The Making of International Trade Law: Sugar, Development, and International Institutions

by

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A thesis submitted in conformity with the requirements for the degree of Doctor of Juridical Science

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Abstract

This historical study focuses on the multilateral regulation of sugar to provide a broader institutional history of trade law. I argue that theories of development and tensions between the global North and South have always been central to the formation, function, and transformation of international trade institutions.

Sugar consistently appears as a commodity throughout the history of modern trade law. The sugar trade provides an immediate way for us to work through larger questions of development, free trade, and economic world order. I examine the 1902 Brussels Sugar Convention, the 1937 International Sugar Agreement (ISA), and the 1977 ISA. These international agreements provide a narrative of the development ideas and concerns that were a central feature of the trade institutions that preceded the World Trade Organization.

In the context of the sugar trade over the last century, very few challenged the idea of free trade. Instead, they debated over what free trade meant. The justification for free trade and the function of those international institutions charged to implement trade agreements has changed throughout history. Yet, despite multiple historical and doctrinal definitions of free trade, two dynamics remain consistent: trade law has always been configured by the relationship between policies of tariff reduction and market stabilization and has been defined by the tension between industrial and agricultural interests.
For my grandparents, Petro Mitri Hajj and Nohad Fouad Hajj (née Chidiac) – I am still learning how to articulate everything they taught me.
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PROLOGUE: OUTLINE OF STUDY

The history of sugar has always been entwined with the history of international trade. What began as a humble grass in South Asia, worked its way through Islamic empires in the east Mediterranean, North Africa, and the Iberian Peninsula eventually reaching the tables of European royalty. By the 17th century sugar was a staple in Europeans’ common diet coinciding with people’s voracity for coffee, cocoa, and tea. Slave labourers in European colonies cutting cane and peasants on the European continent digging up beets could barely harvest fast enough to keep up with Europe’s growing appetite for sugar. The corollary, as this study outlines, is that sugar treaties have been central to the making of international trade law.

For centuries, producers and consumers traded in sugar, but it was not until 1902 that the world’s largest sugar importing and exporting territories negotiated a multilateral trade treaty – the International Convention Relative to Bounties on Sugar of 1902 (the “Brussels Sugar Convention”) – which is one of the first modern international trade treaties that established a multilateral institution. One early scholar of international organizations goes so far as to consider the Brussels Convention as “the first [agreement] to give an international committee power to dictate policy.”¹ The 1860 Cobden–Chevalier Treaty is often credited as one of the earliest free trade treaties, but this treaty was a bilateral treaty between the UK and France. The 1885 General Act of the Berlin Conference on West Africa is sometimes noted as being one of the earliest multilateral free trade treaties. However, this treaty governed trade through the negotiation of territorial rights. The Brussels Convention, like treaties of today, governed trade by regulating the movement (and production) of an actual good.

I trace sugar through three different multilateral trade treaties signed in 1902, 1937, and 1977.\(^2\) I expose how theories of development and tensions between the global North and South have always been central to the creation, operation, and transformation of international trade institutions. Thus, this dissertation is also part of a larger endeavor of asking how trade can be a means for development.\(^3\) I suggest that before we can prescribe how trade institutions can lead to development, we must first take into account how theories of development and developing countries have already formed international trade law.

Development as a professional field and academic discipline arose soon after the Second World War. It was also an idea promoted, defined, and debated under the auspices of various international organizations.\(^4\) Yet, development as a family of concerns regarding questions of wealth and welfare has been present in some embryonic form since colonial times (if not earlier).\(^5\) I define development as the theories that prescribe how to change social, economic, and political structures and institutions for the purpose of advancing a community’s welfare.\(^6\) Development discourse is therefore animated by debates as to


\(^6\) I draw my definition of development from the work of Gunnar Myrdal. See for e.g. Gunnar Myrdal, ” ‘Growth’ and ‘Development’” (1972), in Gunnar Myrdal, *Against the Stream: Critical Essays on Economics* (New York: Pantheon Books, 1973) 182 at190:

I understand development as the movement upward of the whole social system. In other words, not only production, distribution of the produce, and modes of production are
which structures and institutions matter, what are the boundaries of the community in question, and what is meant by welfare. Development theories attempt to identify, explain and modify the structures and institutions that enhance welfare, as opposed to only seeking to increase the output of variables (such as employment) without necessarily being concerned with its social or other impacts. If we adopt this broad understanding, we see that what we call development had its antecedents in the late 19th century sugar treaty and League of Nations, even though experts and diplomats at the time would not have labeled their discourse as such.

It is from these early development debates that I am able to show how modern international trade institutions emerge from impositions, negotiations, and contestations of colonial relations – what Antony Anghie calls the colonial encounter in international law. Thus, by explicating how development was central to the formation of some of the first modern international trade institutions I am also arguing that colonialism was a defining factor of international trade law.

It was the development demands of colonial governors of the West Indies that led to the Brussels Sugar Convention. Thus, the 1902 sugar treaty, amongst other things, reaffirmed and reconstituted British imperial rule of the West Indies. But the story of sugar, development, and international trade law was not only about the imposition of imperial power. The dynamics were more nuanced. Cuba’s rising sugar-producing elite desire to develop and modernize the Cuban state was the impetus behind the 1937 International Sugar Agreement (ISA) under the auspices of the League of Nations. The rising elite wanted more power to determine economic policy and thus wanted to renegotiate (not resist) their neo-colonial relationship with the United States. It was through this sugar treaty and involved, but also levels of livings, institutions, attitudes and policies. Among all the facts in this social system there are [largely unknown] causal relations.

See also America Dilemma (New York: Harper, 1944) at Chapter 3 Section 7, and Appendix 3; Economic Theory and Underdeveloped Regions (London: Methuen, 1963) at Chapters 2-3; Asian Drama (New York: Pantheon, 1968) at Appendix 2, Part 2. I am also indebted to my conversations with Mark Fakhri.

League economic doctrines that Cuban delegates attempted to redefine their neo-colonial relationship with the United States. And against the backdrop of the Third World confrontation with the First World via the New International Economic Order, it was the 1977 ISA where the world's largest sugar importers (and former imperial powers) compromised with the world's largest sugar exporters, and where developed countries negotiated with developing countries.

By following sugar from the colonial era and continuing into to the late 20\textsuperscript{th} century, I trace how development discourse through international trade law continued to manage and define relations between the colony and metropole, the neo-colony and the neo-empire, developed country and developing country, and the First World and Third World. Whereas geopolitical designations are named and renamed, two tensions consistently defined the character of trade law over the last century. The first was the animosity between interests surrounding sugar beet growers in continental Europe and sugar cane growers in colonies and former colonies of Europe. The other was the uneasy relationship between agriculture and industry. Thus, I employ development as a lens to understand how these various interests defined themselves and interacted. It is through development discourse in relation to trade agreements that interests comprising the state worked through their struggles to industrialize and modernize. This same discourse was the proxy through which national welfare ideas and demands were promoted. But we have to be keenly attuned to noting who was behind these different interests since national boundaries did not neatly define interests. Moreover, it is important to pay attention to how interests coalesced and defined themselves through trade and development theories of the time and during the negotiation of the respective treaties.

Part I situates this study within the broader historical context of sugar, trade, and development. It also outlines the methodological and theoretical contribution.

Part II focuses on the process of institutionalization itself. The general method of Chapters Three and Four in this part is to examine the text, structure, and travaux préparatoires of the trade treaties within the political context and economic discourse of the time.
juxtaposed against the international social history of certain sugar producing countries.\textsuperscript{8} Thus, we discern how institutionalization involves the prioritizing, marginalizing, and exclusion of certain ideas and interests.

More specifically, Chapter Three introduces the Brussels Sugar Convention and illustrates how the treaty defined trade in a pattern of rule and exception. A British conception of free trade that was allergic to subsidies and allowed for countervailing duties was the rule, and infant industry arguments in Continental Europe was the exception. The treaty excluded some notions of free trade circulating at the time that challenged British Empire or that left it to national governments’ prerogative to decide whether they should subsidize a domestic industry for the purpose of export.

The free trade arguments that were codified in the Brussels Sugar Treaty were enmeshed with theories of development and imperial interests. What is different from contemporary development theories is that the interests and conditions of local workers were explicitly and unabashedly subordinate to colonial interests relating to white planters and domestic European markets. Former slaves in sugar colonies in the West Indies were frustrated with their dire social and political conditions, burning sugar fields in protest and challenging colonial governors’ authority. Though I draw in how decisions made in London were effected by fears of the “Negro uprising”, British politicians made little provision to improve the lives of black workers (and indentured workers from India and China). In fact, the development theories and free trade discourse of the time that generated the Brussels Convention created a sort of “free trade imperialism” – i.e. international law employing free trade doctrine whose purpose and effect was to maintain British imperial power over the West Indies, and ensure that raw material from colonies reached European industries and consumers in the metropole.

Chapter Four examines how the 1937 International Sugar Agreement (ISA), though also created in response to colonial relations, was informed by a different ordering of ideas and

\textsuperscript{8} I examine primary legal material and rely as much as possible on social historical accounts that draw from primary sources.
interests. This treaty was concluded under the auspices of the League of Nations within the context of the rise of the neo-colonial Cuban state. Whereas the 1902 sugar treaty used trade doctrine to reinforce and reshape the British imperialism, the 1937 sugar treaty employed the orthodox trade doctrine of its time to renegotiate US neo-colonial interests. Cuba’s role in the League marked an important moment both in the colonial history of Cuba and in the economic history of the League. In the rare instances in which the League’s three world economic conferences are examined, it is usually through the lens of European interests. According to the standard account, the 1920 International Financial Conference focused on Europe’s reconstruction, the 1927 International Economic Conference unsuccessfully attempted to stave off protectionist tendencies to improve world trade conditions, and the 1933 International Monetary and Economic Conference was an attempt to stabilize international currencies in response to the Great Depression. I counter this account by considering the history of Cuba and the structure of the sugar economy discerning how interests within and without Cuba led to the formation of the 1937 ISA. Employing development discourses and economic theories from mainstream thinking within the League, Cuban delegates attending the international economic conferences agitated for an international sugar agreement starting from 1927 until the final League sugar treaty was concluded in 1937.

Thus, this chapter traces how Cuban diplomats, by expressing their interests through the League doctrines of rapprochement, rationalization, and freer trade transformed economic discourse within the League. There was great debate within the League as to whether international trade agreements should focus on the gradual reduction of tariffs (freer trade) or the regulation of the production and consumption of goods (rationalization). The 1937 ISA, through the hard work of the Cuban delegates, was informed by and institutionalized the assumption that rationalization was a precondition to freer trade – that the global sugar market had to be stabilized through quotas before there could be any discussion of reducing tariffs.

Even though Cuban diplomats considered the doctrine of rationalization and the 1937 ISA as a means to increase Cuba’s economic power especially in their neo-colonial relation to the United States, they did not agitate for complete independence from the United States.
Nor did they present their interests in “anti-imperial” terms. The Cuban diplomats represented a certain vision of Cuban nationalism informed by the business interests of the rising class of sugar farmers, the colonos. These interests were intermingled with financiers in the North America. Even with their close economic relationship with North American capital, this sugar elite was still determined to devise and implement plans to create a strong modern Cuban state with administrative functions, industrial policies, and economic diversification plans. This vision of Cuba as navigating between US capital and Cuban nationalism was but one version of Cuban identity during the 1920s and 1930s. Thus, the colonos in negotiating the 1937 ISA galvanized Cuba as a modern state that was an active League member and principal player in constituting the world sugar market. This excluded other widespread and various identities, such as black trans-nationalism and international worker movements, which competed to define Cuba.

Part III studies the implications of institutionalization in regards to international trade by asking: what was the character of international trade law and politics when institutionalization became the established means of organizing trade? Unlike Part II which traced trade discourse through difference geographies, Part III follows how the meaning of trade varied through different institutions.

Chapter Five of this part looks to institutional developments after the Second World War. I suggest that the International Trade Organization (ITO) international trade law attempted to hold together doctrines of rationalization and freer trade. However, the implications of these doctrines changed from when they were devised within the League. Rationalization was increasingly employed by developing countries whereas freer trade was considered to be paramount by developed countries. I also suggest that the ITO was one institutional manifestation of embedded liberalism policies. Embedded liberalism was a set of postwar policy goals which sought to avoid protectionism and minimize social disruptions in domestic industries caused by international functional differentiation and tariff level reduction. In the past, some have thought that within embedded liberalism only domestic institutions addressed embedded liberalism’s domestic goal of social stability and that only international institutions addressed the international goals of multilateralism. I argue,
however, that the ITO was an early example of an international institution that was designed to meet embedded liberalism’s domestic goals.

Chapter Six of this part continues the augmented account of embedded liberalism and considers the 1977 International Sugar Agreement as a case-study of how ICAs were a central component of trade and development policies of the time. We see how both developing and developed countries created and used international mechanisms of market regulation to ensure that certain domestic socio-economic goals were met (in line with the desire to work) within a multilateral trade system. This chapter also situates the sugar treaty within a narrative of the fragmentation of international trade law. While the First and Third World contested each other’s trade policies within and between GATT and UNCTAD, ICAs such as the 1977 ISA were the site of negotiation and rapprochement. Through the negotiation history of this sugar agreement, I also explain how ICAs eventually disappeared as an idea because they were incorrectly closely associated with UNCTAD.

Throughout this study, most of my overt normative determinations are historical. I argue what moments in time are worth knowing and emphasizing. To me, history provides a repertoire of different conceptions of trade and development that we may choose to critically reexamine. By revisiting these points in time and augmenting the history of trade law, we generate different starting points for creating future changes. In order not to interrupt my historical account, I leave my institutional and doctrinal preferences to the end. With my emphasis on development and centre-periphery relations, it should come as no surprise to the reader that I find Raúl Prebisch’s intellectual and institutional dilemmas while he was UNCTAD Secretary-General in the 1960s as a moment worth engaging with in order to help us reconceive the relationship between multilateral trade institutions and development.
PART ONE. SITUATING THE STUDY

CHAPTER ONE. METHODOLOGICAL APPROACH AND ANALYTICAL CONTRIBUTION

I. Expanding the Institutional History of Trade

Ruggie provides one of the most popular accounts about the creation of the postwar international economic regimes.¹ Postwar policies were a compromise between domestic social needs and liberal internationalism, which according to Ruggie, created a framework of “embedded liberalism”. This policy framework structured the postwar international trade institutions such as the General Agreement on Tariffs and Trade (GATT). Embedded liberalism had two interlinked trade goals. First, it was to ensure that domestic pressures would not provoke states to raise trade barriers in such a way to prompt a protectionist “race to the bottom” eventually leading to pervasive war and depression.² Second, it had to minimize social disruptions in domestic industries caused by international functional differentiation and tariff level reduction. Thus, embedded liberalism was an attempt to achieve both domestic and international economic stability, where domestic and international goals conditioned each other. Drawing from Karl Polanyi’s The Great Transformation,³ Ruggie suggests that the policies were based on the premise that the market was “embedded” within the state and domestic stability was predicated on


² With thanks to Robert Wai who reminds us that modern trade lawyers are perennially preoccupied with avoiding war and depression.

domestic state regulation. The compromise was “liberal” in that it was multilateral in character.⁴

Ruggie relies heavily on Polanyi in order to understand why international trade institutions were formed and how they were the “internationalization of domestic authority relations.”⁵ He provides insight into how the GATT institutionalized prevailing ideas and policies of industrialized countries of the time. Even though Ruggie’s account of the GATT in the immediate decades after the Second World War (which I revisit in Chapter V) remains an innovative and constructive description, it does not provide a way of appreciating how multilateral institutions came about as an idea and practice in the first place.⁶

Like Ruggie, I consider the creation of international institutions as a culmination of debates, negotiations, and compromises. My focus, however, is on the institutionalization process itself. Ruggie’s working premise was that international trade institutions are a central feature of international relations and thus it is important to understand why they mattered – his aim was to argue that norms generated by institutions were influential and persistent. My intent is to understand why is it that international institutions were thought to be a necessary and viable way of organizing international trade in the first place.

This difference in emphasis means that I consider how institutionalization is informed by and captures more than “domestic authority relations.” At times different groups coalesce between countries to form transnational interests looking to institutionalize the world sugar market. For example, Cuban sugar-producing elite and North American banks considered an international sugar treaty necessary and opposed domestic US sugar producers. At other times truly global interests were at play, such as the United Nations Conference on Trade and Development (UNCTAD) secretariat under Gamani Corea working within the framework of the New International Economic Order (NIEO).

⁴ Ruggie, supra note 1 at 393-394.

⁵ Ibid. at 385.

⁶ This is the question asked in David Kennedy, “The Move to Institutions” (1987) 8 Cardozo Law Review 841.
This approach also expands what ideas and interests I draw in as part of the institutionalization process. Ruggie was troubled that embedded liberalism did not reflect developing country’s interests and did not address their needs. Others have considered this to be a principal problem, noting that that embedded liberalism is an account of the postwar international trade regime that silences important concerns by marginalized communities.

Instead, I seek to uncover the role that the Third World played in the advancement of international trade regimes. Colonial and postcolonial world perspectives were, in fact, a central factor in the formation of international trade institutions. We can better appreciate the role of Third World communities if we do not only focus on the postwar decades and take an extended historical perspective that begins in the long 19th century. Of course, the role of the Third World changed throughout history. During the colonial era, the West Indies were primarily represented by colonial governors navigating between local worker-instigated instability and London’s demands. In the interwar period, Cuba found itself independent from Spain, building a new postcolonial state, but in a neocolonial relationship with the US. By the 1970s, the Third World organized itself through NIEO thereby influencing the GATT and international commodity agreements. What remained consistent in relation to international trade institutions was that Third World perspectives (whether

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7 Ruggie, *supra* note 1 at 413-414.

8 Lang, *supra* at 1 at 100.

9 I use the term “Third World” in the sense that, as Okafor puts it:

[...] what is important is the existence of a group of states and populations that have tended to self-identify as such—coalescing around a historical and continuing experience of subordination at the global level that they feel they share—not the existence and validity of an unproblematic monolithic third-world category. That much is undeniable. Now, if these states tend to complain about similar things, and tend to speak to similar concerns, it is of course undeniable that, as contingent and problematic as any style they wish to assign to their grouping is, or can be, that grouping—that sense of shared experience—does exist and has been repeatedly expressed.


colonial, neocolonial, or anticolonial) were most often expressed through development discourse. As such, not only were Third World perspectives central to the formation of trade institutions but so were theories of development.

Ruggie’s original concern in his account of embedded liberalism was to outline the origins of the postwar international economic institutional landscape and not the idea of multilateral trade institutions in general. Polanyi, however, had a more expansive historical vista in his endeavour to describe “the political and economic origins of our time.”11 Therefore, if we want to augment Ruggie’s account both in terms of historic time and institutional space, then we should briefly revisit Polanyi.

II. Reading Polanyi

In The Great Transformation, Polanyi set out to understand what caused the political and economic crisis that led to the Great Depression and Second World War.12

Polanyi’s first thesis, drawing from sociological and anthropological studies, was that historically markets were “submerged” in social relationships and as such can be considered as enmeshed or embedded in society.13 This meant that social needs dictated markets’ function and purpose. People acted not to safeguard their individual interest in material goods, rather they acted to safeguard their social standing, social claims, and social assets.14

11 This is the subtitle of The Great Transformation.


13 Supra note 3 at 45-46.

14 The Great Transformation, ibid. at 43-55.
Polanyi was reacting against a theory that assumed that the market was and is separate from society. He was responding to the premise that “instead of economy being embedded in social relations, social relations are embedded in the economic system.” Polanyi warned, however, that this theory of a “market society” was a stark utopia that had violent consequences. The destructive nature of markets was most apparent (and acute) during the Industrial Revolution in England when new technologies radically improved the tools of production while at the same time drastically disrupting common people’s lives through “satanic mills.”

In his later work, Polanyi, stated that the economy “is embedded and enmeshed in institutions, economic and noneconomic” and describes the economy as an “instituted process”. By “economy” he meant the interchange of humanity and the “natural and social environment, in so far as this results in supplying him with the means of material want and satisfaction.” “Process” was meant to suggest motion, that is movement in location (through means of production or transportation) or appropriation (through the regulation and administration of goods). Institutionalization of the economy was that which vested the economic process with unity and stability. It also provided structure and definite function in society thereby adding significance to history, and focused “interest on values, motives and policy.”

In *The Great Transformation*, Polanyi never explicitly defined what he meant by institution (which he used interchangeably with “system”). Generally, he considered institutions as the

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social instruments that translate interests into politics. One could assume from his
discussion of the more informal system that what Polanyi may have meant by an institution
are the various laws made effective by customary practice. Institutions “established
centers, regular meetings, common functionaries, or compulsory code of behavior.” 22

This leads to Polanyi’s second thesis, regarding the “double movement” created by the
market. According to Polanyi, all markets are embedded in society. Time and time again
certain social actors successfully push the market to become the principal institution
structuring economic life (as opposed to redistributive or reciprocative institutions).
Because this first move causes the market to have a destructive social effect, society
responds with a countermovement demanding and creating laws and institutions in order
to ameliorate the ensuing social disruption. To Polanyi, this double-movement is what
characterized a market society.

Polanyi provided a definition of interests that was broader and more dynamic than Marxist
notions of economic class popular during his time:

An all too narrow conception of interest must in effect lead to a warped
vision of social and political history, and no purely monetary definition of
interests can leave room for that vital need for social protection – under
modern conditions, the government of the day. Precisely because not the
economic but the social interests of different cross sections of the population
were threatened by the market, persons belonging to various economic
strata unconsciously joined forces to meet the danger. ... All this should warn
us against relying too much on the economic interests of given classes in the
explanation of history. ... It leaves outside its range those critical phases in
history, when a civilization has broken down or is passing through a
transformation, when as a rule classes are formed, sometimes in the briefest
space of time, out of the ruins of classes, or even out the ruins of older

22 Supra note 3 at 8, 262.
classes, or even out of the extraneous elements like foreign adventures or outcasts.  

Thus, determining interests was not necessarily obvious or economically determined. Groups and individuals coalesced depending on the social, political, economic conditions of their time. It was from these interests being put into operation that institutions were formed. Notably, laws and institutions not only reflected certain interest but they also had the effect of changing people’s perception of their social reality. Thus, institutions also had the effect of influencing what interests in the future came together as a common social class.

Polanyi did not only look at interests but also accounted for how ideas unto themselves shaped what social actors considered as possible choices. Polanyi took stock of how European policy-makers took liberal market policies and theories of *laissez-faire* as creed. So for example, during the major currency fluctuations in the 1920’s:

belief in the gold standard was the faith of the age. … It would be hard to find any divergence between utterances of Hoover and Lenin, Churchill and Mussolini, on this point. Indeed, the essentiality of the gold standard to the functioning of the international economic system of the time was the one and only tenet common to men of all nations and all classes, religious denominations, and social philosophies. It was the invisible reality to which the will to live could cling, when mankind braced itself to the task of restoring its crumbling existence.

