

January 1994

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### Recommended Citation

Edward Quill, The Failure of International Commodity Agreements: Forms, Functions, and Implications, 22 *Denv. J. Int'l L. & Pol'y* 503 (1994).

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# The Failure of International Commodity Agreements: Forms, Functions, and Implications

## Keywords

Commerce, Antitrust, Revolution, Transportation Law

# International Trade Section Student Comment

## The Failure of International Commodity Agreements: Forms, Functions, and Implications

### I. INTRODUCTION

In 1964, the United Nations Conference on Trade and Development began working towards the creation of a New International Economic Order (NIEO). Plans for the imposition of the NIEO included extensive use of International Commodity Agreements (ICA's) as a means by which Lesser Developed Countries (LDC's) could become more involved in world markets and increase the living conditions of their citizens.<sup>1</sup> Less than thirty years later, ICA's are nearly extinct. This Note examines the history of ICA's, especially in relation to oil, tin, coffee, and sugar; analyzes the market factors that have undermined the success of ICA's; and illustrates some of the ramifications of their failure on the international distribution of wealth and the global economic order.

### II. OVERVIEW

#### A. *Chronology*

Attempts at international commodity control began around the time of World War I. Economic conditions during the war increased general economic awareness and created the perception that commodity price control could be feasible. In addition, market inconsistencies and instabilities bolstered the trend towards market control.<sup>2</sup> Initial efforts in this area came in the form of non-governmental, producer agreements that demonstrated only limited success and were almost universally destroyed by the Great Depression. However, they did provide the groundwork for the more comprehensive governmental control schemes that developed after the Great Depression.<sup>3</sup>

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1. BRANISLAV GOSOVIC, UNCTAD: CONFLICT AND COMPROMISE 28 (1971).

2. ALTON D. LAW, INTERNATIONAL COMMODITY AGREEMENTS 38-39 (1975).

3. INTERGOVERNMENTAL COMMODITY CONTROL AGREEMENTS xii (International

By the 1940's, International Commodity Agreements were being examined and constructed at the governmental level. Since these agreements were driven primarily by large fluctuations in basic commodity prices, they tended to focus primarily in the creation of price stability.<sup>4</sup> In 1948, the Havana Charter was drafted in order to provide an organizational framework for a new International Trade Organization. Although plans for this organization eventually foundered, the Havana Charter provided another important basis upon which later International Trade Agreements (ITA's) were built.<sup>5</sup>

Two important trends developed over the next three decades. First, in the 1950's, early ICA's, which had focused on price stabilization, began to be more concerned about price boosting through oligopolistic market control. Second, by the creation of the United Nations Committee on Trade and Development (UNCTAD) in 1964, the usage (or at least contemplation) of ICA's had intensified considerably. Support for ICA's was especially strong among the Lesser Developed Countries (LDC's), which hoped to improve their positions in the global market.<sup>6</sup>

The early 1970's was a particularly important time period in commodity market history due to the simultaneous impact of a sharp commodity price boom and consequent collapse of many commodity markets, the unforeseen impact of the Organization of Petroleum Exporting Countries (OPEC), and the formal recognition by the United Nations for the need of a New International Economic Order (NIEO). With respect to the NIEO, UNCTAD adopted the Integrated Program for Commodities (IPC) in 1976 in response to renewed price fluctuations in the international commodity markets. This program was designed to promote stability in long term commodity development by creating or renewing ICA's. However, only minimal achievements have been made since the adoption of the IPC, largely because of increased resistance to the implementation of the program by industrialized countries and the increasing difficulty of renegotiating ICA's.<sup>7</sup>

During the 1980's and early 1990's, there has been a general downturn in the overall use and effectiveness of ICA's. In many commodities, this has been the result of increasing world production in combination with static demand. Accordingly, there has been a general reduction in commodity prices with a corresponding loss in bargaining

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Labour Office [of Canada], 1943) [hereinafter INTERGOVERNMENTAL AGREEMENTS].

4. *Id.* at xix.

5. ABDULQAWI A. YUSAF, *The Legal Framework for Stable, Renummerative and Equitable Commodity Prices in International Trade*, in FOREIGN TRADE IN THE PRESENT AND A NEW INTERNATIONAL ECONOMIC ORDER 122, 125 (Detlev Chr. Dicke & Ernst-Ulrich Petersmann eds., 1988)

6. L. BARANYAI & J.C. MILLS, INTERNATIONAL COMMODITY AGREEMENTS 9 (1963).

7. YUSAF, *supra* note 5, at 129-31.

position for the producers of primary products. In addition, the imposition of ICA's has been regularly opposed by developed countries, which have come to regard them as economic threats.<sup>8</sup>

Consequently, the future of ICA's is uncertain. The recent dissolution of the USSR is likely to improve levels of trade in the global market, at the same time that the relative strength of the western industrialized countries increases. However, recent clashes between developed and developing countries may indicate either a shift towards greater integration and a more active role on an explicit level by the governments of the west or a widening of the rift between the developed and developing countries.

### B. *Function*

As the discussion above illustrates, the function that ICA's serve, or perhaps should serve, depends greatly on one's perspective. ICA's can be divided into three main categories. The great majority of the ICA's that remain in operation retain no ability to directly effect the operation of their respective markets. These ICA's provide important fora for discussion, supply crucial information to the market place, and provide needed market surveillance. However, the roles they play in the world commodity markets are essentially limited. The second type of ICA focuses on co-operation in production, consumption, and development of rare commodities; agreements of this kind include arrangements in commodities such as jute and tropical timber. These agreements are generally of relatively limited scope and play only a relatively minor role in the market place.<sup>9</sup> The third and arguably most important type of agreement includes ICA's, such as OPEC, that have price support/control mechanisms built into their structure. These ICA's play much more important and active roles in the market place; however, the number of these organizations has been dwindling in recent years.<sup>10</sup>

While the stated objectives for the imposition of ICA's range from security to health, many of these concerns should be considered "window dressing." In actuality, the goals of most ICA's are relatively straight forward.<sup>11</sup> When viewed from a traditional market perspective, commodity agreements essentially serve two primary functions: stabilizing prices and markets, and increasing income to producers.<sup>12</sup>

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8. AMER S. ARAIM, *INTERGOVERNMENTAL COMMODITY ORGANIZATIONS AND THE NEW INTERNATIONAL ECONOMIC ORDER* 212 (1991).

9. YUSAF, *supra* note 5, at 132.

10. *International Commodity Agreements in Decay* (part 1), AUSTRALIAN FINANCIAL REVIEW, May 24, 1985, at 2, [hereinafter *Agreements in Decay*], available in LEXIS, World Library, Allwld File.

11. LAW, *supra* note 2, at 75-79.

12. JERE R. BEHRMAN, *INTERNATIONAL COMMODITY AGREEMENTS: AN EVALUATION*

These goals make trade agreements politically controversial because they are a method by which LDC's may be able to better control their economies and improve their positions in the world economy in relationship to industrialized countries.<sup>13</sup>

Within the objective of stabilization lies another contentious issue. The prices of basic commodities have often fluctuated widely throughout history, causing extensive social harm to Third World laborers and farmers.<sup>14</sup> UNCTAD has consistently endorsed the imposition of ICA's as one means of mitigating these fluctuations. However, Alton Law, a professor of economics specializing in ICA's, notes that closer analysis indicates that the effect of ICA's on stabilization may be overstated for several reasons:

First, price stability has been greatly increased and instability has been exaggerated in the first place, especially with respect to its relationship to the LDC's. Second, that instability which remains is so heavily dependent upon noneconomic considerations that its expectations of elimination by manipulation of economic aspects are slim. Third, one must insist that specific facets of each commodity situation be examined with considerable care to determine the desirability and detailed nature of any control effort.<sup>15</sup>

Further, even if relative price stability is achieved, it is uncertain whether the revenue stability desired by LDC's will follow.<sup>16</sup>

If price stability were the only objective of ICA's, then they would probably be much more prevalent. Industrialized countries desire price stability because it reduces the requirement for large stocks, and resulting high storage costs, due to reduced uncertainty. However, even if ICA's guaranteed these benefits, the price controls would be likely to offset any economic gain to LDCs.<sup>17</sup>

As a result, price control is the most controversial issue over which producing and consuming countries differ. Traditional market economics postulate that market prices will be set by the interaction of supply and demand for each individual product. If this hypothesis is valid, the producers of basic commodities may only increase price levels if they can engage in monopolistic/oligopolistic behavior. Whether producers may do so depends upon the specific attributes of the particular product and its associated market.

An accurate evaluation of the use of monopoly power by LDC's will not necessarily dismiss ICA's as inefficient. Proponents of ICA's

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OF THE UNCTAD INTEGRATED COMMODITY PROGRAMME 21 (1977).

13. ARAIM, *supra* note 8, at 18.

14. INTERGOVERNMENTAL AGREEMENTS, *supra* note 3, at xi.

15. LAW, *supra* note 2, at 17.

16. *Id.* at 77.

17. *Id.* at 79.

cite modern theories of economics, such as The Theory of the Second Best, to demonstrate that resources will be maximized, at least in a relative way, when producers and consumers employ equal levels of monopoly power. In addition, some commentators have argued that the degree of disparity in bargaining position between the industrialized countries and the LDC's makes traditional market analysis inapplicable.<sup>18</sup> Nevertheless, it is clear that the profound difference in interests between consumers and producers will remain a large stumbling block in the implementation of ICA's.

### C. *Forms of Market Control*

There are three means of achieving commodity control in the global market. Each may be used alone or, more typically, together in strategic combination. The first method is to form a multilateral contract between international sellers and buyers of commodities. Multilateral contracts usually allow a number of sellers to coordinate their efforts either alone or subject to input from one or more buyers.<sup>19</sup>

Second, buffer stocks are often used to regulate price and business fluctuations by buying commodities in times of excess and selling in times of scarcity.<sup>20</sup> However, effective buffer stock programs are difficult to maintain because they require not only adequate storage facilities and careful management but also the continuous, adequate supply of capital necessary to finance the buffer pool itself. In addition, attempts to use buffer stocks to maintain unrealistic commodity prices in the long-term is most likely to lead to either a "disposal crisis" or exhaustion of the buffer pool capital reserves.<sup>21</sup>

Third, trade restrictions and quotas are frequently used to control the commodity market. These agreements are important both because they are widely used and because they allow the state to unilaterally set ceilings on the importation or exportation of commodities. However, these arrangements can be problematic because they are often affected by political, non-economic disruptions, and they tend to retard the development of low cost competition. As a result, the use of restrictions and quotas has been criticized on economic grounds because of their potential for creating global misallocation of resources and inefficient levels of output.<sup>22</sup>

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18. BEHRMAN, *supra* note 12, at 9-10.

