CHAPTER 11

INTERGOVERNMENTAL COMMODITY AGREEMENTS

In the case of manufactured goods, the *Charter* condemns the adoption, by private or public enterprises, of measures that operate to restrain international trade. In the case of primary commodities, under certain circumstances, it permits the adoption, through intergovernmental agreement, of measures that may have the same effect. The policies proposed in these two cases are obviously inconsistent. It should be noted, however, that a similar inconsistency has characterized the policies pursued, in its domestic market, by the United States. In manufacturing, restraint of trade has been forbidden by the Sherman Act. In agriculture, prices have been supported by Congressional enactment, and curtailment of production and marketing has been encouraged or required. Differential treatment of primary and fabricated products involves no innovation in public policy.

This differentiation is to be attributed, in large measure, to the peculiar conditions that characterize the production and sale of certain primary commodities. Income, in agriculture, and in mining, fluctuates more violently than in other industries. In agriculture this fluctuation is caused by a wide and rapid swing in prices; in mining, more often, by a pronounced expansion and contraction in output. In both fields, demand is relatively inelastic; it does not grow as prices fall. In agriculture, supply also is relatively inelastic; farmers keep on producing when prices fall. As a result, price acts clumsily in regulating agricultural output and production responds slowly to

changes in demand. Surpluses may thus accumulate, prices may be depressed, and large numbers of small producers may suffer serious hardship over long periods of time. In mining, on the other hand, production is often carried on in isolated regions where alternative opportunities for employment are not at hand. Contraction of output may thus result in widespread and persisting unemployment among workers in such communities.

In both of these cases, pressure will be brought to bear on national governments. And these governments will respond by adopting measures that are designed, in one way or another, to afford relief. Such measures, in the United States and in other countries, have restrained competition and regulated trade. But this is not their only consequence. World markets are affected and international relations are involved. When nations attempt to aid domestic producers by curtailing imports or forcing exports, the effects of these measures are felt abroad. Foreign producers suffer, resentment is created, and retaliation is likely to occur. As nationalistic measures grow in scope and in intensity, the volume of world trade is certain to decline. If a freer trading system is to be established, international agreement on commodity policy is required.

It would be futile to propose that nations agree to abandon all efforts to assist producers of primary commodities. There is not the remotest possibility that any nation would accept such a commitment. Even in the United States it would run counter to established policy. And in many another country the whole economy depends upon the exportation of one or two crops or minerals. The question that must be answered is not whether governments will act, but how. If each of them pursues an independent policy, there is little chance that multilateral trade can be restored. If all of them agree upon a common policy, the hopes for multilateralism will revive.

APPROACHES TOWARD COMMODITY POLICY

Governments have attempted, in the past, to stabilize the incomes of producers of primary commodities by entering into agreements through which exports, imports, stocks, production, and prices in world markets have been controlled. Under these agreements, exports and imports have been restricted through taxation, prohibi-

tion, the imposition of quotas, and the requirement of licenses. Subsidies have been paid and loans made to assist producers in withholding their supplies. Governments themselves have bought, stored, and held commodities. Limitations have been imposed upon acreage sown, livestock kept, and minerals developed and, at a later stage, upon crops gathered, livestock slaughtered, and mines worked. In cases where production could not easily be curtailed, portions of a crop have been destroyed. Under some agreements, prices have thus been influenced indirectly. Under others, minimum prices have been fixed.

Such agreements have been subject to serious abuse. Nominally they have been devised for the purpose of stabilizing prices. But the levels at which this stabilization has been attempted have almost invariably been higher than those that could be justified by conditions of demand and supply. Quotas have been allocated on the basis of past performance rather than prospective efficiency. Production has thus been frozen to uneconomic locations; high-cost production has been kept in operation, low-cost production prevented, and average costs increased. Little effort has been made to enhance efficiency, to expand consumption, or to promote the diversion of resources into more productive activities. In few cases have importing countries been accorded a voice in the negotiation or administration of an agreement or the interests of consumers taken into account.