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23 *Ibid.* at 155-156. See also at 152: “The fate of classes is much more often determined by the needs of society than the fate of society is determined by the needs of the classes.”


All foreign policies were directed towards stabilizing currencies in service of the gold standard. Although everybody agreed that stable currencies ultimately depended upon the freeing of trade, policies had to be taken that inevitably restricted foreign trade and foreign payments. Governments sacrificed their economies by reducing trade and closing markets in order to ensure a stable currency. Herein lay the paradox that could only be explained by how influential the theory of the time was. Most policy-makers believed that currencies should be stabilized by any means necessary especially since a stable currency was sought to ensure the flow of foreign trade: to ensure a stable currency, however, they had to enact that laws and policies that in effect strangled trade.

To Polanyi, these sort of economic dogmas were what created a sense of an automatic march to the Great War. He had been deeply horrified by how surreptitiously the world found itself at conflict and sought to understand how decisions that were intended to avoid global political and economic crisis actually contributed to triggering war and depression.\(^{27}\)

III. Framework

A. Law as the Interplay of Ideas, Interests, and Institutions

The term “embedded” has become a term of art with different uses. Beckert has mapped out the different understandings in economic anthropology and sociology of social relations in relation to embeddedness.\(^{28}\) Scholars have debated whether the market is embedded within social networks or institutions. They also disagree whether researchers should treat the embeddedness of markets as an empirical starting point (i.e. by understanding embeddedness, we understand modern markets) or as a theoretical heuristic that may provide answers to certain questions. Beckert argues that, “we need a

\(^{27}\) Cayley, *supra* note 12.

\(^{28}\) Beckert, *supra* note 12. For surveys of how the term has been used see Dale, *supra* note 12 at 188-206; Beckert, *supra* note 12; Ayşe Buğra & Kaan Agartan, *Reading Karl Polanyi for the Twenty-First Century: Market Economy as a Political Project* (Houndmills: Palgrave Macmillan, 2007) at 4-5.
historical perspective if we are to understand the specific ways in which economic action is embedded in institutions and social structures of modern societies.”

What follows is an outline of how I have taken notions of law and institution creation inspired by Polanyi to craft my own historical study. Reading Polanyi makes me think that while social actors struggle to determine how institutions will configure the market’s role in society, they look to law as a central object of contestation. Here, I examine how law both reflects and structures ideas and interests. In this section I explain what I mean by thinking of law as the interplay of ideas, interests and institutions within the context of explicating the role of international institutions in the global economy. Later, I describe what relationship I found amongst ideas, interests, and institutions when studying the international legal history of the sugar trade.

Like Polanyi, Part II of this study describes how international trade institutions emerged from domestic, transnational, and international power struggles. I focus on 19th century West Indian colonial relationships with interests in the United Kingdom and 20th century Cuban neocolonial relationships with interests the United States. Here I outline how the market, in this case the international sugar market, is embedded in society through an international institution.

Part II, however, takes a different approach. I examine the postwar institutional landscape and use the 1977 International Sugar Agreement as a case study to expand our understanding of “embedded liberalism.” I inspect how the concept of “society” is used in a Polanyian account of embedded markets. Polanyi suggested that the market was embedded in social structures, yet he never provided a definition of society. Polanyi’s lack of definition of society is not necessarily an analytical shortcoming. What I conclude is that defining what is “society” is part of the effort involved in the double movement. The

29 Ibid. at 19

argument is that it is the ideational and political struggle over defining society that shapes the market and respective institutions.

An increasing number of scholars look to Polanyi to develop analytical tools and heuristics to understand processes and effects of globalization. Some read Polanyi as providing a critique of the market. Others focus on how Polanyi provides a way of better understanding how markets operate. Whereas, others react against Polanyi because they believe that he justifies political intervention into the market.

For our purposes, what is most interesting is how Polanyi has inspired analyses of contemporary international economic institutions. Block suggests that what makes Polanyi so attractive in this regard is that he provides a way of understanding different scales of governance:

The first level of action is the mobilization of social actors as part of [the] great conflicting movements for *laissez-faire* and for social protection [the double-movement]. These efforts tend to begin in local contestations that often make claims on local or sub-national states – the second level of action. However, as tensions intensify, demands often come to be focused on the decisions and policies of national states – the third level of action. The movements fight, for example, for and against tariff protections, new regulatory initiatives, or new forms of social insurance. Actions by national states are sometimes further constrained by regional blocs and multi-national empires – a fourth level of action. Having spent his formative years


in Hungary which was then part of the Austro-Hungarian Empire, Polanyi was acutely aware that ethnicity, nationhood, boundaries, and sovereignty did not coincide. Finally, all of these entities operate in a global environment that often constrains and limits the actions that can be taken at lower levels.\textsuperscript{35}

Within Polanyi’s rich mutli-scalar sensibility, law is central in his account of the rise of the market society and the nature double-movements. Indeed, Polanyi’s imagery of a market as always enmeshed within legal institutions aligns with the work of legal realists such as Robert Hale and Morris Cohen.\textsuperscript{36} Polanyi, like Hale and Cohen, argued against the notion that the idea of the market and interventionism are mutually exclusive terms:

For as long as [the system of a self-regulating market] is not established, economic liberals must and will unhesitatingly call for the intervention of the state in order to establish it, and once established, in order to maintain it. The economic liberal can, therefore, without inconsistency call upon the state to use the force of law.\textsuperscript{37}

There is no separation between law and the market or society and the market. Rather, the law and the state are constitutive of the market. Like Polanyi, legal realists argued that “a free market system could not be distinguished in a significant sense from a regulatory system.”\textsuperscript{38} In reading Polanyi, Hale and Cohen, we can think of markets as institutions in and of themselves, constantly interacting with other social institutions.


\textsuperscript{36} For e.g. Robert Hale, “Coercion and Distribution in a Supposedly Noncoercive State” (1923) 38 Political Science Quarterly 470; Morris Cohen, “Property and Sovereignty” (1927)13 Cornell L. Q. 8; Morris Cohen “The Basis of Contract” (1933) 46 Harv. L. Rev. 553.

\textsuperscript{37} Supra note 3 at 149.

The normative debate is then over what sorts of laws we want to create a market, and what sort of institutional configuration we want among markets and societies. Legal realists such as Hale and Cohen also teach us that law always has significant distributive consequences:

> [a]ll market systems distribute power, and thus constitute regulatory systems. The rules in force have the effect of privileging the interests of some persons over the interests of others. It is impossible for a legal system not to so distribute power and wealth. Any definition of property and contract rights necessarily requires the state to determine the character of relations among citizens in the marketplace. For the realists, the important questions were not how to define the limits of state power or the boundaries of a private realm beyond state power, but instead, whose interests market regulations should protect, and what distribution of power the rules in force should foster.39

Thus, while laws are made and remade from the conflicts of the double movement, power and wealth are distributed and redistributed through the institutional organization and design of markets.

If we combine Polanyi’s historical telling of how the market society emerged and the ensuing double movements with insights about the relationship between law, the state and market, then we can use the legal and institutional contours of society in order to understand markets and societies in more detail and with more nuance.

Recall that Polanyi provided insight into how the idea of the market determined which decisions seemed necessary or normal for the time. According to Polanyi, prevailing ideas determined decisions, and those decisions led to the creation of institutions. But institutions and laws were also created or changed to respond to the problems and needs of certain classes of society of the time. Thus we can imagine that in a Polanyian account, institutions created from moves (prioritizing the social role of markets) and countermoves

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39 Ibid. See also Duncan Kennedy, “The Stakes of Law, or Hale and Foucault!” (1991) 15 Legal Studies Forum 327.
(responding to the disruption) affect how future social actors understand their interests and how policy-makers understand what changes may be possible. For example, once the international gold standard was institutionalized, the idea was further legitimized and prevailed over all domestic and international economic policy. This is much like accounts of institutional path dependence, where we can see how historical institutions highlight and grant authority to certain ideas thereby providing social actors with the repertoire of tools to make choices if not dictate the actual choices possible.\textsuperscript{40}

We can continue to sketch out a Polanyi-inspired concept of law and see that a society’s laws and institutions manifest the conflict and tension of competing social interests. Law is a central mechanism used by all sides in the debates regarding international trade. In \textit{The Great Transformation}, laws (which constitute institutions) are created to (re)establish the market’s role as the primary institution structuring society. Laws were also created as the pushback dynamic of the double movement to compensate for the markets destructive effect. Moreover, laws and institutions also reflected a compromise or uneasy tension between the market and other societal structures. Law is not simply characterized as representing the interests of the ruling class; rather it exemplifies the mix of societal interests and structures. This complexity means that law can either represent the interests of social actors who benefit from the primacy of the market, social actors reacting against the transformative nature of the market, or a compromise between varieties of social actors. Within a Polanyian analysis, law is the terrain of conflict and negotiation for both aspects of the double movement – law structures the market and is also part of the countermovement against attempts to create a market society.\textsuperscript{41}

There is an ambiguity in Polanyi’s text as to whether the economy, politics, or ideas caused or characterized international crisis; this underlying tension regarding causality is both Polanyi’s strength and weakness. Polanyi’s approach is richest when he assumes that establishing determinative causes of change is virtually impossible in light of the


\bibitem{41} Dale, \textit{supra} note 12 at 201-202.
complexity of society, happenstance of history, and ever-changing identities and interests of social actors and instead focuses on the dynamic between ideas, institutions, and interests. This approach is much like David Kennedy’s call for “an internationalism based on a global politics of identity, a shifting sand of cultural claims and contestations among constructed and overlapping identities about the distribution of resources and the conditions of social life.”

And so in my reading of Polanyi, I imagine law as a continuous interplay amongst ideas, interests, and institutions with each element constituting the other. This means that when explicating how law is formed and how it functions, I look to how it reflects certain ideas and competing interests and in turn, how it redistributes ideas, power, and wealth. Below I will explain what this interplay looked like in the history of sugar, trade, and development.

B. Market Societies and Imperialism

Polanyi considered how transnational European interests constituted international institutions. To summarize Polanyi’s account, the market first emerged in Europe and then became the driving logic behind international economic institutions. European countries expanded and established colonies in the non-European world often under the watchful if not legitimizing eye of international institutions, transforming non-European communities into market societies.

To Polanyi, this transformation was most drastic in the colonies because the transformations brought in by the market created “a social calamity [that] is primarily cultural not an economic phenomenon that can be measured by income figures or population statistics.” Economic exploitation through the imposition of a market economy was the vehicle that caused “rapid and violent disruption of the basic institutions" of the colonized. In other words, it was not the economic system per se that devastated the lives of the colonized, rather it was the speed and violence of the institutional changes

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\[\text{\footnotesize 43 Supra note 3 at 157.}\]
brought upon them by the colonizers.\textsuperscript{44} Thus, we can also look to Polanyi to appreciate how power relations between colonizer and colonized was a part of the expansion of the market society and its ensuing international institutions.

Polanyi points out that one must understand the role of the market alongside the interests of certain social classes to explain why the market society expanded out of Europe through international institutions into colonies. Moreover, the formation of international economic structures was not just simply driven by the interests of particular class, but also emerged from policies informed by unquestioning faith in the market to organize life.

This faith also underlay ideas and institutions that legitimized colonial expansion and radically constrained domestic policies. The European free market and free trade policies of the early and mid 19\textsuperscript{th} century were followed by economic crisis and depression during 1873 – 1886, which included the dislocation of millions in rural Europe. During the beginning of the depression Europe’s economies were linked together through the gold standard and free trade. Governments believed that the gold standard was absolutely necessary to preserve since it represented sound economic policy, despite the fact that the international gold standard restricted the policy-tools which governments could use to address the crisis. In order to ensure a stable currency and convinced of the necessity of free trade, the European powers expanded outside of their continent to “politically unprotected regions” to supply the raw material necessary for industry,\textsuperscript{45} imposing “unspeakable suffering” on those colonies.\textsuperscript{46} Colonized peoples were either convinced or forced through gunboat diplomacy to embrace a market system with social consequences more devastating than the transformation in Europe, since colonial structures did not allow people to politically organize to create the countermove needed to ameliorate the destructive affects of the market.\textsuperscript{47} The balance of power system of Europe shifted from

\textsuperscript{44} \textit{Ibid.} at 158-165.

\textsuperscript{45} \textit{Ibid.} at 217.

\textsuperscript{46} \textit{Ibid.} at 214.

\textsuperscript{47} \textit{Ibid.} at 182-183, 207.
interlinking interests on the European continent to competing interests in colonial expansion.

Polanyi’s insights only provide the beginnings of how to understand the structures of the global economy. Polanyi’s account of imperial expansion focuses on why Europeans expanded through ideas and institutions of a market society. He explains the violent social transformations in the colonies brought about by the expansion of European ideas and institutions concerning market society as a result of the conditions, attitudes, and needs of European actors. But what is missing are the stories from the periphery, which are necessary to understand imperial expansion in its fullest. How and why European actors expanded into forming colonies can be thought of as a product of the domestic conditions of Europe as well as a response to increasing contact between Europe and non-European peoples.48 As Edward Said notes, “the durability of empire was sustained on both sides, that of the rulers and that of the ruled, and in turn each had a set of interpretations of their common history with its own perspective, historical sense, emotions, and traditions.”49 If Polanyi’s telling of 19th century market society and imperialism is one of the centre affecting the periphery, then what is needed is an understanding of how ideas and institutions moved to the periphery, the dynamic of the encounter between colonizer and colonized within the periphery, and how the periphery affected the centre.50 This not only allows for an understanding of the relationship between Europe and the rest of the world and the consequences of imperialism but also provides opportunity for understanding conditions that shape life in the colonies that is not necessarily Eurocentric.51


Polanyi also leaves open the possibility of exploring the different specific ways in which particular markets and economic ideas are embedded in social and institutional structures. Here I turn to recent scholarship by a community of scholars engaged in Third Approaches to International Law (TWAIL) who prioritize experiences and perspectives from the periphery, scrutinize the colonial encounter, and forego a heretical divide between the social, political, economic, and cultural in international law. TWAIL scholars highlight the role of the disparity of power as a central force constituting international law. For example, Anghie explores the links between development and international law through cultural ideas, Rajagopal examines the link between development, human rights and international law through resistance, and Gathii sketches notions of social issues interwoven within the praxis, history and rules of the WTO. These scholars and the like outline how interdependent economic, social, political, and cultural ideas are embedded within international laws and institutions. They take stock of how the relationship between these ideas and institutions changes through history.

IV. Insights into Trade and Development

This study is both an institutional analysis and a genealogy of free trade. Its focus on institutions means that it looks at the internal doctrines of the trade institutions in order


“to identify the logical necessity of each of its constituent components.” It is also an institutional historiography that considers how the drafters of each treaty characterized and were influenced by preceding institutions. For example, negotiators of the 1937 ISA and drafters the 1977 ISA each characterized the 1902 Brussels Sugar Convention differently. This allows us to appreciate the role that institutional history played in the progression from one treaty to the next. This study is also a genealogy of free trade and situates the institution within a broader “network of alliances, communications, and points of support” in order to understand how the institution was formed by and part of broader power struggles. We see how traces of modern WTO doctrine emerged from contestations of the last century.

I examine how certain ideas of free trade and development associated with certain interests prevailed to successfully create institutions. It is always difficult to determine what element is driving what – whether interests are determining ideas and intuitions, if interests are shaped by ideas, whether institutions are dominating the formation of ideas, etc. Polanyi asks (but does not answer) the following prescient question:

There is no magic in class interests which would secure to members of one class the support of members of other classes. Yet such support is an everyday occurrence. ...The problem here was not so much why agrarians, manufacturers, or trade unionists wished to increase their incomes through protectionist action, but why they succeeded in doing so; not why businessmen and workers wished to establish monopolies for their ware, but why they attained their end; not why some groups wished to act in a similar fashion in a number of Continental countries, but why such groups existed in these otherwise dissimilar countries and equally achieved their aims everywhere; not why those who grew corn attempted to sell it dear, but why


57 Ibid. at 117.
they regularly succeed in persuading those who bought the corn to help raise the price.\textsuperscript{58}

The answer may very well lie in understanding the discursive context within which each group navigated.

The production and trade of sugar created specific national and transnational interests. Several interests would then often coalesce together through the free trade discourse of the time. Thus, for example, 19\textsuperscript{th} century British sugar refiners who wanted access to cheap sugar cane found themselves aligned with colonial governors demanding changes to the international sugar market and advocates for maintaining the British Empire.

It was how each group of interests adopted and employed concepts of free trade that determined the configuration of the ensuing institution. West Indian governors could have demanded direct relief from London to support their ailing sugar industry. Instead they expressed their interests through a certain concept of free trade that was allergic to subsidies. Thus, the 1902 Brussels Sugar Convention came into effect because imperial British interests aligned with a certain version of free trade discourse. Or taken from the opposite perspective, the first modern multilateral institution came into existence at the point that free trade discourse made room for imperial interests. The same can be said in the interwar period when League trade discourse emphasized market regulation of international agriculture over tariff reduction policy and industrial needs thereby allowing for neocolonial Cuban interests to be expressed through the 1937 ISA. And the same in 1977 when the Third World had room to navigate in a free trade discourse that was structured by negotiating between industrial and agricultural interests for the purpose of global market regulation.

In sum, the history of trade law indicates that its multilateral institutions have been semi-autonomous in that they were created to:

\textsuperscript{58} Polanyi, \textit{supra} note 3 at 153. [emphasis added]
generate rules and customs and symbols internally, but that [they are] also vulnerable to rules and decisions and other forces emanating from the larger world by which [they are] surrounded. [They have] rule-making capacities, and the means to induce or coerce compliance; but [they are] simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.59

What further contributed to the making of international trade law, revealed in terms of institutional historiography, is that once a certain concept of free trade was associated with an institution, it would always remain on the table as a viable idea to be rediscovered or refashioned by subsequent interest groups, policymakers, and scholars.

A. Genealogy of Free Trade: Configuration of Tariff Control and Market Regulation

In the context of the sugar trade over the last century, very few challenged free trade as such. Instead, the debate was primarily over defining free trade. This meant that conceptions of free trade’s purpose and international trade institutions’ function changed throughout history. Others have considered how contemporary free trade institutions such as the GATT and WTO include various and sometimes competing meanings of free trade.60 Driesen notes:

Instead of defining free trade scholars seem to assume that “free trade” has an obvious (although unspecified) meaning. Decisions interpreting the General Agreement on Tariffs and Trade (GATT) and academic writing use vague phrases like “trade barriers”, “trade restrictions” and “protectionism”


to describe that which trade should be free of. But these phrases, absent clarification, may be broad enough to collectively embrace almost any regulation or commercial tax serving competing values...

Where others have employed theories of language and indeterminacy, this study provides a genealogy of contemporary trade law as a partial explanation into the multiple meanings of free trade within the GATT and WTO. Traces of historical theories regarding the purpose of trade and function of international institutions can still be found in the text of WTO treaties.

Despite these multiple historical and doctrinal definitions of free trade, what is consistent is that free trade discourse and ensuing institutions were always configuring the relationship between tariff reduction and market stabilization.

In 1902, free trade’s purpose was generally about ensuring as little government interference as possible in the import and export of goods based on the assumption that this was the most efficient system of international trade. The 1902 Brussels Sugar Convention’s function was to reduce government subsidization of sugar and increase sugar producers’ access to the largest sugar consuming market (the UK). The treaty institutionalized the norm of the time by disallowing subsidies and allowing countervailing duties. The treaty also included the commonly accepted exception of the time by allowing subsidization for infant industries but only for the purpose of domestic consumption. The treaty disallowed subsidization for the purpose of export. The thinking was that the disallowing of subsidies for the purpose of export, which were in the form of direct payments or tariffs, would stabilize the sugar market.

The 1937 ISA was informed by the same norm-exception pattern. It, however, institutionalized and regulated the exception. The thinking was that because depressed agricultural prices placed the sugar industry (and world economy in general) in a crisis, a multilateral institution was necessary to support domestic sugar industries. Free trade was

\[\text{Driesen, ibid. at 281-282.}\]
defined as the reduction of tariffs and was generally thought to be desirable in the long run to ensure economic stability and prosperity. But free trade was assumed to be the result of good economic conditions and not the cause. Certain preconditions, such as development through industrialization and market stabilization, had to be met before policies of free trade could be put forward. The purpose of the treaty was to regulate domestic sugar production in such a way that stabilized sugar prices. Once the price was stabilized and domestic industries could recover, then the focus could be on gradually reducing duties and tariffs.

By the time of the 1977 ISA, the emphasis in the definition of free trade shifts again. Tariff reduction was a policy reserved for manufactured products, and production/price regulation was for agriculture. At the time, free trade was defined as the international regulation of production and the stabilization of prices. During this time, tariff reduction and market stabilization were no longer in a norm-exception relationship and became simultaneous and complementary ideas. The GATT regulated manufactured products and focused on tariff reduction, whereas UNCTAD and ICAs regulated agriculture. Even though the politics of the time between North and South was heated, the various multilateral trade treaties were legally complementary in a way thought to be uncontroversial for the time because the trade institutions were functionally differentiated.

**B. The Role of Development Theory in the Making of Trade Institutions**

If free trade was a constant rearrangement of tariff reduction and market regulation policies, then we still need to understand why certain ideas about free trade were implemented and others were not. This involves asking questions such as: What ideational framework delineated the choices thought possible or feasible at the time? How did certain interests come to be associated with certain iterations of free trade theory? What groups stood to gain from a particular configuration of an international trade institution? What were the unanticipated political and economic consequences of different trade treaties and why were they unanticipated?

I suggest that even though the 1902 and 1937 sugar treaties purported to be about regulating international trade, theories of development played an important different role
in each trade treaty. Each treaty was informed by a different development concept. In the 1902 sugar treaty free trade was a means for development (in the West Indies). The 1937 sugar treaty assumed that development through market stabilization was necessary before free trade policies could be instigated – development was a precondition of free trade. We can also understand why the GATT and ICAs were functionally differentiated and legally complementary when we note that developing countries, following the popular development theories of the time, wanted to stabilize the agricultural market in order to gain the capital necessary to industrialize.

Drawing-out theories of development of the time provides insight into why certain concepts prevailed over others and also illuminates what was at stake during free trade debates. Thus, by taking into account the fires set by protesting workers in the West Indian sugar cane fields we note one reason why the 1902 Brussels Sugar Convention was thought to be necessary. In appreciating that Cuban lives depended on the world sugar market we know how League trade discourse was put into action in one of the only operational economic treaties of the time. And by situating post-WWII trade policies within the politics of the Third World project we see that ICAs were an important feature of trade law.

C. Contestation and Negotiation Between Industrial and Agricultural Interests

Even with ever-changing free trade definitions, institutional designs and development demands, the enduring factor shaping multilateral trade institutions over the last century has been the tension between interests in core and peripheral countries. According to the Prebisch-Singer hypothesis, core countries are those whose economy primarily relies

upon the manufacturing of goods whereas peripheral countries are those whose economy relies on the production of primary products. One result is that core countries control (or at least greatly influence) the means of production and distribution of primary products within and from peripheral countries.