19. LAW, *supra* note 2, at 70-72.

20. *Id.* at 72-73.

21. BARANYAI & MILLS, *supra* note 6, at 65-66.

22. LAW, *supra* note 2, at 73.

### III. INDIVIDUAL COMMODITIES

Although a detailed analysis of every major commodity is beyond the scope of this paper, a cursory review of at least some real examples is necessary to illustrate further discussions on ICA's. Recent history, structure and function of several major agreements have been detailed below in order to provide a better framework of analysis. To that end, some effort has been made to select commodities that have experienced substantial control efforts. Besides the commodities listed below, control efforts have been attempted in a variety of other markets including wool, tea, beef, bauxite, rubber, and wheat.

#### A. Oil

##### 1. Chronology

In the early stages of the industrial revolution, oil production for the United States and European interests dominated the world market for at least two reasons. First, increasing trade and building industry created a greater need for a continuous and secure supply of oil in developing countries. Second, the exploitation of oil reserves was extremely costly and expensive. Since the countries that had the potential to produce oil could not generally afford the start-up costs, oil interests were largely controlled and manipulated by the large corporations from the U.S. and Europe that had the resources and technology required to access the oil deposits.<sup>23</sup>

The Standard Oil Trust, founded in 1877, quickly became dominant in both the American and international oil markets. However, the development of American anti-trust law caused Standard Oil to splinter into more than thirty separate companies, five of which — Esso, Mobil, Standard of California, Gulf, and Texaco — remained important players in the world market. The European oil market developed in a similar manner with two corporations, Shell and British Petroleum, eventually winning the largest share of the European market.<sup>24</sup>

Following the Russian Revolution of 1917, market competition increased, and the seven largest oil corporations — the so-called "seven sisters" — attempted to find ways to stabilize oil production and pricing. The resulting negotiations culminated in 1928 with the Pact of Achnacarry, which by 1930 involved all of the major oil corporations. Acting under the terms of the pact, the major oil corporations maximized their retained earnings and exercised considerable bargaining power by combining a high degree of vertical and horizontal integration with oligarchic trade practices. Consequently, the major oil corpo-

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23. IAN SKEET, *OPEC: TWENTY-FIVE YEARS OF PRICES AND POLITICS* 4 (Richard Eden ed., 1988).

24. SHUKRI M. GHANEM, *OPEC: THE RISE AND FALL OF AN EXCLUSIVE CLUB* 4 (1986).



rations were at least majority partners in trade relations with the major oil producing countries until 1960.<sup>25</sup>

The relationship between the oil corporations and their host countries was frequently confrontational. Corporate decisions designed to maximize profits often conflicted with national security interests of the individual states. In addition, the secrecy with which these decisions were made often left the host with a great deal of uncertainty. As a result, the increasing importance of oil as an international commodity led to an increased desire, and ability, of the host countries to create changes in the international oil arena.<sup>26</sup>

The formation of the Organization of Petroleum Exporting Countries (OPEC) began at the First Arab Petroleum Congress in 1959 with the Maadi Pact. The Maadi Pact was a confidential but relatively informal arrangement between the representatives of Venezuela, Saudi Arabia, Iran, Iraq, and Kuwait, designed to promote discussions concerning the production of oil. In addition, the arrangement called for the construction of an "Arab Petroleum Organization."<sup>27</sup>

A combination of political and economic factors contributed to the subsequent formation of OPEC in September of 1960. Political disagreements between President Nasser of Egypt, who dominated the Arab League, and General Quassem of Iraq, who wished to create an organization outside of the Arab League, motivated Quassem to issue invitations to a conference in Iraq to discuss oil issues.<sup>28</sup> Two key economic factors also contributed. First, the bargaining strength of the members of the Pact of Achnacarry was weakened by the gradual introduction of independent and nationally owned oil corporations into the international market combined with the opening of a market for them to exploit, Libya's oil fields. Second, increased competition in the international oil market and governmental protection of the American domestic oil market prompted a widespread decline in the price of oil, culminating in a drastic price cut in 1960.<sup>29</sup>

OPEC's initial impact upon the international oil market was relatively minor due to several factors. First, the demand for oil in the 1960's was much lower than it became in the 1970's. Second, the bargaining position held by the oil corporations was still relatively strong. Third, dissention between the members of OPEC prevented them from presenting a united front until 1964.<sup>30</sup> In addition, increased production and competition world wide led to even further reductions in oil

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25. MOHAMMED E. AHRARI, OPEC: THE FAILING GIANT 11-12 (1986).

26. *Id.* at 13.

27. GHANEM, *supra* note 24, at 21.

28. *Id.* at 28.

29. SKEET, *supra* note 23, at 5, 17.

30. *Id.* at 33, 245.

prices.<sup>31</sup>

By 1971, OPEC's position had changed significantly, and it began to be able to negotiate much more effectively. OPEC's membership had increased to a total of ten members, adding Qatar (1961), Indonesia (1962), Libya (1962), United Arab Emirates (1967), and Algeria (1969),<sup>32</sup> and it had increased its market share to 50.6 percent.<sup>33</sup> At the same time, global demand for oil had more than doubled, from around thirty-six million barrels per day in 1960 to in excess of seventy-seven million barrels per day in 1970.<sup>34</sup> The closure of the Suez Canal in 1967 cut off a major trade route to the west and further increased oil scarcity. Finally, Libya's ability to effectively negotiate with the smaller, independent corporations led to increased confidence within OPEC that concerted action could be used effectively against the larger corporations.<sup>35</sup>

The Tehran Agreement of 1970 contained the first substantially effective resolutions made by OPEC members: 1) increased income tax rates; 2) the elimination of posting price disparities; 3) the establishment of uniform increases in price; 4) a new "gravity" escalation system; 5) the elimination of all OPEC allowances granted to oil companies; and 6) continued support for Libya's actions.<sup>36</sup> The ensuing negotiations with the oil corporations, which culminated in the Tehran Agreement in February of 1971, effectively began the transition from a buyer's to a seller's market.<sup>37</sup>

In 1973, in response to western support for Israel, OPEC stopped consulting with the oil corporations, began unilaterally setting oil prices, and cut production by more than 900 billion barrels per day. Downstream, these actions tripled the transfer price between producers and refineries, a cost which was passed along to consumers worldwide.<sup>38</sup> The result was a worldwide "oil crisis," which dramatically impacted industrialized areas such as Western Europe and the United States where both oil consumption and dependence on foreign oil had been steadily increasing.<sup>39</sup> The "oil crisis" also interacted profoundly with the world economy. Developing countries that had little potential for export related income quickly accumulated large oil related debts, a

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31. GHANEM, *supra* note 24, at 80.

32. SKEET, *supra* note 23, at 238.

33. AHRARI, *supra* note 25, at 203.

34. SKEET, *supra* note 23, at 245.

35. AHRARI, *supra* note 25, at 33.

36. *Id.* at 48.

37. GHANEM, *supra* note 24, at 128.

38. *Id.* at 144-45.

39. See generally Dario Scuka, *O.P.E.C.: Organization of the Petroleum Exporting Countries, Background, Review and Analysis*, CONGRESSIONAL RESEARCH SERVICE (CRS No. 74-189 E, 1974) [hereinafter *O.P.E.C.*] (discussing the impact of petroleum price increases in the U.S.).

situation that was further aggravated by the ensuing economic recession and relatively high inflation rates of the mid-1970's.<sup>40</sup>

By 1974, the cohesion of OPEC with respect to pricing policy had degenerated due to the different desires of its member countries. The "price hawks" advocated further price increases designed to bolster profit levels in the face of inflation. This position is ironic, since increases in the prices of petroleum have been frequently cited as a major source of rising inflation in the world economy.<sup>41</sup> The more moderate states — Saudi Arabia, in particular — felt that OPEC's continued success was linked inexorably to stability and prosperity in the world economy and that further increases in oil prices were unwarranted. The disagreements were exacerbated by a decline in the demand for oil, resulting partly from the implementation of conservation policies by non-oil producing nations and partly from the continuing recession. As a result, a rift formed between Saudi Arabia, which controlled the most abundant oil reserves, and the rest of the OPEC membership.<sup>42</sup>

At the same time that OPEC was struggling to maintain a cohesive front, the industrialized nations began to attempt to find ways to combat the "predatory price increases." Accordingly, the International Energy Agency (IEA) was established, largely through the efforts of the U.S. foreign policy under the direction of Dr. Henry Kissinger. Specifically, the IEA provided for the creation of a sharing mechanism to deal with oil supply disruptions; the establishment of energy policies that would reduce dependency on oil; and an information system that would enable IEA governments to understand better and to monitor the oil market.<sup>43</sup>

The IEA initially received only marginal support, largely because of the economic importance of OPEC, whose members regarded the IEA as confrontational. IEA also received little support because of the self-serving attitudes taken by each of the oil importing countries. However, the International Energy Policy, created by the IEA, greatly improved cooperation between the Western nations.<sup>44</sup>

Despite OPEC's ability to control oil price, its oil pricing policy has been characterized by most commentators as erratic after 1974. There are several reasons for this. First, the increase in wealth caused many oil producing states to embark on ambitious domestic improvement plans. The objectives of these plans, in turn, required the maintenance of high levels of oil export related income, the lack of which leads to increased debt and destabilization. Second, the inability of

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40. AHRARI, *supra* note 25, at 76.