It has often been suggested that the abuses experienced under commodity agreements could be avoided by setting up one or more international agencies to stabilize prices by operating buffer stocks. Under such a scheme, it is contended, violent short-run fluctuations would be prevented and gradual long-run adjustments permitted to occur. Trade and production could thus be freed from regulation and resources shifted in response to changes in demand. The buffer-stock agency would control the market by establishing a range of prices, buying when they fell below the minimum and selling when they rose above the maximum. Its own holdings would be kept small by moving its range of prices to the proper point; the bulk of world trade would be left in private hands. The agency would be established with capital supplied by governments; it would finance its

operations by private borrowing. In the long run, it would just break even; its profits and its losses, over time, would cancel out.

In theory, certainly, the plan is sound. In practice, however, it may be doubted that it could be carried out. The buffer-stock agency would be set up and controlled by governments; it would be subject to political pressures; and these pressures would be directed toward assuring producers the highest prices obtainable. Efforts would inevitably be made to set the minimum and maximum figures at levels that would not be justified. Attempts to reduce these figures would encounter determined resistance. The agency's prices, in all probability, would be set too high. As a result, production would be increased, consumption would be curtailed, and stocks would accumulate. Carrying charges would mount; losses would be incurred. From here on, the agency could avoid disaster in only one way. If it were to unload its holdings, prices would fall disastrously. If it were to destroy them or give them away, it would go bankrupt. But gradual liquidation and continued solvency might be possible if production were to be controlled. The scheme thus ends in promoting the very policy that it was designed to prevent. And here, as elsewhere, the consumer would bear the cost. This outcome might be avoided if freedom from political pressure could be assured. But such assurance is not to be obtained.

A third approach toward international commodity policy was contained in the *Proposals* and the *Suggested Charter* issued by the United States. This approach was designed to afford relief from the distress occasioned by burdensome surpluses of agricultural products and by widespread unemployment in isolated mining areas. It required that an attempt be made to remove such surpluses and to restore employment by devising methods of expanding consumption before consideration could be given to measures involving restriction of output or trade. It envisaged the conclusion of intergovernmental agreements for the regulation of trade in primary commodities. But these agreements were to be permitted only as exceptions to the general rules of commercial policy; they were to be limited in duration; and they were to differ radically in character from those that had been concluded in the past.

Such agreements were to facilitate the adaptation of production

to changes in demand. They were to serve as a stopgap, affording a measure of stability while this adaptation was under way. They were to permit production to contract where costs were high and to expand where costs were low. They were to cushion the shock of readjustment by providing a breathing period during which an orderly reallocation of resources could take place. They were to safeguard the interests of consumers by according to countries mainly interested in exports and to those mainly interested in imports an equal voice. They were to be negotiated and administered with full publicity.

These proposals were deliberately designed to prevent abuses of the sort that had accompanied commodity agreements in the past. They provided the foundation on which the sixth chapter of the *Charter* has been built.

ISSUES IN THE COMMODITY NEGOTIATIONS

The first issue to present itself in the negotiations at the London meeting was raised by the proposal that jurisdiction over agreements affecting agricultural commodities should be given to the FAO. If this proposal had been adopted, the policy applied in such cases might have come to differ sharply from that adopted for other industries and agreements might have been promoted and administered by an agency that had no responsibility for reducing barriers to trade. The United States therefore insisted that a common policy should govern agreements affecting all primary commodities and that this policy should be subordinated to the broader purpose of restoring a multilateral trading system by keeping such agreements within the jurisdiction of the ITO. This view prevailed. The FAO was given the right to participate, in an advisory capacity, in the negotiation and administration of agreements affecting agricultural products. Governments were invited, pending the adoption of the *Charter,* to make sure that agreements already in existence conformed to the recommended rules. And an interim committee was established by the United Nations to give advice on such agreements and to make periodic reports. One member of this committee represented the FAO; its chairman represented the Preparatory Committee (and, after the Havana conference, the Interim Committee) of the ITO.

