THE INTERNATIONAL RUBBER COMMODITY AGREEMENT: A STUDY

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INTRODUCTION

The legacy of colonialism — the need for economic growth — on the part of the developing countries, left them in search of mechanisms to surmount the obstacles for their impoverished economies. They found one — the commodity agreement.

Nevertheless, the very notion of international commodity agreement does not present a one-sided advantage for the less developed countries for it has been defined as "an association of the governments of more than two countries for the purpose of regulating the marketing of some primary products in the interest of exporters and importers."[1] Be that as it may, the negotiations of commodity agreements through the international agencies such as the United Nations Conference on Trade and Development is a cognizance of the problems that beset the less developed countries in international trade which the latter cannot tackle on their own—the low elasticity of demand for foodstuffs and primary commodities; agricultural protectionism in industrial countries; the increased share of services in the consumers' budget; the shift towards less material-extensive products in manufacturing; the substitution of synthetics for natural materials; and the reduction of input requirements in individual industries.[2] In sum, the problems intertwined for a stable foreign receipt earnings through international trade.

Presently, the commodity agreements are but one of the happy compromise between the less developed countries and the developed economies in the pursuit of what Black calls the "diplomacy of economic development."[3]

More specifically, commodity agreements have been used to counter the instability in trade where demand for commodities fluctuate sharply

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1 HAVILAND, INTERNATIONAL COMMODITY AGREEMENT 9 (1963).

2 BALASA, TRADE PROSPECTS FOR DEVELOPING COUNTRIES 3 (1964).

3 "To the usual tasks of diplomacy these facts of modern life add a whole new dimension. To the age-old task of maintaining the balance of power must now be added the task of maintaining the balance of hope — hope in the proposition that the underdeveloped studies of the world can take science and technology in their lives without, in the process denying the values of freedom and tolerance. It is to this problem that development diplomacy addresses itself.

Cooperation in economic development can be the most hopeful means, perhaps the only really important means of maintaining this balance of hope..." BLACK, DIPLOMACY OF ECONOMIC DEVELOPMENT 4 (1960).

(usually because of the business cycle); where supply is frequently uncertain (because of natural disasters or political interventions by nationalistic governments); and where market imperfections (export controls, quotas, or import subsidies for domestic production) exist.[4] The commodity agreements have been envisaged as instruments for a better bargaining power of developing countries in international trade during the negotiating process in intergovernmental forums.[5]

Furthermore, trade with the North on a stronger leverage position set forth by the commodity agreements was seen as a better alternative to foreign aid where trade on a large and profitable volume of exports would encourage production within a particular developing country; provide the necessary foreign exchange; permit the accumulation of capital from profits and reward and encourage commercial innovation; and most of all, the opportunity for political interference by trading countries is far less than that available for the providers of trade.[6]

On the other hand, the developed countries have the following advantages by being signatories to commodity agreements:[7] stable markets with adequate supplies maintained; stable prices of materials; lower average costs of materials; reduction of storage costs; fewer restrictions on trade by customers and better effective demands by customers. But most of all, it was the OPEC phenomenon — the increase of the price of oil that triggered the North's adherence to commodity agreements.[8]

Commodity agreements are seen as manifestation of international cooperation among governments. The functioning and structure of the commodity agreements have been described as akin to unions, in this wise:[9]

> The participation and structure of these commodity agreements is very much like that of unions for they possess also the characteristics of international unions. First, they are based on agreements on particular problems of common interests which call for intergovernmental cooperation; secondly, various interests in the specialized field are represented in them; finally, they have permanent structure of intergovernmental organs and a secretariat.

THE LEGAL BASES FOR INTERNATIONAL COMMODITY AGREEMENTS

The regulation of commodity trade came a long way.

The League of Nations took notice of it in its studies on the problems of raw materials in the years 1921, 1927 and 1937; in the report of the

4 ROTHSTEIN, GLOBAL BARGAINING: UNCTAD AND THE QUEST FOR A NEW INTERNATIONAL ECONOMIC ORDER, 41 (1979).

5 Hager, *Commodity Agreements and the Developing Countries: A Collective Bargaining Approach*, 7 INT'L LAWYER 309 (1972).

6 W.T.W. Morgan, *Aid for Needy Nations*, in MOUNTJOY, ed., THE THIRD WORLD: PROBLEMS AND PERSPECTIVES, 132 (1978). See also SINGH, A NEW INTERNATIONAL ECONOMIC ORDER 4-5 (1977).

