L. MICHAEL HAGER*

Commodity Agreements and the Developing Countries: - A Collective Bargaining Approach†

Foreign nations are not yet considered as objects susceptible of an injury.
Jeremy Bentham

Geneva is a long way from Havana. The physical distance separating the two cities symbolizes the philosophic gap between the Havana Charter of 1948 and the UNCTAD Final Act of 1964. Yet the modern commodity agreements—and much of the controversy that presently surrounds them—were born in Havana and Geneva.

Commodity agreements have been recognized internationally since the World Economic Conference in 1927; they even have nineteenth century antecedents.[1] Nevertheless, it was not until the United Nations Conference on Trade and Employment promulgated the Havana Charter for an International Trade Organization (ITO), that there was anything approaching an "international law" of commodity agreements. The ITO aborted; but Chapter VI of its Charter, dealing with inter-governmental commodity agreements, was adopted in 1951 by a resolution of the Economic and Social Council of the United Nations (ECOSOC).[2]

*LL.B. (1963), A.B. (1960), Harvard; M.P.A. (1969), John F. Kennedy School of Government, Harvard; member, Oklahoma and American Bar Association, African Law Association in America and American Society of International Law. Mr. Hager is with the Headquarters Office, Islamabad, U.S. Agency for International Development Mission to Pakistan.

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[1]In 1864, for example, four European countries entered into a ten year agreement to do away with beet sugar production bonuses and export subsidies. WILLIAM E. HAVILAND, INTERNATIONAL COMMODITY AGREEMENTS (Montreal: Private Planning Association of Canada, 1963), p. 16. Generally, inter-governmental agreements succeeded private cartel arrangements and national valorization or price supporting schemes. EDWARD S. MASON, CONTROLLING WORLD TRADE (New York: McGraw-Hill, 1946), p. 152.

[2]Resolution 373 (XIII), Sept. 13, 1951, cited by Herman Walker, *The International Law of Commodity Agreements*, LAW AND CONTEMPORARY PROBLEMS, Vol. 28 (Spring, 1963), p. 401. But, strictly speaking, Chapter VI never became law. It has had only a "hortatory status." *Id.*, at 414.

The significance of Chapter VI lay in its restrictive endorsement of inter-governmental agreements: commodity control was a "necessary evil," for temporary use and limited objectives.[3] Not only were such agreements not to exceed an initial period of five years, but their operations were confined to surplus disposals and price stabilization. Significantly, the Charter provided an equal voice for importing countries in order to safeguard consumers "against producer-cartel exactions."[4] The philosophic norm of the Havana draftsmen was free trade.

In 1948 ECOSOC had established the Interim Coordinating Committee for International Commodity Agreements (ICCICA). Evan after the ITO proposal failed, ICCICA promoted the commodity principles of the Havana Charter.[5] At least until the Coffee Agreement of 1962, ICCICA and the Committee on International Commodity Trade (CICT), established in 1954, preserved the spirit of Havana. Indeed, the paucity of agreements reached under Chapter VI guidelines testifies to their success.

The United Nations Conference on Trade and Development (UNCTAD) met in Geneva in the spring of 1964. More than 2,000 delegates from 120 countries spent three months debating trade problems. An entire volume of the printed *Proceedings* (numbering eight volumes) was devoted to commodity trade. When compared to its Havana predecessor, UNCTAD marked a complete turnabout. No longer were the main issues simply "burdensome surpluses" or price fluctuations. At UNCTAD the less-developed countries (LDCs) called the tune. And the melody bore little resemblance to the soft strains heard at Havana. In short, the LDCs mounted a well-coordinated assault on the citadel of free trade.

The most significant proposals put forth by the seventy-seven poor nations called for broader access to the markets of the industrial North, preferential arrangements for LDC manufactures, and the use of commodity agreements to increase producer incomes as well as to stabilize prices. Finding a logical parallel in the national price support programs, the UNCTAD majority moved from price stabilization to price augmentation.[6] Here was a mighty effort to prick the conscience of the rich.

If success can be measured by the quantity of ink poured out in scholar-

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[3]J.W.F. Rowe, Primary Commodities in International Trade (Cambridge: Cambridge University, 1965), at 160; Stanley D. Metzger, *Law and Policy Making for Trade among "Have" and "Have-Not" Nations*, Law and Policy Making for Trade Among 'Have' and 'Have-Not' Nations, ed. John Carey (Dobbs Ferry: Oceana, 1968), p. 16.

[4]Walker, Law & Contemporary Problems, Vol. 28 (Spring, 1963), p. 414.

[5]E.M.Ojala, *Some Current Issues of International Commodity Policy*, Journal of Agricultural Economics, vol. 18 (January, 1967), p. 39.

