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Special Problems of International Trade, Investment and World Order. Trade Between Developed and Less Developed Countries: North-South Trade - Recent Developments in Third World Trade Organizations

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IV. SPECIAL PROBLEMS OF INTERNATIONAL TRADE, INVESTMENT AND WORLD ORDER

A. Trade Between Developed and Less Developed Countries: North-South Trade

RECENT DEVELOPMENTS IN THIRD WORLD TRADE ORGANIZATIONS*

The four principal organizations concerned with the economic development of third world countries[1] are the United Nations Conference for Trade and Development (UNCTAD), the Council on International Economic Cooperation (CIEC), The Group of Seventy Seven, and the African, Caribbean and Pacific Countries (ACP).[2] The first two organizations, UNCTAD and CIEC, provide fora for negotiations between developed and developing countries. The Group of Seventy Seven and the ACP are formal interregional alliances among developing countries. This paper surveys recent trade law developments within these four organizations.

The ACP signed a formal trade agreement, The Lomé Convention,[3] with the European Economic Community (EEC) in February 1975. The agreement became effective on April 1, 1976. The Convention, which has been considered an innovative model for prospective agreements between groups of developed and developing countries,[4] is actually a multilateral treaty although the ACP signatory states chose not to call it by this name.[5] One of

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1. "Third world countries" refers to those countries which have signed the Joint Declaration of Developing Countries, which was originally drafted in Geneva in 1964.

2. There are at present 46 ACP countries.

3. African, Caribbean, Pacific-European Economic Community Convention of Lomé (Lomé Convention) signed Feb. 28, 1975, reproduced in 14 INT'L LEGAL MATS. 595 (1975).

4. White, *A New International Economic Order?*, 16 VA. J. INT'L L. 323 (1976); White, *The Lomé Convention — A Lawyers View*, 1 EUR. L. REV. 212 (1976) [hereinafter cited as White, *Lomé*].

5. 3 BULL. LEGAL DEVELOPMENTS 30 (Feb. 13, 1976).

its most significant aspects is the stabilization scheme for commodities (Stabex),[6] which gives ACP countries the right to compensation from the EEC if there is a sudden fall in the export earnings of an ACP country.[7] These earnings must be derived from the sale of goods in twelve product categories.[8] In order for a country to claim compensation for a drop in export income, it must be shown that the earnings from the previous year amounted to either 7.5% or 2.5% of the country's total income, depending on the particular country's level of development.[9] The compensation provisions of the Stabex scheme provide an immediate opportunity for accelerated growth in the export of primary products, which are the major source of income for most developing nations.[10] As of August 1976, at least seventeen ACP countries have been paid for losses incurred as a result of the price drops in compensable commodities.[11]

Also of major importance are the multilateral commodity negotiations to be conducted under the auspices of the Lomé Convention. Negotiations concerning sugar have already taken place. Unfortunately lack of conclusive results has caused a minor setback in EEC relations with the third world.[12]

Another alliance composed solely of developing countries is the Group of Seventy Seven.[13] The major goals of the Group are expressed in the Manila Programme of Action,[14] drawn up at the

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6. White, *Lomé, supra* note 4, at 212.

7. Laing, *New Departures in Multi-lateral Trade Development and Cooperation: The Lomé Convention and its Impact on the United States*, 27 MERCER L. REV. 781, 804–05 (1976).

8. White, *Lomé, supra* note 4, at 206. The products are groundnuts, cocoa, coffee, cotton, coconut, palm and palmnuts, kernel products, rawhides (skins and leather), wood products, fresh bananas, tea, raw sisal and iron ore.

9. 7.5% applies to the more developed countries and 2.5% applies to the least developed economies, which are usually islands or land-locked countries.

10. The Lomé Convention provides further benefits for the ACP countries by incorporating the principle of non-reciprocity. Most trade agreements are reciprocal in nature, *i.e.*, concessions on one side must be matched by concessions on the other side. Article 7 provides that no requirement for reciprocal treatment be imposed.

11. Business Weekly of Ghana, Sept. 20, 1976, at 3 (available in the Reading Room of the Embassy of Ghana).

12. Business Weekly of Ghana, May 24, 1976, at 5.

13. Currently, the Group has over one hundred members. Seventy-seven is the number of countries that signed the original declaration in Geneva.