7 LAW, INTERNATIONAL COMMODITY AGREEMENTS 76 (1975).

8 ROTHSTEIN, *op. cit.*, at 44.

9 KOUL, THE LEGAL FRAMEWORK OF UNCTAD IN WORLD TRADE 114 (1977).

London Monetary and Economic Conference in 1935; during the early years of the Second World War, through the Mutual Aid Agreements, commonly called the Lend-Lease and the Atlantic Charter.[10]

It was in the Havana Charter in 1948 which called for an International Trade Organization where the objectives for commodity trade were set as internationalized rules. Article 63 of the said Charter explicitly provides for "Stabilization of prices and long-term equalization of supply and demand" in the following manner:

> Art. 63. *Additional Principles governing Commodity Control Agreements.* The Members shall observe the following principles governing the conclusion and operation of commodity control agreements, in addition to those stated in Article 60:
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> (a) Such agreement shall be designed to assure the availability of supplies adequate at all times for world demand at prices which are in keeping with the provisions of Article 57(c) and when practicable, shall provide for measures designed to expand world consumption of the commodity;
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> (b) Under such agreements, participating countries, which are mainly interested in imports of the commodity concerned shall, in decisions on substantive matters, have together a number of votes equal to that of those mainly interested in obtaining export markets for the commodity. Any participating country, which is interested in the commodity but which does not fall precisely under either of the above classes, shall have an appropriate voice within such classes;
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> (c) Such agreements shall make appropriate provision to afford increasing opportunities for satisfying national consumption and world market requirements from sources which such requirements can be supplied in the most effective manner, due regard being had to the need for preventing serious economic and social dislocation and to the position of producing areas suffering from abnormal disabilities;
>
> (d) Participating countries shall formulate and adopt programmes of internal economic adjustment believed to be adequate to ensure as much progress as practicable within the duration of the agreement towards the solution of the commodity problem involved.

The United Nations Economic and Social Council in Resolution No. 30 in 1947 established an "Interim Coordinating Committee for International Commodity Arrangement" (ICCICA) to facilitate intergovernmental consultation with the principles enunciated in the Havana Charter as the general guide in the adoption of commodity agreements.[11]

The UNCTAD was given the authority to promulgate rules on international commodity agreements, which the critics claim to be a kind of an

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[10] Wallace, *et. al., International Control of Raw Materials and The International Labor Office, Intergovernmental Commodity Control Agreements,* cited in LAW, *op. cit., supra.,* note 7 at 86.

[11] For a general discussion on the rules governing commodity agreements, see: Blau, *International Commodity Arrangements* in ROBINSON, ed., PROBLEMS IN ECONO-

inverted protectionism for the less-developed countries.[12] Thus, in the Constitution of UNCTAD,[13] one of its functions is "to promote international trade, especially with a view to accelerating economic development, particularly trade between countries at different stages of development, between developing countries and between countries with different systems of economic and social organization. . . ." Moreover, UNCTAD was also left to "formulate principles and policies on international trade and related problem of economic development and to initiate action for the negotiation and adoption of multilateral legal instruments in the field of trade."

With the enactment of the Declaration and Programme of Action on the Establishment of a New International Economic Order by the United Nations General Assembly in its Sixth Session on May 1, 1974, it was all for certain that commodity agreements were means of achieving the "[j]ust and equitable relationship between the prices of raw materials, primary commodities, manufactured and semi-manufactured goods exported by the developing countries and the prices of raw materials, primary commodities, manufactures, capital goods and equipment imported by them with the aim of bringing about sustained improvement in their unsatisfactory terms of trade and the expansion of world economy."[14]

The Programme of Action on the Establishment of a New International Economic Order, more specifically, the provisions relating to the fundamental problems of raw materials and primary commodities as related to trade and development give a mandate to every State that efforts be made to take measures to reverse the continued trend of stagnation or decline in the real price of several commodities exported by the less developed countries.[15] In Article III relating to general trade, the formulation of commodity agreements where appropriate was deemed expedient, in order to regulate as necessary and to stabilize the world markets for raw materials and primary commodities. Furthermore, the need for the preparation of an over-all integrated programme setting out guidelines, for a comprehensive range of commodities of export interest to the less-developed countries, was emphasized.

MIC DEVELOPMENT 553-573 (1966);Gariepy, *International Commodity Agreements*, 25 INT'L. & COMP. L. Q. 679 (1976); JACKSON, LAW AND POLICY OF PUBLIC INTERNATIONAL COMMODITY AGREEMENTS 1-63 (1974); KOUL, *op. cit. supra.*, note 9 at 77; Krumme, *International Commodity Agreements: Purpose, Policy and Procedure* (Notes), 31 GEO. WASH. L. REV. 784-811 (1964); LEWIS, THE EVOLUTION OF THE NEW INTERNATIONAL ECONOMIC ORDER 26 (1977); Lowenfeld, *International Commodity Controls — Some Lessons from the Coffee Agreement* (Notes and Comments), 61 AM. J. INT'L. L. 785-789 (1967); ROTHSTEIN, *op. cit. supra.*, note 4 at 44; UNCTAD, *New Directions and New Directives for Trade and Development: Report by the Secretary-General of UNCTAD to the Conference*, T/D 183, 14 April, 1976, pp. 19-23; *UNCTAD: The Elements of the New International Order* in SAUVANT, *et al.*, eds. THE NEW INTERNATIONAL ECONOMIC ORDER: CONFRONTATION OR COOPERATION BETWEEN THE NORTH AND THE SOUTH 39 (1977).