41. O.P.E.C., *supra* note 39, at 21.

42. GHANEM, *supra* note 24, at 149.

43. SKEET, *supra* note 23, at 119.

44. AHRARI, *supra* note 25, at 98.

OPEC to effectively coordinate oil production has resulted in relatively poor control over the supply of oil compared to that exercised by the oil corporations before 1960. Third, since OPEC countries are highly dependent on oil exports, their income is highly vulnerable to policy changes in foreign industry. Fourth, OPEC's increased income has resulted in massive investment in foreign countries. Accordingly, increases in oil prices adversely affect OPEC's holdings in non-oil producing countries.<sup>45</sup>

During the 1980's, OPEC's economic strength declined considerably. This decline is generally attributed to the reduction in the global demand for oil brought about by conservation programs instituted in oil importing nations. However, this factor alone is insufficient to explain the size of OPEC's loss of power since global consumption of oil declined by only about two percent from 1974 to 1986.<sup>46</sup> Instead, two other factors played major roles in OPEC's decline. First, the dramatic increase in the production of oil by non-OPEC countries resulted in a decline in OPEC's global market share by almost twenty percent from 1970 to 1984.<sup>47</sup> Second, effective manipulation by the IEA and generally poor market conditions have further decreased OPEC's ability to control the international oil market.<sup>48</sup>

OPEC's future remains uncertain. On the brighter side, at least for OPEC, oil consumption has been rising since the late 1980's, a trend which is expected to continue. Indeed, some analysts have predicted that OPEC's share of the U.S. oil import market will swell to more than fifty percent by 1995 because of OPEC's control of the most extensive known oil resources.<sup>49</sup> Along with increased market share, OPEC's technological and oil processing capabilities, its negotiating skills, and its understanding of economics have improved.<sup>50</sup>

On the other hand, OPEC's market share continued to decline through 1992,<sup>51</sup> and some economic analysts have projected that certain individual OPEC nations are likely to encounter substantial economic challenges in the near future.<sup>52</sup> These downturns could become worse because of the inability of OPEC to overcome the differences in opinion among its members concerning pricing policy objectives. This point is underscored by recent willingness of Saudi Arabia to enter into

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45. ABBAS ALNASRAWI, *OPEC IN A CHANGING WORLD ECONOMY* 114-15 (1985).

46. SKEET, *supra* note 23, at 245.

47. AHRARI, *supra* note 25, at 203.

48. GHANEM, *supra* note 24, at 190.

49. Bernard A. Gelb, *Oil Imports from OPEC: Recent and Projected Trends*, 6 CONGRESSIONAL RESEARCH SERVICE (CRS No. 88-558 E, Aug. 11, 1988).

50. *O.P.E.C.*, *supra* note 39, at 20-22.

51. *Gulf States: The Confrontation to Come*, MIDDLE EAST MAGAZINE, Mar. 1, 1992, at 6, available in LEXIS, World Library, Allwld File [hereinafter *Gulf States*].

52. FARID ABOLFATHI ET AL., *THE OPEC MARKET TO 1985* 17 (1977).

bilateral negotiations with ARAMCO.<sup>53</sup> Finally, the recent invasion of Kuwait by Iraq has further widened the rift between Iraq, which has been a traditional proponent of price increases, and Saudi Arabia and Kuwait, traditional moderates.

Finally, the rising discord within OPEC has led to increased importance in a number of other organizations, such as the Gulf Cooperation Council (GCC), which includes the oil-rich states of Saudi Arabia, Bahrain, Qatar, the UAE, and Oman. If relations between the members of OPEC do not improve, the GCC could play an increasingly important role in the oil market.<sup>54</sup>

## 2. Form and Function

Chapter I, Article 2 of the treaty signed by the five founding members of OPEC provides for three principle objectives:

(A) The principle aim of the Organization shall be the co-ordination and unification of the petroleum policies of member countries and the determination of the best means for safeguarding their interests, individually and collectively.

(B) The Organization shall devise ways and means of ensuring the stabilization of prices in international oil markets with a view to eliminating harmful and unnecessary fluctuations.

(C) Due regard shall be given at all times to the interests of the producing nations and to the necessity of securing a steady income to the producing countries; an efficient, economic and regular supply of petroleum to consuming nations; and a fair return on their capital to those investing in the petroleum industry.<sup>55</sup>

In short, the founders of OPEC were attempting to create a cartel designed to more effectively interact with oligopolistic nature of the oil corporations.<sup>56</sup>

Organizationally, OPEC consists of a series of vertically integrated committees designed to determine, evaluate, and implement oil economic strategy. The highest level of the organization is the Commission, which consists of only the oil ministers of each of the member states. The Commission is responsible for the general policy and membership of the organization. Theoretically, this arrangement allows OPEC to react expediently to changes in the world oil market. However, with the exception of procedural matters, the Commission often faces delays and disruptions because many of the oil ministers do not have broad leeway to operate on behalf of their respective govern-

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53. ARAMCO is a conglomeration of four U.S. oil corporations.

54. *Gulf States*, *supra* note 51, at 4.

55. JOHN EVANS, *OPEC, ITS MEMBER STATES AND THE WORLD ENERGY MARKET* 138 (1986).

56. GHANEM, *supra* note 24, at 31.

ments. The Commission's operation is further impeded because it meets only twice a year, except under extraordinary circumstances.<sup>57</sup>

At the next level is the Board of Governors, which consists of one governor for each member country. The Board of Governors is theoretically responsible for the implementation of the directives of the Commission. Functionally, the Board is a bureaucratic level that adds little to the performance of the organization as a whole. The Board's executive function is limited to the submitting to the Commission agendas that are rarely followed. Administratively, the Board's influence is limited because it only meets twice a year.<sup>58</sup> The Board is, however, responsible for some of OPEC's fiscal operations, such as the annual budget.<sup>59</sup>

The Secretariat is the next level of OPEC and is the principle body through which OPEC implements market operations. Over the years, the structure of the Secretariat has changed markedly. The Secretariat is headed by a Secretary General and Deputy Secretary. Both of these posts are filled by unanimous election of a member of the Board of Governors and consist of only three year terms. As a result, the Secretary and Deputy Secretary positions have frequently been filled by political candidates. Accordingly, the Secretariat's effectiveness depends mainly on the quality of its staff.<sup>60</sup>

Actual operations within the Secretariat are divided by function into five departments. The Administrative Department handles personnel, budgets, and accounting matters. The Information Department collects and collates information from each of the member countries for processing and analysis by the Economics Department. The Technical Department monitors the technological changes that are relevant to the industry. The Legal Department reviews changes in existing domestic laws and analyzes their potential effects on the industry. Finally, the Secretariat uses a number of outside consultants as deemed necessary by the General Secretary.<sup>61</sup>

Although not in direct conflict with OPEC, the International Energy Agency also bears some examination. Twelve basic policy principles of the IEA were set out during Board meetings in 1977. These twelve principles focus on two fundamental concepts: the reduction of future oil imports through conservation and substitution of indigenous oil; and implementation of alternative means of energy production through "progressive replacement of oil" with coal, natural gas, and nuclear power.<sup>62</sup>

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57. *Id.* at 37.

58. *Id.* at 38.

59. *O.P.E.C.*, *supra* note 39, at 10.

60. *SKEET*, *supra* note 23, at 237.

61. *O.P.E.C.*, *supra* note 39, at 10-11.

62. *EVANS*, *supra* note 55, at 163-64.

Currently, the IEA, which is an autonomous extension of the Organization for Economic Co-operation and Development, consists of some twenty member countries. Its policy-making body, the governing board, is composed of senior representatives from each member country who determine operation ostensibly by consensus. In cases where consensus cannot be reached, however, decisions are made by a complex weighted voting system. The U.S., Japan, West Germany, and the United Kingdom combined hold more than fifty percent of the votes.<sup>63</sup>

The IEA's Board of Governors oversees five standing groups designed to promote co-operation between member countries. Like OPEC, two of these groups are oriented towards collection and analysis of information and technology. The central focus of the other three is to find ways to reduce oil dependency through cooperation between both member and non-member states and through a comprehensive emergency oil sharing system.<sup>64</sup>

## B. Tin

### 1. Chronology

Initial attempts at organization of the tin market occurred in 1921 with the "Bandoeng Pool," which was primarily an agreement between Britain, the Netherlands and their respective colonial interests, the Malay States and Netherlands' Indies. The Bandoeng Pool, essentially a buffer stock, enjoyed initial success until its stocks were exhausted due to insufficient capacity. The pool collapsed in 1925.<sup>65</sup>

In the 1930's, declining prices caused further attempts to organize the tin market, such as the tin agreements signed in 1931 and 1933. These attempts culminated in the Agreement for the International Control of Production and Export of Tin, which was signed in 1942. This agreement created a committee to oversee the production of tin in the major tin producing states, which at that time included Belgium, Bolivia, the United Kingdom, the Netherlands, and their associated colonies, the Belgian-Congo, the Malay States, Malacca, Nigeria, and the Netherlands' Indies.<sup>66</sup>

Unfortunately, this agreement was interrupted by the onset of World War II and the subsequent Japanese control of the Pacific. Market control was re-established in the post war period with the first International Tin Agreement (ITA), which was modeled substantially after the 1942 accord. Membership of this organization included representatives of all the major producing countries but less than half of the consuming nations. This agreement and its successors continued with

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63. *Id.* at 161.

64. *Id.* at 161-62.

65. LAW, *supra* note 2, at 56-57.

66. INTERGOVERNMENTAL AGREEMENTS, *supra* note 3, at 95.

varying success until 1961 when increased prices completely depleted the buffer stocks of the ITA, and the pool collapsed.<sup>67</sup>

In 1964, the third ITA was negotiated and passed under the newly created UNCTAD. This new ITA included a new preamble that provided for the raising of the price of tin, in addition to the original objective of price stabilization. Otherwise, this agreement and its eventual successor, passed in 1970, were essentially the same in form as earlier agreements.<sup>68</sup>

The structure of the ITA remained remarkably unchanged until the collapse of the organization in 1985. Two important observations may be made regarding the chronology of the ITA. First, the focus of the ITA changed from stabilization to increased price control with the ratification of the third ITA in 1965. This change naturally resulted in disagreement and friction between consuming and producing nations by the early 1970's. Second, only the fifth ITA included the United States. This is important because the United States commands an extensive and strategically important tin reserve and because the U.S. is the largest tin consuming nation. The United States is generally supportive of the objectives of the ITA and offers considerable cooperation.<sup>69</sup>

The ITA was considered by most observers to have been a great success, even into the 1980's. This evaluation is based on evidence that the ITA has been able to moderate market fluctuations relatively effectively. However, with respect to increasing tin price levels, the ITA was largely unsuccessful, and its demise is directly related to its efforts in this area. Since the collapse in the tin market, the ITA continues only on a provisional level, a situation which is unlikely to change without substantial reorganization of the ITA and its policy objectives.<sup>70</sup>

Further, despite the fact that tin production is overwhelmingly concentrated in LDCs, that tin is consumed mostly by the industrialized countries, and that price control may have been effective in the past,<sup>71</sup> several factors make supply cartelization unlikely in the immediate future. The most important reason is the Western market orientation of the majority of the tin producing countries. In addition, the benefit of oligopolistic action is uncertain in light of the potential for economic repercussions and the existence of extensive stockpiles, espe-

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67. BARANYAI & MILLS, *supra* note 6, at 21-22.