[6]UNCTAD defined the "new" commodity agreement objectives as follows:

> "... stimulating a dynamic and steady growth and ensuring reasonable predictability in the real export earnings of the developing countries so as to provide them with expanding resources for their economic and social development, while taking into account the interests of consumers in importing countries, through remunerative, equitable and stable

ly debate of the new commodity policy, UNCTAD indeed succeeded. Books and articles on trade policies toward less developed countries proliferated after 1964.[7] If political embarrassment of the developed countries, particularly the United States, is a measure, UNCTAD's was a double success. The American representatives voted against almost every major proposal.[8] But if the criterion is translation of policy declarations into practice, UNCTAD worked no revolution. Indeed, the recent departure of Dr. Raul Prebisch, mentor of the Conference, may be a reflection of the group's continued frustration.[9]

What accounts for UNCTAD's rise—and apparent decline? With regard to international commodity agreements, what is the response of the professional economists? Where can the LDCs go from here?

The answer to the first question lies in the times. Development economics was not a recognized science in 1948; nor did the LDCs have a coherent trade doctrine to bring to Havana. Most of the present poor nations were then colonies or only recently independent. But with the Marshall Plan came the notion of planned development.[10] And with the independence movement in Africa and Asia came the consciousness of underdevelopment.

Commodity surpluses and a declining price trend following the Korean War coincided with a stagnating import substitution policy in Latin America, and general impatience with the tariff barriers in the developed world. Added to this was a realization that the gap between rich and poor countries was growing, even in the midst of a "Development Decade." Regional associations like the Common Market posed a threat, while the General Agreement on Tariffs and Trade (GATT) offered no practical help.

UNCTAD exposed the duplicity of the free trade dogma as it was applied in practice; the Conference challenged the developed countries to pursue a trade policy consistent with the goals of economic development. UNCTAD's decline since 1964 simply mirrors the failure of the industrial nations to meet that challenge.

Professional economists have responded profusely to the commodity agreement proposals of UNCTAD. Indeed they have disagreed among

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prices for primary commodities, having due regard to their import purchasing power, assured satisfactory access and increased imports and consumption, as well as coordination of production and marketing policies." UNCTAD PROCEEDINGS: FINAL ACT AND REPORT, Vol. I (New York: United Nations, 1964), p. 12.

[7]*See*, in particular, JOHN PINCUS, TRADE, AID AND DEVELOPMENT (New York, McGraw-Hill, 1967), and Harry G. Johnson, ECONOMIC POLICIES TOWARD LESS DEVELOPED COUNTRIES (New York: Praeger, 1967).

[8]Johnson, *Economic Policies*, at 251–54.

[9]*The New York Times*, March 10, 1969, at 19.

[10]I. M. D. LITTLE and J.M. CLIFFORD, INTERNATIONAL AID (Chicago: Aldine, 1966), at 24.

themselves to a considerable extent. Even such underlying factors as the nature and relevance of export instability, the declining terms of trade, and the kinds of commodities amenable to agreement are hotly disputed in the literature.[11] For the most part, American and British economists have denounced the commodity agreement as an instrument of trade policy. Professor Rowe's attack is not untypical:

> If the politicians of consuming countries accept the doctrine of trade at artificially high prices as preached by the politicians of underdeveloped countries for their primary products, then economists everywhere should shout, and for once can do so with one voice, that this policy is bound to lead to the waste and misuse of the world's limited resources, and cannot maximize the world's wealth.[12]

Perhaps because of the economists' traditional repugnance to monopoly pricing and quota restrictions, most of the attention to commodity problems in underdeveloped countries focuses upon alternatives to price-supporting agreements. After reciting the litancy of evils associated with international commodity agreements, the analyst usually addresses himself to the trading plight of the LDCs.

What should be done to narrow the gap? Here there is no want of fertile suggestions: compensatory finance, more aid, an international reserve currency, removal of Northern tariff barriers, internal reforms in the LDCs. Thus it is said that commodity agreements "are marginal at best in their positive effects upon development," and the developing countries should instead:

> devote their energies, collectively, to securing greater amounts of foreign aid (directly and through compensatory financing) and dismantling of protectionism by developed countries, and individually, to internal societal transformations at home.[13]

Consequently, the question of improving and expanding the commodity agreement hardly appears in the literature.[14]

[11]For example, on export instability, contrast ALASDAIR I. MACBEAN, EXPORT INSTABILITY AND ECONOMIC DEVELOPMENT (London: George Allen & Unwin, 1966), p. 339 with GUNNAR MYRDAL, ASIAN DRAMA, (New York: The Twentieth Century Fund, 1968) Vol. 3, at 2190. On the declining terms of trade, contrast RAUL PREBISCH, TOWARDS A NEW TRADE POLICY FOR DEVELOPMENT (New York: United Nations, 1964), at 15 with Johnson, *Economic Policies*, at 249–50. On the types of commodities suitable for agreements, contrast John A. Pincus, *What Policy for Commodities?* READINGS IN INTERNATIONAL ECONOMIC RELATIONS, eds. Finn B. Jensen and Ingo Walter (New York: Ronald, 1966), at 459–60 with Gerda Blau, *International Commodity Arrangements and Policies*, UNCTAD, PROCEEDINGS: COMMODITY TRADE, Vol. III (New York: United Nations, 1964), at 150.