Some research, under the heading of “world-system analysis”, has highlighted the core-periphery dynamic as a central factor in structuring the world economy. Recent legal analysis has shown how historical global diffusion of legal thought paralleled core-periphery relationships. My study contributes to these works by making an institutional link between political economy and legal thought by outlining how international trade institutions have been shaped by attempts to reinforce, overcome, or negotiate core-periphery relationships, and in turn influenced those relationships. It also argues that the core-periphery dynamic via international trade institutions has structured both colonial and postcolonial relationships and has always been expressed in relation to (that is, either through or against) development discourse.

Competing transnational interests within the core-periphery relationship also played a role in the formation of international trade treaties thereby complicating the dynamic. Some interests within peripheral countries aligned with particular interests in core countries and vice versa. Therefore, what was at stake, despite national borders, were transnational agricultural interests in contestation and negotiation with transnational industrial interests.

Many in the Third World were most vehement about overcoming the peripheries’ dependence on the core. The tragedy of trade law is that even though Third World leaders and thinkers believed trade treaties necessary to ameliorate global patterns of wealth

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63 This literature here is also extensive. Prominent authors include Immanuel Wallerstein, Janet Abu-Lughod, Andre Gunder Frank, Samir Amin, and Giovanni Arrighi. Wallerstein added the category of the semi-periphery to Prebisch’s core-periphery categories.

64 See Kennedy, *supra* note 51.
distribution in the short-term, there was little that trade treaties could achieve in the long-term to overcome industry’s power over agriculture.

**D. International Institutions as Technologies of Governance**

It is common to characterize modern international institutions as trapped between the uneasy delineation of an institution’s autonomy in relation to preserving some amount of state sovereignty. However, in the last two decades there has been a focus on how international institutions are sites of global governance unto themselves generating their own laws and norms -- where a definition of “global governance” is the sum of laws, norms, policies, and institutions that define and constitute, relations among citizens, society, markets, and the state through which collective interests are articulated, rights and obligations are established, and differences are mediated on a global scale.

As we will see, the notion of sovereignty did play a role in the formation of the sugar treaties. Nevertheless, these treaties and their ensuing institutions neither operated at the behest of states’ commands nor were they simply created as an expression of negotiated state sovereignty. These international trade institutions were also part of transnational networks of governance whose purpose was to ensure the flow of sugar through world economies.

With this mind, we learn that these trade institutions in their governance of the sugar market actually contributed to defining the power of respective states. All sugar treaties determined signatory state’s relative political and economic power according to the amount of sugar it imported or exported. The 1902 Brussels Sugar Convention was thought by many in Europe to be part of domestic trade policy. It also contributed to defining the political relationship between the United Kingdom and the British West Indies, the United

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Kingdom and continental Europe, as well as Europe and a good portion of the sugar-producing world. The 1937 ISA was part of Cuba’s domestic development policies and granted the relatively new government increased power over its economic policy despite its neocolonial relation to the United States. The 1977 ISA governed the flow of sugar by structuring the international sugar market, and regulating domestic sugar production and reserve stocks in developed and developing countries.

The final point is that during the first short century of multilateral trade institutions there was never a clear distinction made between notions of public and private. The 1902 Brussels Sugar Agreement was not characterized by international lawyers of the time as a public international legal institution despite the fact that it was a treaty negotiated amongst state actors in an effort to come to an agreement over state commercial policy. The interwar attempts to create a sugar treaty first began with a gentlemen's agreement between sugar producers later formalized into the 1931 Chadbourne Agreement. Many of the sugar producers, however, were also government officials and the Chadbourne Agreement laid the foundations for the 1937 ISA negotiated under the auspices of the League of Nations – the exemplar of public international legal institution. And the 1977 ISA was an international commodity agreement negotiated between states under the auspices of the United Nations which set import and export quotas and allowed states remedial mechanisms when other countries exceeded quotas – all with the aim of stabilizing the price of sugar within a specific range. This not only determined the production rates of sugar producers but also blurred the line between understanding sugar producers as private entities and sugar producing countries as public entities.
CHAPTER TWO. BROADER CONTEXT OF STUDY

I. Trade and Development

Many policy-makers, academics, and community activists are looking to ensure that international trade be a means for development by focusing on how to make the WTO promote the development of poorer states. They thereby often presume, for better or for worse, that the WTO and trade policy is dictated by a doctrine of comparative advantage.1 David Ricardo’s doctrine of comparative advantage, published in his book The Principles of Political Economy and Taxation in 1817, remains at the heart of contemporary economic trade theory.2 Ricardo’s argument was intended to provide a theoretical framework for understanding how a country should reallocate resources and determine what are the most efficient products to domestically produce and what are more efficient to import.

I suggest that the first step of understanding the relationship between trade and development should involve examining international trade institutions and debates instead of assuming that international trade institutions reflect one particular economic theory. I first outline the debates regarding comparative advantage. I briefly sketch the expository strengths and limits of the theory, in order to present what is generally meant by “comparative advantage” and to show how it is a constantly changing and contested idea. I then summarize critiques of current theories of trade and their relationship to development. The main point of the critiques is that most theories of trade are limited in their ability to provide for a theory of development because the causal relationships are unclear between policies of free trade and economic growth, trade generated growth and

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1 For an argument that trade policy and the WTO should be dictated by theories of comparative advantage see for e.g. Alan O. Sykes, “Comparative Advantage and the Normative Economics of International Trade Policy” (1998) 1 J. Int’l Econ L. 49.

poverty reduction, the WTO and improvements in developing countries, and the WTO and economic theories. This study engages with the final ambiguity.

A. The Theory of Comparative Advantage

In contemporary terms, Ricardo’s doctrine of comparative advantage states that a country has a comparative advantage if it produces a good at a lower opportunity cost (value of a product forgone to produce or obtain another product) than another country. This was an argument against Adam Smith’s notion that country should only import goods in which another country is able to produce more efficiently using less resources (absolute advantage). According to Ricardo’s theory, a country should specialize in producing goods in which comparative advantage is greatest and import goods in which comparative advantage is smallest. Ricardo surmised that countries would achieve the most efficient use of labor and generation of wealth from specializing in what it was best at producing and trading with other nations.

Ricardo measured the resources necessary to produce goods (factors of production) in terms of the amount of labor needed. Also, he used to illustrate his theory in a model with two countries trading two products. The assumptions of Ricardo’s theory are that there is full employment in both countries, that there are no costs associated with transporting the goods between countries, that labour can move freely within a country between industries, and that there is perfect competition (characteristics of perfect competition include perfectly efficient allocation of productive resources in an idealized free market). Ricardo’s theory of comparative advantage also assumes that labour and capital cannot move between countries.

Generally, gains described by this theory are considered static: “one-shot” gains from the comparative advantage in a particular sector until new circumstances arise that change the comparative advantage. Over the years there have been refinements to Ricardo’s original

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theory complicating his assumptions and attempting to make the theory more dynamic by taking into account change of circumstances.

The most prominent tweak of Ricardo’s theory is the Heckscher-Ohlin model of international trade developed in the 1920s. The Heckscher-Ohlin model attempts to address the issue of multiple factors of production (labour and capital) which determine a country’s comparative advantage. The starting premise of the model is that different countries are abundant in different factors of production. As such, the theory derived from this model (the Heckscher-Ohlin theorem or Factor Proportions Hypothesis) is that countries will export goods that more intensively use its most abundant factor of production, and import goods that more intensively use its scarce factors. Like Ricardo’s theory of comparative advantage, the Heckscher-Ohlin theorem is based on a model of two countries trading two products; the variation is the Heckscher-Ohlin model takes into account two factors of production, labour and capital, instead of one. Also like Ricardo, this model’s assumes that labour can move freely within a country between industries, that there is full employment and perfect competition within each country, that labour (and capital) do not move between the two countries, and that there are no costs associated with transporting the goods between countries. This model differs than Ricardo’s comparative advantage in that it assumes that technology is equal between countries, and therefore the same product in both countries could be made with the same level of capital and labour in either country. Since its original inception, propositions have been made to both theoretically supplement⁴ and empirically refute⁵ the Heckscher-Ohlin model.

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⁴The most common derivations from the Heckscher-Ohlin model are the following:
  1. **Factor Price Equalization Theorem**: assumes that because of perfect competition and *constant returns to scale* (that output increases by the same proportion of the increase in input), prices of the output goods will be equalized between countries as they move to free trade, and therefore concludes that the prices of the factors of production will also be equalized between countries.
  2. **Rybczynski Theorem**: assumes that there is an increase in a country’s endowment of a factor of production will cause an increase in output of the good which uses that factor intensively, and a decrease in the output of the other good which uses a different factor of production.
  3. **Stolper-Samuelson Theorem**: assumes that there is perfect competition and constant returns to scale, a rise in the relative price of a good will lead to a rise in the price of the factor which is used most intensively in the production of the good, and conversely, to a fall in the price of the other factor.
In response to evidence that the Heckscher-Ohlin model provided little explanatory power for contemporary trading patterns of industrialized countries, the Product Cycle Theory, which focused on manufactured goods in industrialized countries, was devised in the 1960s. This theory focused on countries’, such as the USA, comparative advantage in new product research derived from their great access to financial capital and highly specialized human capital. But by the 1970s, confidence waned with the Product Cycle Theory’s ability to be descriptively accurate as an increasing number of countries gained the financial and human capacity to innovate new products, and capital became increasingly mobile.

Despite the prominence of the theory comparative advantage in international trade theory, with all its variations and modifications, some commentators question the usefulness of the theory through three common advances. First, the theory of comparative advantage and subsequent models do not always empirically reflect what is actually occurring. A model is limited by its assumptions, and those assumptions are most often arguable or problematic. A second critical advance, is that in light of the multitude of products and trading partners, as a theory of product specialization, comparative advantage provides little guidance as to which product a country should specialize in. The argument made is that each different model of analysis of comparative advantage makes very different and even sometimes incompatible assumptions. Another argument to this effect is that within each model exist multiple solutions as to the assignment of comparative advantage among countries.

The final advance made against comparative advantage is that it only addresses static gains. What the theory does not account for are the distinct technological and organizational capabilities of trading partners, especially in light of the fact that these

5 The most prominent refutation of the Heckscher-Ohlin theorem is the Leontief paradox, which found that the U.S. (an economy relatively abundant in capital and scarce in labor) exported labor-intensive commodities and imported capital-intensive commodities.

6 The Product Cycle Theory outlines the following sequential stages:
1. **New product stage**: The product is produced and consumed in the US. No trade takes place.
2. **Maturing product stage**: mass-production techniques are developed and foreign demand (in developed countries) expands. At this stage the US exports the product to other developed countries.
3. **Standardized product stage**: Production moves to developing countries, which then export the product to developed countries.
capabilities are open to improvement and change. According to this critique, despite variations to Ricardo’s theory, comparative advantage theory does not inform us as to how the acquisition of new technologies and capabilities by some countries, and failure by others to acquire them, would affect comparative advantage.

B. The Relationship Between Theories of Trade and Development

The latter two critiques of the theory of comparative advantage stem from the premise that trade should be understood within the context of change whether it be technological, social, political or otherwise. This brings international trade theory alongside theories of development, in that theories of development advance prescriptions as to how to change social, economic, and political structures to advance a community’s welfare (however defined). In light of these critiques of international trade, some commentators have concluded that there remains to be constructed robust theories outlining the relationship between trade and development.\(^7\)

In the examinations of the relationship between trade and development, four ambiguities arise. The first is the relationship between free trade and economic growth. Economists have debated for decades about whether and how free trade generates growth. Even when there is a correlation between so-called open trade policies and economic growth, many point out that the link between the policies and growth are not necessarily clear; understanding what causes economic growth when there is an open trade policy remains a matter of argument.\(^8\)

The second ambiguity is the relationship between trade generated growth and poverty reduction. Assuming an open trade policy generates economic growth, it is theoretically

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and empirically unclear what are the links between trade-generated growth and resource allocation or income distribution.9

An increasingly common argument, however, is that trade may or may not create static gains in terms of economic growth, but what is more important for purposes of development is that trade generates “dynamic gains.” Meier considers John Stuart Mill to have made one of the earliest arguments to this end in 1848.10 Mill used Ricardo’s theory of comparative advantage as his premise, and argued that the primary gains made from trade are not commercial but rather the indirect gains from the exchange of technologies and ideas.11 Recently, there has been renewed interest in this notion and increased exploration as to the correlation between open trade policies and dynamic gains.12 Even if there is a correlation between trade and dynamic gains, however, what is left unclear is what mechanisms are necessary to ensure there is a transfer of technology and ideas. Furthermore, a problem remains as to how to make certain that the dynamic gains accrued alleviate poverty and promote development.

The third ambiguity is the affect of the WTO upon developing countries. Scholars are examining how the WTO affects developing countries; some suggest that the WTO actually hinders opportunities to improve peoples’ lives in developing countries.13 The broad question being asked is how does the WTO affects poorer communities’ welfare. Specific

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9 Rodrik, ibid. at 12-14; Trebilcock & Howse, supra note 3 at 485; Meier, supra note 7 at 179

10 Meier, ibid. at 24.


examinations include questioning whether the WTO generates economic growth and development\textsuperscript{14} and examining how the WTO affects domestic social, economic, and political structures.\textsuperscript{15}

The final ambiguity is the relationship between international trade institutions and economic theory. Comparative advantage does not explain why international trade law is necessary or why it emerged. Trebilcock and Howse note: “It is important that the history of international trading institutions is not seen as the inevitable result of economic rationality and the triumph of superior economic thought.”\textsuperscript{16} Meir suggests that there is no necessary correlation between international trade institutions and economic theory supposedly providing the institution’s intellectual underpinnings.\textsuperscript{17}

My study engages with this question of the relationship between international trade institutions and economic theory. This historical study suggests that international trade agreements are not simply dictated by policies intended to reduce tariffs or ease the movement of goods as per economic theories of comparative advantage and instead are informed by an untidy variety of development debates and theories.


\textsuperscript{15} See for e.g. Kinda Mohamadieh, Joseph Shaw & Julien De France, The Arab Region and Trade Liberalization Policies (Beirut: Arab NGO Network for Development, 2008).

\textsuperscript{16} Trebilcock & Howse, supra note 3 at 25.

\textsuperscript{17} Meier, supra note 7 at 179.
II. Why History Matters

A. The Orthodox History of Modern Trade Law

The history of the GATT and WTO is an often-told story. In English-language, Western texts, the common history of the WTO starts with the ambitious International Trade Organization (ITO) collapsing in 1950 before ever coming to existence as a result of US Congress’s unwillingness to approve the new trade organization. What remained was the GATT, originally intended to be only one part of the institutional structure of the ITO. In order to pave the way for ratification and enforcement of the broader umbrella of the ITO, negotiating states ratified the GATT through a Protocol of Provisional Application before they intended to ratify the ITO. With the failure of the ITO, as the story goes, the GATT became the de facto sole multilateral international trade agreement.

The history of the WTO from this point becomes one of the “evolution” of the WTO from the GATT. It is a story in which the GATT was a political forum populated mostly by diplomats and the WTO is a more structured institution populated mostly by lawyers with its dispute

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19 55 U.N.T.S. 308 (1947)

settlement system, avenues of appeal, and formalized mechanisms of enforcement – a “politics to law” narrative. Some commentators celebrate this turn to law as a means to overcome power-politics, whereas others are concerned with trade relations being ruled by a technocracy.

It is repeatedly emphasized that the history of the GATT is one in which developing countries originally had a very little role to play. The common assumption is that the GATT emerged from US-UK negotiations (the Atlantic Charter) and that the GATT’s political structure was an efficient “club model of cooperation” reflecting the interests of the small number of like-minded, trade ministers who were from rich countries. Negotiators and scholars, from the global North and South, often present the Uruguay Round as the moment that developing countries first considered the GATT relevant to their economies and took an active interest in the GATT. Because members within this elite club fundamentally


24 See for e.g. Matsushta et al, supra note 18 at 765; Trebilcock & Howse, supra note 3 at 470; van den Bossche, supra note 18 at 694; Gallagher, supra note 18 at 3-4; Lowenfeld, supra note 18 at 68; Julio A. Lacarte, “Trade as a Guarantor of Peace Liberty and Security - The Role of Peace in the Bretton Woods Institutions” (2004-2005) 20 Am. U. Int’l L. Rev. 1127 at 1131.


26 See for e.g. Colleen Hamilton & John Whalley, “Coalitions in the Uruguay Round” (1989) 125 Weltwirtschaftliches Archiv 547; Rubens Ricupero, “Integration of Developing Countries into the Multilateral
agreed on how international trade should be regulated, disputes were easily resolved politically and diplomatically. The agreement between the small numbers of rich, Western states is referred to as the political economy of “embedded liberalism” – the compromise by the post-War powers to balance domestic economic stability and avoid destructive “protectionist” policies.27

The way the story continues is that as GATT membership grew over the years and the world economy changed and became more integrated, it became too unruly to maintain the regulation of trade through political and diplomatic means. The agreed upon notions of “embedded liberalism” and efficient club nature of the GATT was no longer workable under these new conditions. With the remarkable increase in developing country membership in the GATT, disparities in power became more acute. Moreover, the GATT was considered to have certain institutional “birth-defects” which hindered its ability to function coherently.28

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28 According to Jackson, the “birth defects” were:

1. lack of charter granting the GATT legal personality and establishing its procedures and organizational structure;

2. the fact that the GATT had only “provisional” application;

3. the fact that the Protocol of Provisional Application contained provisions enabling GATT contracting parties to maintain legislation that was in force on accession to the GATT and was inconsistent with the GATT (“grandfather clauses”);

4. ambiguity and confusion about the GATT’s authority, decision-making ability and legal status.

So, according to the orthodox history, the end of the Uruguay Round of GATT negotiations in 1994 created the WTO that addressed the shortcomings of the GATT.29

**B. The Problem With the Orthodox Story**

One critique of this orthodox historical account is against the assumption that the developing countries played an extremely minor role in the GATT. These countries are often considered to be exceptions to the trading system even though developing countries make-up the majority of WTO membership. It is commonly argued that developing countries need to become integrated into the world market by becoming less exceptional, adhering to what is considered the normal/core elements of the trade regime, and increasing WTO participation through technical assistance programs.30

The emphasis that developing countries had little role to play in the life of the GATT is misplaced considering that much has been written about the role of developing countries in negotiations of the GATT from the 1960s through to the end of the Uruguay Round in 1994.31 The GATT was only a small “club” for its first “decade” from 1948-1959.32 Recent

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29 See for e.g. Raymond Vernon, “World Trade Organization: A New Stage in International Trade and Development” (1995) 36 Harv. Int’l. L. J. 329 (comparing the ITO to the WTO from the perspective of US interests concluding that the WTO is an outgrowth of the GATT and not the ITO)


studies examine how Third World countries played a central, (and not necessarily exceptional) role in shaping the GATT.33 Even with these discussions of the role of developing countries during approximately three decades of GATT, some assume that these countries were irrelevant because they consider developing countries to have always been exceptions to the norm of the trade regime and sought to use UNCTAD as a negotiating forum.34

Not only does orthodox history marginalize the role of developing countries in the GATT but it also presents a history of modern trade law that is narrow in space and time. First on temporality: even those contemporary textbook histories that take a historical perspective of international trade law before the post-war era do so from the perspective of the GATT by noting the history of GATT doctrines in previous centuries.35 In this way, the GATT acts as the historical centre-point for modern international trade law in that international trade agreements and doctrines are either pre-GATT or post-GATT. A GATT-centric account has obscured the fact that modern trade law has its origins at the end of the 19th century within the context of imperialism – a context most relevant to developing countries. Second on spatiality: this version of trade law has done away with the appreciating the role of multilateral trade institutions such as UNCTAD and international commodity agreement in the regulation of international trade for several decades – agreements for which

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33 See for e.g. Faizel Ismail, “Rediscovering the Role of Developing Countries in GATT before the Doha Round” (2008) 1 Law and Development Rev. 50, online: <http://www.bepress.com/lrd/vol1/iss1/art4/>.


development was a central concern. Focusing on sugar allows us to augment the history of trade law.

III. History of Sugar

Sugar is the rare commodity that has been addressed by the majority of multilateral trade agreements starting from the modern colonial era until today.36 The history of contemporary multilateral trade agreements starts in the late 19th century, but sugar has been traded for thousands of years.37 For most of its history, sugar in the human diet was a luxury that came in the form of sucrose extracted from sugar cane.38 Only in the 19th century did sugar beet become a competitor to sugar cane. And only starting in the 1970s did sucrose start losing out to high fructose corn syrup and artificial sweeteners that dominate the contemporary Western diet.39

It is thought that Arab traders brought sugar from where it grew as a native grass in India via Persia. They were the first to introduce sugar to the European palate as the Umayyad Empire expanded into Europe through Spain and Sicily during the 7th and 8th centuries B.C.E.40 Later, crusaders established sugar cane plantations in the Levant and Mesopotamia, and brought news of what was considered an exotic spice from the Orient. European

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37 Historians often consider the commencement of WWI in 1914 as the end of the 19th century. See Eric Hobsbawm, The Age of Empire, 1875-1914 (New York: Pantheon Books, 1987).

38 I am referencing sucrose throughout this study when I discuss “sugar” unless otherwise noted.


nobility then started to incorporate sugar as a luxurious additive elevating the flavour of food and forming part of the stock for apothecaries. By 1440, sugar began replacing honey in the diet of European nobility. Braudel notes that in 1544 there was a German saying: “Zucker verderbt keine Speis” (sugar spoils no dish).

Sugar first came to the “New World” on Columbus’s second voyage in 1493. This set the foundation for centuries of African slave labour maintaining sugar cane plantations in the Americas. During the 17th and 18th centuries, European consumption of sugar increased and the price of sugar in Europe decreased. Sugar’s change of status from luxury to everyday item is marked by the “hot beverage” revolution in the mid 17th century when the French and British acquired a voracious taste for coffee, tea, and cocoa. Mintz, in his seminal anthropological study of the role that sugar production and consumption played in structuring of the world’s political economy, notes that the British were the one of the first to move away from a starch-rich diet towards a sugar-rich diet. By the end of the 18th century sugar was a staple in Britain as many cups of sweet tea were incorporated into the diets of workers, providing “calorie-laden stimulant that warms the body and blunts the

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44 Sugar was what was part of the “Columbian Exchange” where a large variety of plants, animals, foods, human populations, communicable diseases, and ideas between the Eastern and Western hemispheres occurred after 1492 which greatly affected ecological conditions. See Alfred W. Crosby, Jr., The Columbian Exchange; Biological And Cultural Consequences Of 1492 (Westport, Conn.: Greenwood, 1972).


pangs of hunger.” Mintz notes that this change in diet coincides with the industrial revolution and that “this transformation exemplifies one sort of modernization.”

