

UNCTAD AND INTERNATIONAL TRADE - THE FORGOTTEN LINK

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Trade liberalization has occupied centre stage of the world's attention in the last two years. GATT and its principal organ, WTO have been scrutinized threadbare by the developed and developing countries to see whether their interests have been protected. At this moment, one's curiosity is aroused about an institution called UNCTAD.¹ What is its importance? Does it not have any say in the present economic scenario? The institution, by its very name definitely professes to deal with 'trade'. Then, is it not important enough as GATT, if not more important? There are some the questions that would be addressed in review of this institution.

THE MAKING OF UNCTAD

The birth of UNCTAD is a very stereotyped tale of conflict between developed and developing countries trying to wrest control of international trade. The earliest international organisation was the ITO² which was established under the auspices of the Havana Conference. When this failed, the economic issue were taken up two levels. The negotiations on tariff concessions were taken up in GATT. The other economic issues were taken up in other institutions. A noted author notes the effects of these institutions:³ "Nor did they satisfy the aspirations of the growing number of developing states for an organisation which would address itself to these questions of trade and development of particular importance to them." This frustration led to many attempts, essentially political, to form the ideal institution which would take care of these issues. Ultimately at the Geneva Conference on Trade and Development (1984),⁴ UNCTAD was formed and given an institutional framework. The Trade and Development Board (TDB) was housed which consisted of 55 members. All countries participated in this conference which was dominated by the Group of 77. This group was born just before UNCTAD-I. All the developing countries got together and voted as a block.

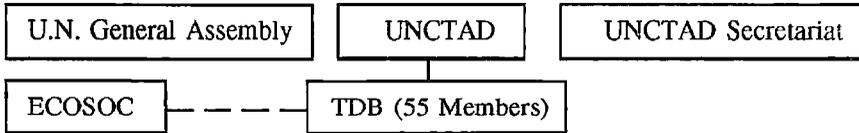
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1 United Nations Conference on Trade and Development.

2 International Trade Organisation.

3 Corea, Gavin, *Encyclopedia of Public International Law*, Vol. 5, 1980 at p. 301.

4 Popularly known as UNCTAD-I.

INSTITUTIONAL FRAMEWORK

The UNCTAD was established as a permanent member of the group of U.N. institutions.⁵ "The fact that UNCTAD was made directly responsible to the General Assembly rather than ECOSOC⁶ (in which the developing countries did not yet have a voting majority), proved to be advantageous. The developing countries viewed UNCTAD as a means of circumventing developed country control of the various international financial institutions, a control which was ensured through weighed voting." Till date this institutional system continues. The TDB (whose membership keeps changing) takes a decision and makes a recommendation to the General Assembly which passes a resolution adopting it. UNCTAD-I also succeeded in instituting many sub-committees which, in late years did commendable work.⁷

The UNCTAD has concluded many important multilateral agreements which have helped international trade. Among the important ones are U.N. Convention on Code of Conduct for Liner Conferences (1974), U.N. Convention on International Multimodal transport (1980), Multilaterally agreed equitable principles and rules for the control of Restrictive Practices (1980), Agreement establishing Common Fund for Commodities (1980) and by far the most important among these being Charter of Economic Rights Duties of State (1980) which set the ball rolling for the establishment of the NIEO.⁸ As can be seen, the agreements are the result of the work of the specific committees.

The most important thing to note is that most of these agreements were pro-third world. This was attributable to the voting mechanism adopted by UNCTAD. The decision making process was done by a simple majority with a provision for conciliation if a small number of member states wanted to oppose the motion. This made the G-77 really effective. However, voting was always use only as a threat, and always to achieve adjustment and harmony in the overall views.⁹

One way in which UNCTAD has had a substantial impact has been in the emergence of G-77. A leading authority notes,¹⁰ "the Group 77 holds meeting at the Ministerial level prior to each session of UNCTAD in order to reach agreement

5 Rober Meczyher, *Charter of Economic Rights and Duties of States*, 1979 at p. 180.

6 The Economic and Social Council, a permanent organ of the U.N.

7 Committees on Commodities, Manufacturers, Invisible and Financing. and Shipping.

8 *New International Economic Order*.

9 *See Gosvic, supra* n. 5 at 316.