[12]Rowe, *Primary Commodities*, at 215–16.

[13]Metzger, *Law and Policy Making*, at 39.

[14]Surprisingly, even the UNCTAD volume on commodity trade (PROCEEDINGS, Vol. III) devoted little attention to innovative possibilities, especially in the procedural and structural aspects. Dr. Blau's paper, *supra*, note 11, is probably the most sensitive to these issues.

There is, it would seem, substantial basis to challenge the conventional wisdom. For the economists' pleas for increased aid and the lowering of tariff barriers have generally met with inaction by the developed nations. Furthermore, the continuance of agricultural price supports in the United States and other countries appears either as a rebuke to economic theory or as another example of Northern hypocrisy. Almost at every turn political reality thwarts economic rationality. In a world of second best, is there a place for UNCTAD-type commodity agreements? And if so, how can they be made more effective?

I. The Commodity Problem

The commodity problem has two sides: instability and the declining terms of trade. Their importance to the developing countries can be seen in the following statements:

(1) Exports of primary products account for some 85-90 per cent. of the total export earnings of the LDCs.[15]

(2) Based on 1959–61 figures, primary products account for approximately 45 per cent. of the total world exports.[16]

(3) In 1962, twenty-one LDCs depended upon a single commodity for 50 per cent. or more of their export earnings.[17]

What is evident from these statistics is the vulnerability of many developing countries to market fluctuations and a downward price trend. The harmful effects of market fluctuation upon a developing economy are generally conceded. The corresponding instability in employment and incomes undermines sound fiscal policy.

Fear of restrictions on the transfer of funds abroad inhibits capital investment of foreign firms. Market fluctuation causes irregularities in the flow of imports and investment goods. Domestic savings and investment are deterred. The instability phenomenon tends to reduce the credit-worthiness of the country in the eyes of foreign lenders. Planning for development becomes generally difficult and hazardous.[18]

The initial question is whether in fact commodity instability threatens the growth of the LDCs. Some recent empirical studies have cast doubt on the instability argument. Alasdair MacBean presents the strongest case,

[15]Johnson, *Economic Policies*, at 136.

[16]Rowe, *Primary Commodities*, at 2. Furthermore, competition between the Atlantic Community and the LDCs is a "major factor in world commodity trade." PINCUS, TRADE AID AND DEVELOPMENT, at 235.

[17]*See* LITTLE and CLIFFORD, INTERNATIONAL AID, at 156.

[18]ECOSOC, "*International Commodity Problems,*" UNCTAD, PROCEEDINGS: COMMODITY TRADE, Vol. III, p. 110; Rowe, *Primary Commodities*, p. 217.

concluding that (1) the importance of short term instability to underdeveloped countries is exaggerated; (2) there is little evidence to show that their economies have been damaged by such instability; and (3) fluctuations in income are not clearly related to fluctuations in export earnings.[19]

Another writer, studying the Chilean economy, found no clear relationship between the stability of export earnings and growth.[20] Nevertheless, several economists have emphasized the effect of price fluctuations on plantings, especially treee crops.[21] Referring indirectly to the MacBean thesis, a recent observer argued:

> One's conclusions with respect to the instability in export proceeds depend very much on the statistical method selected to correct for trends, on the coverage of countries and commodities, and on the time period examined.[22]

In particular, the revenues of the LDCs which depend upon a few commodity exports for a large percentage of their GNP would seem to be at the mercy of the market, regardless of the predictions of aggregate analysis.[23]

The term "stabilization" has been variously interpreted. What is to be stabilized? Any of the following may be subject to anti-fluctuation policy:[24]

(1) the international price of an export commodity;
(2) producers' money income or real income;
(3) export earnings;
(4) the purchasing power of primary product exports.

It is recognized that stabilization of one of these elements (price, for example) may destabilize another variable (export earnings).[25] While the commodity agreement guidelines of the Havana Charter were limited to price stabilization, the UNCTAD proposals were directed to income and earnings objectives.

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[19]MACBEAN, EXPORT INSTABILITY, p. 339.

[20]Clark W. Reynolds, *Domestic Consequences of Export Instability*, AMERICAN ECONOMIC REVIEW, Vol. 53 (May, 1963), p. 100.

[21]*See* for example, PINCUS, TRADE, AID AND DEVELOPMENT, pp. 285, 293.

[22]Gerald M. Meier, *UNCTAD Proposals for International Economic Reform*, STANFORD LAW REVIEW, Vol. 19 (June, 1967), p. 1185.

[23]*Id.*, at 1186; LITTLE and CLIFFORD, INTERNATIONAL AID, at 155; Haviland, *International Commodity Agreements*, p. 52; Professor Myrdal states the case succinctly:

> "The basic causes of export instability and the reasons it is so significant lie essentially in the nature of underdevelopment itself. Underdeveloped countries have only a limited ability to adjust supply to demand, an export list composed of one or a few major products, often a relatively high ratio of exports to national income, and a rapidly growing total of import needs; thus they are sensitive and extremely vulnerable to variations in export proceeds." Myrdal, *Asian Drama*, Vol. III, p. 2200.