According to Mintz, however, it is not entirely clear whether the industrial revolution caused the dietary transformation, or if changing gastronomical preferences facilitated fundamental industrial and social changes in British society.

As a widely desired commodity, sugar is central to the colonial history of the formation of many states and territories such as Hawaii, Louisiana, Puerto Rico, Brazil, Cuba, Haiti, Indonesia, India, Taiwan, and the Philippines. Some consider that the desire for sugar was a driving force of imperial expansion. Others think that imperial expansion reduced the price of sugar, enabling popular consumption. Regardless, sugar, along with coffee, tea and cocoa, played an important part in the expansion of the British and other European empires.

Sugar may very well have been central to the history of modern trade law because the nature of sugar production lends itself to competing transnational interests. Sugar cane harvested from the fields must be processed into raw sugar. The mill that processes cane into raw sugar must be close to the fields to ensure the cane does not spoil. One mill would be a centre of power fed by multiple peripheral sugar cane fields. As such, mill owners often constituted a sugar elite within their own country with ties to international capital or were owned by foreign investors. In turn, raw sugar had to be refined. Refineries, where

47 Mintz, supra note 45 at 45, 80

48 Mintz, ibid. 14

49 Ibid.


51 Fernández-Armesto supra note 41 at 181.

52 Galloway, supra note 42 at 1-10.
much of sugar’s economic value was added, were most often located in industrialized countries, thus creating a relationship of dependence and disparity of power between sugar growers and sugar refiners. But this the story of sugar cane in tropical colonies. Sugar beet was grown in the cooler climates of Europe and North America where it was harvested and directly processes into refined sugar.

And so the legal history of sugar provides such a rich analytical entry point in understanding trade and development. Harriet Friedmann, who also considers disparities of global power as a constituting element of trade regimes, argues that relations of world power are underpinned by the political economy of food and agriculture. Food has always been a paramount commodity in international trade forming “webs of connection” between communities affecting the social, cultural, economic, and political foundations of societies. If we define development to be theories and prescriptions as to how to change societal structures to advance a community’s welfare, then it is necessary to understand these webs of connection. As such, I use sugar “as a kind of trace element, tracking the direction of change, revealing the complex intersections of old and new” social, economic, and political structures embedded within and forming international trade institutions.


55 Grew, ibid. at 6.
PART II. INSTITUTIONALIZATION OF INTERNATIONAL TRADE

CHAPTER THREE. THE 1902 BRUSSELS CONVENTION: THE INSTITUTIONALIZATION OF INTERNATIONAL TRADE

I. Introduction

A. Foundations of International Trade Law

It is common to assume that theories of comparative advantage have some relation to contemporary trade law. While at times this may be true, theories of comparative advantage do not clearly explain why international trade law is necessary or why it emerged. Moreover, our understanding of how world trade was first organized by way of a multilateral institution has been obfuscated by the tendency to characterize modern international trade law primarily as a post-World War II phenomenon. If we look, however, to free trade debates of the late 19th century in the UK regarding sugar, we are better able to explain how a multilateral institution came to be a means of regulating international trade.

The International Convention Relative to Bounties on Sugar of 1902 (the “Brussels Convention”) was arguably the earliest modern international trade treaty that established a multilateral institution.1 As such, by examining this early trade treaty I draw out the foundations for contemporary international trade law. In many respects the Brussels Convention created an international trade institution that we would recognize as contemporary in form. The 1902 Brussels Convention, like the WTO, discouraged government subsidization and allowed for countervailing duties to be imposed under

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1 International Convention Relative to Bounties on Sugar, 5 March 1902, Cd. 1535, 191 Parry 56, 1902 For. Rel. 80.
certain circumstances. The Brussels Convention included legal mechanisms regarding economic regulation and dispute settlement also akin to the WTO. Most commentators and negotiators had an economic functionalist conception of the Brussels Convention, similar to the contemporary economic functionalist conceptions, which assumed that the primary purpose of the international trade institution was to simply implement agreed-upon economic principles. There were also similar assumptions in the late 19th and early 20th centuries as there have been in the late 20th and early 21st centuries that an international institution was necessary to mediate state sovereignty in light of world economic interconnectedness.

Despite these similarities, the ideational and social context of the Brussels Convention meant that the implications of the ensuing 1902 trade institution were remarkably different from the 1994 WTO. And the story of sugar outlines what those implications were. I examine the legal structure of the Brussels Convention within the political context and economic discourse of the time juxtaposed against the social dynamics of sugar.

I first observe what the contestation and confluence of ideas regarding trade and development were prevalent during the sugar treaty’s time. Then to understand why a certain idea of free trade prevailed and was institutionalized I discern what interests employed the specific idea of free trade and who stood to benefit from such an idea.

The 1902 sugar treaty was partially a product of British free trade debates during the late 19th century. The differing sides in the mainstream debate did not question the merits of free trade. Instead, they vehemently disagreed over the correct definition of free trade. While these debates were probably the most formative upon the Brussels Convention, the treaty would not have emerged without West Indian colonial governors demanding that London improve the economic conditions of sugar production in the colonies – these

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2 This is under the Agreement on Subsidies and Countervailing Measures.

requests were framed in such a way that we would recognize them as development demands.

The result was that the Brussels Convention organized prevailing theories of free trade and policies of development in such a way that it created a sort of “free trade imperialism” – that is, international law employing free trade doctrine whose function, purpose, and effect was to maintain British imperial power over the West Indies, and ensure that raw material from colonies reached European industries and consumers in the metropole.

The debates surrounding the Brussels Convention were most unusual for the late 19th and early 20th century. From the 1870s to about the 1930s, the majority of economists (often labeled “neoclassical”) focused their research on questions of ensuring the most efficient use of resources and not on questions of growth like previous classical economists. They rarely examined questions of historical and future change. Moreover, the few writings on the economic conditions in the colonies were “apologetic writing attempting to absolve the colonial regimes from responsibility for the state of underdevelopment.” The contemporary relevance of the Brussels Convention debates amplifies how the institutional history provides more contemporary relevance than the orthodox intellectual history of the time.

This chapter establishes why the 1902 Brussels Convention can be considered to be one of the earliest modern multilateral trade institution and the limitations of this premise (Part II). It also examines the different interests surrounding the sugar trade in the world (Part

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4 The term "free trade imperialism" has been used to emphasize the UK's informal imperial expansion from c.1750 to 1850. It was part of an argument critiquing the traditional assumption that this was a period when the British Empire was challenged by dominant ideas of "free trade" and not expanding, see John Gallagher & Ronald Robinson, “The Imperialism of Free Trade” (1953) 6 The Economic History Review 1; Bernard Semmel, The Rise Of Free Trade Imperialism: Classical Political Economy The Empire Of Free Trade And Imperialism, 1750-1850 (Cambridge: Cambridge University Press, 1970). I use the term for a different time period, c. 1850 to 1914, to describe when free trade discourse was used to strengthen the formal British empire. See Geoffrey Drage, The Imperial Organization of Trade (London: Smith Elder & Co., 1911) at 141-142, 184-185, 318 [promoting the 1902 Brussels Sugar Convention as a free trade treaty that protected the UK's imperial interests].

5 Meier, supra note 14 at 39.

6 Ibid.
and the shift in interests and ideas that opened up the path to the formation of the sugar convention (Part IV). Finally, the chapter addresses the effects of the institutionalization of international trade (Part V). It does this by outlining how two dynamics structured the form of the Brussels Convention: the tension between textual assertion and equivocation in the language of the treaty, as well as the tension between the demands of institutional autonomy and state sovereignty. Indeed, contemporary legal scholars consider these tensions to be the defining feature of modern international institutions. This part also provides a legal analysis of how the various interests and ideas were organized and institutionalized in the Brussels Convention. It also outlines how the treaty in turn affected ideas and interests in relation to trade and development.

B. Outline of the Conditions that Led to the Brussels Convention

The first international sugar treaty negotiations began in 1863 and for almost 40 years European nations attempted to conclude a sugar treaty. The negotiations were spurred by the rise of beet sugar production in the 1850s and the sugar crises of the 1880s during which the price of sugar radically dropped. We best gain insight into how the final treaty was negotiated and ratified by noting how shifts in British free trade discourse conjoined with certain theories of free trade and early implicit theories of development. Before delving into the details of how this early trade treaty came about, it is important to preview the formative conditions and protagonists and provide some background.

1. Political Economy of the Sugar Trade

The treaty was the result of negotiations mainly among the UK, Germany Austria-Hungary, and France. The primary conflict was between British sugar cane producers in the West Indies and sugar beet producers in Continental Europe. The treaty’s principal purpose was

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to discourage governments from subsidizing sugar production. Each country had its own competing domestic interests at play and was driven by their own ideologies, which informed the treaty in one way or another.

Thus, we must look at how the transnational conditions of sugar production and ensuing theories of development contributed to the formation of the treaty. The UK was the financial centre of the world’s sugar trade and had the largest number of sugar consumers in the world. There was not, however, a world sugar market as such. Rather, there were a number of more-or-less distinct regional markets. The European market was by far the largest and most internationally influential. The US and its market in the late 19th century would only indirectly influence Europe’s treaties and would not enter into multilateral sugar agreements until after the collapse of the Brussels Convention. Asian countries, with the exception of British India and Dutch Java, would not directly enter European multilateral agreements until the 1930s.

In the late 19th century, a combination of reduced production of sugar cane and sudden drop of sugar prices marked a crisis in both Great Britain and the British West Indies. Sometime between 1881 and 1883 the amount of beet sugar produced in the world surpassed cane sugar for the first time. This coincided with a significant drop in sugar prices in London in 1884-1885 caused by an influx of beet sugar mostly from Germany and Austria-Hungary that was “dumped” onto the British market (meaning that it was surplus

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11 C. Y. Shephard, “The Sugar Industry of the British West Indies and British Guiana with Special Reference to Trinidad” (1929) 5 Economic Geography 149 at 151. Data regarding the production of cane sugar in the 19th century are not entirely accurate and therefore there are different sets of statistics placing the actual date and production output at slightly different amounts. Some commentators consider that beet sugar production rose from 14% of world sugar production in 1853 to 65% in 1900 and surpassed cane sugar production in 1883, see Charles S. Griffin, “The Sugar Industry and Legislation in Europe” (1902) 17 The Quarterly Journal of Economics 1 at 5; E. Muriel Poggi, “The German Sugar Beet Industry” (1930) 6 Economic Geography 81 at 81-82; Chamlin, *ibid.* at 12. Others consider that beet sugar production rose from 10% in 1850 of world sugar production to approximately 60% in 1900 and surpassed cane sugar production in 1881, see Noel Deerr, *The History of Sugar* (London: Chapman and Hall, 1950) vol. 2 at 490-491; Galloway, *supra* note 10 at 132.
sold at less than the cost of production). London prices mattered since the UK was the largest consumer of sugar in the world.

This crisis had been culminating for a variety of reasons since the mid-19th century. Continental Europe had subsidized sugar produced from beets for the purpose of export at the expense of high domestic taxes on sugar. Continental sugar consumers, who paid very high prices especially when compared to the British, were demanding that this staple food be more affordable. Germany and Austria-Hungary’s subsidization system had in effect (since it is not clear how much the policy-makers expected this result) subsidized sugar beet production, which enhanced technological advancements and created incentives for sugar to be produced for the purposes of export. These subsidies were putting a great strain on government treasuries and the governments believed that they had enough of a technological advantage that subsidies, or “bounties” as they were then commonly called, were no longer necessary. France, where Napoleonic ideas of agricultural self-sufficiency were still influential, was navigating between the interests of the rising refiners, ardent agriculturalists, and waning colonialists.

The British West Indies primarily relied on producing, that is harvesting and processing, cane sugar for the purpose of refinement. Historically, it sold most of its sugar to refiners in Great Britain who further processed the sugar for the purpose of consumption. By the latter half of the 19th century, however, West Indian planters (who were mostly white) were economically depressed and were no longer selling their sugar to the British market. Meanwhile, continental European countries were subsidizing sugar production and refining for the purpose of export. Planters blamed this system of subsidies to be the cause of the sugar depression. West Indian planters had been pressing their interests in London but with very little traction until the 1880s.

12 The price of sugar went down by approximately 50% from 1872 to 1884-1885. See Deerr ibid. at 503-505; Galloway, ibid. at 238-239; Chalmin, supra note 9 at 23-24.

13 See for e.g. James Cropper, Relief of West Indian Distress: Shewing the Inefficiency of Protecting Duties on East-India Sugar and Pointing Other Modes of Certain Relief (London: Ellerton & Henderson, 1823).
The failing sugar cane industry in the British West Indies and ensuing social unrest finally pushed the British government to create an international sugar treaty as a way to maintain political control over its sugar colonies and to satisfy the West Indian governors’ desire to improve the local sugar industry. For decades before, London had not been acting against the European bounty system for ideological and economic reasons. The European system resulted in cheap sugar essentially subsidized by continental taxpayers for British consumers and confectioners. For most of the 19th century, since the British consumer benefited from the European bounty system, many politicians saw little reason to respond to the West Indian claims for relief. Furthermore, arguments were made that the UK had very little ideological reason to act against these subsidies for it did not offend any principles of “free trade”. As the argument went, if the UK were to respond to these subsidies with countervailing duties it would offend principles of free trade because it would disrupt the free flow of cheap goods with government action.

West Indian colonial governments, representing planters and British refiners, demanded that a treaty be created disallowing subsidization of sugar production for the purpose of improving their respective industries. West Indian planters thought such a treaty would provide the economic stability necessary to create domestic legal and political structures that would increase capital investment, access to cheap labour, and market access for the purpose of saving their sugar industry. West Indian planters and governors petitions were early precursors to theories of development predating the advent of development as a field in the 1950s.14 To be sure, “development” was not a term used at the time. Nevertheless, if we define “development” to mean prescriptions as to how to change social, economic, and political structures to advance a community’s welfare (however defined),15 then the West Indian demands examined in this chapter can be construed as “development” arguments that led to the creation of the 1902 Brussels Convention.


15 See Chapter One.
When British politicians and bureaucrats were responsive to West Indian concerns it was because they thought that the colonies were an inextricable part of the British Empire. This meant that if the West Indies sugar industry failed, then London would have to bear the cost of the increasing economic and political instability in the West Indies. The British President of the Board of Trade, Gerald Balfour’s argument in the House of Commons as to why the Brussels Sugar Convention is necessary captures this sentiment:

In the case of the [British] sugar-refining industry, even supposing that that industry is altogether squeezed out of existence by the unfair competition to which I have referred, it would be still possible for those who were engaged in it to be gradually absorbed in other occupations. The case of the West Indies is different. We have there to deal, not merely with a section of the population engaged in one among a large number of different industries, but with the condition of whole societies. *What is at stake in the West Indies is the fate of entire communities under the British Crown.* Take away the export trade from the West Indies, and you take away form them the means of maintaining a civilised Government. Of all the exports of the West Indies, in the majority, at all events, of the islands, sugar is by far the most important; so much so that if you were to destroy the sugar industry you would practically destroy the Power of those Governments to raise a revenue or to carry on the work of administration in a proper and efficient manner.\(^{16}\)

The welfare of the workers, a mix of former black slaves and indentured servants primarily from India and China, would be of some concern but mostly in reference to how it affected the British metropole.

Even though there was a socio-economic divide between the industrialized centre and the agricultural periphery, the development implications of this divide should not be understood in the same terms as today. Thinking about the “underdevelopment” (of course,

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a term not used at the time) of the sugar colonies was akin to addressing the needs of a poorer, rural area of Great Britain. Attitudes in London with regard to the British West Indies in the late 19th century were not as Lugard described British Imperialism – a dual mandate of industrial benefit for Europe and progress for the native races of the colonies.\textsuperscript{17} John Stuart Mill's words, when discussing the West Indies, are a more accurate description:

Our West Indian colonies, for example, cannot be regarded as countries with a productive capital of their own...[but are, rather] the place where England finds it convenient to carry on the production of sugar, coffee, and a few other tropical commodities. All the capital employed is English capital; almost all the industry is carried on for English uses; there is little production of anything except for staple commodities and these are sent to England, not to be exchanged for things exported to the colony and consumed by its inhabitants, but to be sold in England for the benefit of the proprietors there. The trade with the West Indies is hardly to be considered an external trade, but more resembles traffic between town and country.\textsuperscript{18}

\textbf{2. Ideational Context}

Discussions in the UK regarding sugar from the 1860s onwards were the most vociferous “free trade” debates since the repeal of the Corn Laws in 1846. The 1902 sugar treaty institutionalized a particular concept of free trade that was the result of this debate. These debates matter because British political economic thought was emerging as the most influential thinking in Europe and US from the mid-19th century onwards.\textsuperscript{19}

After disputes about corn (“corn” being the word for any grain, in this case wheat) in the early 19th century established the dominance of the idea of free trade, by the 1860s, competing interests argued as to whose definition of free trade was most accurate and

\textsuperscript{17} Lord Frederick Lugard, \textit{The Dual Mandate in British Tropical Africa}, 5th ed. (Frank Cass: London, 1965 [1922]).

\textsuperscript{18} John Stuart Mill, \textit{Principles of Political Economy} (1848) at Book III, Ch. XXV, para. 17.

\textsuperscript{19} Lars Magnusson, \textit{The Tradition of Free Trade} (London: Routledge, 2004) at 3.
desirable. By the latter half of the 19th century free trade discourse had seeped through the general British consciousness and "by 1879 Free Trade principles in the United Kingdom were adopted, in some sections of the government with the full fervour of a religion let alone policy."20 The intellectual and political heroes of free trade of the early 19th century were treated by most as the foundations for what was called “free trade”.21 As such, the parties argued as to who was the true inheritor of these foundational thinkers.

The sugar debates for and against the Brussels Convention continued the trend of linking arguments for “free trade” with Adam Smith; both sides sought to legitimize their position as the true Smithian definition of “free trade”. The unifying idea was that “free trade” was generally defined as the policy of maintaining as little government involvement as possible in the import and export of goods. The dividing ideological question was whether countervailing duties and other government actions responding to foreign subsidies were within this definition of “free trade”.

One group, who would be represented by the Anti-Bounty League, argued that countervailing duties were necessary to equalize the unfair advantage provided to sugar producers who received subsidies from their government. Another group, represented by the Cobden Club, thought that if governments subsidized their sugar industry that was their folly and that countervailing duties were a dangerous intervention by the government into the market.

The Anti-Bounty League employed its free trade concept to buttress British imperialism, whereas the Cobden Club employed its free trade concept to scuttle British imperialism. Imperialism was at the heart of the matter in light of London’s concern over a “Negro uprising” after the black community rebellion in Jamaica in 1865 and worker revolts across West Indian sugar plantations from 1884 to 1902. Those supporting the Brussels Convention were deemed to be outdated “protectionists” or “imperialists” by advocates


against the treaty and later historians. 22 What is rarely noted, however, is that both those for or against the Brussels Convention considered themselves free traders and wrangled over what “free trade” meant.

Marx, like his British contemporaries, also accepted free trade as a desirable goal. 23 To Marx, however, the doctrine of free trade had little explanatory power:

we are told that free trade would create an international division of labor, and thereby give to each country the production which is most in harmony with its natural advantage. You believe, perhaps, gentlemen, that the production of coffee and sugar is the natural destiny of the West Indies. Two centuries ago, nature, which does not trouble herself about commerce, had planted neither sugar-cane nor coffee trees there. And it may be that in less than half a century you will find there neither coffee nor sugar, for the East Indies, by means of cheaper production, have already successfully combated this alleged natural destiny of the West Indies. ...

If the free-traders cannot understand how one nation can grow rich at the expense of another, we need not wonder, since these same gentlemen also refuse to understand how within one country one class can enrich itself at the expense of another. 24

What is remarkable is that in 1848, Marx used sugar and the West Indies as an example to make his point that free trade doctrine was limited in explaining why some countries were more adept at trading certain commodities over others. Therefore, he thought it necessary

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22 See for e.g. Beachey, ibid. at 54.

23 “The Repeal of the Corn Laws in England is the greatest triumph of free trade in the 19th century. In every country where manufacturers talk of free trade, they have in mind chiefly free trade in corn and raw materials in general. To impose protective duties on foreign corn is infamous, it is to speculate on the famine of peoples.” To Marx, however, free trade was a necessary revolutionary force because it destroys conservative protectionist policies and “breaks up old nationalities and pushes the antagonism of the proletariat and the bourgeoisie to the extreme point.” Karl Marx, On the Question of Free Trade (1848), online: <http://www.marxists.org/archive/marx/works/1848/01/09ft.htm>.

24 Ibid.
to understand how some countries established comparative advantage and benefited from free trade and why others did not. To Marx and some contemporary scholars, “comparative advantage can be created as well as discovered.”

This suggests that competing economic and political stakes are behind different policies and theories of free trade. At first blush one might recognize the competing definitions of “free trade” of the late 19th century as being similar to concepts in contemporary discussions. But the historical context of those debates between the Anti-Bounty League and Cobden Club requires closer scrutiny in order to understand what “free trade” meant at the time, who employed respective definitions, and to what end.

The final point worth exploring is why protagonists thought a multilateral trade institution, which was an extremely unique concept at the time, was thought to be necessary. One reason was the belief that an international institution was necessary to mediate state sovereignty in light of world economic interconnectedness. But what made an international institution seem absolutely necessary were theories of development that required a treaty be enforced by an international institution that would affect domestic laws.

Many Continental policy-makers were informed by an “infant industries” theory of development expounded by Alexander Hamilton26 and commonly attributed to Freidrich List.27 The Continental European sugar industry was, however, now mature, and governments, after nearly a century of subsidizing their domestic sugar industry, needed a mechanism to give them leverage against politically powerful domestic sugar producers; the Brussels Convention ensured access to the lucrative UK sugar-consuming market only if subsidization ceased. Thus, sugar producers could be weaned off government subsidization, and ensure they have access to the UK market without having to compete

26 Alexander Hamilton, Reports of the Secretary of the Treasury on the Subject of Manufactures (1791).
with sugar producers from other countries are who were subsidized by their respective governments.

During the sugar crisis in the late 19th century, West Indian colonial governors did not petition London for subsidization – this contravened their political economic sensibilities. They thought subsidies destabilized the price of sugar and sought to abolish them in continental Europe through a treaty in order to encourage private investment in the West Indian sugar industry. The governors considered private investment over public subsidization a more reliable means of improving their industry. This theory of development also limited decision-makers’ ability to assess the treaty’s effects. In hindsight, the treaty was detrimental to the West Indies and reduced London’s control over its colonies. Nevertheless, colonial governors and the British government, at the time of the treaty’s signing and the few years that followed had continued faith in the ideas behind the treaty.

II. Modern Treaty/Contemporary Precursor

The majority of historical examinations of the Brussels Convention consider it to be an early incarnation of an international commodity agreement. The treaty was unique in form, according to this view, because it attempted to manage the price of sugar by regulating domestic subsidies. Commentators also regard the treaty as not being unique in its effect since it foreshadowed international commodity agreements’ dubious effect on commodity prices.