14. Reproduced in 15 INT'L LEGAL MATS. 414 [hereinafter cited as Manila Programme].

Group's February 1976 meeting in Manila. The Programme of Action focuses on nine areas of concern to the developing nations.[15]

Like the Lomé Convention, the Programme calls for strict adherence to the "non-reciprocity principle" and application of differential measures in favor of developing countries as a basis for multilateral trade negotiations.[16] In the area of manufactures and semi-manufactures, the Group insists on the alleviation of "restrictive practices,"[17] focusing on the reduction of tariff and non-tariff barriers to trade. With respect to commodities, the Programme aims to improve terms of trade with industrialized nations, to reduce excessive fluctuations in commodity prices, to improve export earnings in raw commodities and to promote the expansion of the export trade in processed products.[18]

At its most recent meeting, in May 1976 in Colombo, Sri Lanka, the Group drew up a proposed agenda for the then upcoming meeting of UNCTAD IV. The UNCTAD agenda did not differ significantly from the Manila Programme of Action.

UNCTAD, which has institutional status within the United Nations, is the principal forum for negotiations between the Group of Seventy Seven and the developed countries. Its formal machinery includes the Trade Development Board as well as Standing Committees on

1. Commodities
2. Manufactures and Semi-Manufactures
3. Financial Resources for Development
4. Insurance and Tourism
5. Trade Relations Among Countries Having Different Economic and Social Systems
6. Special Measures in Favor of Least Developed Among Developing Countries.

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15. The Programme Sections are: commodities; transfer of technology, manufactures and semi-manufactures; multilateral trade negotiations; money and finance and the transfer of real resources for development; least developed countries; countries with different economic and social systems; review of institutional arrangement of UNCTAD IV. *Id.*

16. Manila Programme, *supra* note 14, at 418–20.

17. *Id.* at 425–30.

18. *Id.* at 421–25.

The most recent UNCTAD meeting (UNCTAD IV) was held in Nairobi, Kenya in May 1976. The 139 member states in attendance, along with representatives from intergovernmental and nongovernmental agencies, considered action within the nine policy areas outlined by the Group of Seventy Seven at the latter's Manila meeting.[19]

UNCTAD IV members voted to begin multilateral negotiations on a wide range of commodities including the "core" commodities: cocoa, coffee, copper, cotton, jute, rubber, sisal, sugar, tea and tin.[20] The five key elements of the integrated commodities program of the Standing Committee on Commodities are:

1. Establishment of buffer stocks
2. Initiation of multilateral trade commitments by both consumer and producer nations
3. Improvement of compensatory financing for losses incurred by reason of export earning fluctuations
4. Initiation of stocking provisions for food grains
5. Establishment of a common source of funds for financing international institutions responsible for administering the international buffer stocks.[21]

More than twenty countries have already expressed a willingness to participate in the "common source" fund; pledges totalling $156 million were received before the conference recessed.[22] Proposals for the dispensation of this fund were solicited and required to be submitted by September 1976. The United States proposal, which has already been submitted, suggests utilization of the common funds to finance the processing of raw materials and agricultural products. The proposed commodity buffer stocks would be used as collateral for periodic bond issues. The bonds would be redeemed with the money received from the sale of buffer stocks during periods of high commodity prices. The Ameri-

19. *See* UNCTAD MONTHLY BULL. No. 118 (1976), U.N. Doc. TD/182 (1976).

20. UNCTAD MONTHLY BULL. No. 118 (1976), U.N. Doc. TD/RES/85(IV)–TD/RES/100(IV) (1976).

21. *See* UNCTAD MONTHLY BULL. Nos. 116, 118 (1976), U.N. Doc. TD/184 (1976). For a brief analysis of the proposal and the positions of the major blocs of negotiating states, see *Big Brother Buffer Stock*, 261 THE ECONOMIST, Dec. 4, 1976, at 116.

22. UNCTAD MONTHLY BULL. No. 118 (1976).

can plan has been viewed skeptically by some developing country spokesmen. For example, S.E. Quarm, Ambassador to the United States from Ghana, says that "such an institution might slant its actions to the benefit of commodity buyers rather than to the benefit of the commodity selling nations."[23] Instead, Mr. Quarm suggested that the fund be utilized by the World Bank or the International Monetary Fund for raw materials development and commodity price stabilization.[24]

Multilateral negotiations on commodity pricing, beginning with copper, were scheduled to begin in September 1976.[25] On the topic of money and finance UNCTAD members were unable to agree on a plan of action to alleviate debt problems of least developed countries.[26]