68. WILLIAM L. BALDWIN, *THE WORLD TIN MARKET: POLITICAL PRICING AND ECONOMIC COMPETITION* 86-89 (1983).

69. LAW, *supra* note 2, at 58.

70. Eric J. McFadden, *The Collapse of Tin: Restructuring a Failed Commodity Agreement*, 80 AM. J. INT'L L. 811, 814-15 (1986).

71. KLAUS E. KNORR, STANFORD UNIVERSITY FOOD RESEARCH INSTITUTE, *TIN UNDER CONTROL* 196 (1945).



cially within the U.S.<sup>72</sup>

## 2. Form and Function

Article I of the first ITA stated four objectives for the organization:

- (a) To prevent or alleviate widespread unemployment or underemployment and other serious difficulties which are likely to result from maladjustments between the supply of and the demand for tin;
- (b) To prevent excessive fluctuations in the price of tin and to achieve a reasonable degree of stability of price on a basis which will secure long-term equilibrium between supply and demand;
- (c) To ensure adequate supplies of tin at reasonable prices at all times; and
- (d) To provide a framework for the consideration and development of measures to promote the progressively more economic production of tin while protecting tin deposits from unnecessary waste or premature abandonment.<sup>73</sup>

In short, the original ITA was created to moderate market fluctuations and to promote the development of new and efficient ways of tin production. So long as it maintained these goals, the ITA seems to have been at least moderately successful, and the relationship between producers and consumers remained relatively good.<sup>74</sup>

With the ratification of the third ITA, "renumerative return to producers" officially became an objective of the ITA. This development implied long-term price support that was opposed by consuming nations. The result was a general downturn in relations between consuming and producing nations, a situation which was exacerbated during the fifth ITA by the U.S., which used its influence to keep the ceiling price of tin at artificially low levels. This policy angered producing nations because it prevented the implementation of market support at a time when production costs were consistently rising. Consequently, disagreements over policy eventually led to the United States' refusal to sign the ITA during the sixth continuance.<sup>75</sup>

The early 1980's was an important era in tin production for several reasons. First, the Association of Tin Producing Countries was established by several of the larger tin producing nations, including Malaysia, Thailand, Indonesia, Australia, Bolivia, Nigeria, and Zaire. However, this organization has had only symbolic influence. Second,

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72. JOHN THOBURN, *MULTINATIONALS, MINING AND DEVELOPMENT: A STUDY OF THE TIN INDUSTRY* 32 (1981).

73. McFadden, *supra* note 70, at 817 n.16, citing *International Tin Agreement, 1953, Art. I, UN Doc. E/CONF.12/12* (1954).

74. *Id.* at 818-19.

75. *Id.* at 822-23.

the United States withdrew from the agreement in 1982 on the grounds that the ITA was "subsidizing" tin prices.<sup>76</sup> Third, attempts by the ITA to maintain "renumerative" price levels on an extended basis, in conjunction with insufficient funding and rising volumes of tin exports from non-member states, led to the eventual collapse of the ITA and massive losses in bad debt in 1985.<sup>77</sup>

Since the Bandoeng Pool, efforts at control of the tin market have essentially taken the form of buffer pools overseen by a committee known as the Tin Council.<sup>78</sup> Funding of the pools was made possible by the collection of compulsory contributions from each of the members, in addition to provisions for the collection of additional funds as necessary.<sup>79</sup> At a more fundamental level, operation of the pool consisted of a complex system of quotas and restrictions combined with both a price ceiling and floor.<sup>80</sup> These two levels were set by committee vote, but, in the past, policy changes have required a near unanimous vote of the major producers and consumers due to the "unrealistic" structure of the voting system. Accordingly, ITA operation has been criticized for being inflexible in its reluctance to change the ceiling and floor to reflect realistic, long-term price levels and changing market conditions.<sup>81</sup>

Historically, the structure of the ITA has been much less centralized than that of OPEC. Most of its operations have traditionally been spread among various sub-organizations, each of which were individually responsible to the council, within each of its member states.<sup>82</sup> The Council was comprised of representatives of each of the member nations and was headed by a chairman who had no vote. The Council also contained numerous committees defined by function. Administratively, the buffer stock was controlled by a Manager, who reported directly to the Chairman of the Council. However, due to anomalies in the charter, the manager of the buffer stock seemed to be required to act both within the bounds of the ITA itself and under the supervision of the Chairman. In the past, this arrangement has been somewhat tenuous at times, since these two directives are sometimes at odds.<sup>83</sup>

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76. Stefan Wagstyl, *The Crisis No One is Ready to Resolve*, FINANCIAL TIMES, Nov. 1, 1985, at 22.

77. *Id.* at 22; See also, McFadden, *supra* note 70, at 813.

78. WILLIAM FOX, TIN: THE WORKING OF A COMMODITY AGREEMENT 130 (1974).

79. BALDWIN, *supra* note 68, at 79.

80. LAW, *supra* note 2, at 57-58.

81. McFadden, *supra* note 70, at 817-18.

82. KNORR, *supra* note 71, at 111.

83. FOX, *supra* note 78, at 261-62.

### C. *Coffee*

#### 1. Chronology

Prior to World War II, coffee exports from Latin America constituted over ninety percent of the world market. It is not surprising, then, that the first attempts at control of the coffee market, in the early 1900's, were made by Brazil. Indeed, Brazil alone controlled over sixty percent of the market share at that time, and its schemes were basically national output restriction, so it was able to achieve a marginal degree of success, especially during lean seasons.<sup>84</sup>

In 1923, Brazil attempted to implement a permanent plan to control coffee prices. Although the plan was disbanded after the crash of the coffee market in 1929, it did have several important effects on the coffee market. First, bumper crops in 1927 and 1929 created enormous excess stocks that made output reduction difficult — Brazil eventually burned much of that coffee when it no longer remained storable. Second, the artificially high price level maintained during the 1920's spurred increased planting of coffee plants and production. Since a coffee plant takes at least five years to begin producing beans, and ten to twelve years to mature, this increased planting led to systematic overproduction until World War II. Third, the experiment in price control of the coffee market exemplified a market pattern of demand leading to increased productivity and planting, falling prices and control, artificially high prices and eventual market crash, and culminating in market stagnancy.<sup>85</sup> Fourth, Brazil's marketing strategy led to a severe loss of market share. As a result, since no suitable agreement could subsequently be reached with other producing countries, Brazil was forced to abandon its attempts to control the market.<sup>86</sup>

The first real attempt at international organization of the coffee market came in 1940 with the International Coffee Agreement (ICoA), which included Brazil, Columbia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Peru, and Venezuela, and the United States. The Agreement concerned the division of the U.S. coffee market using import and export quotas that focused more on the stabilization than the control of prices.<sup>87</sup>

The post-war period coffee market showed all the signs of the beginning of a new market cycle: initial low production rates of coffee that interacted well with accumulated stocks of coffee and the generally decreased demand that resulted from the closure of much of the European market. However, demand and price steadily increased through early 1949. In the 1950's, a period of intense price increase

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84. ARAIM, *supra* note 8, at 186.

85. LAW, *supra* note 2, at 40-45.

86. BARANYAI & MILLS, *supra* note 6, at 149.

87. INTERGOVERNMENTAL AGREEMENTS, *supra* note 3, at 59.

began, leading to the removal of market controls by the U.S. in 1953. The removal of these controls, combined with frost scares in 1954, pushed market prices to record levels. By 1960, however, increased planting and cultivation efficiency, driven by the high prices, led to plummeting prices and massive overstocks.<sup>88</sup>

In 1958, coffee prices began to decline, and organizational efforts began anew and developed piecemeal with the Latin-American Coffee Agreement. This Agreement was joined by France, Portugal, and their African colonies in 1959 and by Britain and her African colonies in 1960. Additional marginal producers joined in the next two years, leading to the ICoA and the formation of the International Coffee Organization (ICO) in 1962. By 1962, the ICO controlled over ninety five percent of the world market.<sup>89</sup>

The imposition of this agreement initially led to both chronically increasing overstocks and inflated price levels. However, U.S. support for increased prices declined in the early 1970's, and by early 1972, differences between producing and consuming nations resulted in the demise of the Agreement. Until that point, the ICO was generally considered effective, at least from the standpoint of the coffee producing countries. In any case, the ICoA was able to produce a sizable transfer of wealth from consumers to producers over the period during which it was in effect.<sup>90</sup>

A review of the market stability factors during the period of 1962-72 is particularly enlightening with respect to the operation of the ICO. The period of 1962-68 showed relative cooperation between consumers and producers and can be characterized as a period during which the central focus of the ICO was market stability. To this end, the ICO was successful, and market stability increased for those six years.<sup>91</sup> Beginning in 1968, however, the ICO became more concerned with price control, and dissension between producers and consumers increased. During the latter period, the ICO's ability to exercise market power was at least marginally successful, but it was accompanied by market instability greater than what would have existed without the ICO.<sup>92</sup>

The next two ICoA's, signed in 1976 and 1983 respectively, were largely continuations of the previous arrangements. However, each contained particular modifications. The imposition of quota systems in the ICoA of 1976 met substantial opposition both because they contained extensive modifications and because market prices fluctuated

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88. ARAIM, *supra* note 8, at 187.

89. LAW, *supra* note 2, at 43-44.

90. *Id.* at 45-46.