A second issue was raised at London by a British proposal to exempt from the rules applying to restrictive agreements all plans for the operation of buffer stocks. It was contended that such rules should apply only to agreements that fixed prices directly and not to those that operated to fix them indirectly through purchases and sales. Agreements of the latter type, it was argued, are generally to be preferred. In reply, it was pointed out that buffer-stock operations are likely to be restrictive in their ultimate effects. And it was insisted that safeguards are required. This difference was resolved by including among the possible objectives of a commodity agreement the moderation of pronounced fluctuations in price. But agreements that involve the regulation of prices, even though the method of regulation is indirect, remain subject to all of the limitations that are prescribed.

The principal problem at Geneva was that presented by agreements adopted for purposes other than the prevention of hardship resulting from burdensome surpluses and widespread unemployment. It was recognized that agreements might properly be employed for the conservation of natural resources and for the distribution of commodities in short supply. It was clear, too, that such agreements might involve the restriction of production or trade. But it was apparent that some of the rules devised to deal with situations of burdensome surplus and widespread unemployment did not apply. It was also argued that agreements involving incidental regulation of trade might not be restrictive in purpose or effect. It was pointed out, for instance, that countries in the Northern and Southern hemispheres might agree that each would confine its exports of an agricultural product to certain seasons of the year. But such an agreement would not have the effect of controlling the volume of exports as a whole. It was also suggested that agreements adopted for the purpose of stimulating production in undeveloped areas might include a precautionary provision for the later establishment of a minimum price. But unless such a provision should come into effect, no restriction would be involved. These points were met in a reorganization of the chapter that was designed to apply to each type of agreement, at each stage of its operation, the rules that would properly be relevant. The resulting provisions are described below.

Another issue was raised by attempts so to extend the terms of the chapter as to permit the conclusion of agreements in the case of manufactured goods. In the draft adopted at London, the ITO was authorized to find, under exceptional circumstances, that such an agreement was justified. At Geneva, this possible escape was whittled down. Under the present draft, an agreement may be permitted if a product does not fall "precisely" within the definition of a primary commodity. But it must also satisfy numerous conditions that will seldom be found to exist in the case of manufactured goods. It was thought, however, that this wording might permit agreements affecting certain marginal products, such as butter and cheese, which come close to satisfying the definition but fail to do so "precisely," because they have been subjected to more than an initial stage of processing.

Efforts were made by various Latin American countries at Havana to obtain amendments exempting stabilization agreements from the *Charter's* rules, authorizing agreements with no consumer representation, and establishing formulas for the determination of a minimum price. Under one such formula, the price of a raw material would be fixed at the highest figure that could be justified by the price of the finished product in which it was used. Under another, the prices of primary products would be set at figures high enough to maintain purchasing power, in producing countries, at levels required to assure "proper" standards of living. Under a third, international parity would be provided by establishing a "fair relationship" between the prices of primary commodities and manufactured goods. Each of these proposals was defeated. No significant alterations were made in the Geneva draft. In the *Charter,* as it stands today, the fundamental principles proposed by the United States have been retained.

COMMODITY AGREEMENTS IN THE CHARTER

The *Charter* recognizes that "the conditions under which some primary commodities are produced, exchanged, and consumed . . . may, at times, necessitate special treatment of the international trade in such commodities through intergovernmental agreement" (55). For this purpose, it defines the term "primary commodity" to cover

products which have undergone the processing required to prepare them for sale and those which may be "so closely related, as regards conditions of production or utilization," that they must be included in a common agreement (56). It exempts from its provisions, under certain safeguards, conservation agreements relating to wild life and fisheries (70*d*).