29 Even commentators that liken the Brussels Convention to the GATT and WTO sometimes make this point. See for e.g. Pigman, supra note 8 at 199-201.
To be sure, there was a rise in the price of sugar soon after the signing of the treaty. Scholars have debates about whether the cause of this increase in price was the treaty, or ecological causes that affected sugar production such as drought or crop failure. Whatever the treaty’s affect on prices, this focus on commodity price misses the particular circumstances surrounding the creation of the Brussels Convention and the treaty’s novel way of organizing international economic life. The 1902 Brussels Convention was most innovative and unique for its time, preceding the moment in public international legal thinking when in 1918, as described by David Kennedy, the “move to institutions” became the assumed approach to organize international life.

The Brussels Convention may have very well set down the path for subsequent international commodity agreements. But unlike ICAs, its purpose was to discourage subsidies for reasons of economic efficiency and perceptions of fairness as much as (if not more than) it was about stabilizing or raising the price of sugar.

It also foreshadowed the institutional mechanisms of the GATT and WTO. The Brussels Convention contains a number of mechanisms quite familiar to contemporary trade agreements. The treaty established a “most favoured nation” clause (Art. V), regulated against subsidies (or “bounties”) (Art. I), allowed for countervailing duties and retaliation (Art. IV, the “penalty clause”), and addresses matters of “like” or “analogous” products (Art. I).

Moreover, the treaty established a permanent organization structure that not only held administrative duties of collecting and publicizing information, but also functioned to resolve disputes and to ensure adherence to the agreement (Art. VII). A Permanent Commission was composed of delegates of the Contracting States, each member with one

30 Galloway, supra note 10 at 134.


32 David Kennedy, “The Move to Institutions” (1987) 8 Cardozo Law Review 841. This is not to suggest that Kennedy provides a definite historical schematic. This chapter provides an account of early international institutionalization that is intended to be examined alongside other similar moments.
vote. The Permanent Commission was aided by a Permanent Bureau, which addressed matters of collecting and disseminating technical information. The treaty even made provision for how states were to ensure revenue officers monitored sugar factories and refineries (Art. II).

To some, the Permanent Commission’s unique and pervasive functions was undue interference with national sovereignty.\(^{33}\) Nonetheless, it is likely that these new international legal mechanisms stemmed from the acute feeling of interests intertwining on a global scale. As one member of the German Reichstag stated during debates regarding the Brussels Convention:

> In answer to the question raised – as to why we should allow the foreigner to interfere in German tariff legislation – he is not interfering with us any more than we are with his; every Tariff and Commercial Treaty binds both parties, and cannot be looked upon as undue interference of a third Party.\(^ {34}\)

Thus, a relational concept of sovereignty underlay the Brussels Convention. This was not a notion of sovereignty whose premise was that each state had absolute political and economic control over its territory. Instead, it was an understanding whose starting assumption was that the world was already interconnected, and thus sovereignty mediated between state’s political power and the necessities of an interconnected world economy. This conception of sovereignty is similar to contemporary considerations of sovereignty in light an assumed interconnectedness between states via processes of “globalization”.\(^ {35}\)

The Permanent Commission collected information from every country regarding the details of industrial output and unique systems of domestic regulation, accounting for different

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\(^{33}\) Moura Filho, *supra* note 31 at 12-13, 21.

\(^{34}\) H.C., UK., “Enclosure to No. 70, Memorandum on Debate in Reichstag on the Abolition of Sugar Bounties” Cd. 1013 (1902) 58.

grades and colours of sugar. This information was thought to be necessary to calculate the amount that sugar was subsidized and the appropriate countervailing duty. It would not have been able to establish this international system of economic management without the sugar-related innovations in statistics in late 19th century. During this time a great number of statistical firms arose in Europe which collected data for the purpose of predicting future trends in the sugar market. Franz Otto Licht established one of the first German sugar statistical firms which remains today as the one of the most influential publishers of sugar reports and journals; his son, Friedrich Otto Licht took over in 1885 and was one of the expert authors of a report to the World Economic Conference providing recommendations to the League of Nations as to how to regulate the international sugar market. F.O. Licht’s influential work may have been the driving force behind Germany’s suggestion that the Permanent Bureau establish a uniform system of collecting statistics. This parallels Foucault’s account of how the technical science of statistics paved the way to modern modes of governmentality.

Sugar production has always been linked to the development of new technologies. W. Arthur Lewis, renowned development economist and St. Lucian, commented that sugar was the only tropical crop to experience a scientific revolution before 1914. This phenomenon likely correlates to the fact that sugar was also the only tropical commodity produced on a


38 Cd. 2094 (1904) No.15


large scale in Europe. There is evidence that West Indian and European sugar producers were informed of each other’s respective innovations especially as experts traveled between Europe and the sugar colonies. West Indian planters, however, were frustrated by the European system of sugar subsidies which they believed enhanced industrial efficiency and unfairly reduced the price of sugar. The developed-developing divide in this trade and development story is different than contemporary concerns. The interests and conditions of local workers were only a tertiary concern subsumed by colonial interests related to white planters and domestic European markets.

The other technological innovation around the time of the Brussels Convention of 1902 was the development of factory-processed food, high in sugar, quickly prepared, and quickly eaten. That is, sugar consumption trends and not only sugar production conditions created a need for a multilateral institution. During the late-19th century into the early 20th century, sugar claimed a central role in US cookbooks. The increase of sugar consumption in Europe was part of the broader trend from c.1850 to 1913 when demand for staple food (sugar by now was considered a staple) dramatically increased, and transportation and production costs radically decreased. This multilateral sugar trade agreement emerged in a time when sugar, industry, and commerce intertwined in a way that became a mainstay in the Western diet exemplified by the 1904 World’s Fair in St. Louis, Missouri. Abbott tells the story of how the Fair itself may have changed the way the


44 Galloway, supra note 10 at 1-10.

Western world ate and snacked. The Fair made eating on-the-go popular and acceptable, which until then had been considered vulgar. Dr. Pepper, Coca-cola, ginger ale, iced tea, and Hines Root Beer were showcased. Ice cream was for one of the first times, placed in a cone. Jell-O was given away for free along with recipes in order to allow people to prepare this fast food at home. Forerunners to popsicles and cotton candy were introduced at the fair.  

III. Geography of Intertwining Interests

A. Rise of the Continental European Sugar Beet

Traces of the changes that would lead to the Brussels Convention start in the early 16th century when European agriculturalists first discovered that beet contained sugar. It was not until 1747, when a Berlin professor of chemistry Andreas Sigismund Marggraf, succeeded in extracting sugar from a beet, that this knowledge was put to use. Franz Karl Achard, Marggraf’s student, applied this method with the financial backing of the King Friedrich Wilhelm III of Prussia and set up a sugar beet factory in Cunern, Silesia in 1801. Interest in Archard’s work quickly spread across Europe, especially to France and the Netherlands.

During the time of the Napoleonic Wars (c. 1800-1815), the UK’s naval blockade and France’s embargo of goods cut off continental Europe’s supply of cane sugar (which mostly came from Cuba, Brazil, and the West Indies). By this time, sugar had become a mainstay in the common French diet – in 1792 crowds in Paris rioted to protest the increased cost of sugar. Napoleon, to ensure a domestic source of sugar, invested heavily in the expanding


the continental European sugar beet industry. Moreover, Haiti’s slave revolt and independence in 1791 cut off France’s largest source of sugar cane (and catapulted Cuba’s sugar industry as French technicians fled to Cuba).\textsuperscript{49} According to Fraginals, the French state “organized the costly infrastructure of the beet sugar industry, trained technical cadres, engaged in research, made surveys, collected information and, above all, sought to interrelate interests. The schools inaugurated under Napoleon in 1812 had by 1817 shown positive results in the training of middle-level personnel. Their students and teachers were far more knowledgeable than the ‘sugar masters’ employed in cane production in the Caribbean islands.”\textsuperscript{50}

At the end of the Napoleonic War in 1815, cheaper sugar from sugar cane flowed back into continental Europe, causing the sugar beet industry to collapse. However, France retained a unique position in the sugar trade since its source of sugar was both its domestic sugar beet and French colonial cane sugar from the Caribbean and Indian Ocean. Within France were competing interests between colonial and shipping interests that defended colonial sugar and agricultural and industrial interests that defended domestic sugar. During the Napoleonic Wars, France’s colonial holdings were diminished which also reduced the influence of colonialists in France. By 1830, France’s remaining sugar producing colonies, Guadeloupe, Martinique and Reunion, could not keep up with French sugar consumption. Therefore, as France’s colonial holdings in the Caribbean dwindled and the subsidized domestic sugar industry grew, it was easier for the domestic sugar beet growers to ensure France’s foreign policies reflected their interests. This meant that after the end of the Napoleonic war during the first half of the 19\textsuperscript{th} century, France continued to subsidize domestic sugar beet agriculture and industry, provided some protection to French colonial sugar, and established high tariff barriers against cheaper sugar from Cuba and Brazil.\textsuperscript{51}

\textsuperscript{49} Abbott, \textit{supra} note 46 at 270-340

\textsuperscript{50} Fraginals, \textit{supra} note 47 at 21-22.

\textsuperscript{51} Stein, \textit{supra} note 48 at 50, 88-89; Fraginals, \textit{supra} note 47 at 22;
Certain agricultural elements also influenced the development of sugar beet production in continental Europe. Improvements in Russian agriculture had increased the yield in wheat, which was sent to Europe. This reduced the price of wheat which was detrimental to continental wheat farmers. The inclusion of beet into crop rotation not only provided farmers relief from relying on devalued wheat and cereals, but it also enriched the yield of other crops. The byproduct of beet harvested for the purpose of sugar extraction provided valuable feed for cattle during a time when animal husbandry was more lucrative than growing cereals.52

French consumption never came close to the British. Mintz notes that “in 1775, gross British sugar consumption was two and one-half times that of the French when the French population may have been that of England and Wales.”53 This pattern of consumption continued through to the 19th century making Britain the largest market for sugar in the world and major refining centres thereby making it the central influence on the global sugar trade.54

B. USA, Cuba, Brazil

In the mid-19th century, Cuba and Brazil were the largest producers of cane sugar in the world.55 Despite this fact, however, sugar from Cuba and Brazil made little headway into the UK and continental Europe, the world's largest sugar consumers. Cuban and Brazilian cane sugar had little presence in continental Europe for several interrelated reasons.

European countries, such as France and Germany, essentially kept out foreign sugar through their respective systems of high tariffs and subsidies. These policies also allowed for continued investment and innovation into beet sugar extracting and harvesting


53 Mintz, supra note 43 at 189.

54 Chalmin, supra note 9 at 18-22; 47-67; Galloway, supra note 10 at 120-142.

55 Mintz, supra note 43 at 36.
technology, so that by the 1870s, sugar beet provided a more efficient way of producing sucrose. This also meant that British consumers’ cheapest source of refined sugar was from Europe.\(^{56}\)

When the UK abolished all duties on imported sugar with the *Sugar Duties Act* in 1846, West Indies plantation owners feared that slave-produced sugar from Cuba and Brazil (and Puerto Rico) would dominate the British and European market because of the perception that slave labour was more economically efficient than wage labour.\(^{57}\) But one other reason Cuban and Brazilian sugar gained little presence in the UK was an influential campaign in the UK to boycott slave-produced sugar.\(^{58}\) In 1807, the UK ended slave trade in its colonies, and by 1834 it abolished slavery in most of its colonies, including the West Indies. Cuba and Brazil, however, were among the last sugar producing countries to abolish slavery (1886 in Cuba and 1888 in Brazil). Also, many British consumers considered quality and taste of Brazilian refined brown sugar, which after 1854 was similarly priced as European sugar, to be one of the most inferior in the world.\(^{59}\)

Even though the UK residents consumed the largest amount of sugar in the world and influenced significantly the patterns of sugar trade around the world, Cuba and Brazil’s sugar production was not detrimentally affected by *de facto* exclusion from the British market. Brazil had preferential trade agreements with Portugal and Germany so that in 1870, 83% of sugar in Portugal was from Brazil and in 1844 approximately one-third of

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sugar in Germany was from Brazil. Besides, in the mid-19th century, the Brazilian sugar industry was starting to give way to a burgeoning production of coffee.\(^\text{60}\)

The US was Cuba’s principal sugar consumer and by 1880, 82% of Cuban sugar went to the US. In 1903, the US granted a newly independent Cuba preferential access to its market; this was not surprising since US businessmen owned the most area of sugar plantations in Cuba.\(^\text{61}\) The US’s main sources of sugar were cane sugar from Louisiana (territory bought from France in 1803),\(^\text{62}\) Hawaii (which it had annexed in 1893 and ended the Hawaiian monarchy, some argue, for the purpose of maintaining its US-owned sugar plantations),\(^\text{63}\) and the Philippines (US-capital developed the sugar industry, and the US government provided preferential access to Filipino sugar after annexing the islands in 1898).\(^\text{64}\) With these preferential agreements and annexations combined with legislation in the 1890s that imposed countervailing duties on subsidized sugar,\(^\text{65}\) the US had developed its own regional sugar market.\(^\text{66}\) As one US economist proudly noted in 1904 in regards to the insulation of the US sugar market from international market influences, “Hamburg no


\(^{64}\) Galloway, *supra* note 10 at 216-217.

\(^{65}\) These were the McKinley Bill 1890, Wilson Bill 1894, and Dingley Bill 1897, see Deerr, *supra* note 11 at at 507-508.

\(^{66}\) Even though the US never participated in the multilateral sugar trade conferences, the US valuation of countervailing duties would later act as a temporary system later to be used by the Brussels Agreement Permanent Commission until the Commission was able to make its own assessment. See U.K., H.C., Findings of the Permanent Commission established under Article VII of the Sugar Convention of 5 March 1902, and Report of the British Delegate, "M. de Favereau to Sir B. Boothby (27 June 1903) encl. in Boothby to Lansdowne (28 June 1903); "M. de Favereau to Sir C. Phipps" (4 July 1903) encl. in "Phipps to Lansdowne" (5 July 1903), Cd. 1632 (1903) at 5-6.
longer fixes the price of sugar in American markets." The US was increasing its appetite for sugar and would not develop its sugar beet industry until the 20th century. Chapter IV examines the relationship between the rise of US power and Cuban sugar that would lead to the formation of the 1937 International Sugar Agreement under the auspices of the League of Nations.

C. West Indies

The 19th century history of sugar denotes a turning point in the relationship between the UK and the West Indies. There had always been tension between West Indian planters, who organized themselves via the colonial legislatures, and the Crown represented by the colonial governor. The competing interests of the Crown, the West Indian planters, newly emancipated black workers, and recent immigration of indentured workers primarily from India and China would inform the UK’s negotiation and eventual accession to the Brussels Convention.

In 1846, the Sugar Duties Act was passed in the UK, which led to the gradual removal of all duties on sugar and ended the protection and preference that West Indians previously enjoyed in the UK. Advocates for “free trade” saw this legislation as a considerable ideological victory. The planters were infuriated by this legislation. They argued that allowing for duty-free slave produced sugar (which was perceived to cost less than free wage-labour produced sugar), would ruin West Indian economies and uphold slavery. These arguments implied that the resulting economic distress would potentially lead to


68 Abbott, supra note 46 at 303.


71 The sugar duties were completely removed in 1874. See Beachey, supra note 20 at 44.
violence from recently emancipated slaves who would find themselves destitute.72 West Indian planters were further frustrated by the 1847-1848 commercial crisis in the UK that led to the bankruptcy of several prominent West Indian merchants and banks.73 According to Clinton V. Black, esteemed Jamaican historian, this was a time when:

[s]ome plantations were abandoned because they were so heavily in debt; others were sold for whatever they could fetch; many were bought by attorneys who cut them up into small lots and sold them to Negro peasants... A visitor to the island at this time, the Rev. John King, who came out from Glasgow to inspect the Presbyterian missions, describes how he rode for miles in the country parts over fertile ground which used to be cultivated, but was now lying waste. Trees grew out of the walls and roofs of estate buildings...Everywhere were neglected fields, crumbling buildings, broken fences, silent machinery.74

Another source of socio-economic change was that former slaves began to reorganize their relationship with white planters a decade after the 1834 emancipation of slaves in most of the British Empire. Each particular island had its own consequent system that depended on how much ex-slaves were willing to move away from the plantation and the ensuing relationship if the exslave did decide to move away.75 A commission of enquiry appointed in 1842 under the chairmanship of Lord Stanley concluded that there was a labour shortage in the British West Indies; according to the Lord Stanley this was due to former slaves leaving plantations to buy or rent their own plots of land.76 Lord Bentick chaired

72 See for e.g. Peter J. Questel, An Appeal On Behalf Of The British West Indies As Affected By The Late Proposed Reduction Of Duty On Foreign Sugar (London: Smith, Elder & Co., 1841).


75 Look Lai, ibid. at 3-4.

76 Different islands were affected differently, with Jamaica, Trinidad, and British Guiana experiencing the largest exodus of black workers. See Look Lai, ibid. at 5.
another commission of enquiry appointed in 1848 to investigate the effects of the Sugar Duties Act in the West Indies. He reiterated the problem of labour shortage and called for financial assistance to help planters with an immigration project to bring in workers. This demand of labour would later pull large numbers of indentured servants from China and India which would forever change the landscape of the West Indies.77

Most of the West Indies recovered from the financial crisis by the 1860s except Jamaica.78 Indeed, Jamaica’s exceptional circumstances would eventually affect the relationship between the West Indian sugar colonies and the British Crown. Firstly, the crisis was most acutely felt in Jamaica for ecological reasons. There had been a cholera epidemic in 1850 followed by a small pox epidemic in 1852 combined with a severe drought, all of which ruined many plantations.79 Secondly, there was also a critical labour shortage in Jamaica resulting from a large number of emancipated slaves refusing to work on plantations. There is debate as to whether former slaves refused to work because they wanted to escape the memory of slavery as a reaction to specific post-Emancipation policies that were perceived as unjust or because they had easy access to prosperous land.80 Look Lai, in his study of indentured labour in the West Indies, concludes that “[t]he desire for autonomy and greater control over one’s own destiny, and a willingness to explore all avenues in this direction, would seem to have been a sufficient motivation.”81

Jamaica’s unique circumstances also arose because black workers agitated against proposed immigration policies to bring in indentured workers. The UK offered West Indian sugar colonies financial support to aid in developing immigration programs (as per Lord Bentick’s report). However, economic conditions in Jamaica were so dire and workers’

77 Look Lai also examines the conditions in China and India at the time in order to understand how these workers were “pushed” from their respective domiciles. Look Lai, ibid. at 13-18.

78 Beachey, supra note 20 at 40-44; Look Lai, ibid. at 11


80 Beachey, supra note 20 at 43-44, 105-111; Deerr, supra note 11 at 362-378.

81 Look Lai, supra note 73 at 4.
wages were so low relative to nearby islands, that by 1858, Baptist missionaries, citizen groups, and the small number of black members of legislature were so organized that they kept immigrant workers to a minimum for decades by working against immigration legislation (the 1840s and 1860s being the main period of “multietnic immigration and experimentation” in the region). Their fear was that the influx of indentured servants would weaken black workers’ position by reducing already low wages.\textsuperscript{82}

Most indicative of black workers’ strained relationship with white planters was when, in 1848, black workers were so alarmed over the rumor that the US was asked to annex Jamaica and slavery would be introduced again, that the Governor of Jamaica had to issue a proclamation denying the rumour and emphasizing that there was no possibility of slavery being reinstated.\textsuperscript{83} The workers’ concerns were not unfounded. Some Jamaican political parties (most political parties represented the interest of planters) were so infuriated by the introduction of the \textit{Sugar Duties Act} in 1846 that they suggested that payment of taxes to the UK cease and that the island be annexed to the US.\textsuperscript{84}

In October 1865, political disenfranchisement and economic adversity led to a revolt by the black community in Morant Bay, Jamaica. Governor Eyre declared martial law and British troops were sent in to reclaim order. The rebellion was quelled through the burning of houses, and the flogging and execution of hundreds of men and women without trial. The Members of the Jamaican House Assembly who feared a general “Negro uprising” passed legislation granting more power to the executive. Other islands soon followed suit. The Jamaican rebellion, and later the Confederation Riots in Barbados in 1876 indicated a shift of power in the British West Indies from the colonial legislature to the Crown represented by its governor magnifying the UK’s direct political interest in the West Indies.\textsuperscript{85}

\textsuperscript{82} Look Lai, \textit{ibid}. at 18, 184-187.

\textsuperscript{83} Burns, \textit{supra} note 79 at 653.

\textsuperscript{84} Burns, \textit{ibid}. at 659.

\textsuperscript{85} Richardson, \textit{supra} note 70 at 40; \textit{Cf.} Burns, \textit{ibid}. at 653-654.
This meant that from 1884 to 1902 when riots erupted across the West Indies and workers were secretly burning sugar cane fields in protest, the UK had a direct political hand in trying to maintain order. Richardson, in his study of popular use, modification and contemplation of fire in the Lesser Antilles, notes that the most pivotal cause of the discontent was the massive economic depression caused by the severe drop in sugar cane prices.\textsuperscript{86} He argues that in 1884, subsidized German sugar dumped into the British market caused prices to collapse, creating a depression in the British West Indian islands leading to widespread fires.

The relationship between former slaves and white planters, and the relationship between white planters and British Crown were both overwrought.\textsuperscript{87} Joseph Chamberlain, who became the Secretary of State of Colonies in 1895, had little patience for trying to understand the cause of the riots. Chamberlain’s comments regarding the different riots indicate that he had distaste for this level of disruption when it affected the UK’s economic prosperity. He had little trust in the colonial governments to avoid these “nuisances” and keep its house in order. Chamberlain, like many in London, considered all non-whites in the West Indies as “near savages”. These opinions failed to appreciate the trend of increasing literacy, growing numbers of black and brown professionals, and centrality of English culture within this group of emerging elites. Those in London generally underestimated the increasingly sophisticated, broad-based local groups agitating against local governments to improve their conditions.\textsuperscript{88} Richardson points out the irony that London only had itself to blame because for the most part the islands’ language, population, and infrastructure were colonial creations.\textsuperscript{89} In other words, London only considered how the West Indian colonies benefited the British metropole and not the reverse.

\textsuperscript{86} Richardson, \textit{ibid.} at 9.

\textsuperscript{87} Richardson, \textit{ibid.} at 40, 162

\textsuperscript{88} Richardson, \textit{ibid.} at 123; 181-192.

\textsuperscript{89} Richardson, \textit{ibid.} at 191.
IV. Shifts in Interests and Ideas

Chamberlain was the official instigator for passing the Brussels Convention through British Parliament and his concern for abolishing sugar bounties emerged from the matrix of interests and ideas playing out in London. Multilateral sugar conferences began in 1864 but for decades the British could not come to an agreement with continental Europeans as to how to regulate the international sugar trade. During this time, the British government was in part responding to agitation by the loaf sugar refiners in Britain. However, power dynamics started to shift within the British Empire in 1876.