91. ARAIM, *supra* note 8, at 196.

92. LAW, *supra* note 2, at 46.

widely. Analysis of the agreement of 1983 is important because it has been largely seen as "an elaborate and advanced attempt to regulate the market."<sup>93</sup>

The U.S. disapproved of the ICO in the 1980's. The U.S. believed that the ICO artificially maintained high coffee prices and sold coffee to non-member countries at below market prices. The United States' dissatisfaction intensified when several large coffee exporting nations decided to further limit exports in December of 1986.<sup>94</sup> Accordingly, the U.S. refused to enter into a further ICoA when the 1983 agreement ended in 1989. With the loss of the support of the largest consuming nation, the ICO was unable to effectively maintain its quota system, and the coffee market collapsed. Coffee prices declined rapidly as producing countries drastically increased their outputs in order to retain earnings in the more competitive market.<sup>95</sup>

In response to continually dropping coffee prices in the early 1990's, the first few months of 1993 saw increased pressure from coffee producing nations for the construction of a new coffee agreement. However, despite offers of new concessions by the coffee producing nations, such as banning "below agreement price level" sales of coffee to non-member countries, a new pact has not been reached for two central reasons. First, since the present ICO represents fifty two producing countries, agreement on the distribution of the world market has been difficult to reach. Second, and far more importantly, continued reluctance on the part of coffee consuming nations, most notably the U.S., have stalled completion of a new ICoA.<sup>96</sup>

At first glance, the importance that coffee producers attribute to creating consensus between producing and consuming nations seems unwarranted in light of the success of OPEC. There are, however, a number of reasons why the coffee market is different than that of oil. The production cycle of coffee cannot effectively be changed in the short run, so the world supply of coffee is much more difficult to control than that of oil. Controlling supply is further complicated by the existence of considerable coffee stocks in the hands of the consuming nations.<sup>97</sup> In addition, the relatively large number of coffee producing nations makes the enforcement of coffee agreements much more difficult. Indeed, one reason for the initial ability of the ICO to control coffee prices was consumer cooperation with respect to distribution

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93. ARAIM, *supra* note 8, at 198.

94. *Id.* at 200.

95. Christina Lamb, *A Storm in a Coffee Cup*, FINANCIAL TIMES, Nov. 18, 1992, at 18.

96. *Coffee-Producing Countries Agree on Strategy for Talks with Consuming Countries*, BRITISH BROADCASTING CORP., Mar. 16, 1993, at 2 [hereinafter *Strategy for Talks*], available in LEXIS, World Library, Allwld File.

97. *Id.* at 18.

quota enforcement.<sup>98</sup> Finally, the potential for increased coffee prices does not represent the same threat to industrialized economies that an increase in the price of oil does. Coffee plays only a very limited role as a factor of production for other products and can, to a relatively large extent, be substituted for or done without.

The role of the U.S. in future ICoA's must be characterized as important but unclear. Without the support of an economically active ICoA, prices in the coffee market have declined significantly, despite previous predictions that increases in coffee prices may be close at hand.<sup>99</sup> As the largest consuming nation, the U.S. imports nearly twice the coffee of the next largest importer. Thus, U.S. involvement in a new ICoA could mean substantial U.S. subsidization of world coffee production, at least in the short run. However, coffee pricing remains a volatile issue of political importance for the U.S.<sup>100</sup> Low coffee prices threaten to lead to social unrest in many coffee producing nations, which rely heavily on coffee exports to generate export earnings, and to increased production of the main alternative crop, coca and its refined product, cocaine.<sup>101</sup>

## 2. Form and Function

The initial ICoA of 1940 was created "to allocate equitably the market of the United States of America," and to "take steps to promote the orderly marketing of coffee, with a view to asserting terms of trade equitable for both producers and consumers by adjusting supply to demand."<sup>102</sup> These goals were expanded to a global level by the agreement of 1962, which included the following principles:

1. to ensure by a comprehensive and centralized control of exports, backed up by supervision and regulation of imports, that the general level of coffee prices does not decline beyond the level of 1962 and that real export earnings should progressively increase;
2. to promote the consumption of coffee (importing members to have no financial obligation), and to work for the removal of obstacles to consumption (e.g., import tariffs, quotas, etc.);
3. to adjust production with demand within the lifetime of the agreement;
4. to establish a policy 'relative to' stocks, which producing members 'shall endeavour' by all means within their power to implement.<sup>103</sup>

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98. LAW, *supra* note 2, at 43-45.

99. David Blackwell, *Report Forecasts Strong Coffee Price Recovery*, FINANCIAL TIMES, Mar. 20, 1991, at 46.

100. David Blackwell, *Time Running Short for Coffee Pact Renegotiation*, FINANCIAL TIMES, Feb. 9, 1993, at 26; *Strategy for Talks*, *supra* note 96, at 1.

101. Lamb, *supra* note 95, at 18.

102. INTERGOVERNMENTAL AGREEMENTS, *supra* note 3, at 59.

103. ARAIM, *supra* note 8, at 195-96, citing J.W.F. ROWE, THE WORLD'S COFFEE

Thus, the ICoA has focused, at least partially, on maintaining a price above market levels.<sup>104</sup>

When in force, the ICoA operates through an elaborate system of import and export quotas that serve to control over ninety percent of global coffee production. Quotas were chosen because buffer stocks cannot cope with chronic overproduction problems and large capital requirements. The ICoA enforced the quotas by implementing an extensive system of verification of coffee stocks that helped to prevent cheating.<sup>105</sup>

The system of export and import quotas was designed and monitored by the International Coffee Council (ICC).<sup>106</sup> The ICC itself is made up of representatives from both coffee producing and consuming nations. Decisions made by the ICC are based on a complicated weighted voting system that provides overall equal voting power to consuming and producing factions. A two-thirds majority is required to implement a quota change. A sixteen member Board aids the Council; the Board is elected by the Council and oversees the Secretariat. The Secretariat is the central administrative branch of the ICC and is headed by the Executive Director. The ICC is structured similarly to OPEC, yet its operations are much different. However, since 1989, the ICC has operated on a provisional level only.<sup>107</sup>

#### D. Sugar

##### 1. Chronology

Although global efforts to organize the sugar markets did not materialize until the 1930's, British efforts to control the sugar markets began in 1891 with the International London Convention. Subsequent agreements were reached primarily between European producers in the Sugar Convention of 1902.<sup>108</sup> Although this agreement was limited in scope, it represented a significant first step in the generation of future sugar ICA's. By 1920, however, the Sugar Convention was abandoned for political reasons.<sup>109</sup>

The next major attempt to control the sugar market did not occur until 1931 when negotiations between Cuba, the United States, and

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187 (1963).

104. LAW, *supra* note 2, at 44.

105. UNCTAD Committee Assesses Role of International Commodity Agreements in Attaining Integrated Programme Goals; United Nations Conference on Trade and Development, UNITED NATIONS CHRONICLE, Jun. 1985, at 57 [hereinafter UNCTAD].

106. GOSOVIC, *supra* note 1, at 229.

107. ARAIM, *supra* note 8, at 191-93.

108. MOHAMED HASSAN EL-GAMAL, LE PROBLEME INTERNATIONAL DU SUCRE 16-17 (1941).

109. LAW, *supra* note 2, at 46.

Java led to an agreement to restrict output through a system of quotas. Shortly thereafter, similar arrangements were forged between Cuba, Java, Germany, Hungary, Czechoslovakia, Poland, and Belgium.<sup>110</sup> The "Chadbourne Agreement," as these agreements were collectively called, successfully limited output among the membership nations. However, this output was quickly replaced by non-membership countries creating, in effect, a transfer of production. With sugar prices in continual decline, the Chadbourne Agreement was abandoned in 1935.<sup>111</sup>

Two years after the initiation of the Chadbourne Agreement, negotiations towards price stabilization began with the World Monetary and Economic Conference of 1933. Initial agreement was hampered by the Chadbourne Scheme, which was still in force. However, by 1937, a sugar agreement was signed between the governments of South Africa, Brazil, Belgium, the United Kingdom, China, Cuba, Czechoslovakia, the Dominican Republic, France, Germany, Haiti, Hungary, India, the Netherlands, Peru, Poland, Portugal, the USSR, the United States, and Yugoslavia.<sup>112</sup> This agreement was unsuccessful in affecting prices and was interrupted by the onset of World War II.<sup>113</sup>

By the end of the war, there were shortages and relatively high prices in the world sugar market; accordingly, the next fifteen years were characterized by gradually increasing outputs and decreasing prices. By 1953, prices were low enough to prompt further attempts at controlling the sugar market. The International Sugar Agreement (ISA) of 1953 included all major producers (except Brazil and Peru) and importers, and it operated on the basis of a set of quotas that were to be enforced by both exporters and importers.<sup>114</sup>

The 1956 ISA included Brazil and Peru and made several important refinements to the quota system. By 1960, however, the agreement faced serious political and functional difficulties, and the ISO barely moderated wide price fluctuations. In addition, political differences between the United States and Cuba forced wholesale changes in the distribution of the quota system. Record production levels worldwide further strained the quota system, and large landholding in Cuba became necessary to protect against fluctuations.<sup>115</sup> These complications eventually led to a collapse in the agreement by 1962, as Cuba withdrew from the world market due to commitments to the Sino-Sovi-

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110. EL-GAMAL, *supra* note 108, at 298-300.

111. BARANYAI & MILLS, *supra* note 6, at 109.

112. INTERGOVERNMENTAL AGREEMENTS, *supra* note 3, at 26.

113. LAW, *supra* note 2, at 47.

114. *Id.* at 48.

115. HEINRICH BRUNNER, CUBAN SUGAR POLICY FROM 1963-1970 19-21 (Marguerite Borchardt & H.F. Broch de Rothermann trans., 1977).



et Bloc.<sup>116</sup>

Following a decade of violent price swings and changing political conditions, renegotiation of the agreement was attempted in 1965. These negotiations stalled due to differences in opinions with respect to price range targets and export quotas. Agreement was finally reached in 1968,<sup>117</sup> but, during the early 1970's, the ISO was unable to prevent skyrocketing prices despite considerable increases in both production and consumption.<sup>118</sup> These high prices created great incentives for increased production. Accordingly, world production boomed and signs of an impending sugar glut arose as the ISA of 1977 went into effect.<sup>119</sup>

The ISA of 1977 was further burdened by the refusal of the European Economic Community (EEC) to join the pact. Although the EEC's rationale was largely political, its failure to join the ISA and subsequent increases in sugar exportation made attempts by the ISO to keep sugar within the proscribed price range impossible. In addition, the continuing development and use of alternative sweeteners exacerbated the downward pressure on sugar prices. Consequently, by 1984, when the agreement lapsed, sugar prices fell precipitously in the face of huge global surpluses.<sup>120</sup>

Since 1984, the ISO has been relegated to the non-market role of continuously monitoring the sugar market, and it has no ability to perform market operations. Accordingly, controversy has surrounded the ISA's adoption in 1987<sup>121</sup> and 1992. Currently, the ISO provides a forum for discussion about issues concerning the sugar market and supplies comprehensive statistics on the functioning of the market. However, the ISO has diminished in importance as an economic actor, and it is unlikely to recover, at least in the near future.<sup>122</sup>

## 2. Form and Function

At least since the end of World War II, International Sugar Agreements have been oriented towards the goals of stability and the provision of remunerative returns to sugar producing nations. Evidence of

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116. BARANYAI & MILLS, *supra* note 6, at 121-22.