[24]Meier, STANFORD LAW REVIEW, Vol. 19 (June, 1967), p. 1195.

[25]*Ibid.*

Sources of instability may be found on both supply and demand sides. For convenience, these destabilizing factors may be arranged in parallel columns.[26]

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

As the list suggests, supply variations, especially for agricultural commodities, are usually more important than fluctuations on the demand side. This is largely explained by the relative insensitivity of agricultural output to price, and the fact that once resources are expanded they are difficult to contract.[27]

Of even greater significance than instability to the LDCs is the downward price trend. The so-called "declining terms of trade" thesis were a predominant influence on the UNCTAD commodity proposals.[28] Examining the post-Korean War period, John Pincus estimates that the terms of trade of the developing countries declined "by about 5 per cent. for the period 1952/53-1964," notwithstanding a recovery during the last two years.[29] Elsewhere he traces the reasons for the secular decline.[30]

First, Engel's Law: the tendency in high income countries for demand for food to increase more slowly than income. Second, the increasing recourse to commodity substitutes and synthetics, as well as technological

[26]Haviland, *International Commodity Agreements*, pp. 41–43; Myrdal, *Asian Drama*, Vol. III, p. 2193; L. Baranyai and J.C. Mills, *International Commodity Agreements* (Mexico City: Centro De Estudio Monetarios Latino Americanos, 1963), p. 11; Dragoslav Avaramovic, *Economic Growth and External Debt* (Baltimore: Johns Hopkins, 1964), p. 14.

[27]Mason, *Controlling World Trade*, p. 141.

[28]Haviland, *International Commodity Agreements*, at 2.

[29]Pincus, *Trade, Aid and Development*, at 234.

[30]Pincus, *Readings in International Economic Relations*, at 455.

advances requiring fewer raw materials. Third, the supply of many products was stimulated during the Korean War, thus leading to chronic over-supply. Finally, for some poor countries there is no ready alternative to continued production of traditional commodities.

The last point is particularly important in view of repeated exhortations for developing countries to pursue diversification policy instead of commodity agreements. The fact of the matter is that the ability to diversify often depends upon a level of economic development which many countries have not yet reached.[31] As noted below, the incapacity to diversify is a formidable objection to the efficiency arguments of the economic theorist attacking commodity agreements.

A striking example of the severity of commodity price decline is that of coffee. According to Dr. Avramovic, the coffee countries produced and sold in 1962 a quantity which was 50 per cent. greater than in 1954. Yet their exchange earnings in 1962 were one-third smaller than eight years earlier.[32]

The supply side variables should not obscure the difficulties stemming from countries which preach free trade while practicing protection. The Atlantic countries commonly place restrictive tariffs upon imports of temperate agricultural products (including such competing products as sugar, oilseeds, cotton and citrus), as well as minerals which compete with domestic production.[33] In addition, one may discover in the trade practices of the developed countries quantitative limitations on imports, excise or other internal taxes, and preferential trade arrangements.[34]

Referring to national price support schemes in industrial countries, ECOSOC found that they "have adversely affected the stability of the world market."[35] In other words, the same countries that attack international commodity agreements use the world market as a safety valve for their own support or stabilization operations.[36] Even before the UNCTAD gathering, the *Economist* described the trade crisis of the third world in these terms:

> The underdeveloped countries, poor as they are, have been contributing, involuntarily, to western prosperity. Since the early 'fifties the volume of food and agricultural products exported has risen by about a third. But in value they have increased by only a sixth and the rise in the price of manufactures has wiped out even that small gain.[37]

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[31]ECOSOC, UNCTAD *Proceedings: Commodity Trade*, Vol. III, at. 83.
[32]Avramovic, *Economic Growth*, at 17.
[33]Pincus, *Trade, Aid and Development*, p. 124.
[34]*Id.*, at 259.
[35]ECOSOC, UNCTAD *Proceedings: Commodity Trade*, Vol. III, at 93.
[36]*Id.*, at 81.
[37]The *Economist*, January 12, 1963, at 131.

II. The ICA Solution[38]

No one (including UNCTAD) contends that international commodity agreements can solve all the trade problems of developing countries. The disagreement is over potential net gains or losses.

As seen by the developing countries at Geneva, commodity agreements should serve three main purposes:

(1) to raise, or at least prevent declines in, prices;
(2) to diminish fluctuations in prices and earnings; and
(3) to guarantee market access for specified quantities as a method of counteracting protectionism in importing countries.[39]

In addition, Dr. Blau has viewed ICAs as "instruments for intergovernmental commodity programming on more comprehensive lines."[40] Clearly, these objectives go far beyond the Havana Charter guidelines. Notwithstanding the declared policy of maintaining "equitable prices" in the Wheat and Coffee Agreements, and "adequate" or "reasonable" returns to producers in the Sugar and Tin Agreements, the UNCTAD goals exceed the stated objectives of the five agreements operative in 1964.[41]

More important than the declaration of purpose are the means chosen to stabilize or augment prices or earnings. Prices, production, exports and stocks are the available points of access for governmental intervention.[42] Thus, in the existing agreements, three principal control devices are used, separately or in combination.