British West Indian planters aligned their interests alongside the now collapsing British refining industry and starting agitating for the end of the European bounty system. The 1884 crisis, which not only affected the workers and plantation owners in the West Indies but also affected the British refining and confectionary industries, raised the stakes of sugar in the British Empire. The result was that by the late 19th century political and discursive shifts opened up the path to the 1902 Brussels Convention.

A. Coalescing of Interests

There were two types of sugar refining industries in Great Britain in the 19th century. Moist sugar refiners were mostly found in Liverpool and on the River Clyde and used both foreign and colonial cane sugar. Loaf sugar refiners, which constituted a smaller industry than moist sugar refiners, were mostly found in London and Bristol. They preferred cane sugar from places like Java, Havana or Mauritius rather than muscovado cane sugar from the West Indies because they believed that were able to get more yield out of the former. Loaf sugar refiners directly competed with the subsidized, refined beet sugar that came in from Europe and were the most vocal opposition to the European bounty systems when they

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90 Supra note 8.

91 Beachey, supra note 20 at 48-50.

92 For discussion regarding the British sugar refining industry in the 19th century see Chalmin, supra note 9 at 45-67.
first appeared. Most British West Indian sugar went to moist refiners and so West Indians voiced little concern regarding European sugar bounties prior to 1875.

Austria-Hungary and Germany had adopted a novel system of bounties and duties that shielded local industry from foreign competition and stimulated local industry with a subsidy. Sugar producers invested in new technologies that increased the extractable sugar content of beetroot. By the 1870s this bounty system and new technology made Austro-Hungarian and German sugar the cheapest sugar on the world market. The new German and Austro-Hungarian bounty system was later adopted by France in 1884. This lead to a “bounty war” primarily between France and Germany as they competed for access to consumer markets in the US and the UK. The result was also increased use of citizens’ taxes directed towards the bounty system. This strained national treasuries while European consumers paid more and more for sugar. France continued to negotiate the competing interests of its remaining colonial holdings, sugar refiners (who benefited from the new bounty system), sugar producers (who gained little from the new bounty system), and consumers. Sugar consumers throughout Europe demanded lower sugar prices and were frustrated to see British consumers have access to sugar at two to three times less. Some thought that British confectioners benefited to the disadvantage of European consumers.93

By 1876 continental sugar dropped to such a low price that West Indian sugar producers faced significant competition from beet sugar for the first time. By the late 1870s, those who were harmed by the declining price of cane sugar, those who competed with the rising level of imported beet sugar, and those that supported the British West Indian planters found their concerns coalesced around declining sugar prices.94 By 1882 the National Anti-Bounty League formed as an umbrella group representing all those who opposed European sugar bounties and supported what later became the Brussels Convention. The League’s main voice was the West Indian Committee (a lobby group representing West Indian


94 Beachey, supra note 20 at 50-53. For discussions regarding the historical role of West Indian families in English society see Abbott, supra note 46 at 148-156.
planters’ interest in London), members from the sugar refining industry, and “sugar capitalists” (those whose invested capital was at stake) who provided the League with financial assistance. The League explicitly set out in its Constitution that its purpose was to advocate for free trade not protectionism.95

However, to sugar related industries, such as jam, confectionary and biscuit manufacturers the sudden drop in sugar prices was a boon. Academics and politicians that opposed the Brussels Convention were affiliated with what was called the Cobden Club. Opposition also included those that represented the interests of British consumers and the sugar using industries. This group derived its name from the then-deceased Richard Cobden who had led the campaign of “free trade” to repeal the Corn Laws in the early 19th century.96 This was a time when sugar related industries in the UK were gaining wealth and power – the 1890s were when iconic British confectioners Cadbury and Rowntree incorporated and started mass-producing milk chocolate bars.97 According to Deerr, sugar related industries were such a powerful force within British politics at the time that when an international sugar treaty was signed at a conference in 1888 it failed to be ratified by British Parliament because the leader of the opposition raised the interests and concerns of the sugar using industries.98

B. The Linking of West Indian Colonialists’ “Development” Demands to Free Trade Discourse

The 1850s saw the early rise of the sugar beet and development of the European bounty system. It also witnessed the faltering demise of sugar cane and engendered West Indian

95 See infra note 107.


98 Deerr, supra note 11 at 506. The confectioners were also among the principal supporters of the Liberal government which later withdrew from the Brussels Convention, Chamlin, supra note 12 at 41.
popular unrest. By 1883-1884 multiple crises struck in the British Empire – local conditions in the West Indies becomes so dire that local unrest erupted into organized resistance and politically motivated arson; beet sugar production surpassed cane sugar production for the first time in history; sugar prices in London drastically dropped to unprecedented prices as subsidized German and Austrian sugar flooded the English market.

Debates raged in London as to what caused the economic crises and what was to be done. Up until the 1890s, countervailing duties played an ambiguous role in free trade discourse and rarely was a matter of contention in the UK’s trade policy.99 Indeed, economists still debate as to whether countervailing duties in fact discourage government subsidization and whether even the discouragement of subsidization is warranted for the purposes of encouraging international trade.100 In contemporary thinking, the common way of understanding the debate is to divide the positions between “protectionists” who were against foreign bounties and supported countervailing duties versus “free traders” who were not against foreign bounties if it benefited the British consumer and were against countervailing duties.

Looking more closely, however, what can be discerned is that most scholars and parliamentarians during the debates of the late 19th century self-identified as “free traders.” They differed in opinion as to whether foreign subsidization of exports constituted a violation of the principles of “free trade” and whether countervailing duties were warranted against this bounty. West Indian planters, British refiners, British confectioners, and British consumers employed concepts of “free trade” to argue for their desires


regarding sugar. Each of these interests organized into respective political organizations, each claiming that they employed the true concept of free trade.

As one prominent economist noted during the time of the Brussels Convention, historically free traders opposed countervailing duties since they involved what was considered direct government interference in the market. But he went on to comment that in this instance countervailing duties may be necessary because:

the situation [of sugar bounties] was so exceptional that even a convinced free-trader might accede to this drastic mode of ending it. The bounty system was certainly a greater violation of the principle of free-trade than the prohibition or taxation of bounty-fed imports. It was well-nigh certain to topple over sooner or later from its own weight; and, the sooner it was ended, the better.101

Many in the West Indies thought that these “exceptional” bounties detrimentally affected their economic conditions. Planters and governors from British Guiana, Trinidad, Antigua, Barbados, Jamaica, and St. Lucia increased their complaints of economic depression, and petitioned the British government to take action against what they thought was the cause of the depression – the European bounty system.102 This is indicative of an assumption by West Indian planters’ that the bounty system blocked its access to the British consumer market by reducing the price of sugar.

Some had little sympathy to this argument because by the late 19th century, most West Indian sugar was exported to the US. However, what added to the colonialists’ gloom was that when negotiations to establish a preferential trade agreement between the US and


102 U.K., H.C., Correspondence Relating to the Sugar Industry in the West Indies [1894-1897], C. 8359 (1897); Correspondence Relating to the Sugar Conference At Brussels 1901-1902, Cd. 940 (1902).
West Indies failed in 1884-1885, they thought that they no longer had access to the US or UK (that were the major world sugar consuming markets).103

Petitioners also thought that the bounty system diminished confidence in the West Indian sugar industry’s production capacity because it slowed down the flow of capital investment from London, which was thought to be necessary to modernize the colonial sugar industry. In contemporary terms, colonialists made “free trade” claims for a system of countervailing duties to oppose foreign subsidization, alongside “development” arguments for access to more developed markets and capital investment in local industry. The twist is that the “developed” nation that the West Indies was appealing to was the “Mother Country” and so planters and governors couched their interests as part of the UK’s interest.

C. Countervailing Duties Enters Into Free Trade Discourse

According to some sugar historians, the 1887 sugar conference failed to manifest into a treaty because the British delegation refused to include an allowance for a countervailing duty system.104 But around 1896 countervailing duties became a part of free trade thinking for the first time. This shift in discourse coincided with British government beginning to take action to address the depression in the West Indies, on the assumption that the European bounty system was the primary cause.105 The British government had been generally unresponsive to the West Indian colonial governors’ petitions and claims but this changed with the 1902 treaty.

After 1846, West Indian sugar no longer had privileged access to its traditional market in the UK. Planters began to increasingly export their sugar to the US such that by the 1890s, the US was the primary destination for West Indian sugar. This meant that when the US erected its high tariffs and negotiations for a preferential agreement with the West Indies

103 Beachey, supra note 20 at 139-140.
104 Deerr, supra note 11 at 506.
105 U.K., H.C., “Colonial Office to Treasury (Appointment of Royal Commission)” (9 November 1896), Cd. 8359 (1897) 100.
collapsed, West Indian sugar lost its sustaining market. Moreover, the US blocked bounty-fed sugar from Europe. This closure of the US market worried European sugar producers because the UK was considering the use of countervailing duties for the first time with regards to bounty-fed sugar.106

Countervailing duties were thought to be the only mechanisms that would enforce the multilateral treaty and ensure that continental European countries would break out of their pattern of subsidizing sugar production. The argument made was that if the UK enacted countervailing duties, the Continental sugar industry could only be sustained if it was no longer subsidized and/or European consumption significantly increased. By the time the idea of countervailing duties achieved prominence in public British discourse as a legitimate “free trade” policy in 1896, British and West Indian interests that wanted a sugar treaty had also started to gain more influence in London.

Examining debates within Britain between the Anti-Bounty League and the Cobden Club expounds how countervailing duties achieved legitimacy in British free trade discourse.

The ideological argument from those involved in the Anti-Bounty League can be summarized as follows.107 The problem with the bounty system is not that it reduces the price of sugar. Rather the problem is that it does not allow for the “natural” price of sugar because of bounties. “Natural price” means the price dictated by the market without any

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government interference. This is problematic because the purpose of free trade is not simply for consumers to receive goods at the cheapest price, but for consumers to receive goods at the cheapest natural price. Bounties create “unnatural” prices because they are dictated by government policy and are a form of protection; they disallow sugar from outside to enter, exploit the use of national taxes to sell sugar in free trade countries, and create instability in cane sugar industries due to the fear that beet bounties will increase at any moment. Countervailing duties, therefore, compensate for this economic transgression, and restores sugar to its natural price. Countervailing duties do not contravene “most favoured nation” (MFN) clauses in bilateral commercial treaties. This is because the spirit of MFN clauses concerns equality and therefore they do not apply in this instance because the bounties constitute such a disparity of competitive conditions.

This argument and concerns regarding domestic industries is similar to the theory informing GATT Article VI and the WTO Agreement on Subsidies and Countervailing Measures which allow for countervailing duties. The GATT provision is intended to ensure products maintain a “normal value” by preventing subsidization for products intended to be export (Para. 1). Subsidies are prevented by allowing for countervailing duties, which are defined as “a special duty levied for the purpose of offsetting any bounty or subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise” (Para. 3.) The GATT provides for a factual test in which a countervailing duty is authorized only when the “subsidization ... is such as to cause or threatens material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry” (Para. 6(a)).

The Anti-Bounty League considered those that supported the bounties and were against countervailing duties to be protectionists who had misread Adam Smith and Richard Cobden’s work. The League derided members of the Cobden Club for assuming that the role of government was to ensure citizens are left to be free in the market and allow competition to rule everyday life. This laissez faire view, League members argued, ignores

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108 I only highlight GATT Art. VI because the WTO Agreement on Subsidies and Countervailing Measures (SCM) is more complex. The SCM follows a similar general logic regarding countervailing duties.
the role government already plays through laws regarding commerce, factories, education, and land. However, they argued, laissez faire is a policy of government inaction and does not necessarily equate with free trade.

This argument mirrors the critique of the idea of a self-regulating market by Polanyi and some American legal realists. The early US legal progressives (such as Oliver Wendell Holmes, Jr.) and early legal realists, contemporaries of the Anti-Bounty League, provided an account of the market that outlined how the state always played a regulatory role in its relationship to the market. They showed that the state enacted the laws which determined, whether through action or inaction, how wealth and power would be distributed through the market.\textsuperscript{109} This also parallels arguments that the regulation of domestic markets is inextricable from, but does not necessarily determine how, international trade should be internationally organized.\textsuperscript{110}

The Cobden Club argument is as follows.\textsuperscript{111} Countervailing duties are against principles of free trade mainly because they demand government intervention in the market. Much like arguments that would inform neoliberal thought,\textsuperscript{112} they argued that this was problematic because they assumed that the government is ill-equipped to regulate the market. They also thought that MFN clauses were a paramount concept in free trade; thus because

\begin{footnotesize}
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\item[\textsuperscript{109}] See for e.g. Oliver Wendell Holmes, “Privilege, Malice, and Intent” (1894) 8 Harv. L. Rev. 1; Roscoe Pound, “Liberty of Contract” (1909) 18 Yale L.J. 454; Walter Wheeler Cook, “Privileges of Labor Unions in the Struggle for Life” (1918) 27 Yale L.J. 779; Robert Hale “Coercion and Distribution in a Supposedly Non-Coercive State” (1923) 38 Pol. Sci. Quart. 470 (1923); Morris Cohen, “Property and Sovereignty” (1927) 13 Cornell L. Quart. 8.

\item[\textsuperscript{110}] A most prescient argument at the time, though not published with reference to the Anti-Bounty League was L.S. Amery, \textit{The Fundamental Fallacies of Free Trade: Four Addresses on the Logical Groundwork of the Free Trade Theory} (London: Love, 1908). For contemporary argument see for e.g. John Ruggie, “At Home Abroad, Abroad At Home: International Liberalization and Domestic Stability in the New World Economy” (1994) 24 Millennium 507; Robert Howse, “From Politics to Technocracy – And Back Again: The Fate of the Multilateral Trading Regime” (2002) 96 AJIL 94; Unger, \textit{supra} note 25.


\item[\textsuperscript{112}] For e.g. Friedrich Hayek, \textit{The Road to Serfdom} (Chicago: University of Chicago Press, 1944).
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countervailing duties treated goods from different countries differently, the duties offended principles of free trade and MFN clauses in commercial treaties.

The Cobden Club members (unwittingly) anticipated contemporary arguments that establishing legally specific definitions for economic concepts and ensuring all the different definitions are theoretically coherent would be difficult if not impossible in an international trade treaty.\textsuperscript{113} For example, they argued, it is extremely difficult to establish what exactly is defined to be a bounty – are investments in infrastructure such as roads and railroads bounties?\textsuperscript{114} They argued that it is also extremely difficult determining what should be the appropriate countervailing duty.

Even though the ideational debates regarding free trade of the late 19th century have contemporary equivalents, the stakes behind the ideas were particular to the time and do not carry over to current arguments. Ideological differences regarding the role of the state, the role of the market, and definitions of free trade were not the only differences between the two positions. Different factual and normative assumptions informed each position. The Anti-Bounty League arguments supported the concept of maintaining the British Empire. They considered the role of the West Indies to be crucial to the British Empire; they also connected the depression in the West Indies to the depression of sugar prices which were in turn caused by European bounties. The Cobden Club generally refuted the notion of imperialism. They discounted the economic role of the West Indies in the British Empire and assumed that the British confectioners were a more viable industry. Any depression in the West Indies, they assumed, was exaggerated and not necessarily caused by the bounty system in Europe. Each country has such a complex and different system of


tariffs and duties, they argued, that it is not clear how to establish its relationship to the price of sugar. Moreover, argued members of the Cobden Club, if the low price of sugar is a result of foreign bounties, it is not a concern for the British government because it is a benefit to the British consumer at the expense of foreigners and it is not sustainable by foreign governments and will probably collapse on its own.

By 1886-1887, the Anti-Bounty League vision of free trade dominated British thought. This is evidenced by the appointment of two Royal Commissions whose mandate was to address the 1884 crises in Great Britain and the West Indies; both Royal Commissions characterized the dominant free trade ideology of the time. The first of these, the Royal Commission on the Depression in Trade and Industry,115 was headed by Neville Lubbock, chairman of the West India Committee (and who would later serve as an expert for the British delegation to the conference that led to the Brussels Convention.)116 The “Cobdenites” in Parliament decried this nomination because they thought that Lubbock’s appointment was indicative of the Commission’s general “protectionist” bias.117 The West India Royal Commission was appointed to examine the state of the sugar industry in the West Indies. Chamberlain’s primary concern was that the West Indies solely depended on sugar, and that if the industry was to collapse, there would be no other industry to compensate for the unemployed, thereby causing great political instability and financial strain for the UK.118 The West India Royal Commission concluded, thereby supporting Chamberlain’s position with factual detail, that the West Indian sugar industry was on the verge of extinction and was likely caused by the European bounty system.119


117 Beachey, supra note 20 at 137.

118 U.K., H.C., “From Mr. Chamberlain to Sir H.W. Norman” (5 January 1897), C. 8359 (1897) 103.

119 U.K., H.C., Report of the West India Royal Commission, C. 8655, 8656, 8657, 8669 (1898).
V. Institutionalization of Ideas and Interests

The inclusion of countervailing duties into the idea of free trade was just the beginning of the international trade debate. The definition of bounties and countervailing duties still had to be reconciled with competing interests to form an international institution through a process which David Kennedy describes as the “textual balance of assertion and equivocation [that] is the secret of institutional establishment.”

The other defining issue of the Brussels Convention would be that of determining the relationship between the institutional permanent body and member states. Recall that the sugar treaty was revolutionary for its time since it established a permanent institutional body which was empowered to disseminate technical information, resolve disputes, and devise rules of procedure for the international sugar institution. Many at the time feared that such a powerful body would encroach upon state sovereignty. To some jurists today, this unresolved tension between delineating an institutional organization’s autonomy in relation to preserving some amount of state sovereignty is the defining feature of all modern international institutions.

An examination of the treaty’s legal form not only outlines how the treaty was expected to operate but also, when situated within the technological, political and economic specificities of international sugar trade, illuminates how the treaty structured relationships that would affect trade and development. The Brussels Convention would provide the legal structure to maintain the core-periphery dynamic between the West Indies and the UK. Surprisingly, even though the British West Indian colonial governors were the most vehement in demanding that Europe end its sugar subsidization, the British West Indian sugar producers were to benefit the least from the Brussels Convention. This was because the treaty marginalized West Indian interests and did not anticipate

120 Kennedy, supra note 32 at 980.

121 Supra notes 33 and 34.

122 For e.g. Jan Klabbers, An Introduction to International Institutional Law, 2nd ed. (Cambridge: Cambridge University Press, 2009).
technological and agricultural change. Indeed, the role of sugar in the West Indian economy by the beginning of the twentieth century was not as prominent as before. West Indian islands were diversifying their agricultural exports to commodities such as bananas, coffee and cacao, that required no mechanical processing before export.\textsuperscript{123} This is not to say that no one benefited from the reduction of European sugar subsidies. But any “development” that occurred primarily benefited the European sugar industry by allowing for increased sugar consumption in continental Europe and by maintaining European technological supremacy in sugar. Other countries benefited from the treaty even though they were not original signatories (e.g. Peru) or ever signed the sugar treaty (e.g. Argentina). Even though the Brussels Convention incorporated some allowance for infant industry protection at the behest of continental European countries’ requests, the treaty text formulated these policies as an exception in a way that would never be open to the West Indies as an option.

A. The Function and Purpose of the Brussels Convention

1. The Permanent Commission

One can truly appreciate how the 1902 institutionalized free trade amongst sovereign states by understanding how the sugar treaty defined its function and purpose and adeptly delegated power to the newly created Permanent Commission. Article VII is reproduced in its entirety below since it was the main provision creating this modern international institution and will be examined in detail (emphasis added):

\begin{quote}
The High Contracting Parties agree to establish a Permanent Commission charged with \textit{supervising the execution} of the provisions of the present Convention.

This Commission shall be composed of Delegates of the several Contracting States, and a Permanent Bureau shall be attached to it. The Commission elects its President; it will sit in Brussels and will assemble at the summons of the President.

The duties of the Delegates will be: –
\end{quote}

a. To pronounce whether in the Contracting States no direct or indirect bounty is granted on the production or on the exportation of sugar
b. To pronounce whether the States referred to in Article VI continue to fulfil the special condition foreseen by that Article.
c. To pronounce whether the bounties exist in the non-Signatory States and to estimate the amount thereof for the purposes of Article IV.
d. To deliver an opinion on a contested question.
e. To prepare for consideration requests for admission to the Union made by States which have not taken part in the present Convention.

It will be the duty of the Permanent Bureau to collect, translate, arrange, and publish information of all kinds respecting legislation on, and statistics of, sugar, not only in the Contracting Parties, but in other States as well.

In order to insure the execution of the preceding provisions, the High Contracting Parties shall communicate, through the diplomatic channel, to the Belgian Government, which shall forward to the Commission, the Laws, Orders, and Regulations of the taxation of sugar which are or may in the future be in force in their respective countries, as well as statistical information relative to the object of the present Convention.

Each of the High Contracting Parties may be represented on the Commission by a Delegate, or by a Delegate and Assistant Delegates.

Austria and Hungary shall be considered as separate Contracting Parties.

The first meeting of the Commission shall be in held in Brussels, under arrangements made by the Belgian Government, at the least three months before the coming into force of the present Convention.

The duty of the Commission shall be limited to findings and investigations. It shall draw up a report on all questions submitted to it, and forward the same to the Belgian Government, which shall communicate it to the States interested, and, at the request of the High Contracting Parties, shall convoke a Conference, which shall take such decisions or measures as circumstances demand.

The findings and calculations referred to under letters (b) and (c) must, however, be acted on by the Contracting States; they will be passed by a vote of majority – each Contracting State having one vote – and they will take effect in two months' time at the latest. Should one of the Contracting States consider it necessary to appeal against
a decision of the Commission, the said State must, within eight days of notification to it of the said decision, require a fresh discussion by the Commission; the Commission will immediately hold a meeting and will pronounce its final decision within one month of the date of appeal. The new decision shall take effect, at latest, within two months of its delivery. The same procedure will be followed with regard to the preparation for consideration of demands for admission provided for under letter (e).

The expenses incurred on account of the organization and working of the Permanent Bureau and of the Commission – excepting the salaries or allowances of the Delegates, who shall be paid by their respective countries – shall be borne by all the Contracting States, and shall be divided among them in a manner to be determined by the Commission.

What can be discerned from this provision is that the Permanent Commission and Bureau were granted a significant amount of power and responsibility. The state, however, was still given a role in mediating this power. The Permanent Commission’s role was not to directly enforce the treaty, rather it was to supervise the execution. This suggests that the Commission had some power over the state, but the state had to actually enact the terms of the treaty. In fact, the treaty required states to ensure “continuous supervision, both by day and night” of sugar refineries and factories by state Revenue Officers for the purpose of guaranteeing “against the surreptitious removal of sugar” (Art. II). The treaty actually empowered these state agents allowing them “the right of entry into all parts of the factories” (Art. II).