12 MEIER, LEADING ISSUES IN ECONOMIC DEVELOPMENT 685 (1977).

13 U.N. General Assembly Resolution No. 1995 (XIX), 30 December 1964.

14 U.N. General Assembly Resolution No. 3201 (S-VI), Par. 4(j). (May 1, 1974).

15 U.N. General Assembly Resolution No. 3202 (S-VI), Sec. 1, par. 1(e), May 1, 1974.

The turning point for the recognition of commodity agreements was realized in the Charter of the Economic Rights and Duties of States[16] where it was explicitly provided in Article 5 that "[a]ll States have the right to associate in organizations of primary commodity producers in order to develop their national economies, to achieve stable financing for their development and, in pursuance of their aims, to assist in the promotion of sustained growth of the world economy, in particular accelerating the development of developing countries. . . ." A correlative duty has been imposed, in that all States are under the mandate to respect the right to enter into commodity agreements by refraining from applying economic and political measures that would limit it.

While Article 5 provides for the right of a State to enter into a commodity agreement, Article 6 looks upon it as an obligation, in this wise:

> Art. 6. 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. All States share the responsibility to promote the regular flow and access of all commercial goods traded at stable, remunerative and equitable prices, thus contributing to the equitable development of the world economy, taking into account, in particular, the interests of developing countries.

The Declaration of Dakar[17] which found that:

> The marketing and distribution systems for individual commodities prevailing at present, were developed in the nineteenth century by colonial powers and are wholly inadequate today as instruments of economic change and advancement. Under such systems, transnational corporations control production of, and trade in, many primary commodities, particularly through the exercise of bargaining power against a large number of weak competing sellers in Developing Countries. World commodity markets experience a chronic instability which arises through sudden and substantial shifts in the balance of world supply and demand as well as through excessive speculative activities encouraged by lack of adequate regulation of these markets.

The Nairobi Resolution of May 30, 1976 provided for an Integrated Programme for Commodities which is now the working guideline for the enactment of commodity agreements covering a particular primary commodity. Broadly, it called for a programme of commodities whose export is of interest to the less-developed countries and that one of the major objectives the Programme seeks to achieve is to improve the market structures for the producer countries, which were conceived to be, on the main, less-developed countries.[18]

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16 U.N. General Assembly Resolution No. 321, XXIX, Art. 5, December 12, 1974.

17 UNCTAD, *Conference of Developing Countries on Raw Materials*, cited in Franck, *Minimum Standards of Public Policy and Order Applicable to Collective International Commodity Negotiations*, II RECUEIL DES COURS 395, 406 (1978).

18 UNCTAD Resolution No. 93 (IV), May 30, 1976.

The Integrated Programme on Commodity Agreements is sought to be strengthened by the establishment of a Common Fund which function is to contribute to the financing of international buffer stocks that may be provided by a particular commodity agreement.[19] In addition, the Group of 77—the less-developed countries—have pressed for an UNCTAD study of the feasibility of adoption of a complementary compensatory facility for export shortfalls measured in real terms in each commodity. This, understandably, met the sharp dissension from the developed countries' camp.[20]

THE INTERNATIONAL NATURAL RUBBER AGREEMENT

Natural rubber production faces obstacles set by the nature of the product itself—the natural tendency toward supply inelasticity caused by the long years between planting and harvesting, the considerable costs that cover the same before production and the need for rest periods after some years of production.[21] To counter this, it is hoped by the signatories to the International Natural Rubber Agreement (hereinafter referred to as INRA) that the agreement will help:[22]

> (a) to achieve a balanced growth between the supply and demand for natural rubber, thereby helping to alleviate the serious difficulties arisng from surpluses or shortages of natural rubber;
> (b) to achieve stable conditions in natural rubber trade through avoiding excessive natural rubber price fluctuations, which adversely affect the long-term interests of both producers and consumers, and stabilizing these prices without distorting the long-term market trends, in the interests of producers and consumers; . . .

While the British "Stevenson Plan" in 1922 and the International Rubber Regulation of 1934 aimed to raise the price of natural rubber[23] (which at the time had no competing substitutes, i.e., the synthetic rubber), the objective of the INRA is to increase the competitiveness of the natural rubber against the synthetic rubber. This assertion can be gleaned from the statement of objectives in the INRA:[24]

> (f) to seek to expand international trade in and to improve market access for natural rubber and processed products thereof;
> (e) to improve the competitiveness of natural rubber by encouraging research and development in the problems of natural rubber;
> (h) to encourage the efficient development of the natural rubber economy by seeking to facilitate and promote improvements in the processing, marketing and distribution of raw natural rubber; . . .

[19] United Nations Negotiating Conference on a Common Fund under the Integrated Programme for Commodities, Resolution I (III), March 21, 1979, in I TRADE AND DEVELOPMENT 94 Spring 1979.

[20] "Limited Agreement Hammered Out After Intense Debate at UNCTAD", *IMF Survey*, June 18, 1979, p. 187.

[21] LAW, *op. cit. supra.*, note 7 at 61.

[22] International Natural Rubber Agreement, Art. 1. (a) and (b), (1979).

[23] LAW, *op. cit. supra.*, note 7 at 62.

[24] International Natural Rubber Agreement, Art. 1 (f), (g) and (h).

The need for price stabilization for natural rubber is also an underlying *raison d' etre* of the INRA. In this respect, Article 1 (b) states that one of the objectives is "to achieve stable conditions in natural rubber through avoiding excessive natural rubber fluctuation, which adversely affect the long-term interests of both producers and consumers, and stabilizing these prices without distorting long-term market trends, in the interests of producers and consumers."