117. GOSOVIC, *supra* note 1, at 99-101.

118. LAW, *supra* note 2, at 50-51.

119. *New Sugar Treaty Leaves Dominican Republic Uneasy*, LATIN AMERICAN NEWSLETTERS, LTD., Oct. 14, 1977, at 158, available in LEXIS, World Library, Allwld File.

120. John Edwards, *Why the Sweet Talking Had to Stop*, FINANCIAL TIMES, Jul. 24, 1984, at 15-16.

121. David Blackwell, *International Sugar Pact Comes into Force*, FINANCIAL TIMES, Mar. 29, 1988, at 34.

122. Nigel Hunt, *New Pact Secures Future for International Sugar Organization*, REUTER ASIA-PACIFIC BUSINESS REPORT, Jan. 20, 1993, at 2, available in LEXIS, World Library, Allwld File.

the goals were clearly set out by the International Sugar Agreement of 1958:

The objectives of this Agreement are to assure supplies of sugar to importing countries and markets for sugar to exporting countries at equitable and stable prices; to increase the consumption of sugar throughout the world; and to maintain the purchasing power in world markets of countries or areas whose economies are largely dependent upon the production or export of sugar by providing adequate returns to producers and making it possible to maintain fair standards of labour conditions and wages.<sup>123</sup>

Later agreements echoed these objectives.<sup>124</sup> In the long run, however, any claims of success regarding these objectives, other than stabilizing prices,<sup>125</sup> must be viewed with suspicion.<sup>126</sup>

As with coffee, the ISO's market control mechanism took the form of a system of quotas designed to keep prices within a pre-determined range. Buffer stock arrangements in this area have long been considered infeasible due to the size of sugar price fluctuations and the enormous amount of capital that would be required to implement a pool. The most recent attempts at price control failed both because of the large non-member production of the EEC, currently estimated at about twenty five percent of world production, and chronic overproduction around the rest of the world.<sup>127</sup>

The ISO of 1937 provided for the creation of a "General Council, composed of delegates representing all of the contracting governments, and an Executive Committee of nine members, which are to administer the agreement through a Secretariat to be established in London."<sup>128</sup> The Executive Committee consisted of equal representation of the sugar importing countries, the cane-sugar producing countries, and the beet-sugar producing countries. Permanent seats on this committee were held by the United States, the United Kingdom, Cuba, the Netherlands, and Java.<sup>129</sup> Subsequent ISO's have continued to utilize this structure with only minor changes,<sup>130</sup> the most important of which was the addition of the Finance Committee. The decline in importance of the ISA has, however, had a corresponding effect at the administrative level, as is illustrated by the merger of the Finance and Executive

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123. *United Nations Sugar Conference, 1956: Summary of Proceedings*, at 53, U.N. Doc. E/Conf.22/7/Annex II [hereinafter *Sugar Conference*].

124. *Id.*; W.R. AYKROYD, *SWEET MALEFACTOR: SUGAR, SLAVERY AND HUMAN SOCIETY* 114 (1967).

125. BRUNNER, *supra* note 115, at 62-65.

126. LAW, *supra* note 2, at 51.

127. Edwards, *supra* note 120, at 15.

128. MYER LYNSKY, *SUGAR ECONOMICS, STATISTICS, AND DOCUMENTS* 276 (1938).

129. *Id.* at 276.

130. See generally, *Sugar Conference*, *supra* note 123, at 65-67 (discussing the sugar agreements of 1953 and 1956).

Committees into one Administrative Committee in 1993.<sup>131</sup>

#### IV. ANALYSIS

It is difficult to make accurate generalizations about commodity markets because of the degree of variation between markets. As a result, analysis of the ability of actors to effectively form and maintain an ICA must necessarily be limited to the provision of factors that bear on the effectiveness of ICA's. These factors can be loosely separated into market, commodity, and organization specific factors, as outlined below.

##### A. Market Factors

International Trade Agreements do not work in a vacuum. Each commodity market has important differences and unique attributes that affect any attempted ICA in that particular market. These attributes may even prevent an ICA from effectively functioning in certain markets. Relevant market attributes include the following:

1. The number of producing and consuming entities;
2. Political and functional stability and organization of these entities;
3. Barriers to entry;
4. The degree of variation in international costs of production;
5. The relative "importance" of a product both in the world economy and individual markets;
6. The degree and severity of price fluctuations; and
7. Demand and supply elasticities.

First, the fewer entities involved in a market, the more effective an ICA is likely to be. Negotiations are easier to conduct, agreements are easier to construct, and enforcement is less difficult. For instance, OPEC's ability to effect control of the oil market was directly related to the concentration of previous control within the hands of a small group of multinational corporations.<sup>132</sup> Conversely, the number of producers and actors involved in the tin market undoubtedly had a negative effect on the ITA.<sup>133</sup>

Second, the political and functional positions of each of the economic actors can have a positive or negative effect. For instance, the British colonial system undoubtedly aided the preservation of unity of

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131. See, Hunt, *supra* note 122, at 2 (noting the merger of the Finance and Executive Committees).

132. ARABINDA GHOSH, OPEC, THE PETROLEUM INDUSTRY, AND UNITED STATES ENERGY POLICY 11 (1983).

133. McFadden, *supra* note 70, at 826.

the ITA until 1985.<sup>134</sup> In addition, the larger the economic entity, the greater the impact on a particular market. This is especially true for the Western industrialized countries that enjoy large GNP's and already trade extensively with one another.<sup>135</sup>

Third, the ability to control market price depends directly on the ICA's ability to prevent new sources of production from entering the market place. A prime example of this is the oil industry. OPEC was assisted in its efforts to raise prices by the high initial investment costs required for oil production and the relative scarcity of known oil deposits. In addition, OPEC's relative decline in power since the early 1970's is directly related to the discovery and exploitation of new oil deposits.<sup>136</sup>

The degree of variation in international production costs and the importance of the product both affect the degree to which the various producers of a commodity can be enticed to form, make, or agree to an ICA. If the costs of production vary greatly between producers, then low cost producers will have to be compensated to a larger extent for giving up their comparative advantage. Since the price maintained by the ICA must be higher than the highest cost producer, the incentive for the low cost producer to cheat is likely to be higher in cases where there is a large differential between low and high cost producers. Naturally, it is the high cost producers, such as Venezuela in OPEC, who often initiate the process of creating an ICA.<sup>137</sup>

Similarly, countries that rely heavily on a particular product are likely to be more interested in the formation of an ICA than countries who are less dependent on the commodity. In addition, the ICA's ability to effectively punish a cheating country will decline as a function of the dependency on the export of the particular commodity.<sup>138</sup>

Wide fluctuations in the price that the ICA is attempting to control can make the operation of an ICA much more difficult. Price fluctuations and their subsequent effect on the economies of the producing nations is frequently cited as a central justification for the creation of ICA's: the larger the fluctuations in the target commodity price, the greater the need for and the cost of some type of commodity control. However, the larger the price fluctuations a commodity experiences, the greater the capital and commodity stock requirements are.<sup>139</sup> In addition, failure of an ICA can have serious international economic consequences, as is illustrated by the collapse of the ITA in

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134. *Id.* at 816.

135. SIDNEY DELL, *TRADE BLOCS AND COMMON MARKETS* 220 (1963).

136. AHRARI, *supra* note 25, at 193, 203.

137. SKEET, *supra* note 23, at 2.

138. Ian Ayres, *How Cartels Punish: A Structural Theory of Self-Enforcing Collusion*, 87 COLUM. L. REV. 295, 303 (1987).

139. LAW, *supra* note 2, at 82.

1985.

Finally, demand elasticity is important because it measures the degree to which a change in supply will impact demand. Therefore, since the operation of an ICA is integrally involved with the regulation of supply and the price level, the elasticity of demand is critical in determining how effective an ICA can be. In general, the less elastic a commodity is in terms of demand, the more effective an ICA will be at controlling price. Comparing oil and coffee illustrates this difference. Since the demand for oil is relatively inelastic, OPEC was able to demand high prices in the early 1970's by restricting supply.<sup>140</sup> In contrast, the demand for coffee is more elastic, so the shortages experienced during the 1950's led to dramatic declines in consumption, rather than prolonged increases in price.<sup>141</sup>

### B. *Commodity Factors*

The particular attributes of the specific commodity profoundly affect the ability of an ICA to control market prices. Many of these elements are important because they affect the supply of the particular commodity:

1. The renewability and scarcity of the commodity;
2. The storability of the commodity;
3. Crop or production cycles;
4. The ratio of variable to fixed costs;
5. The susceptibility to outside influences such as the weather; and
6. The extent and availability of substitutes.

First, the renewability of the product affects supply as a barrier to entry into the market. For instance, the scarcity of oil clearly helped OPEC to effectively control oil prices,<sup>142</sup> while the relative ease of growing sugar, especially among traditional sugar importing countries such as the U.S., creates a natural limitation on the degree to which the ISO can exercise oligopolistic power.<sup>143</sup> Indeed, renewability may even prevent an ICA from acting oligopolistically at all.<sup>144</sup>

Second, the storability of the product is important because it directly affects the ability of an ICA to control the supply of a product. This factor is much less important with respect to non-agricultural

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140. SKEET, *supra* note 23, at 85.

141. LAW, *supra* note 2, at 42.

142. ARAIM, *supra* note 8, at 79.

143. LAW, *supra* note 2, at 46.

144. See BEHRMAN, *supra* note 12, at 17 (providing an in-depth economic analysis of this concept).

products, such as tin or oil, because these commodities may be either left in the ground or stored indefinitely once extracted. However, with agricultural products, natural decay both increases storage costs and limits storage life.