The effort to improve economic cooperation among developing countries was also addressed at the Nairobi meeting. These countries have begun to enact strategies for comprehensive and mutually advantageous economic cooperation. However, subregional schemes such as the Economic Organization of West African States (ECOWAS), the Andean Group and the East African Community (EAC) have met with limited success. In fact, the greater part of third world trade is still carried on with industrialized nations.[27] In an effort to encourage expansion of trade among themselves, the developing countries laid the groundwork for an interregional preferential trade system. According to its drafters, this system does not constitute an exception to the Most Favored Nation (MFN) principle of the General Agreement on Tariffs and Trade (GATT).[28] Thus, it is argued that industrial nations cannot utilize the MFN principle embodied in GATT Article I, to obtain the same preferential treatment afforded to participants in this new interregional economic preference system. At the same time, however, the proposed special preferences must be extended to all developing countries.

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23. *Commodity Plan Sparks Poor Nations' Doubts,* Journal of Commerce, June 28, 1976, at 10, col. 2.

24. *Id.*

25. UNCTAD MONTHLY BULL. No. 118 (1976).

26. *Id.* The conference did agree to bring the issue of future operations regarding the debt problems before the "appropriate existing international fora." *Id. See also Key Issues Split Rich, Poor Lands,* Journal of Commerce, May 25, 1976, at 1, col. 8.

27. *Economic Cooperation Among Developing Countries,* U.N. Doc. TD/192 (1976).

28. *Id.*

UNCTAD IV concluded by putting forth the following suggestions:

1. Duty free entry of manufactured imports of developing countries into developed countries.
2. Adaptation of the general system of preferences outlined in Part V of the GATT to respond better to developing country needs.
3. Shifting of production emphasis in developed countries from manufactures and semi-manufactures which enjoys little or no competition in the international market in order to allow developing countries to expand production in these areas.
4. Revision of GATT to provide for more favorable treatment to developing countries.
5. Revision of the international patent system.
6. Worldwide reduction of tariff and non-tariff trade; increasing exports from developing to socialist countries of eastern Europe.
7. Optional membership on the Trade and Development Board for all members of UNCTAD as opposed to limiting it to the sixty-eight countries now designated.
8. Adoption of the Manila Declaration as working document of the UNCTAD program.[29]

Unlike UNCTAD, which was created primarily to serve as a forum for communications, the Council on International Economic Cooperation (CIEC), was created specifically for the purpose of negotiations (the "North-South Dialogue"). CIEC is composed of twenty-seven delegations, eight from industrialized nations and nineteen from oil producing and other developing countries. The 1976 CIEC meeting in Paris established four commissions: Energy, Raw Materials, Development and Finance.[30] The meet-

29. UNCTAD MONTHLY BULL. No. 118 (1976); U.N. Press Release TAD/687 (June 2, 1976).

30. HOUSE COMM. ON INTERNATIONAL RELATIONS, NORTH-SOUTH DIALOGUE, 94th Cong., 2d Sess. (Comm. Print 1976), *reprinted in* 15 INT'L LEGAL MATS. 388, 389-90 (1976) [hereinafter cited as NORTH-SOUTH DIALOGUE].

ing adjourned, however, without reaching agreement on two key issues: the protection of the purchasing power of developing countries and the alleviation of the mounting foreign debts of these countries. Each side reproached the other for the failure. The developing countries said that the lack of agreement resulted from the negative attitudes of several participants from the developed countries, specifically the United States, Japan and West Germany.[31]

In spite of this criticism, the United States has pledged its continued participation in CIEC.[32] Furthermore, the report to the U.S. Congress emphasized the positive aspects of the North-South dialogue, indicating that the overall atmosphere of the conference was harmonious.[33] The United States views the CIEC as a forum for dialogue between energy producers and energy consumers. The congressional report asserts that U.S. interest in CIEC is oriented toward separating the oil producing countries from other developing countries.[34] The fact that suggestions to enlarge CIEC membership were not followed indicates that the United States has accomplished its aim. Any increase in membership would necessarily entail the admission of non-oil producing countries, because all of the oil producing developing countries are members.

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31. Ryan, *Int'l Order Conference at Impasse,* Journal of Commerce, July 20, 1976, at 12, col. 2.

32. *US Hopes to Extend Energy Talks,* Journal of Commerce, July 12, 1976, at 8, col. 6.

33. NORTH-SOUTH DIALOGUE, *supra* note 30, at 388.

34. *Id.* at 389.