The studies made under the Food and Agriculture Organization show that prices for natural rubber fluctuated from 21¢ per pound in 1947, to 59¢ in 1951; to 23¢ in 1953; to 36.6¢ in 1959 to 25.7¢ in 1965; to 18.1¢ in 1973.[25] In contrast, it was found that prices for synthetic rubber were more stable throughout the years. The decline of the price for natural rubber was partly caused by substantial fluctuations in price, making it for quite some periods unattractive to manufacturers of rubber products and the continuous technical developments in synthetic rubber which widened the area of potential substitution to the detriment of the natural rubber.[26]

While the International Wheat Agreement of 1971 was concluded with developed countries as producers, the producing countries in the INRA are, on the main, less-developed countries—Bolivia, Cameroon, India, Indonesia, Liberia, Malaysia Nigeria, Papua-New Guinea, the Philippines, Singapore, Sri Lanka, Thailand and Zaire.[27]

It is also noteworthy to state that the leading producer of synthetic rubber is from the North—the United States, which produced one-half of the world synthetic rubber output in the mid-1960's. However, some of the well-off less-developed countries like Australia in 1961; Brazil in 1962; India in 1963; South Africa in 1964 and Argentina have followed suit in the production of synthetic rubber.[28]

Generally, the control mechanisms set by international commodity agreements to achieve its basic objective of attaining price stabilization of a covered commodity are (a) multilateral contract agreements; (b) export restrictions; and (c) buffer stocks.

Through the multilateral contract agreements, the importers and the exporters are under the obligation to buy or sell certain guaranteed quantities of the particular commodity subject of the agreement at a stipulated maximum price or at a stipulated minimum price whenever the free market price reaches or exceeds the limits as in the Wheat Trade Convention of 1971.[29]

[25] FAO, *Monthly Bulletin of Agricultural Economics and Statistics*, various issues cited in LAW, *op. cit. supra.*, note 7 at 63.

[26] MAIZELS, EXPORTS AND ECONOMIC GROWTH OF DEVELOPING COUNTRIES 357 (1971).

[27] International Natural Rubber Agreement, Annex A.

[28] MAIZELS, *op. cit.* at 459.

[29] *Wheat Trade Convention*, Art. 3 (1971). This agreement whose life was extended until June 30, 1979 by a protocol is intended to be superseded by an international wheat

Secondly, the export-restriction agreement provides for the limitations of exports to maintain the stability of the price of the covered commodity. This control mechanism has been used in the International Sugar Agreement where a producing country's export quota represents its share in the free market based on the estimated requirements of the free market.[30] The International Sugar Agreement of 1977, however, takes into account the plight of the less-developed countries which are exporters of sugar by providing for a creation of a Hardship Reserve Committee to "examine the applications of less-developed countries which are experiencing hardship as a result of special difficulties and in temporary need of additional export entitlements in excess of their respective quotas in effect or export entitlements under the Agreement."[31]

The International Coffee Agreement of 1976 similarly provides for export quotas but only when prices are low. Thus, when prices for coffee are high, the quotas will be suspended.[32] Moreover, a new special fund is also established to aid the International Coffee Organization in its implementation of the Agreement.

Thirdly, the buffer stock scheme has been used in the Fifth International Tin Agreement[33] where the signatories contribute cash or commodities to a central buffer fund. Price stabilization of tin is achieved by authorizing the Buffer Stock Manager, through the use of the buffer fund to sell tin when the prices are at or above the higher price range, or to buy tin when the price is at or below the low of the price range and may buy it, when it is in the lower range.[34]

A hybrid group of commodity agreement uses two of the aforementioned control mechanisms, i.e., the Fifth International Tin Agreement and the International Cocoa Agreement which both utilize the quota system and the buffer stock.[35] In the latter, when the market price of cocoa is at or close to the minimum price, supplies are reduced by means of export quotas (the size of which varies according to prices) and the Buffer Stock Manager buying up cocoa. When, on the other hand, the prices are high, export quotas are suspended and the buffer stock intervenes on the market by selling the

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agreement that will take into consideration the interest of developing countries through reserve stocks "appropriate for ensuring food security as such, as well as price and supply stability". The new agreement comprises of a new Food Aid Convention to carry out a programme of food aid of not less than ten million tons of wheat and other grains suitable for human consumption annually to less-developed countries and a new Trade Convention which should contribute to the fullest extent possible to the stability of the international wheat market in the interest of the importing and exporting members". *Recommendations of the Third Session of the Committee on the World Food Security*. TD/Wheat/ 6/6, 22 May, 1978.

30 United Nations Sugar Conference, International Sugar Agreement, Art. 34 (October, 1977).

31 International Sugar Agreement, Art. 39.

32 British Institute of International and Comparative Law, *International Commodity Agreements*, 25 INT'L. COM. L.Q., 445 (1976).

33 Fifth International Tin Agreement, Art. 20, (24 June, 1975).

34 Fifth International Tin Agreement, Art. 32.

35 British Institute of International and Comparative Law, *supra*, note 32.

cocoa. In the middle of the price range, free market conditions prevail, with the absence of both export controls and the intervention of the buffer stock.