Third, production cycles, especially with respect to agricultural products, limits the ability of an ICA to control supply. For example, coffee plants require ten years to reach full maturity. The ability of producing nations to expand or contract coffee output quickly is extremely limited. Sugar, on the other hand, can be harvested the same season it is planted. However, the shorter season for sugar has provided no advantage to the ISO because sugar plants can often be harvested only once. Output, therefore, is difficult to predict far in advance.<sup>145</sup>

Fourth, the ratio of variable to fixed costs affects the incentives that the market provides to the individual producers of goods. For example, both oil and coffee require extensive initial investment in order to establish production. Investors in these areas naturally spread the cost of this investment over the period of yield, even though the entire investment is made prior to any return. However, producers of these commodities are likely to consider only the variable costs when determining the size of periodic levels of production. Therefore, exceptionally low prices are required to curtail production in the short run, so prices that would normally be expected to negatively impact supply will be less likely to change production. In addition, the lack of responsiveness to market signals makes the use of a buffer stock alone particularly difficult because of the increased capital required to combat the likelihood of wide price fluctuations.<sup>146</sup>

Fifth, weather often affects the availability of certain commodities. An excellent example of this is coffee, which is particularly susceptible to changes in supply due to frost. In 1953, for example, one particularly damaging frost raised coffee prices by six percent.<sup>147</sup>

Sixth, the availability of viable substitutes greatly impacts an ICA's ability to control supply. Without question, the relative "uniqueness" of oil is one factor responsible for OPEC's success in controlling prices.<sup>148</sup> Conversely, readily available sugar substitutes have undoubtedly hurt the ISA's attempts to regulate the sugar market.<sup>149</sup>

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145. LAW, *supra* note 2, at 40, 46.

146. *Success of UNCTAD Common Fund Hinges Upon Commodity Price Supports, ICA Heads Agree*, [Current Reports] Int'l Trade Rep. (BNA), No. 25 at 820 (Jun. 19, 1985) [hereinafter *Success*].

147. LAW, *supra* note 2, at 41-42.

148. ARAIM, *supra* note 8, at 79.

149. Robin Stainer, *Commodities and Futures: Sugar Organization in Danger*, INDEPENDENT, Jul. 13, 1992, at 22, available in LEXIS, World Library, Allwld File.

### C. ICA Organization Factors

The effectiveness of an international agreement depends primarily on two factors. First, the construction and operation of an economic system requires that the parties involved hold common interests and values. Second, there must be general agreement on the objectives of the political system.<sup>150</sup> Translation of these concepts to International Commodity Agreements has yielded various results. For instance, Baranyai and Mills suggest that the achievement of continuing success by an ICA depends on

- 1) participation by the principle producing and consuming countries, combined with some reasonable pressure to induce outsiders to cooperate;
- 2) governmental management through an administrative board representing the interests of both producers and consumers;
- 3) adequate power to control the volume of output so as to ensure a remunerative price to producers and a sufficiently free flow of commodities to the consumers; [and]
- 4) measures to encourage efficient production and discourage uneconomical operations.<sup>151</sup>

These elements seem to indicate that the success of an ICA depends primarily upon its members and the strength of their combined power in the world market.

"Group B," a committee of delegates from the industrially developed countries, identified different elements:

- 1) realistic and market related price ranges;
- 2) adequate provisions for adjusting price ranges in accordance with shifts in the underlying market trends;
- 3) effective economic provisions (in cases where stabilization measures were deemed feasible and desirable); and
- 4) support and participation of as many important producing and consuming countries as possible.<sup>152</sup>

These factors contrast sharply with those suggested by Baranyai and Mills because they focus primarily on the operation, management, and objectives.

Reconciling these two formulas is not as difficult as might be supposed. Without adequate cooperation between member nations, effective operation becomes impossible. Thus, the correct constituency becomes a prerequisite for an effective ICA. Yet even with full support initially, focusing on achieving objectives that are not desired by a powerful faction of the ICA can often lead to the destruction of the

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150. ARAIM, *supra* note 8, at 5.

151. BARANYAI & MILLS, *supra* note 6, at 26.

152. UNCTAD, *supra* note 105, at 55-56.

agreement. Therefore, operation within the interests of the full membership is also a prerequisite. As a result, to be successful in the long term, an ICA must contain the right members and pursue policy objectives that the full constituency desires.

This is not to say that a group of either producing or consuming nations acting alone cannot effectively use an ICA to influence a market. There is no question that certain ICA's, most notably OPEC, have had profound influences on their individual markets. However, attempts to raise prices through collusion generally tend to produce confrontational situations between producers and consumers. Maintaining the ICA then becomes even more difficult because implementing the four elements above unilaterally is far more difficult than a bilateral operation and also because market conditions eventually tend to shift in favor of the "other side," which can then exert pressure for change.

In addition, the ability of an ICA to control prices effectively depends heavily on its ability to control commodity supply. However, the ability of an ICA to control supply is limited for several reasons. First, with respect to food, demand curves are relatively inelastic, so an increase in price will have only a small effect on demand since food is a primary item that people must have. It does not follow, however, that demand curves will be inelastic for individual commodities because a rise in the price of a single commodity may lead to the substitution of others.<sup>153</sup>

Second, the creation of an artificially high price naturally creates incentives for each member of the ICA to cheat. This is especially true for countries in dire economic straits since the monetary gains for breaching the ICA are likely to be substantial, and the restriction of output will often result in production surpluses. From the ICA's point of view, this problem is exacerbated by the relatively ineffective punishment measures it can exercise, especially if the breaching party is a major actor.<sup>154</sup>

Third, an increase in prices brought about by ICA action is likely to provoke a variety of negative responses from consuming nations. Increased prices are likely to speed up the search for suitable substitutes and motivate consumers to impose conservation measures. In addition, consuming countries may attempt to find relief through international anti-trust measures, an area of law that is steadily expanding.<sup>155</sup> Further, prolonged periods of prices above market level are

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153. LAW, *supra* note 2, at 3-5.

154. *But see*, Ayres, *supra* note 138 (discussing enforcement measures a cartel can use to enforce its decisions).

155. Deanna Conn, Note, *Assessing the Impact of Preferential Trade Agreements and New Rules of Origin on the Extraterritorial Application of Antitrust Law to International Mergers*, 93 COLUM. L. REV. 119, 128-29 (1993).



likely to provide incentives for the consuming countries to form their own ICA's to attempt to mitigate the effects of price control.<sup>156</sup>

It is interesting to note that neither of the two sets of criteria listed above mentions the organizational structure of the ICA as a factor involved in success. A comparison of the industries outlined above, particularly when OPEC is compared to the relatively ineffective ICO, seems to support that omission. Indeed, an ICA's choice of structure seems to play a minor role in the ability of that ICA to participate effectively in the market place.

#### D. Conclusion

In conclusion, these factors indicate that ICA's may effectively provide market stabilization measures, even in the long run. However, most ICA's have been relatively unsuccessful in controlling prices, largely because of political differences among their constituents and the inability to effectively control global supply.<sup>157</sup> Furthermore, attempts at global market and price controls have frequently resulted in destroying the ICA and exacerbating supply problems in the long run or both.

### V. GLOBAL IMPLICATIONS

#### A. Introduction

During the early 1970's, some commentators predicted that a "New Era" was beginning in the commodity markets. These commentators were encouraged by the ability of some ICA's, especially OPEC, to successfully control market prices. In addition, the high rates of inflation globally combined with relative scarcity of commodities led to decreased bargaining power by consuming nations and a corresponding increase in commodity prices.<sup>158</sup> This initial success led many Lesser Developed Countries (LDC's) to view ICA's as a means of altering the global economic order. At the same time, the Declaration on the Establishment of a New International Economic Order (NIEO), made by the Sixth Special Session of the UN General Assembly, called for changes in global economic structure and a general redistribution of the world's

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156. LAW, *supra* note 2, at 78.

157. Given the theoretical framework outlined above, a logical next step would be an econometric analysis to determine the relative importance and validity of the factors listed. Construction of a model of this nature is beyond the scope of this Note. In addition, an econometric model may not prove useful because of problems obtaining relevant data, the incompatibility of some of the factors for conversion into a numerical form, and the large number of theoretically relevant factors, which is likely to lead to regression multi-colinearity. As a result, this study will have to rely on the authorities cited and the logical connection of each of the factors to the actual experience of the commodities.

158. C. FRED BERGSTEN, TOWARD A NEW INTERNATIONAL ECONOMIC ORDER: SELECTED PAPERS OF C. FRED BERGSTEN, 1972-74, at 287-88, 294 (1975).

wealth.<sup>159</sup> The combination of these two concepts found expression most clearly in the resolutions of the "Group of 77" and UNCTAD.<sup>160</sup>

Yet even in the 1970's, during the pinnacle of ICA support, the propriety of the use of ICA's as the vehicle to promote redistribution of wealth was by no means universally accepted. As Lincoln Gordon wrote,

[i]nternationally managed commodity markets do not hold out a true prospect of huge additional foreign exchange earnings or resource transfers to the developing countries. They cannot substitute for the internal structural changes that are at the core of real development.<sup>161</sup>

Today, this view is endorsed by the majority of commentators, although some have predicted a re-emergence of ICA's, at least in some commodity markets.<sup>162</sup>

### B. *The Decline of ICA's*

ICA's are slowly disappearing from commodity markets and being replaced by free market forces. Indeed, only two ICA's still conduct market operations in substantial commodity markets, both of which must be considered special cases. First, OPEC has survived, at least in name, due to the unique and important nature of oil. However, international economies, market structure,<sup>163</sup> and political considerations make its future unclear. Second, the International Rubber Organization (IRO) has been able to continue market operations largely because of the increased demand for condoms and rubber gloves caused by the AIDS crisis.<sup>164</sup>

One major reason for the decline of ICA's has been a general decline in support for them within the industrialized countries. The collapse of the Tin Agreement in 1985 resulted in extensive bank losses and greatly impacted the reputation of commodity pacts.<sup>165</sup> In addition, industrialized countries have increasingly seen commodity agree-

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159. ARAIM, *supra* note 8, at 28-30.

160. LAW, *supra* note 2, at 17.

161. Lincoln Gordon, *Natural Resources and the International Economic Order*, in *THE FUTURE OF INTERNATIONAL ECONOMIC ORGANIZATIONS* 45, 55 (Don Wallace, Jr. & Helga Escobar eds., 1977).

162. ARAIM, *supra* note 8, at 213-15.

163. FADHIL J. AL-CHALABI, *OPEC AND THE INTERNATIONAL OIL INDUSTRY: A CHANGING STRUCTURE* 2-6 (1980).

164. Greg McCune, *International Commodity Accords Face Hard Times*, REUTER BUSINESS REPORT, Sep. 1, 1988, at 4, available in LEXIS, World Library, Allwld File.