10 *See Meczyher, supra* n. 6 at 200.

on an agenda and common strategy. A major consequence of the emergence of this group has been the defacto institutionalisation of the group system of negotiation in the UNCTAD. This spilled over into other U.N. forums and is now the standard mode of interaction between rich and poor countries at international conferences. The developing countries use the permanent secretariat of UNCTAD to produce statistics and collect data and argumentations supportive of Third World claims which are sometimes contrary to the view of outputs of other international economic organizations like GATT, the IMF and the World Bank. This body of literature has given the third world a systematic basis on which to challenge the postulates of developed countries. Another important achievement which was accomplished was that the contracting parties to GATT in 1971 agreed to waive the Most-Favoured Nation (MFN) rule for the generalized system of preferences¹¹ at UNCTAD held in New Delhi in 1968.

All this would indicate that the developing countries initiated several measures which helped to enhance their trade. But, more importantly, what has been the attitude of the developed countries towards these measures? As an example, we will study the U.N. Convention on Code of Conduct for Liner Conferences (1974).

This Code related to the International regulation of ocean shipping. The developing countries wanted to participate in the open cargo shipping industry. U.S. was always against this Code and this Code really was ratified because European Economic Community (EEC) wanted it to be so. No amount of pressure by developing countries was effective until EEC. entered the picture. The main objections by the U.S. were twofold.¹² Firstly, the Code was against U.S. policy of free competition by allowing quotas and secondly, freight rates were to be fixed by an independent authority at a low level as is feasible to a commercial point of view. This clearly indicates that the U.S. definitely viewed it as a threat to their shipping industry.

There were four options that the U.S. had. The first was to ignore the Code and wait for the developing countries to invoke it. The second was to rearrange its laws according to the Code. The third option was to adopt the Code with reservations which was practically impossible. Fourth was to conclude bilateral agreements with their trading partners.¹³ The U.S. preferred the fourth option and hence made their transactions outside of the purview of the Code and nullified the Code. This amply, illustrates a developed country's jealous attitude towards equitable international trade. This would also indicate how the U.S. and other countries have responded to the multilateral arrangements under UNCTAD.

11 This system of preferences (GSP) vis-a-vis commodities brought down the rigour of preferential treatment by developed countries towards each other. The waiver of MFN rule was an important step in this regard.

12 Alan G. Lopatin, *The UNCTAD Code of Conduct for Liner Conferences*, 22, Harv. Journal of International Law, 365 at pp. 356-360.

13 See Lopatin, *supra* n. 12 at 371.

UNCTAD & TRADE LIBERALIZATION

We to first understand the history of UNCTAD-GATT relationship to understand the role of UNCTAD in trade liberalization. A leading author notes¹⁴ "At the first UNCTAD meeting, the developing countries tried, but did not succeed, either in reducing GATT to some subordinate role or in establishing a formal link between the two organizations. The attitude can be described as one of "frontal attack" failing which co-operation was practised. Both tactics failed leaving a broken diplomatic relationship between the two institutions."¹⁵

An analysis of UNCTAD & trade liberalization reveals that¹⁶ "UNCTAD is not directly involved in trade liberalization". International negotiations are undertaken in GATT, and national schemes, such as the GSP, can only be recommended by UNCTAD.

However UNCTAD has played an important role in providing information, and thereby raising government's awareness on the extent and impact of protection and on the potential benefits of liberalization. Much of the information is provided in the documents the secretariat prepares for the TDB..." Also UNCTAD has given important information NIMs,¹⁷ VERTs¹⁸ and other temporary trade practices which will have a great impact on liberalization.

UNCTAD - THE RELEVANCE

What the last decade and a half have shown is that the process of trade liberalization has totally ignored UNCTAD. Other than doing supplementary activities like providing information, UNCTAD has not done much. Today, GATT & WTO are the new 'mantras' of international trade. Other than comment on structural adjustment policies and regulating the shipping industry, UNCTAD has been inactive.¹⁹

One has to really conclude by saying that the developed nations have pulled off a coup in International trade. UNCTAD, from its inception was dominated by the developing nations. What the developed countries have done is to reduce the importance of UNCTAD to such an extent that its existence at this juncture really does not matter. Almost no academic attention is paid to UNCTAD today, and the spotlight is firmly focussed on GATT. The developed countries have staved of a determined challenge by the developing countries to their hegemony of international trade.

14 See Meogher, *supra* n. 6 at 201.

15 For more on these two institutions see, Guivic, *supra* n. 5 at 198-218.

16 Detler Chr. Dicke, (Ed.) *Foreign Trade in the Present and a New International Economic Order*, at p. 328.

17 Non-Tariff Measures.

18 Voluntary Export Restraints.

19 The extent of inactivity can be gauged by the fact that the gap between UNCTAD VII and UNCTAD VIII was nearly 12 years which indicates how important the member countries themselves consider it.