The control device which is provided in the INRA is the buffer stock. In contrast with the Fifth International Tin Agreement of 1975 which provides for export control in addition to the use of the buffer stock, the INRA explicitly states that the buffer stock shall be the sole instrument for market intervention.[36]

The market price of the natural rubber as envisaged by the INRA is left to be determined by the operation of supply and demand for natural rubber in the world market. The reference prices provided for in Article 30 determines the operation of the buffer stock.[37] These reference prices are subject to a review and revision by the Council based on the criteria set in Article 32 which provides:

> A. Reference Price
> 1. Review and revision of the reference price shall be based on market trends and/or net changes in the Buffer Stock, subject to the provisions of this section of this Article. The reference price shall be reviewed by the Council every 18 months after the entry into force of this Agreement.
> (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 the reference 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 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.

The operation of the Buffer stock, through the intervention of the Buffer Stock Manager, is called to play when there occurs a market instability according to the price ranges fixed therein. In the following instances, the operation of buffer stock is authorized when the market indicator price is: (a) at or above the upper trigger action price, in which case the Buffer Stock Manager is called upon to offer natural rubber for sale until the market indicator price falls below the upper trigger action price; (b) above upper intervention price, the Buffer Stock Manager is authorized to sell in defense of the upper trigger action price; (c) below the lower interven-

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36 International Natural Rubber Agreement, Art. 27.

37 Article 30 of the International Natural Rubber Agreement of 1979 provides:
"1. There shall be established, for the operations of the Buffer Stock:
(a) a reference price,
(b) a lower intervention price,
(c) an upper intervention price,
(d) a lower trigger action price,
(e) an upper trigger action price,
(f) a lower indicative price, and
(g) an upper indicative price."

tion price, the Buffer Stock Manager may buy natural rubber in defense of the lower trigger action price; (d) at or below the lower trigger action price," the Buffer Stock Manager shall defend the lower trigger action price by offering to buy until the market indicator price exceeds the lower trigger action price.[38]

The INRA limits the buffer stock to 400,000 tons of the normal buffer stock and 150,000 tons of contingency buffer stock. The latter may be used by the Buffer Stock Manager only by a qualified member votes of the Council, and only when the Buffer Stock Manager uses up the normal buffer stock.[39]

The contributions to the buffer stock by the exporting and importing countries alike are fixed by a table apportioning the voting rights of both groups within the International Natural Rubber Council. An exception is provided in that an importing country which share as stated in the table is less than or equal to 0.1 per cent but not more than 0.5 per cent is required to contribute to the buffer stock an amount based on its actual share of the total net imports or based on the .005 per cent of its total net imports if its share in the total net imports is .05 per cent or less. Article 39 provides for the adjustments of contribution of the exporting or importing country in the INRA.

The financing of the buffer stock by both the consumer and producer countries' contribution settled the question whether the buffer stock should be financed via levies on trade on natural rubber or through public funds provided by the signatories.[40] On the other hand, the buffer stock in the Fifth International Tin Agreement is shouldered solely by the producer countries.[41] However, some consumer countries in the Tin Agreement voluntarily contributed to the buffer stock.[42]

To ensure economic and efficient commercial operations in the trade of natural rubber, the INRA provides that the "buffer stock shall be located in both the territories of the exporting and importing countries and apportioned, based on the stabilization objectives of the INRA ... while minimizing the costs."[42a] The location of the buffer stock may be changed by a special vote of the Council.

To the International Natural Rubber Organization belongs the power to administer the execution of the provisions of the INRA. As the commodity agreements are intergovernmental schemes, the organization is composed of two groups — the exporting and the importing countries.

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38 International Natural Rubber Agreement, Art. 31, par. 1 (1).
39 International Natural Rubber Agreement, Art. 31 (2).
40 Opinion of the European Court of Justice, 4 October, 1979, p. 47.
41 Fifth International Tin Agreement, Art. 21.
42 Allen, "The International Tin Agreement. Why It Works", *Supplement to Tin International*, December, 1975.
42a International Natural Rubber Agreement, Art. 35.

It is worth to mention that the term "contracting parties" in Article 5 of the INRA should be construed to include the States signatories to the Agreement and to any intergovernmental organization "having responsibilities in respect to the negotiation, conclusion and application of international agreements, in particular commodity agreements."

A question arose as to whether the European Economic Community acting alone is competent to conclude the INRA in behalf of the Member-States of the European Economic Community. The European Court of Justice, in its opinion of October 4, 1979, took into account that while the INRA is a matter of the Community's commercial policy based on Article 113 of the Rome Treaty[43] thus coming within the competence of the Community, commodity agreements in general contain "elements of non-reciprocity which are typical of development aid." In this regard, the Court recognized that this kind of agreement is distinct from the classical commercial agreements but they should not be taken away from the competence of the Community institutions since they had become an important mechanism in the regulation of international trade. The Court added that:

> Following the impulse given by UNCTAD to the development of this type of control it seems that it would no longer be possible to carry on any worthwhile common commercial policy if the Community were not in a position to avail itself also of more elaborate means devised with a view to furthering the development of international trade. It is therefore not possible to lay down, for Article 113 of the EEC Treaty, an interpretation the effect of which would be to restrict the common commercial policy to the use of instruments intended to have an effect only on the traditional aspects of external trade to the exclusion of more highly developed mechanisms such as appear in the agreement envisaged. A "commercial policy" understood in this sense would be destined to become nugatory in the course of time. Although it may be thought that at the time when the Treaty was drafted liberalization of trade was the dominant idea, the Treaty nevertheless does not form a barrier to the possibility of the Community's developing a commercial policy aiming at a regulation of the world market for certain products rather than at a mere liberalization of trade.[44]

However, as the issue whether the buffer stock in the INRA should be borne by the Community or by the Member-States has not been settled yet, the Member-States should act in concert with the Community representatives in the negotiations of the INRA.