165. Jane Merriman, *Outlook Bleak for Commodity Stabilization Pacts*, REUTER BUSINESS REPORT, Mar. 21, 1989, at 2, available in LEXIS, World Library, Allwld File.

ments as mere vehicles for the transfer of development aid, as opposed to true efforts at market stabilization. Claims that ICA's are not practical due to enforcement problems further buttress this view.<sup>166</sup> ICA's may even exacerbate existing market problems,<sup>167</sup> and they require capital investment that far exceeds the benefit they yield.<sup>168</sup>

ICA's have also been criticized on the grounds that they promote inefficient resource allocation because their decisions are most often based on political or past production rationales rather than on objective market analysis.<sup>169</sup> Examples include the failure of the tin agreement to adjust its price levels in response to long term market conditions, the political wrangling in the coffee market, and even the agenda of some of the proposals of UNCTAD.

Nonetheless, some commentators believe that ICA's may have a future regulating international commodity markets, perhaps even through mere price stabilization efforts.<sup>170</sup> However, should recent trends continue, even modest advancements are unlikely unless the LDC's gain more realistic views of the current commodity markets.<sup>171</sup>

### C. Conclusions

The prevailing trend in world commodity markets away from ICA's is likely to impact the global structure in several important ways. First, since ICA's have constituted an important part of plans for the NIEO for several decades, the failure of ICA's in general may cause changes in the strategy and means by which UNCTAD and other world organizations attempt to implement the NIEO.<sup>172</sup> Second, the disappearance of ICA's may affect the degree of stability in world commodity markets. Third, multinational corporations and other non-governmental organizations are likely to play an increasingly important role in commodity markets.

Even a cursory analysis of the world economy reveals a continuing need for support of the LDC's. This remains true particularly since falling commodity prices has significantly affected the ability of many LDC's to maintain levels of export earnings.<sup>173</sup> Falling prices have

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166. *Commodity Pacts More Oriented Towards Market*, REUTERS, Mar. 31, 1987, at 6 available in LEXIS, World Library, Allwld File; see also, Ayres, *supra* note 138 (discussing cartel enforcement).

167. *Success*, *supra* note 146, at 820.

168. *Agreements in Decay*, *supra* note 10, at 1.

169. *LAW*, *supra* note 2, at 111.

170. *Success*, *supra* note 146, at 820.

171. Robin Stainer, *Commodities & Futures: Producers and Consumers Start to Focus on the Pacts*, INDEPENDENT, Jan. 6, 1992, at 19, available in LEXIS, World Library, Allwld File.

172. Gordon, *supra* note 161, at 55.

173. UNCTAD, *supra* note 105, at 55.

led, in turn, to increased pressure by LDC's for greater participation by industrialized nations in the construction of ICA's.

Prior to examining the potential for alternatives to ICA's that may warrant consideration in the future, two important points must be discussed. The fundamental role of such a mechanism must be determined. As discussed above, the goals of ICA's tend to go beyond mere price stabilization. Indeed, LDC's tend to see ICA's as mechanisms to control the markets of the commodity they sell and to enhance the wealth they receive from those products. In short, LDC's are really looking for greater economic participation in the market place.<sup>174</sup>

Second, the goal of price stability has been placed at center stage in many of the negotiations concerning ICA's. Ironically, general agreement exists among industrialized and developing countries that increased stability of commodity markets would be beneficial.<sup>175</sup> For the industrialized countries, stability is important because they continue to produce the vast majority of the world's commodity supply.<sup>176</sup> For LDC's, stability is important because even though the aggregate quantity they export is relatively limited, the income generated by these primary products represents a significant proportion of their overall income.<sup>177</sup>

Without ICA's, instability within commodity markets is likely to increase. First, it is clear that ICA's contributed, at least to a limited degree, to the stability of some commodity markets. Second, since many of the LDC's are "fringe" suppliers to the world economy, market instability is more likely to be reflected in demand for their goods. For example, since the U.S. both produces and imports sugar, a decline in sugar demand is likely to mean a decline in imports rather than production.<sup>178</sup> Third, increased "regionalization" is likely to result in "minilateral" trade agreements that are likely to place LDC's even more on the fringe. For example, agreements within the EEC are likely to lock out at least some of the LDC trade to Western European Nations.<sup>179</sup>

One way in which LDC's can and do continue to seek improvement in the global economy is through the UNCTAD, which has been uniformly committed to the development of LDC's and to improving

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174. Stephen D. Krasner, *United Nations and Political Conflict Between North and South*, in THE US, THE UN, AND THE MANAGEMENT OF GLOBAL CHANGE 210, 212-13 (Toby T. Gati ed., 1983).

175. *Success*, *supra* note 146, at 820; *see also*, LAW, *supra* note 2, at 105-06 (discussing instability).

176. LAW, *supra* note 2, at 11.

177. Gordon, *supra* note 161, at 51.

178. SHAILENDRA J. ANJARIA ET AL., INTERNATIONAL MONETARY FUND, DEVELOPMENTS IN INTERNATIONAL TRADE POLICY 52 (1982).

179. *Id.* at 33.

their terms of trade. As a result, UNCTAD has been an avid supporter of ICA's and has frequently provided a forum for their negotiations as well as for the Integrated Programme for Commodities.<sup>180</sup> UNCTAD's attitude towards commodity pacts continues to be favorable. However, in the face of declining popularity of ICA's among the more industrialized countries, UNCTAD has begun to focus more heavily on the operations of LDC's in the market place and on possible free market related solutions to the LDC plight.<sup>181</sup>

The keystone of UNCTAD's Integrated Programme for Commodities is the Common Fund for Commodities (CFC), a large money pool earmarked for use for financing buffer stock arrangements and for enhancing the long term competitiveness and development prospects for various commodities.<sup>182</sup> Financing for the CFC requires contribution from industrialized and developing nations as well as regional groups such as OPEC.<sup>183</sup> Nonetheless, plans for the completion of the CFC have run into difficulties similar to those experienced by other ICA's, and prospects for final ratification look bleak.<sup>184</sup>

The General Agreement on Tariffs and Trade (GATT) is another forum allowing LCD's to improve their position vis-a-vis the industrialized world. GATT seeks the expansion of free trade and the lowering of trade barriers, goals which have recently been endorsed by the segments of the industrialized nations that are most interested in the development of LDC's. However, some scholars have argued that fundamental discrimination exists within the structure of the free market itself. If they are correct, then the free market alone is unlikely to provide solutions to the LDC problem.<sup>185</sup>

Finally, some potential exists for regional integration to help provide solutions to the trade problems of the LDC's. In certain cases — ASEAN, for example — regional integration has provided a more stable framework of trade, opportunities for economies of scale, and increased specialization, that has benefitted the region generally. However, the potential for regionalization is limited for several reasons. The political diversity between LDC's in many regions makes the process of integration more difficult. In addition, natural obstacles, combined with geographical dispersion, make integration difficult, especially for the LDC's that have little to invest in domestic infrastructure.<sup>186</sup>

The decline in the importance of ICA's is likely to result in in-

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180. Gordon, *supra* note 161, at 58.

181. Adrian Croft, *UNCTAD Seeks More Open Commodities Markets*, REUTERS, Feb. 18, 1992, at 4, available in LEXIS, World Library, Allwld File.

182. YUSAF, *supra* note 5, at 140-41.

183. AL-CHALABI, *supra* note 163, at 156.

184. *Success*, *supra* note 146, at 820.

185. ARAIM, *supra* note 8, at 56.

186. DELL, *supra* note 135, at 226-27.

creased importance of other international organizations, especially in light of the continual decline in U.S. strength.<sup>187</sup> In particular, non-governmental organizations are likely to play an increasingly important role, especially within the operations of the United Nations.<sup>188</sup> Private agents of international trade, such as multinational corporations, which already exercise extensive power in the international commodity market, are likely to increase in significance.<sup>189</sup> Indeed, some commentators have suggested that the decline in the economic strength of the U.S. may present opportunities for increased bilateral trade with the Third World.<sup>190</sup>

From a global perspective, it is difficult to see who benefits from this, but scholars disagree. On one hand, it is clear that the host country receives more direct benefit, especially in terms of usage of labor, than the home country.<sup>191</sup> Multinational corporations may also provide access to markets that would not otherwise be open to the host country.

On the other hand, the home country of a multinational corporation clearly benefits, not only monetarily through stockholder benefits and indirect taxation but also with respect to increased commodity control. Indeed, the political importance of the link between the home government and the multinational corporation has been a central source of discontent within the LDC's,<sup>192</sup> many of which have sought to increase their control of the means of production in recent years.<sup>193</sup>

In any case, the role of multinational corporations in the world commodity markets has been ignored for too long. Just as charges that these corporations are merely the agents of their home countries seem simplistic, arguments that multinational corporate presence can only be beneficial to a host country should be regarded with skepticism. More likely, multinational corporations act to maximize their own utility, so they represent separate and independent economic actors.<sup>194</sup> It seems odd, then, that multinational corporations have not

187. See Robert W. Cox, *Problems of Global Management*, in *THE US, THE UN AND THE MANAGEMENT OF GLOBAL CHANGE* 64, 66-67 (Toby T. Gati ed., 1983)(discussing the relevance of the decline of the US as a global hegemon).

188. Angus Archer, *Methods of Multilateral Management: The Interrelationship of International Organizations and NGO's*, in *THE US, THE UN, AND THE MANAGEMENT OF GLOBAL CHANGE* 303, 304 (Toby T. Gati ed., 1983).

189. See ARAIM, *supra* note 8, at 204 (noting that multinational corporations already play a large role in international trade).

190. Emmanuel I. Osagie, *The Linkage Between U.S. Agriculture and Third World Development*, in *INTERNATIONAL TRADE AND FINANCE: A NORTH AMERICAN PERSPECTIVE* 239, 244 (Khosrow Fatemi ed., 1988).

191. Raymond Vernon, *Multinational Enterprises: Performance and Accountability*, in *INTERNATIONAL CORPORATIONS, TRADE AND THE DOLLAR* 65, 75 (Jules Backman & Ernst Bloch eds., 1974).

192. ARAIM, *supra* note 8, at 65.

193. Krasner, *supra* note 174, at 212.

194. BETH V. YARBROUGH & ROBERT M. YARBROUGH, *COOPERATION AND GOVER-*

been included more in formal attempts to organize the commodity markets. Considering the power that multinational corporations exert over commodity markets, the failure to include them may be a crucial factor in the general lack of success of ICA's.

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NANCE IN INTERNATIONAL TRADE: THE STRATEGIC ORGANIZATIONAL APPROACH 124 (1992).

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