Under the *multilateral contract* mechanism of the Wheat Agreement a permissible price range is specified. Above the maximum, the producing countries are obligated to sell stipulated quantities to consuming countries at the maximum price. Below the minimum, consuming countries are obligated to purchase stipulated quantities from producing countries at the minimum price.

Buffer stock is a second control mechanism. As applied in the Tin Agreement, member countries contribute either stocks or cash to a central

[38]An international commodity agreement (ICA) has been defined as "an association of the governments of more than two countries for the purpose of regulating the marketing of some primary product in the interests of exporters and importers." Haviland, *International Commodity Agreements*, p. 9. Professor Mason has shown that ICAs may serve such diverse ends as providing equitable access to scarce strategic materials and safeguards to health and morals (*e.g.*, regulation of the opium trade), and may include bulk purchase agreements, barter deals and import quotas of one government to another. Mason, *Controlling World Trade*, pp. 149, 151. For the purpose of this article, these latter types of agreement, as well as compensatory finance agreements, are not included in the ICA device.

[39]Pincus, *Trade, Aid and Development*, at 267.

[40]Blau, UNCTAD *Proceedings: Commodity Trade*, Vol. III, at 141, 166.

[41]*See* Haviland, *International Commodity Agreements*, at 10–11, 14–15, 17, 20–22.

[42]Mason, *Controlling World Trade*, at 143.

fund. When the price exceeds or falls below a specified range, the manager of the buffer stock will attempt to restore price stability by buying or selling on the open market.

Finally, there are *export quotas,* on which reliance is placed in the Sugar, Tin and Coffee Agreements. The quota device seeks simply to raise the price by restricting supply.

Imbued with the free trade spirit of Havana, most economists have reacted unfavorably to international commodity agreements. Conceding that buffer stock and multilateral contracts are less likely to distort efficiency factors,[43] they usually focus their attack upon quota restrictions.[44] The catalogue of ideological objections is familiar and may be summarized as follows:[45]

(1) misallocation of resources;
(2) restriction of production;
(3) protection of inefficient producers.

Behind each of these objections is the efficiency criterion. Under micro-economic theory, monopoly pricing wastes economic resources, generates excess capacity, and leads to higher average costs than are technologically necessary.[46] Should effects upon efficiency be the sole measurement of ICAs? Equally important, is the standard efficiency argument applicable in the LDC context?

Efficiency is not the only economic goal. Growth, stability, and equitable income distribution are also pursued in various fashion by modern societies. Yet the theoretical arguments against ICAs are almost solely on efficiency grounds.

The efficiency argument itself is subject to some question. It is based on the assumption that resources not used in the production of primary products will find employment elsewhere. While this may be true in complex industrial societies, it is not necessarily so in poor countries. There the capacity to diversify may depend upon further development. ECOSOC recognized the problem:

> If a persistent movement indicates the need for some structural adjustment,

[43]*Id.*, p. 221; Little and Clifford, *International Aid,* at 157; Johnson, *Economic Policies,* at 146; MacBean, *Export Instability,* at 275–76.

[44]There is at least an implicit recognition that buffer stock and multilateral contract arrangements must ultimately be accompanied by some control of exports or production. Haviland, *International Commodity Agreements,* at 42; MacBean, *Export Instability,* at 275–76. For this reason perhaps, much of the economists' criticism falls on ICAs in general. *Id.*, at 273-74.

[45]Johnson, *Economic Policies,* at 147; Rowe, *Primary Commodities,* at 215; Pincus, *Trade, Aid and Development,* at 293; Haviland, *International Commodity Agreements,* at 36; Baranyai and Mills, *International Commodity Agreements,* at 29.

[46]Robert Dorfman, *The Price System* (Englewood Cliffs: Prentice-Hall, 1964), at 96.

> this may have to be approached in a more positive manner, with Governments actively assisting factors to move to more productive employment. This poses particularly difficult problems in underdeveloped countries in which alternative uses for resources may in the short run be very few and in the longer run require a good deal of complementary investment.[47]

Considering the rigidity of many LDC economies, a government enforced production control scheme would seem to offer a more constructive incentive for diversification than *laissez-faire* exhortations from abroad. Thus a quota scheme may encourage a shifting of resources out of the area of overproduction.[48] Furthermore, the Coffee Agreement shows that an ICA itself may embody diversification policy.