The power structure provided for in the INRA is the International Natural Rubber Council which is composed of all members of the Organization. It has a blanket authority to act for the performance of all functions

[43] Article 113 (2) and (3) of the Rome Treaty states:

"2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations."

[44] European Court of Justice, Opinion of October 4, 1979, p. 61.

as are necessary to carry out the provisions of the Agreement and to adopt rules and regulations in connection with the implementation of the provisions of the INRA;[45] to borrow from commercial sources for the Buffer Stock and administrative accounts to cover any deficits on either account caused by the lags between the authorized expenditure and acquired contribution;[46] to revise the reference and the indicative as well as the market indicator price;[47] to direct the Buffer Stock Manager to change the composition of the buffer stock;[48] to restrict or suspend the operation of the buffer stock;[49] to suspend the voting rights of a member in arrears in its contribution; to provide for an adjustment of a member's contribution to the buffer stock account;[50] to adopt a single currency whenever there is a great disparity between the Malaysian ringgit and the Singapore dollar, which significantly affects the buffer stock;[51] to identify appropriate measures and techniques directed towards the promotion and development of the natural rubber economy of the producing members through improved production thereby increasing their export earnings and improving stability of supply;[52] and to publish an annual assessment, statistics and studies on the world natural rubber situation.[53]

The Council is also given the power under the provisions of Article 53 to relieve a member of its obligation arising from the INRA on account of exceptional circumstances or *force majeure*. Furthermore, it has also been granted the authority in personnel administration in that it appoints an executive director and the Buffer Stock Manager and both are answerable to the Council for their acts.

The executive director is the chief administrative officer of the INRA.[54] The duties of the Buffer Stock Manager have been discussed elsewhere in this article.

It is also within the ambit of the Council's powers to appoint a panel of experts.[55] Committees within the organization are responsible to the Council.[56] In this respect, Article 9 of the INRA provides that the Council may delegate to the Committee the exercise of powers specifically conferred to the former by the INRA.[57]

The decisions in the Council for any policy or action are reached by a majority vote generally, which may be a simple majority vote (or the

[45] International Natural Rubber Agreement, Art. 7.
[46] International Natural Rubber Agreement, Art. 8.
[47] International Natural Rubber Agreement, Art. 32.
[48] International Natural Rubber Agreement, Art. 34.
[49] International Natural Rubber Agreement, Art. 37.
[50] International Natural Rubber Agreement, Art. 39.
[51] International Natural Rubber Agreement, Art. 40.
[52] International Natural Rubber Agreement, Art. 44.
[53] International Natural Rubber Agreement, Art. 47.
[54] International Natural Rubber Agreement, Art. 13.
[55] International Natural Rubber Agreement, Art. 20.
[56] International Natural Rubber Agreement, Art. 19.
[57] International Natural Rubber Agreement, Art. 9.

distributed simple majority)[58] or a qualified majority (special vote) when specifically provided for by the INRA.

The signatories to the INRA are divided into two groups, each having a total of 1,000 votes.[59] At the inception of the effectivity of the agreement, the initial votes which may be 100 or 200 are divided equally among the members of the producers' group or the consumers' group as the case may be. The remainder of the votes is apportioned according to the share in the natural rubber market for a period of time as fixed by the INRA. The Council has the power to redistribute the votes held by either groups when membership in the organization changes or when the member's rights under the agreement are suspended.[60]

A decision is reached when the required number of votes is attained separately in each of the producers' and consumers' groups. The same voting machinery has been used in the Fifth International Tin Agreement.[61]

The INRA provides for the obligations of the signatories to it, more particularly, the obligation to contribute to the buffer stock. Upon failure to do so, the Council, by special vote, shall suspend the defaulting member's voting rights.[62] In addition, the INRA also provides that the exporting countries are under the obligation to pursue policies and programmes which ensure continuous availability to consumers of natural rubber and to upgrade and achieve uniformity in quality specifications and promotion of natural rubber.[63] Generally, both the producers and consumers of natural rubber are under the mandate to use best endeavours and to cooperate to promote the attainment of the objectives of the INRA; to improve the conditions of the natural rubber economy; and to encourage the production and use of natural rubber to promote the growth and modernization of the natural rubber economy for the mutual benefit of the producers and consumers.

As in the Fifth International Tin Agreement,[64] a dispute settlement mechanism which is internal, is provided by the INRA in Article 56 where the Council decides on a dispute concerning the interpretation and the application of the INRA. When a majority of members holding at least one-third of the total votes is attained, the same may request an opinion from an advisory panel.