Commodity agreements may be employed for a variety of purposes. At times when "adjustments between production and consumption cannot be effected by normal market forces alone as rapidly as circumstances require," they may afford temporary relief while nations make provision for "economic adjustments designed to promote the expansion of consumption or a shift of resources and manpower out of over-expanded industries into new and productive occupations." They may be used to achieve "a reasonable degree of stability on the basis of such prices as are fair to consumers and provide a reasonable return to producers, having regard to the desirability of securing long-term equilibrium between the forces of supply and demand." They may be used to expand production, to conserve natural resources, and to assure the equitable distribution of a commodity that is in short supply (57).

The procedure that must be followed in negotiating an agreement is prescribed in some detail. A member or another intergovernmental organization may request the ITO to set up a study group to investigate conditions affecting international trade in a primary commodity. Such a group will report its findings to the Organization and to its members. If, in its opinion, the situation requires such action, it may recommend that a conference be called for the purpose of preparing an intergovernmental commodity agreement (58). The ITO will summon such a conference on the basis of this recommendation and may do so at the request of members with important interests in a commodity, at the instance of another intergovernmental organization, or upon its own initiative. Members of the ITO who wish to do so and representatives of other intergovernmental organizations may participate in the proceedings of study groups and commodity conferences. Non-members may also be invited to attend (59). This procedure must normally be followed in the negotiation of all agreements save those relating to commodities in short supply. It is pro-

vided, however, that members may enter into direct negotiations if the procedure has been unreasonably delayed (61–6).

Certain requirements are established for all commodity agreements, whether restrictive or not in purpose or effect. They must be open initially to all members on equal terms. They must provide for adequate participation by countries whose interest is in the importation or consumption of a commodity. They must accord fair treatment to members who do not participate. Their negotiation and administration must be given full publicity (60).

To govern restrictive agreements, called "commodity control agreements," additional requirements are laid down. Such agreements are defined to include those which involve the regulation of prices or involve the regulation of output, exports, or imports and have the purpose or possible effect of restraining production or trade (61–2). Agreements of this type must be confined to commodities whose production and sale are characterized by a number of conditions that will be found to exist only in the case of certain agricultural staples or in that of minerals produced in isolated communities.

One or the other of two sets of conditions must be satisfied. In the first case, small producers must account for a substantial portion of the total output; a surplus must have developed or be expected to develop; this surplus must be so burdensome as to cause or threaten serious hardship; it must be impossible to prevent this hardship by relying on the normal operation of market forces; and this impossibility must be attributable to the fact that a substantial reduction in price would not readily lead either to a significant increase in consumption or to a significant decrease in production (62*a*). These conditions can be fulfilled, at times, by certain agricultural commodities. In the second case, unemployment must have developed or be expected to develop; this unemployment must be so widespread as to cause or threaten serious hardship; it must be impossible to prevent this hardship by relying on the normal operation of market forces; this impossibility must be attributable to three facts: first, a substantial reduction in price does not readily lead to a significant increase in consumption; second, it does lead to a decrease in production and therefore in employment; and third, there are no alter-

native opportunities for employment in the areas in which production has been carried on (62*b*). These conditions can be fulfilled, at times, by certain minerals produced in isolated communities. The decision as to whether such conditions are satisfied in a particular case is to be made either through a commodity conference or through the ITO by general agreement among members substantially interested in the commodity concerned.

Members of the ITO are forbidden to enter into a commodity control agreement unless these conditions are fulfilled. Such agreements cannot be concluded or renewed for more than five years at a time (65–1). They must give as many votes to countries interested mainly in imports as to those interested mainly in exports. They must assure the availability of adequate supplies at fair prices. They must provide, where practicable, for measures designed to increase consumption. They must permit production to expand in areas where it can be carried on with the greatest economy. And countries participating in such an agreement must formulate and adopt programs of internal economic adjustment designed to insure all practicable progress, during the life of the agreement, toward conditions that will obviate the necessity for its renewal (63).