ICA critics tend to argue from an ideal-world position. They invariably neglect to explain, and often fail to mention, the substantial barriers to free trade erected by the Northern countries. Moreover, the presence of domestic agricultural price support programs gives rise to justifiable charges of inconsistency and double standards. Even the "Metzger thesis" – that the LDCs should give up their ICA proposals in order to concentrate on tariff reduction[49] – is unencouraging, given the political forces presently in support of protection. On the Northern side, the policy imperatives are clear:

> We must . . . strive for compatability between what we do ourselves with what we demand of others. . . . We must not say that there is a difference because of our domestic supply controls, since these have in most cases been of questionable effectiveness.[50]

Meanwhile, protectionism in the developed countries persists. In a world of second best, commodity agreements become economically defensible.[51]

Failure to recognize monopoly elements in Northern trade leads to a second misconception: that price-augmenting commodity agreements constitute foreign aid. Indeed, the recent literature is replete with such descriptions as "charity in disguise,"[52] "a highly arbitrary form of taxation,"[53] and

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[47]ECOSOC, UNCTAD *Proceedings: Commodity Trade,* Vol. III, at 83.

[48]Mason, *Controlling World Trade,* at 169 – 70.

[49]Metzger, *Law and Policy Making,* at 21; *See also;* Stanley D. Metzger, *Developments in the Law and Institutions of International Economic Relations,* AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 61 (July, 1967), p. 764.

[50]J.H.Richter, *Agricultural Protection and Trade,* (New York: Praeger, 1964), p. 39.

[51]"International commodity agreements are not ideally liberal, but they may be preferable in practice to recurrent waves of protectionism or to cut-throat competition during deflationary periods." Haviland, *International Commodity Agreements,* at 38. "In an imperfect world, imperfect policies intelligently applied may produce more desirable results than theoretically perfect policies applied only in fragmentary fashion." Johnson, *Economic Policies,* at 42. *See also* Blau, UNCTAD PROCEEDINGS: COMMODITY TRADE, Vol. III, at 148.

[52]Rowe, *Primary Commodities,* p. 215.

[53]Pincus, *Trade, Aid and Development,* at 278; *see also* Raymond F. Mikesell, *Commodity Agreements and Aid to Developing Countries,* LAW AND CONTEMPORARY PROBLEMS, Vol. 28 (Spring, 1963) at 296 – 97.

"disguised aid."[54] But are the benefits accruing to producer countries under an international commodity agreement really aid? As Professors Little and Clifford agree, "aid" is an ambiguous word.[55] It is hard enough to extract the aid element from some types of loans.

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

The continuing tendency for the developed countries to extol free trade as the norm, while violating it in practice makes such terms as "charity in disguise" particularly inappropriate. For barriers to trade in the North increase the instability of prices in that market and thus aggravate the instability of export earnings from primary production.[56] Indeed, the logic behind the "disguised aid" terminology would support a "stolen aid" concept in the case of restrictive trade policy. This point is implicit in a statement attributed to the United States Secretary of State in 1961:

> There is no sense whatever in taxing Americans for foreign aid if we meanwhile pursue trade policies which undermine the prospects for economic development. It should be remembered that a drop of a few cents in world commodity prices could wipe out any contribution we might make through our aid in helping the underdeveloped country concerned.[57]

Elimination of such value-charged terms as "charity in disguise" and the like, would undoubtedly raise the level of ICA analysis.

When economists get through with their theoretical attacks on commodity agreements, they usually turn to administrative objections. Arguing largely from past experience, they contend:[58]

(1) that the commodities amenable to ICA control are limited to a handful;
(2) negotiations are extraordinarily difficult; and
(3) breakdowns are frequent.

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[54]*See* Johnson, *Economic Policies,* at 56–57.

[55]LITTLE and CLIFFORD, INTERNATIONAL AID, at 13.

[56]Johnson, *Economic Policies,* at 84–85.

[57]Quoted in Haviland, *International Commodity Agreements,* at 6.

[58]Johnson, *Economic Policies,* p. 137; Pincus, *Readings in International Economic Relations,* at 459–60; Myrdal, *Asian Drama,* Vol. III, at 2194.

Moreover, they claim, there is not enough revenue potential for developing counties to make ICAs worthwhile.

Space does not permit a full examination of the administrative objections; it is sufficient to note that virtually no questioning of them has taken place in the literature. If the prospects for additional agreements are so dim, for example, it seems remarkable that at the time of UNCTAD approximately one-forth of the basic commodities were subject at least to consultative machinery.[59]

Furthermore, Dr. Pincus' discounting of an estimated "$1 billion or so" in additional export earnings from the ICAs,[60] is astounding when that figure is compared to present aid flows. At a time when the real aid commitment of the United States is less than $4 billion, and falling, $1 billion merits more than a shrug.

All of this is not to ignore the serious problems of substitutes, synthetics and storage likely to be involved in commodity agreement policy. Rather it is a plea for more constructive thinking; a recognition that the "case for commodity agreements does not stand or fall on the measure of their nearness to perfection."[61] As one observer of commodity agreements remarked, "more than economics is involved."[62] The political hurdles are as formidable as the economic ones. It may be worthwhile, therefore, to devise a more effective method of negotiation.