The same set-up on dispute settlement has been adopted in the International Sugar Agreement;[65] Wheat Trade Convention;[66] and the International Coffee Agreement.[67]

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58 International Natural Rubber Agreement, Art. 18.
59 International Natural Rubber Agreement, Art. 15.
60 International Natural Rubber Agreement, Art. 15 (7).
61 Fifth International Tin Agreement, Art. 13.
62 International Natural Rubber Agreement, Art. 38.
63 International Natural Rubber Agreement, Art. 43.
64 Fifth International Tin Agreement, Arts. 45 and 46.
65 International Sugar Agreement, Art. 57 (1977).
66 Wheat Trade Convention, Art. 22 (1971).
67 International Coffee Agreement, Art. 59 (1976).

The objective to achieve a stable market for natural rubber is expected to be realized by the assessment of the world natural rubber situation by identifying any obstacle to the expansion of trade through statistical information that should be furnished by the signatories to the INRA.[68]

AN ASSESSMENT

The commodity agreements are but one of the means for the realization of the broader objectives of the New International Economic Order, which seeks: firstly, to reduce and eventually eliminate the economic dependence of developing countries on developed countries' enterprises in the production and trade of developing countries by allowing the latter to exercise full control over their natural resources; secondly, to promote the accelerated development of the economies of the less developed countries on the basis of the principle of self-reliance; and thirdly, to institute appropriate institutional changes required to introduce some measure of global management of resources in long-term interests of mankind as a whole.[69]

Within the commodity agreements themselves, the buffer stock mechanism was seen to achieve these aforementioned ends.

And a good illustrative example is the INRA.

In the word of the European Court of Justice in its Opinion of October 4, 1979, through the use of the buffer stocks, which is by its nature a development aid scheme, the stabilization earnings of the less-developed countries is sought to be achieved by "(1) increasing the earnings through the increase of quantities of natural rubber exported at fair and reasonable prices; (2) a dynamic and rising rate of production leading to accelerated economic growth and social development; (3) promotion of local processing of natural rubber in less-developed countries."

By placing a "floor" and "ceiling" of the price of natural rubber through the use of reference prices where the Buffer Stock Manager would intervene in the buying and selling of natural rubber, it was deemed that the scheme would protect the less-developed countries against the adverse consequences of economic recession in the developed countries; to reduce the short-term instability in the primary commodity markets; and to help strengthen the competitive exports of the less-developed countries against synthetics — the synthetic rubber. On the other hand, it has been argued that the manipulation of the buffer stock is insufficient to reduce instability because the low short-run price elasticities of supply and demand for commodities do not respond significantly to the price changes but to the changes in the market supply and demand which are unpredictable. Ergo, unless the Buffer Stock Manager should foresee the future market trend more accurately on

[68] International Natural Rubber Agreement, Art. 46 (2) and (3).

[69] UNCTAD, "The Elements of the New International Economic Order", in SAUVANT, *op. cit. supra.*, note 11 at 39.

the average than on the market, it is dubitable whether the buffer stock will be an effective scheme for price stabilization.[70] However, the signatories to the INRA have equipped the Buffer Stock Manager in the INRA as means to obtain accurate information by providing for studies, annual assessments to be made by the Council and other relevant information that may be furnished by the signatories.[71]

The attack levelled against the commodity agreements generally are: that the indexation of prices of the commodities results in the termination of the market mechanism of price formation;[72] the production by inefficient producers by rationing supply and keeping prices up[73] (which ultimately will lead to the creation of an international lead, zinc and tin mountain on a gigantic scale[74]); that commodity agreements, which were established for the needy less-developed country-producers in case of instability or down-ward trend of their foreign exchange earning through the redistribution of world's resources between the North and the South, do not serve the purpose for which they were created since most of the producer-countries are the developed countries themselves.[75]

In the light of the provisions of the INRA, these criticisms shall be examined correspondingly.

First, the use of the buffer stock mechanism is used sparingly. Generally, it is the market that determines the price of the natural rubber. Moreover, the prices corresponds with the market trend at a given time by providing for a revision of the reference prices when the situation calls for it. In addition, the absence of a provision on export quota as in the Fifth International Tin Agreement; makes it even more patent that the market should determine the supply of natural rubber. On the other hand, the use of the buffer stock mechanism is to stabilize the price of natural rubber, which the studies have shown to have a high percentage in price fluctuations.

Secondly, the production of surplus natural rubber is forestalled by a limitation of the buffer stock of natural rubber to 550,000 tons — hence, the claim of a creation of an international natural rubber mountain is of no moment.

Thirdly, in this particular commodity agreement, the producer countries are mostly the less-developed countries. Therefore, whatever advantages the buffer stock mechanism may bring will redound to the benefit of less-developed countries which produce natural rubber.

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70 ROTHSTEIN, *op. cit. supra.*, note 4 at 84.

71 International Natural Rubber Agreement, Arts. 46, 47 and 48.

72 Friedrichs, *Basic Problems of the World Economy*, in SAUVANT, *op. cit. supra.*, note 11 at 90. See also, Schmidt, *The Case Against Commodity Agreements*, 28 LAW & CONTEMP. PROB. 313-322 (1973).