Even though the Permanent Bureau was granted a slew of unprecedented duties and power for an international body, the state still had the most important power in regards to the treaty’s operation. The chapeau provided that the treaty’s purpose was to “equalize the competition between beet and cane sugar from various countries and increase sugar consumption by abolishing bounties and limiting surtax”. As outlined above, only when British free trade discourse allowed for countervailing duties did any of the negotiating parties consider a treaty intended to reduce sugar subsidization enforceable. That is, the threat of countervailing duties was thought to be the most powerful incentive against subsidization. Thus, Article IV (referred to as the “penalizing clause”) which allowed for
states to impose countervailing duties was a central feature to the operation of the treaty. Indeed, this provision was assumed to be so central to the treaty that when the UK government decided to withdraw from the treaty it did so by first challenging the legitimacy of this provision.\textsuperscript{124} States were granted some discretion to impose a countervailing duty with the following language:

\begin{quote}
The High Contracting Parties \textit{engage to impose} a special duty on the importation into their territories of sugar from those countries which may grant bounties either on production or on exportation. [emphasis added]
\end{quote}

This discretion is highlighted by the pattern of language throughout the treaty. The Parties would generally “engage to do X”. Whereas the Permanent Commission, Permanent Bureau, and factories were always ordered that they “shall do X”. Article IV granted the state the utmost discretion in regards to disallowing bounty-fed sugar:

\begin{quote}
The High Contracting Parties reserve to themselves, each so far as concerns itself, the right to prohibit the importation of bounty-fed sugar.
\end{quote}

Even though this provision allowed for retaliation against subsidization by import prohibition, in light of the debates regarding countervailing duties in the UK and during treaty negotiations, the \textit{chapeau} including the purpose of increased sugar consumption, and the treaty outlining what entailed an allowable countervailing duty, suggests that retaliation was to be a measure of last resort.

There was also some trepidation in granting the Commission full recognition as a diplomatic force unto itself much less any sort of legal personality exemplified by provisions regarding communication in Article VII. The mode of communication between states was to be directed through the Belgian government, who would then forward the communication to the Commission. The Commission was to communicate to the states via the Belgian government. What must be kept in mind, however, is that an economic functionalist conception informed the understanding of the Commission and Bureau. This

\begin{flushright}
\textsuperscript{124} See \textit{infra} note 180.
\end{flushright}
meant that state’s had to maintain some sovereignty, but the primary purpose was to
ensure that sugar subsidization was reduced. The states had agreed that this was the
necessary goal. The Commission was not a forum to debate as to what economic policy was
best or to manage diverse economic systems.

Nevertheless, the central problem during negotiations was to determine how to regulate
every different European country’s unique system of sugar subsidization under the
auspices of one international institution. Negotiations were made possible because of the
confluence of events noted above that led European governments to agree to work towards
reducing the sugar subsidies. But the issue of defining bounties was so contentious during
the Brussels negotiations that Russia, which had the most centralized system of
subsidization, insisted that its system was not a bounty and refused to sign the Brussels
Convention, (later joining in 1907.)

Each sugar producing country in continental Europe had its own complex system of tariffs
and duties which subsidized domestic beet sugar, generated revenue for the government,
and acted as a means of income redistribution. Germany and Austria-Hungary had a
“direct bounty” system in which consumers paid a high amount of excise duty and sugar
refiners received subsidies for export. France had a system of direct bounties but also had a
system of “indirect” bounties (such as subsidized transportation costs) that favoured sugar
production by sugar planters and old sugar cane refineries. France had first started
negotiation of the Brussels Convention adamant that its system of indirect bounties was

125 Each year the Russian government determined the amount of sugar necessary for home consumption
allowing for sugar surpluses to be exported and taxed at a lower rate than domestic sugar.

126 U.S., Senate Committee on Finance, Proceedings of the Conference on the Question of Bounties Held At
Brussels Jun 7 to 25, 1898 (Blue Book Commercial No. 6, 1898) Procèss Verbal of the First and Fifth Sitting.

127 Protocol Respecting the Accession of Russia to the Sugar Convention on March 5, 1902 and the Additional Act
of August 28, 1907 (19 December 1907) 206 Parry 56, BTS 12 (1908), Cd. 3968 [entered into force 31 March
1908]. See also U.K., H.C., Correspondence Respecting the Adhesion of Russia to the Brussels Sugar Convention of
March 5, 1902, Cd. 3877 (1908).

Report 5. For an excellent summary of the various bounty systems see Chalmin, supra note 8 at 12-14. For
more detail see Deerr, supra note 11 at 501-508; Prinsen Geerlings supra note 36 at 21-35.
not negotiable (later changing its position by 1901 after side negotiations with Germany and Austria-Hungary).129

Bounties were finally defined in Article I in the following way:

The High Contracting Parties engage to suppress...the direct and indirect bounties by which the production or exportation of sugar may profit and not to establish bounties of such kind .... For the application of this provision, sugar-sweetened products, such as preserves, chocolates, condensed milk, and other analogous products containing in notable proportion, artificially incorporated sugar, are assimilated to sugar.

The preceding paragraph applies to all advantages derived directly or indirectly; by the several categories of producers, from State fiscal legislation, and in particular to—

a. Direct bonuses granted on exportation;
b. Direct bonuses granted to production;
c. Total or partial exemptions from taxation which profit a part of the products of manufacture;
d. Profits derived from the excess of yield;
e. Profits derived from too high a drawback;
f. Advantages derived from any surtax in excess of the rate fixed by Article III.

As any student of WTO jurisprudence would know, this hardly solved the dilemma of regulating subsidization and matters of treaty interpretation quickly arose emphasizing Holmes’s point that, "General propositions do not decide concrete cases."130

The Permanent Commission’s President and delegates’ resolved ambiguities of definition in a way that suggests that the understood conception of the Commission’s role was that it was to simply implement economic doctrine. Most disputes and appeals made to the Permanent Commission were presented as disputes of fact as to what was a country’s legislation, determining whether the legislation created a bounty, and measuring amounts

129 U.K., H.C., “British Delegates to Sugar Conference to Marquess of Landsdowne” (16 December 1901) Cd.1013 (1902) 19 [Summary of opening meeting].

130 Lochner v. New York, 198 U.S. 45 (1905) at 74
of sugar production. Despite delegates’ best efforts to characterize the Commission as simple implementer, the Commission in effect operated a legal body with powers of interpretation. For example, much like debates regarding “like” products in the WTO, debates arose as to what constituted a “notable proportion” of sugar in analogous products such as biscuits. Another debate of interpretation was over determining when a surtax constituted enough of an “advantage” as to warrant being treated as a bounty.

Yet, arguments were successfully made against the Commission’s actions when it was thought to have overstepped its boundaries in its dispute settlement capacity. During this same debate over the surtax, the British delegate considered that Permanent Commission actions were too akin to an adjudicative body. The Commission was empowered to “pronounce” as to whether states met the treaty criteria and to “deliver an opinion on contested questions” (Art. VII(d)). The British delegate thought that this only empowered the Commission to interpret the treaty’s text in light of particular facts and not through the development of jurisprudence; he successfully argued that certain practices of the Permanent Commission were becoming general rules and that the facts of each particular case need to be carefully examined.

The Permanent Commission also implemented and enacted rules of procedure. General rules of procedure were listed in Article VII regarding voting procedures, notice, and appeals. The Permanent Commission continued to augment and detail these procedures during its operation. Delegates made appeals for exceptions to the rules of procedure.

131 GATT Article III:4

132 U.K., H.C., “Sir H. Bergne to the Marquess of Landsdowne” (14 April 1904), Cd. 2094 (1905) 26 [reporting the 23rd Session of the Permanent Commission].

133 U.K., H.C., “Sir H. Bergne to the Marquess of Landsdowne (28 October 1904), Cd. 2349 (1905) 3 [reporting the 29th Session of the Permanent Commission]

134 U.K., H.C., “Sir H. Bergne to the Marquess of Landsdowne (28 October 1904), Cd. 2349 (1905) 3 [reporting the 29th Session of the Permanent Commission]

135 U.K., H.C., “Sir H. Bergne to the Marquess of Landsdowne” (14 April 1904), Cd. 2094 (1905) 26 [reporting the 23rd Session of the Permanent Commission]
The Commission also outlined regulations regarding rules of origin through a system of shipment certification.¹³⁷

Even though the Permanent Commission’s President and delegates did not formally regard it as an executive body, the nature of the Commission’s decision-making powers on various matters affected countries’ status with respect to the treaty. Some of these powers were in the text of the treaty and others emerged from the operation of the Commission. The treaty made exceptions for countries that produced sugar but did not export and it was the Commission who had final say as to which countries met this exception (Art. VI). Another example of the Commission’s executive power, is when it ruled that communications and inquiries by private firms and individuals were not to be accepted by the Commission but would be referred to the respective governments.¹³⁸ Indeed, this mirrors a contemporary position that non-governmental actors should not be involved in the WTO but rather limit their activities regarding the WTO within the state.¹³⁹

The Commission had some power regarding non-signatory countries. Stemming from an awareness of the global interconnectedness of the sugar market, it had a duty to collect and disseminate information regarding “legislation on and statistics of sugar” (Art. VII). The Commission also managed the accession of new countries. So, for example when Peru decided to join the Brussels Convention, the Commission first examined Peru’s legislation and then decided when Peru’s legislative changes conformed to the treaty.¹⁴⁰

¹³⁶ U.K., H.C., “The Marquess of Lansdowne to Sir C. Phipps” (22 December 1904), Cd. 2349 (1905) 10


¹³⁸ U.K., H.C., “Sir H. Bergne to the Marquess of Lansdowne” (14 April 1904), Cd. 2094 (1905) 26 [reporting the 23rd Session of the Permanent Commission].


¹⁴⁰ U.K., H.C., “Count de Lalaing to the Marquess of Lansdowne” (26 June 26 1903); “Count de Lalaing to the Marquess of Lansdowne” (20 August 1903), Cd. 2094 (1904) 1.
2. *International Lawyers’ Perspective*

The sugar treaty negotiators and delegates worked to ensure that the international trade institution would not take on a legalistic character. To them, it was simply an effective way of coordinating national tariff and bounty systems in a way to ensure subsidies would be phased out.

International lawyers’ silence on the matter suggests that they held a similar view. Koskenniemi has argued that international law as a profession began in 1868 with the publication of the *Revue de droit international et de législation comparée* – the first international law journal. The *Revue* made no mention of the 1902 Brussels Sugar Convention suggesting that this was not a treaty that international jurists of the time thought worth examining. The reason was that international lawyers of the early twentieth century who followed debates regarding “free trade” and protectionism” considered the issue of tariffs, subsidies, and dumping to be a question of national economic policy and thus a comparative law question. The first, and one of the rare times, that “droit commercial international”, appears in the pages of the journal it is defined as:

- the commercial acts of traders; terrestrial, marine and life insurance; crashes, collisions and wrecks; shipping carriage contracts; general or sea-risk loans; seafarers; benefits; letters of exchange; bankruptcy; issues which arise from the immediate news of the day; all of which are particularly lackluster and

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142 L.D., Book review of *Le procès du libre exchange en Angleterre* by Daniel Crick and *Protection in France* by H.O. Meredith (1904) t. 6, 2eme serie, Revue de droit international et de législation comparée 318 [first time “protectionnisme” and “exchange-libre” appear in the index] [translation by author]; Daniel Crick, Book review of *Protection in the United States* by A. Maurice Low & *Protection in France* by H.O. Meredith (1905) t. 7, 2eme serie, Revue de droit international et de législation comparée 253; D. Warnotte, Book Review of *Free Trade* by the Right Honourable Lord Avebury (1905) t. 7, 2eme serie, Revue de droit international et de législation comparée 611.
come from the program of the international commercial law congress in Antwerp and Brussels, and the Institute of International Law, etc.”

In other words, international commercial law was not within the purview of public international law as such with its grand questions of sovereignty and war; instead international commercial law was concerned with the more mundane private legal instruments of transnational commercial transactions and shipping. The Brussels Convention was an anomaly for its time defying the categories of public international law and private commercial law since it was a multilateral treaty amongst nations whose purpose was to alter domestic laws regarding domestic sugar production and export and regulate the global price of sugar.

**B. Theories of Development and Marginalization of the West Indies**

Underlying the institutional text and practice of the Brussels Convention were theories regarding development. The speeches by the British and German delegates at the opening of the conference proceedings, despite their perfunctory nature, capture the vision of development that permeated the final agreement. The British delegate’s opening remarks were straight out of the pages of Anti-Bounty League pamphlets. He stated that principles of free trade demanded that products everywhere be sought at their natural market price without the artificial hindrance of bounties. When expressing his concern that unnatural effects on price creates uncertainty for the consumer and destroys industries not favoured by the state, the delegate noted the depression of sugar industries in British colonies and refineries. The German delegate’s statement was the exception that made the British the rule. According to the delegate, Germany was in transition to a bounty-less condition. The

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143 P. Pradier-Fodéreé, “Le Congres de droit international Sud-Américain et les traités de Montevideo” (1889) t. 21, 1ere serie, Revue de droit international et de législation comparée 217 at 231. See also H. La Fontaine, “Histoire sommaire et chronologique des arbitrages internationaux (1794-1900)” (1902) t. 4, 2eme serie Revue de droit international et de législation comparée 349 [translation by author].
delegate stated that the German bounty system was only intended as a temporary measure to benefit manufactures until they could produce without government aid.\textsuperscript{144}

The Belgian host-President of the conference proceedings further highlighted the priority of British ideas and interests. He noted that the primary concern created by the bounty system was that it destroyed the normal competition on outside markets, which was a reference to British interests. Moreover, the President’s statements exemplified the theory of sovereignty that underpinned the treaty. He stated that domestic systems of subsidies created such a detrimental effect in the rest of the world that the subsidies might actually go so far as to infringe upon sovereignty.\textsuperscript{145} In other words, the concept of sovereignty was one that mediated between state’s political power and the necessities of an interconnected world economy.

These ideas prevail within the \textit{chapeau} of the Brussels Convention. It reads in part:

\begin{quote}
Desiring on the one hand, to equalize the conditions of the competition between beet and cane sugar from various countries...by the abolition of bounties...
\end{quote}

Accordingly, the treaty captured a moment when bounties may have been considered necessary in the past but were now outdated and exceptional. The treaty assumed that the British no-tariff, no-bounty system was the norm – the UK was the only treaty signatory that had very little legislative changes to make. By requiring states to impose countervailing duties on bounty fed sugar regardless as to whether subsidizing state was a party to the treaty or not (Art. IV), the treaty created an incentive for non-signatory

\textsuperscript{144} U.S., Senate Committee on Finance, \textit{Proceedings of the Conference on the Question of Bounties Held At Brussels Jun 7 to 25, 1898} (Blue Book Commercial No. 6, 1898) Procèss Verbal of the Second Sitting at 20-22.

\textsuperscript{145} U.S., Senate Committee on Finance, \textit{Proceedings of the Conference on the Question of Bounties Held At Brussels Jun 7 to 25, 1898} (Blue Book Commercial No. 6, 1898) Procèss Verbal of the First Sitting at 13-15. The French delegate’s opening speech focused on his country’s desire for agricultural self-reliance. France would later change its position.
countries to do away with their bounty system as soon as possible if it wanted access to the largest sugar consuming market in the world (as was done in Argentina).\textsuperscript{146}

Even though the other purpose enumerated in the treaty’s \textit{chapeau} was geared towards European countries enlarging their domestic consumer market,\textsuperscript{147} all the provisions were focused on maintaining the removal of all bounties. This means that treaty’s primary concern was countries’ exports and it left it to national governments to recalibrate domestic tax systems to reduce the price of domestic consumer sugar. So for example, an exception was made for countries that were sugar producers but not sugar exporters (Art. VI). These countries did not have to remove any of their bounties, and only when these countries become exporters did the bounty-removal requirements apply.

The main provision that did apply to these exceptional sugar-producing, non-exporting countries was the penal clause. This provision allowed “exceptional” countries to subsidize domestic sugar industries and block foreign subsidized sugar through prohibition or countervailing duties. Exceptional countries could subsidize and develop their domestic sugar industry until they were able to internationally compete without public financial support. This exceptional status was a privilege limited to the enumerated countries (Spain, Italy, and Sweden); the Commission decided that it did not have the power to admit new members under the exceptional category.\textsuperscript{148}

Despite the fact that the West Indies were a central factor that contributed to the creation of the Brussels Convention, these colonies were very particular exceptions in the treaty. There was a general provision stating that the treaty shall apply to all parties’ colonies except to the British (and Dutch colonies) (Art. XI). In light of the British sugar colonies’

\textsuperscript{146} Galloway, \textit{supra} note 10 at 188.

\textsuperscript{147} “Desiring ... on the other hand, to promote the consumption of sugar...by the limitation of surtax...”

\textsuperscript{148} Protocol Relative to the Accession of Switzerland to the International Convention Concerning the Regime of Sugars of March 5, 1902, 26 June 1906, 202 Parry 79; Cd. 3301 [admitting Switzerland as an sugar-producing, non-exporting exception but not allowing it to vote; entered into force 1 September 1906]. See also U.K., H.C., “Sir H. Bergne to the Marquess of Lansdowne (28 October 1904), Cd. 2349 (1905) 3 [reporting the 29\textsuperscript{th} Session of the Permanent Commission].
persistent demand for aid, the British delegates tried to negotiate as much flexibility as possible to allow the UK to financially support the West Indies. In the midst of negotiations, Britain argued that it wanted to retain the right to provide bounties to the West Indies. This generated surprise amongst the other delegates and talks almost broke down on this issue. The end result was an annex to Article XI, which is worth reproducing in detail:

(A) 1. The Government of Great Britain declares that no bounty, direct or indirect, shall be granted to the sugar of the Crown Colonies during the continuance of the Convention.

2. It also declares, as an exceptional measure, and reserving in principle entire liberty of action as regards the fiscal relations between the United Kingdom and its Colonies and Possessions, that, during continuance of the Convention, no preference will be granted in the United Kingdom to colonial sugar as against sugar from the Contracting States.

3. Lastly, it declares that the Convention will be submitted by it to the self-governing Colonies and East Indies, so that they may have an opportunity of giving their adhesion to it.

It is understood that the Government of His Britannic Majesty has power to adhere to the Convention on behalf of the Crown colonies. [emphasis added]

There is a tension in the text as to the role of the West Indies (the “self governing Colonies”) within the Empire. There is some reference to the notion that the colonies have some ability to decide their adhesion to the treaty, but the final say remains with the King. Great

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149 See for e.g. U.K., H.C., “British Delegates to Sugar Conference to the Marquess of Landsdowne” (16 December 1901), Cd. 1013 (1902) 19 at 24 [British unsuccessfully trying to negotiate that the penal clause only applies to Europe].

Britain agrees to not provide preferential access to its colonies, but is doing so as an exceptional measure.

In effect, the Brussels Convention considered the West Indies and Great Britain as an integrated political unit but separate economic units. This provision, by disallowing West Indian preferential access to the UK excluded West Indian sugar from the British and European market since it could not compete with the more technologically advanced sugar producers. The West Indies’ only relief would have been that, if it did receive bounties or preferential access (contravening the annex to Art. XI), Great Britain had discretion as to whether it would invoke the penalty clause against West Indian sugar. Regardless, the treaty marginalized the West Indies in the newly formed “international sugar market”.

It should be emphasized that the Permanent Commission decided that all other colonies were allowed preferential access to the “Mother Country”. In assessing the US’s preferential treatment of Cuba and the Philippines (all non-signatories), the Permanent Commission decided that this relationship was akin to a formal colonial relationship, and therefore the preferential access was not considered a bounty. The great irony (discussed in Chapter 3) would be that Cuban delegates would later use a different sugar agreement, the 1937 International Sugar Agreement, to try to negotiate more economic sovereignty for the Cuban state with regards to its relationship to the US.

C. Treaty Effects in the West Indies

West Indian governors, despite their de facto marginalization by the treaty, maintained their faith in the treaty’s potential to improve conditions in their sugar colonies throughout the span of the UK’s membership. This increased confidence may very well have been the Brussels Convention’s most notable contribution to the development of the West Indies. Richardson notes that in Barbados, the site of the worst political protest arsons, the

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151 U.K., H.C., “Sir H. Bergne to the Marquess of Lansdowne” (15 May 1905), Cd. 2531 (1905) 17 at 23.

152 U.K., H.C., Papers Relating to the Brussels Sugar Convention [1906-1907], Cd. 3565 (1907) [West Indian Colonial governments responding to announcement that Great Britain was to withdraw from the Brussels Convention, British West Indian governors petitioned the British government to maintain its membership].
number of sugarcane fires dropped by April 1902 denoting the decrease of fires in the rest of the region by 1905. Richardson doubts that the Brussels Convention, signed that same year, had enough time to have affected the islands and leaves it open as to why sugarcane fires started to decrease in 1902.\textsuperscript{153} This suggests that the Brussels Convention was part of a trend of improving conditions in the West Indies rather than an instigator of change.

But the treaty may have indirectly contributed to the events that quelled social, political and economic anger. There is evidence that the treaty generated the confidence necessary to increase investment in the sugar colonies.\textsuperscript{154} The signing of the Brussels Convention coincided with significant innovations in colonial sugar production. When Lewis noted that sugar was the only commodity to experience a scientific revolution before World War I, he had in mind that sugar was the only crop, other than tea, that required large scale processing after harvesting and before refining for the purposes of consumption.\textsuperscript{155} Even though old mills that crushed sugar cane were being gradually replaced by steam driven mills, it was not until 1874 that the first central factory was constructed in the British West Indies (in St. Lucia); very few were built thereafter due to economic depression.\textsuperscript{156}

Central factories made the production of sugar more efficient by innovative technological and distribution methods. Plantations could form an association and found their own central factory or rent their land, parceled into small plots, to “cane farmers” who cultivated cane for delivery to the factories.\textsuperscript{157} Colonial governors desired the capital and legal authority from London to be able to widely establish central factories. With the 1884

\textsuperscript{153} Richardson, supra note 70 at 124.

\textsuperscript{154} Burns supra note 79 at 706; Benjamin Taylor, “The Brussels Sugar” (1909) 190 The North American Review 347 at 354-356.

\textsuperscript{155} Lewis, supra note 40.

\textsuperscript{156} Shephard, supra note 11.

\textsuperscript{157} Galloway, supra note 10 at 148-182.
crisis, there was little financial confidence or political will. After the crisis, many sugar producers in Jamaica sold their machinery to Cuban producers. The idea of central factories was not supported by London until the time that the Royal Commission of 1897 recommended it. When the Brussels Convention was signed, there were high expectations and great confidence by West Indian planters that conditions would improve. British Parliament granted £250,000 to cover the immediate needs of sugar planters for the year between the signing of the treaty and its coming into force. The governor of the Leeward Islands believed that central factories would be necessary after the abolition of European bounties. Jamaica passed legislation in 1902 that encouraged the building of central factories. The central factories that were built during this time shifted control of sugar production from planters to factory owners. Many of the resulting changes endure today both in terms of technology as well as dynamics of power between estate owners, cane farmers, and central factories.