III. A Collective Bargaining Approach

UNCTAD revealed a new international spirit as well as a fresh commodity policy. The poor countries presented a united front at Geneva.[63] According to Professor Johnson, "they succeeded in maintaining the principle of presenting agreed resolutions jointly, even on issues on which their interests were fundamentally at variance. . . . "[64] Here then, is a potential political base for commodity strategy.

In the power context of international trade, individual producer countries operate at a disadvantage. In most cases they are not only outnumbered by consumers, but enter Commodity Conferences with substantial differences among themselves. Under the Havana principle of equality between importer and exporter groups, it is not surprising that the LDCs are reduced to simple pleas for Northern largesse. With Southern requests

[59] Haviland, *International Commodity Agreements*, at 9.

[60] Pincus, *Trade, Aid and Development*, at 273.

[61] Robert Z. Aliber, *Policy and International Commodity Stabilization—Discussion*, AMERICAN ECONOMIC REVIEW, Vol. 53 (May, 1963), at 104–05.

[62] Haviland, *International Commodity Agreements*, at 33.

[63] Ojala, JOURNAL OF AGRICULTURAL ECONOMICS, Vol. 18 (January, 1967), p. 39.

[64] Johnson, *Economic Policies*, at 34.

for freer trade and more aid falling on deaf ears, a more realistic approach would seem to be warranted.[65] UNCTAD offers an inspiration and GATT a model for what might be termed a "collective bargaining" approach.

Resorting to analogy, one might compare the bargaining position of individual LDCs to individual workers in the industrial state. Both share political impotence. But the comparison may be carried a step further. Just as the labor unions were able to raise the bargaining power of workers to the level of management, a "commodity union" could strengthen the hand of underdeveloped producer countries. Dr. Princus has argued that "to use its new majorities to its own best interest" the LDCs will "have to resort to statesmanship—a clear-eyed view for the realities of power. . . ."[66] Accordingly, he calls for "realistic and unremitting pressure on the North."[67] A "union," so-called, would provide such pressure through legitimate institutional channels.

The "commodity union" idea is to build upon UNCTAD unity in the negotiation and maintenance of commodity agreements. In theory, the purpose of the union would be to exploit the monopoly power of the producer countries. Despite its Hobbesian overtones, such a statement of intent is neither sinister nor cynical. It is instead an appropriate and politically rational response to protectionism and apathy in the developed countries. Furthermore, in practice such "exploitation" of monopoly power would be moderated by consumer power, economic realities (*e.g.*, the threat of substitutes and synthetics), and differences among the producer countries necessitating compromise.

At least two important goals could be approached through commodity unions. First, expansion of the commodities covered by international agreement; and second, more favorable terms for the LDCs, especially price augmentation. But how would a union function? What would be its advantages?

A commodity union would "organize" all or most of the major LDC producers of a primary product, such as cocoa. As in UNCTAD the countries would meet in closed session until a bargaining position (or range of positions) acceptable to all was struck. In most cases, of course, agreement among producing countries large and small would not be a simple matter.

Nevertheless, at this point negotiation would be facilitated by the small-

[65]"The North . . . has already decided, not deliberately, but by the play of events, what degree of 'cooperation' serves its political interests and its sense of justice, in light of other goals. From this point on, barring dramatic political changes, the South cannot look to increases in Northern largesse." Pincus, *Trade, Aid and Development*, at 350.

[66]*Id.*, at 373.

[67]*Ibid.*

ness of the group, the absence of consumer interests, and the underlying LDC unity. The union members would seek to initiate a common policy proposal for presentation at a Commodity Conference. Collective support and initiative advantage would enhance LDC bargaining strength and increase the pressure for enlarged commodity coverage.

What should be clear thus far is that the union proposal requires no disruption of formal procedures. The normal prerequisite to the formation of a Commodity Conference is a Study Group.[68] Under ECOSOC Resolution 296 (XI) a Commodity Conference may be requested by an inter-governmental body, the Committee (ICCICA) then satisfying itself that an agreement is possible and that adequate preparation has been made.[69] Presumably there would be no objection to a request for a Conference which came directly from a commodity union or, in the alternative, from a Study Group initiated by a union.

A commodity union might be organized on any number of lines. GATT provides one working model.[70] As the General Agreement offers a forum for multilateral tariff negotiations, the union would facilitate negotiation of such ICA questions as quotas and market access. GATT studies trends in international trade; the union would do likewise with respect to its particular commodity, while serving as a spokesman for the LDC producers. Finally, as in GATT, there would be some mechanism for settlement of disputes and for sanctions. As Mancur Olson has shown, rational, self-interested parties cannot ordinarily be counted on to act in their common interest.[71]

Among other possible advantages, a union could provide international (*i.e.*, joint LDC) supervision of quotas. This would relieve somewhat the political pressure upon the individual governments. A union would also have an opportunity to advance such LDC policies as diversification and a two-price system; it would be an ideal coordinator for all policies not necessarily involving the industrial nations.