These rules do not apply to agreements to conserve natural resources or to allocate commodities in short supply (70–2, 3). If an agreement to expand production provides for the regulation of prices at some time in the future, they will not apply until this provision takes effect (61–5). In other cases, the classification into which an agreement falls will be determined by the ITO. If it is found that an agreement which may involve some incidental regulation of output, exports, or imports is unlikely to restrain production or trade, the ITO need not classify it as a commodity control agreement, but it may still prescribe the rules to which it must conform (61–4). The Organization may also permit an agreement to be concluded in a case that does not fall "precisely" under the definition of a primary commodity, but it may do so only in the unlikely event that all of the conditions laid down for agricultural staples or minerals are satisfied (56–3).

Detailed provision is made for the administration of commodity control agreements by separate commodity councils (64), for the

periodic review of their operations by the ITO (65), and for the settlement of disputes (66). If any agreement existing at the time the *Charter* comes into force is found to be inconsistent with its rules, it must be modified (68). And if the ITO should find, at any time, that an agreement is not operating in accordance with these rules, it must be terminated or revised (65–3).

CRITICISM AND APPRAISAL

This chapter, like the preceding one, has drawn fire both from the right and from the left. Those who oppose all commodity agreements believe that it compromises with evil; that government cartels should be outlawed along with private cartels. Those who seek the creation of large numbers of such agreements complain that its requirements will make them too difficult to get. Between these two positions, the chapter occupies a middle ground. It neither prohibits commodity agreements nor promotes them. It attempts to prevent abuses of the sorts that have arisen in the past. It seeks to establish principles that are economically defensible and morally sound. It is designed to safeguard the interests of consumers, to force adjustment to changing conditions, and to facilitate the early restoration of free markets. It marks the first approach toward agreement on international policy in this field.

How the chapter will operate in practice remains to be seen. There is danger, of course, that lip service will be given to its principles and means devised for the evasion of its rules. There can be no assurance that members will fulfill their obligation to remove the need for restrictive measures by promoting adjustments within their own economies; such adjustments are distasteful; to promote or even to permit them requires more courage than governments have normally possessed. There can be no assurance that the interests of consumers will be represented effectively; countries that import a commodity in large quantities may also produce it in smaller quantities at home; when they sit on commodity councils, the demands of organized producers may well be more effective than those of unorganized consumers in determining their votes. There can be no assurance that commodity agreements will be limited, in fact, to those cases in which they would be justified; governments may agree that

a burdensome surplus or widespread unemployment is threatened at times when no such threat exists. There can be no assurance, finally, that restrictive agreements will always be subject to the rules that should apply; members of the ITO may decide, in particular cases, that agreements providing for the regulation of production or trade are not restrictive in purpose or in their possible effects.

The provisions of the chapter, in short, may be abused. But this does not argue against the effort to give them effect. In the words of the Committee on Cartels and Monopoly of the Twentieth Century Fund: "The chapter will be what the members of the ITO make it. Much depends on the United States. This country should strongly support ITO in its attempt to regulate commodity agreements and should do everything possible to strengthen its machinery." *

One further observation is pertinent. Few agreements can be expected to operate successfully and, consequently, few agreements can even be negotiated unless they are acceptable to all those governments that have important interests, either as importers or as exporters, in the commodity concerned. There are few, if any, commodities in which such an interest is not possessed by the United States. Where this country depends upon a few exporters for supplies, as it has with rubber and with tin, it must seek protection from monopolistic prices in enforcement of the *Charter's* rules. But where, as a major importer, it buys from many exporters, it has the power to break an agreement by refusing to cooperate in its enforcement. And where, as a major exporter, it competes with other exporters, it has the power to break an agreement by underselling the established price. In such cases, therefore, it would be futile to conclude an agreement unless the United States were willing to cooperate. In this *de facto* power of veto, protection against abuse is virtually complete.

* *Op. cit.*, pp. 449–450.