73 Lowenfeld, *op. cit. supra.*, note 11 at 789.

74 Friedrichs, *supra.*

The inefficacy of the commodity agreements in general, if they are to be gauged against the purpose for which they were created, does not lie on the provisions of the commodity agreements but on the extraneous factors that afflict the less-developed countries. For one thing, they are the multinational corporations and nationals of the developed countries that dominate in the production, distribution, and marketing of the primary commodity that may be subject of a particular commodity agreement. This predicament that faces the less-developed countries has been described in this wise:[76]

> Thus, for most developing countries, their interdependence with developed countries has been one-sided or asymmetrical relationship, characterized by a condition of structural dependence. This dependent relationship has been generally accentuated in recent decades by the growing influence of the transnational corporations of developed countries, which have come to control major aspects of the economic activities of developing countries. The dependent nature of the relationship is manifested both in the domestic socio-economic structures of developing countries and in their external economic relations. Domestically, their economies remain — apart from a relatively few exceptions — still largely oriented to serving the needs of developed countries, and exhibit a lop-sided or distorted pattern, with excessive dependence on one, or few, export commodities, and little or no capacity to produce capital goods or to develop an indigenous technological capability. Externally, most developing countries are heavily dependent on the markets of developed countries for the foreign exchange required to support the development process, as well as on the transnational corporations for the supply of technology, know-how and finance, and for the transport and marketing of their export produce. The international institutional structure thus operates so as to deprive the developing countries, to a greater or lesser extent, of effective control over the pace and pattern of development.

Henceforth, the only alternative is to hope that the multinational corporations will abide by the provisions of the prospective Code of Conduct for Transnational Corporations, more particularly, the adherence to the economic goals and development objectives, policies, and priorities of the less-developed-host country.[77]

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75 *Ibid.*

76 UNCTAD, *The Conceptual Framework For a New International Development Strategy*, 1 TRADE AND DEVELOPMENT, Spring 1979, p. 91.

77 "*Adherence to economic goals and development objectives, policies and priorities.*

4. Consistent with the need to maintain the viability of their operations, transnational corporations should take effective measures to ensure that their activities are compatible with and make positive contribution toward the achievement of the economic goals and established development objectives of the countries in which they operate. To this effect, transnational corporations should support the development efforts of the countries which they operate, particularly developing countries, and participate effectively in these efforts at the national level, and where appropriate, at the regional level within the framework of regional integration programmes. In this context, they should consult and cooperate, as appropriate, with governmental authorities regarding ways of maximizing their contributions to the development process and of establishing mutually beneficial relations with these countries." United Nations Economic and Social Council, *Transnational Corporations: Code of Conduct: Formulations by the Chairman*, p. 4, 13 December, 1978.

The protectionist policies[78] set by the developed countries are said to contribute to a certain extent to the inefficacy of the commodity agreements vis-a-vis the goal to increase the foreign exchange earnings of the less-developed countries through a stable income from exports of primary commodities. An exemplary protectionist policy is that of the European Economic Community's common agricultural policy where there exists a community preference, that is, there is an organization of community markets so that domestic products will always be cheaper than the corresponding imports through the employment of two devices: minimum import prices and subsidies on domestic products. The mechanism used is the variable levy system.[79]

The correlative impact is that where subsidies are granted by the developed countries to their domestic producers to dispose of their production surplus to the domestic needs of the less-developed countries, not only are the latter's domestic markets adversely affected but also the latter's export opportunities to the third markets.[80]

In this instance, the less-developed countries which are signatories to the INRA do not face the restrictive trade policies as reflected in the developed countries' protectionist policies since the former are mainly the producers of natural rubber. But the stumbling block in the realization of the INRA's objectives is the possibility that the developed countries may place on the world market the synthetic rubber, which is a perfect substitute for natural rubber.

The only remedy that has been foreseen to make commodity agreements in general, and in this case, the INRA in particular effective, is a close coordination of the national policies of the governments that are signatories of the INRA for "an orderly method to which the patterns of production and trade can best be adjusted to the requirements of world demand over a long period."[81] This is provided by Article 45 of the INRA which reads:

> Art. 45. *Consultation.* The Council shall consult, at the request of any member, on government natural rubber policies directly affecting supply and demand. The Council may submit its recommendations to members for their consideration.

CONCLUSION

This paper has aimed to examine the provisions of the INRA in the light of the objectives that the commodity agreements sought to achieve;

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[78] The protectionist policies are said to be enacted because of the pressure of domestic surplus in their markets. The developed countries' national market imbalances result from their virtual failure to find a way of moving enough resources out of agriculture in an orderly manner and rationalizing individual farm structure rapidly enough. Ojala, *Europe and World Agricultural Economy,* ROGERS, ed., THE COMMON AGRICULTURAL POLICY AND BRITAIN 18 (1973).

[79] JACKSON, *op. cit. supra.,* note 11 at 992.

[80] KOUL, *op. cit. supra.,* note 9 at 84.

[81] BLAU, *op. cit. supra.,* note 11 at 8.

its probable effectiveness, taking into account the control mechanisms provided for by previous commodity agreements; a perusal of the extraneous factors that affect the efficacy of the commodity agreements; and the criticisms against the commodity agreements in general.

The provisions of the INRA, when taken by themselves, are sufficient to achieve the objectives for which it was established. But like the other commodity agreements, its efficacy will be greatly affected by the extra-legal factors that face the developing countries. It takes more than commodity agreements for the South to achieve economic development.