With regard to the Commodity Conference itself, the union would present one immediate advantage: a single bargaining unit as opposed to many. As one student of the negotiation process has observed:

> A group position is more likely to win than an individual position because of the greater power and resources behind it, because of its greater moral legitimacy (one's cause seems more 'right' when others support it), and

[68]ICCICA, *Inter-Governmental Commodity Agreements*, UNCTAD PROCEEDINGS: COMMODITY TRADE, Vol. III (New York: United Nations, 1964), at 115.

[69]*Id.*, at 114.

[70]*Cf.*, Johnson, *Economic Policies*, at 14.

[71]Mancur Olson, Jr., THE LOGIC OF COLLECTIVE ACTION (Cambridge; Harvard University, 1965), at 2.

> because it is more likely to be a moderate and general position (hence more amenable to accommodation).[72]

It is true, however, that "when individual goals are partly forsaken in generalizing to a group position, individual dissatisfaction is increased."[73]

But the task of the union would be to reach a workable compromise and to maintain it by the fair distribution of rewards and, when necessary, by sanctions. A single negotiating agent (individual or committee) would ease the work of the Conference and sharpen the sword of the LDC producers.

Once it resolved its internal differences, a union could chart a strategy for securing an agreement with its importing countries. This might involve, for example, a public relations campaign, the enlisting of support from foreign investors engaged in commodity production, or even temporary alliance with Northern protectionists who favor increases in LDC export prices to the level of domestic prices in the developed countries.[74] Furthermore, the desire of the "industrial system" for price and supply certainty, through long-term contracts, offers potential support for the multilateral contract mechanism.[75]

The possible drawbacks to the union are first, that it won't work: that member countries would either fail to agree or neglect to abide by an agreement; and second, that the consuming countries would organize a retaliatory union.[76] Both negative possibilities are of course quite real.

UNCTAD is the best, but not conclusive, argument against the former objection. As Professor Johnson says, it was successful in demonstrating LDC capacity "to organize and conduct themselves as a cohesive political group in opposition to the developed countries."[77]

The prospect for a retaliatory organization by the developed countries is lessened by two factors: concern for world opinion, especially in the cold war context; and the fact that consumer interests carry less political weight than producer interests in their respective countries.[78] In any event, a commodity union could be whatever the LDC producers wished it to be; flexibility, low costs, and potential effectiveness are its principal strengths.

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[72]Lillian Randolph, *A Suggested Model of International Negotiation*, THE JOURNAL OF CONFLICT RESOLUTION, Vol. 10 (September, 1966), at 345.

[73]*Ibid.*

[74]Johnson, *Economic Policies*, at 153.

[75]John Kenneth Galbraith, *The New Industrial State* (New York: Signet, 1968), at 41–42.

[76]This notion is implicit in Wilson E. Schmidt, *The Case Against Commodity Agreements*, LAW AND CONTEMPORARY PROBLEMS, Vol. 28 (Spring, 1963), at 318–19.

[77]Johnson, *Economic Policies*, at 38.

[78]*See* Blau, UNCTAD PROCEEDINGS: COMMODITY TRADE, Vol. III, at 165.

Conclusion

International commodity agreements have been looked down upon because they violate some of the most sacred tenets (Efficiency, in particular) of the economic theorists. Free trade idealism, which began in Havana, is strenuously maintained even by those who are otherwise sympathetic to the trade predicament of the LDCs. Consequently, the scholars have devoted little attention to possible ways of strengthening and expanding the commodity agreement.

The thesis of this article is that while the ICA may not "solve" the commodity trade problems facing the developing world, it does offer potentially important contributions in a second-best situation. It may, for example, hold protectionist tendencies in check while offering at least a temporary barrier to a declining price trend.[79] As in the Coffee Agreement, it may promote diversification. And even when agreements fail of adoption, international consultative machinery provides a valuable forum for international review of market problems.[80]

If ICAs are useful instruments of trade policy they are worthy of constructive review. Again referring to the Coffee Agreement, one may see how sophisticated policy devices distinguish a modern ICA from a mere cartel. The collective bargaining approach herein put forth is a modest proposal for adding political strength to the LDCs and for making complex negotiation somewhat easier. The problems of sanctions, commodity control mechanisms and negotiation techniques need more attention than they have had in the past.

For until the rich countries act in support of their free trade rhetoric, exporters will have to face and solve the problems of making commodity agreements effective.[81] At present, "a series of modest steps may be the best tactic for improving the South's trade and aid receipts."[82]

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[79]*See* for example, Sir Sidney Caine, *Commodity Agreements—A New Look,* LLOYDS BANK REVIEW (January, 1963), at 23.

[80]Haviland, *International Commodity Agreements,* at 34.

[81]Pincus, *Readings in International Economic Relations,* at 463.

[82]Pincus, *Trade, Aid and Development,* at 368.