements often do not include effective ways and means to achieve these objectives.63

A third implication relates to the factor of time: the Programme of Action requires the "expeditious formulation of commodity agreements". In this light, states should abjure from following obstructionist tactics in the negotiations. It may be pointed out here that the Integrated Programme had required negotiations for commodity agreements in the specified eighteen commodities to be completed by the end of 1978. This has not been the case. In view of the provisions of the Programme of Action and the Charter, the concerned states need to show greater political will, and approach the negotiations in a spirit of compromise.

63. See Chapter VI.
Finally, besides the Programme of Action, the Charter and a host of other relevant international instruments commodity negotiations, in this regard, there is also the need to take cognisance of evolving principles and norms of a NIEO. As shall be seen, there has evolved a legal principle of stabilisation of the export earnings of developing countries. If such a principle can be said to have evolved then it imposes certain obligations on the international community of states. While the content of the principle will be examined at the appropriate place, it may be noted for present that, in so far as commodity negotiations are concerned, they only go to reinforce the observations made earlier.

Where the negotiations culminate in an agreement over the major issues it is embodied in a formal treaty. The treaty defines the basis of membership, indicates the manner in which it will enter into force as well as its duration. It also establishes an international organisation to administer and enforce the agreement. It is the institutional structure which commodity agreements establish which is the concern of the next chapter.

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64. See Chapter XI.