Global interests also shifted after the Brussels Convention. Supporters and opponents of the treaty assumed that the treaty would benefit colonial sugar cane growers and vehemently argued about the normative implications of this perceived benefit. What does not seem to have been anticipated was that even though the treaty did allow for sugar cane

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158 See for e.g. U.K., H.C., “Sir F. Fleming to Mr. Chamberlain” (6 August 1896) [governor of Antigua], and “Mr. Chamberlain to Acting Governor Melville” (5 September 1896), C. 8359 (1897) 56.

159 Pons, supra note 123 at 265.

160 Letter to Treasury from Edward Wingfield (9 November 1896), C. 8359 (1897) 100. See also Beachey, supra note 20 at 86 (Beachey mistypes 1827 instead of 1897).

161 Beachey, ibid. at 171; Prinsen Gerlings supra note 36 at 209

162 Prinsen Gerlings, ibid. at 209. See also U.K., H.C., “N. Lubbock & George Martineau, Memorandum on the Subject of the Date of Coming Into Force of the Proposed Convention” (24 January 1902), Cd.1013 (1902) 37 [British trying to negotiate an early enforcement date based on the assumption that the sooner the treaty was signed the sooner the British West Indies could benefit].


164 Galloway, supra note 10 at 148.

165 Galloway, ibid. at 148-182.
to have increased access to the growing British and European appetites, the source would not be the West Indies.\textsuperscript{166} Latecomers to the treaty, such as Peru, and non-signatories, such as Argentina, which had subsidized their local sugar industry in the past, changed their domestic system of tariffs and duties in order to gain access to the world’s largest market of consumers in Britain and continental Europe.\textsuperscript{167} Similarly, Cuba and Hawaii, which had benefited from US preferential treatment, also made headway into the expanded European market.\textsuperscript{168}

This suggests that the Brussels Convention may have actually hampered the development of the sugar industry in the West Indies. By the time the Brussels Convention ended the “unnatural” and “unfair” bounty system in most signatory countries, the British West Indies was one step behind other sugar cane producing countries which had spent time and resources to invest in sugar industries. Countries were allowed to subsidize their sugar production until their respective industry could develop technologies that made it globally competitive. The West Indies never benefited from subsidies and were technologically less advanced than bounty-fed sugar industries. This meant the Brussels Convention had the effect of “kicking away the ladder” from under the feet of West Indian sugar producers since they would not be allowed to have access to subsidies like other sugar producing countries had before the treaty, thereby ensuring that the West Indies could never match the industrial efficiency of others.\textsuperscript{169}

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{166} Some commentators, did note that by the end of the 19\textsuperscript{th} century the US was the West Indies’ main market. They assumed, however, that after the Brussels Convention would take effect, that West Indian sugar would have increased access to the European market and argued against any effort to in effect grant privilege to the West Indies.

\item\textsuperscript{167} Galloway, \textit{supra} note 10 at 180, 188.

\item\textsuperscript{168} Timoshenko & Swerling, \textit{supra} note 52 at 240.

\item\textsuperscript{169} Cf. Ha-Joon Chang, \textit{Kicking Away the Ladder – Developmental Strategy in Historical Perspective} (London: Anthem Press, 2002).
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The British had distaste for cheaper unrefined viscous brown Caribbean muscovado sugar and had preference for more expensive refined granulated white European sugar. Thus, Caribbean sugar had to be refined to reach British consumers. By 1902, however, the cane sugar refining industry in Great Britain was practically extinct. After the Brussels Convention, most of the sugar consumed in Great Britain was refined beet sugar from Europe. This could be an indication that Europe's bounty system had generated an efficient and productive sugar industry that could compete in the British market without subsidies. But it also indicates consumers gastronomical preferences, regardless of price differential, also had economic effect.

D. How Trade Concepts In the Treaty Determined Development Possibilities

Even though the economists who praised the Brussels convention were delighted with the rise in the price of sugar after 1902, unlike contemporary commentators examining commodity regulation, this was not the main focus of their satisfaction. They were pleased that sugar was restored to its "natural" price now that the "artificial" system of bounties was eliminated. According to this view, the bounty system left the price of sugar to the whims of government decisions instead of supply and demand, thereby creating an unstable market. It was thought that the penal clause, by allowing for government to impose countervailing duties or prohibit the importation of bounty fed sugar, restored competition in the market. This was because all sugar producers could now interact without unfair and unnatural advantages. To the supporters of the agreement, all of this provided the stability needed to instill confidence in the market.

170 Beachey, supra note 20 at 143-144; Deerr, supra note 11 at 109-100, 528-530.

171 Beachey, supra note 20 at 172.

172 Chalmin, supra note 8 at 15.

It is worth questioning why the British government agreed to the marginalization of the West Indies in the Brussels treaty and why West Indian governors were pleased by the final result. Why is it that when Britain argued that it wanted to retain the right to provide bounties to the West Indies all the other delegates were so surprised by the British that the sugar negotiations were almost derailed?\footnote{Supra note 150.}

Regardless of how the Brussels Convention impacted the price of sugar or detrimentally affected the West Indian sugar industry, there was determined belief in the UK and the West Indies that the treaty, and the ideas it embodied, was in the best interest of preserving economic and political stability in the West Indies. This is evidenced by the fact that the British were trying to negotiate an early enforcement date based on the assumption that the sooner the treaty was signed, the sooner the British West Indies could benefit.\footnote{U.K., H.C., "N. Lubbock & George Martineau, Memorandum on the Subject of the Date of Coming Into Force of the Proposed Convention" (24 January 1902), C.1013 (1902) 37.} Colonial governors held the same beliefs and in 1906-1907 petitioned the British government to remain a party to the convention when they (rightfully) thought that the UK was planning to withdraw.\footnote{U.K., H.C., Cd. 3565 (1907).} This suggests that it is worth identifying the treaty's underlying development framework in order to discern why it was so firmly thought to benefit the West Indies, despite the marginalization of the colonies.

During British free trade debates, rarely was an argument made for the necessity of government subsidization for the purpose of maintaining an industry – there were few propositions for supporting an “infant industry”. In fact, most “free traders” thought the Europeans were at worst misguided in spending public money to subsidize one industry and in effect providing British consumers with cheap sugar. Only when British interests in the West Indies were affected by European subsidies did the free trade debate focus on bounties and countervailing duties.

\footnote{174 Supra note 150.}
The purpose of the Brussels Convention, as advocated for by the West Indies, was to disallow all government subsidization. The assumption was that the West Indies would be able to compete with the Europeans with the help of private investment into advanced sugar machinery. Countervailing duties were framed as necessary mechanisms to restore the “natural” price of sugar in the market; they were not framed as government intervention. When the British asked for the ability to grant preference to colonial sugar as an exception, this was likely not part of thinking to maintain the economic viability of the West Indian sugar industry, but rather as a way of ensuring London could maintain stability and control in the colonies amidst the ongoing social unrest. That is, the British government’s desire to economically support the West Indian sugar industry was a political tool to maintain the Empire and not an economic tool to enhance the welfare of the majority of British subjects. The circumstances that the British government had in mind to warrant “exceptional measures” was likely the rash of worker-initiated fires spreading across colonial sugar cane fields and the ensuing frustration of colonial governors.

However, the “exceptional” status provided to enumerated countries that allowed them to subsidize and develop their domestic sugar industry until they were able to internationally compete without public financial support was consistent with an infant industry argument. Infant industry arguments were introduced into the conference by Germany and were not part of the UK’s arguments – recall that the German delegate stated that they were able to support their industry in the past and were now ready to internationally compete without subsidization. This emphasizes that the West Indian sugar industry was not thought of as “underdeveloped.” Instead, the assumption was that Europe had an unfair advantage. According to British thinking, if other countries with burgeoning sugar industries wanted to (inefficiently) spend public money on subsidizing one industry, that was their folly. The only countries allowed such an exception were Spain, Italy, and Sweden (Art. VI). These were countries whose sugar industries were small and were thought unlikely to export a significant amount of sugar.177

177 Moura Filho, supra note 31 at 11; Taussig, supra note 101 at 132.
VI. Conclusion

When different groups gained power in the UK, it led to the demise of the convention. Starting in early 1905, British military presence in the Caribbean began to decrease as US naval presence increased.\(^{178}\) The diminishing British interest in the West Indies culminated in 1906 when the government of the newly elected Liberal Prime Minister Campbell-Bannerman announced on 27 March 1906 that Britain would withdraw from the sugar convention as of 1 September 1908 (the earliest date permissible). This withdrawal in effect brought an end to the Brussels Convention.\(^{179}\) The British delegates protested the penal clause (that allowed for countervailing duties) as the way out of the convention.\(^{180}\) This would mark a shift in British free trade discourse employed by the government, since countervailing duties were now characterized as illegitimate government intervention into the market. In the late 19\(^{th}\) century, West Indian sugar could not compete with continental sugar beet and could not enter the US market because of preferential treaties and the burgeoning local sugar production in the US.\(^{181}\) Even after the removal of the bounty system, the West Indies could not match the technological advancement of German sugar. What did not help matters was that the British had an increasing distaste for muscovado sugar.\(^{182}\)

\(^{178}\) Richardson, \textit{supra} note 70 at 12-13, 188-190.

\(^{179}\) Chalmin, \textit{supra} note 9 at 41-42.

\(^{180}\) U.K., H.C., \textit{Despatch to His Majesty’s Minister at Brussels Respecting the International Sugar Convention of March 5, 1902, 1 June 1907, Cd. 3577 (1907)}. After a protracted process of disengagement, Great Britain refused to sign the March 17, 1912 agreement protocol and declared that it would withdraw from the Convention as of September 1, 1913, see U.K., H.C., \textit{Despatches to His Majesty’s Minister at Brussels Respecting the Signature and Ratification of the International Sugar Union, Cd. 6146 (1912); Correspondence Relating to the Withdrawal of His Majesty’s Government from the Brussels Sugar Convention, Cd. 6325 (1912); Correspondence Relating to the Withdrawal of His Majesty’s Government from the Brussels Sugar Convention, Cd. 6877 (1913)}.

\(^{181}\) Beachey, \textit{supra} note 20 at 129-136, 141-142.

\(^{182}\) By 1900, this left Canada, with its gastronomical partiality for muscovado and preferential trade agreement with the West Indies, as the British sugar colonies’ sole salvation. Beachey, \textit{ibid.} at 173-174.
After the advent of the Brussels Convention, sugar cane production began to rise again for the first time since the 1850s. It would not gain supremacy over sugar beet until the formal collapse of the Brussels Convention during World War I. The Great War disrupted the link between Great Britain and continental Europe and destroyed the sugar beet fields and factories of continental Europe thereby increasing Allied demands for cane sugar. Sugar prices started to rise again during this time benefiting the West Indies – but the sugar cane producers in Cuba were the greatest beneficiaries. After the war, the waning sugar industry of the West Indies and declining British Empire would be replaced by the burgeoning sugar production in Cuba and a rising US Empire.

Even as sugar interests reconfigured in unexpected ways both because of and despite the Brussels Convention, the treaty retained ideational influence – the sugar treaty provided credence to the notion that subsidies are an unnatural intervention into the market and that countervailing duties are necessary to discourage subsidies. After 1902, within the Cobden Club and at Cobden Club sponsored international free trade conferences, some referenced the Brussels Convention as an exemplar of a liberal free trade agreement. First, it was argued, it restricted any “artificial pampering” of the European sugar industry. Second, it was also praised since it resulted in the reduction of domestic taxes on sugar in continental Europe thereby increasing demand for sugar, which benefited the European sugar industry. Similar characterizations of the Brussels Convention as an example of a liberal trade treaty were made throughout the first half of the twentieth century. Even in

183 Mason, supra note 28 at 18; Burns, supra note 79 at 706-707.

184 See Chapter Four.

185 Lord Welby et al., eds., Report of the Proceedings of the International Free Trade Congress, London, August, 1908 (London: Unwin Bros.; Cobden Club, 1908) 120, 269, 560. [The Congress was an international gathering of “free traders” organized by Cobden Club. The opening address was by Winston Churchill who was at the time the President of the Board of Trade and representative of His Majesty’s Government.]

186 See for e.g. W.F. Notz, “International Private Agreements in the Form of Cartels, Syndicates, and Other Combinations” (1920) J. of Political Econ. 658 at 676-677 [concluding that the sugar industry will probably have to organize itself along the lines of the Brussels Sugar Convention 1902 and that this convention could act as a model for regulating “unfair” commercial practices such as domestic monopolies or trust]; Jacob Viner, Dumping: A Problem in International Trade (Chicago: University of Chicago, 1923) at 185-186 [arguing that while the 1902 Brussels Sugar Convention may be a viable model to prevent dumping in instances when
the WTO, we see how countervailing duties retain an equivocal role in free trade theory but hold a place in international trade institutions of today.

The treaty would also generate a history not in line with its original function and purpose. Architects of the League of Nations ignored the treaty’s economic functions and held it out to be an example of the possibilities of creating public international legal institutions. Others would look to it as a model for a new sugar treaty. ¹⁸⁷ However, whereas free trade discourse and the 1902 Brussels Convention reaffirmed British imperialism, League discourse regarding free trade and the 1937 International Sugar Agreement would be an attempt by some Cuban nationals to renegotiate its colonial economic relationship with the US.

Even though the international lawyers of the early twentieth century never wrote about the 1902 Brussels Sugar Convention, they discussed free trade debates in Europe for the first time in the *Revue* in 1904 and 1905. ¹⁸⁸ To these jurists, it was clear that within the UK, Chamberlain’s imperial politics and trade policy benefited sugar producers in the West Indies and Balfour and the “free traders” policies benefited sugar consumers. ¹⁸⁹

The notes in the *Revue* indicate that free trade debates were a foremost issue across Europe during the time of the sugar treaty. What is difficult to determine, however, is the causal relationship between changes in free trade discourse and the political power of competing sugar interests within the British Empire. One might suspect that the two events may have been interlinked and it may have been the serendipitous synchronization of discourse and interests that led to signing of the Brussels Convention.

¹⁸⁷ See Chapter Four.

¹⁸⁸ *Supra* note 142.


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¹⁸⁷ See Chapter Four.

¹⁸⁸ *Supra* note 142.

CHAPTER FOUR. THE INTERNATIONAL SUGAR AGREEMENT OF 1937: RISE OF THE NEOCOLONIAL CUBAN STATE THROUGH THE LEAGUE OF NATIONS

I. Introduction

A. From Brussels to Havana and Geneva

When the Brussels Sugar Convention was signed in 1902, one of Cuba’s great “sugar barons”, Manuel Rionda y Polledo, hoped that Great Britain would turn to Cuba for its demands for sugar. Cuba had just gained its independence from Spain and Cuban delegates were “negotiating” the terms of their neocolonial relationship with the US. Rionda, who like other members of the Cuban commercial elite had his money tied up in US banks, US refineries, Cuban sugar fields and Cuban mills, would benefit from preferential access to the US. However, Rionda worried, and was proven correct, that the US would only provide duty free access to sugar from its colonies and annexations of the Philippines, Puerto Rico, and Hawaii. The Brussels Convention provided the hope of duty-free access to the world’s largest sugar consumer – Great Britain. Buttressed by the confidence that the Brussels convention provided, Rionda warned US Senator Platt (author of the Platt Amendment which would define the US-Cuba relationship) that if the US did not act quickly, Cuba would “slip through their hands.” Regulating how sugar from Cuba would enter the US for decades to come, the Platt Agreement provided Cuban sugar preferential access to the US market, though not duty-free access.1 As the price of sugar radically fluctuated and declined after the First World War Rionda would envisage a “League of Nations of Sugar” to stabilize the world sugar trade.2 This story of Rionda in 1902 would not only mark the future of how US and Cuban interests would intertwine, but would also foreshadow the role of sugar and international trade agreements in shaping the League of Nations.


2 Ibid. at 2
Even though the 1902 Brussels Convention lay at the origins of the modern multilateral trade institutions, during the time of the League, many looked to the Brussels Convention as a formal exemplar for the institutional design of the League as a whole. Sometimes the sugar treaty was highlighted as an example of multilateralism because it was thought to have successfully managed world economy and diverse national policies. Some looked to the Brussels Convention as a principal antecedent to the League as a whole because its Permanent Commission was thought to be the first example of a permanent international body that effectively influenced domestic policy. What is telling is how the 1902 Brussels Convention was characterized during the time of the League because it was in line with the trend of the time to deemphasize the League’s economic aspects.5

Rarely was the 1902 Brussels Convention examined as an international economic agreement regulating international agriculture despite the fact that its subject was the sugar trade. One League report commissioned to research the prospect of an international sugar agreement and summarizing the findings of retained experts, made the point that the


5 One exception is McClure, ibid. at 49-50, 368 (suggesting that the 1902 Brussels Agreement was the blueprint for devising the tariff scheme for League agreements relating to hides, skins, and bones, and that is one of the earliest multilateral treaties regulating duties and tariffs).
experts could only agree on one issue – that the principles of the 1902 Brussels Sugar Convention did not apply to the context of the sugar crisis they were studying (in 1929).6

Nevertheless, the negotiators of the subsequent international sugar agreements did not follow the thinking of the League memos and did look to the 1902 Brussels Convention7 in order to draft sugar agreements during the time of the League: the 1931 Chadbourne Agreement8 and the 1937 International Sugar Agreement (ISA).9

To one jurist, Harrop Freeman, the 1937 ISA “represented a considerable modification of the principle of absolute state sovereignty as to international trade in that the representation of a state was determined exclusively by the extent of its dealings in sugar.”10 He suggested that the sugar agreement reduced state sovereignty according to the amount of sugar exported or imported. Examining Cuba’s role as a central protagonist in the events leading up to the 1937 ISA reveals how a rising Cuban sugar elite employed League economic doctrine to increase the economic power of the Cuban state. Moreover, it provides insight into the economic aspects of the League of Nations.

1. Geneva

Surveys11 and histories12 of the League of Nations often neglect the institution’s economic aspects. If economic matters are discussed, it is usually in the context of outlining the


7 McAvoy, supra note 1 at 223-234.


League’s general institutional structure or listing its conferences.13 This oversight likely arises because the League is usually examined through the lens of the Covenant where there is only one very limited reference to any “economic” matters in Article 23(e).14

Research into the economic functions of the League is only now emerging.15 Early contemporary work focused primarily on the intellectual significance of the work conducted by economists employed in or by the League.16 More recently, Clavin and


13 See for e.g. Howard-Ellis, ibid. at 132-133.

14 Art. 23(e): “[the Members of the League] will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind.” This provision is referred to the “Economic Equality” provision. Provisions addressing Mandates had economic aspects, but commentators considered this an entirely different issue than the general economic mandate of the League. For an excellent examination of the Mandate system, including its economic elements, see Antony Anghie, “Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations” (2002) 34 NYU J. Int’l Law and Politics 513.


Wessels have provided the first contemporary account of how the economic and financial organization within the League was structured and operated.17

Two things are missing from these works. First, there is little examination of the League’s doctrines, i.e. the system of principles, rules, and procedures intended to implement the ideas derived from expert economic advice and delegates’ demands. We will see how three doctrines dominated League economic discourse of the time: rapprochement, rationalization and freer trade. Rapprochement was the general principle that political and economic cooperation was necessary to ensure peace. Rationalization was the theory that it was necessary to stabilize and control economic conditions of production, distribution and consumption in a way that ensured economic efficiency and improved a community’s welfare. And freer trade was the idea that domestic tariffs levels would be eventually reduced over time, but how fast and to what degree was a matter of negotiation.

If any doctrine is mentioned in the few works that examine the economic aspects of the League it is freer trade and to a lesser degree rapprochement, whereas rationalization has been lost. Yet the one League treaty that attempted to implement the League doctrine of freer trade was not popular amongst many League delegates and it would never come into operation.18 Conversely, the 1937 ISA epitomized rationalization and was one of the few of the League’s economic treaties that were successful.

Indeed, delegates from relatively newly independent Cuba would employ the doctrines of rapprochement and rationalization and be one of the primary instigators of the 1937 ISA.


18 *International Convention for the Abolition of Import and Export Prohibitions and Restrictions,* 8 November 1927, 97 L.N.T.S. 391; Hill, *supra* note 4 at 45-47; McClure note 4 at at 366; *Commercial Policy,* infra note 2 at 33-45, 93. The treaty was riddled with conditional ratifications and was brought into force by special arrangement on a short-term basis on January 1, 1930. By the middle of 1934 the treaty was denounced by all the parties.
This leads to the second point: recent accounts primarily focus on the role of industrialized countries in League debates and operations and do not take into account the role that so-called underdeveloped countries played in the institutional formation and innovations of the League.

2. Havana

One way to counterpoise the common account of the League is to account for how Cuban delegates successfully used League world economic conferences and doctrines to articulate certain Cuban interests. And in order to understand the why the Cuban delegates would turn to the League and the implications of their actions we must situate this account within the context of the history of Cuba and the sugar economy.

Cuban delegates were the principal instigators behind the 1937 ISA – a treaty that institutionalized the rationalization of the world sugar market. Cuban delegates championed the notion that a stable world sugar market was necessary as part of rapprochement. They emphasized that respective governments, in order to ensure rapprochement, should rationally regulate the world sugar market. Cuban delegates also adopted the League assumption the agricultural periphery had to ensure the industrialized core obtained the primary commodities necessary for manufacturing.

But Cuban delegates through the 1937 ISA subtly challenged the underpinning power dynamic between core and periphery and actually increased Cuba’s international economic power. Cuban geopolitical sugar concerns were intertwined with domestic socio-economic needs. The League delegates from Europe gave speeches and wrote articles arguing against policies of “economic nationalism” and “self-sufficiency” because they feared that countries would raise tariffs with little disregard to political and economic consequences in the world.19 This resonated with Cuban delegates since the Cuban economy was extremely dependent on the export of sugar to the US – and the US’s high tariffs and self-sufficiency policies ruined many lives in Cuba. Some Cubans argued against this dependency on one

19 Hill, supra note 4 at 1-13; McClure, supra note 4 at 410-413.
commodity or called for socio-economic changes that would make the domestic sugar economy more equitable. It was during this time that renowned Cuban intellectual, Ramiro Guerra y Sánchez, wrote the first edition of his influential book, *Azúcar y Población en las Antillas*, which turned the attention towards Cuba’s imperial relationship with the US:

> By supplying cheap sugar at a very low price to the consumer, the producer country becomes an economic fief of a distant metropolis, and its working class lives in poverty so that the country that dominates or exploits it can live better and more cheaply.\(^{20}\)

Foreshadowing *dependentista* arguments approximately four decades later in the 1970s,\(^{21}\) Guerra’s concern was that the US was the metropolis that benefited from the high price of sugar leaving Cuba little opportunity for economic development.\(^{22}\)

The sugar treaty would in fact define Cuban sovereignty, as Freeman described it, in relation to “to international trade in that the representation of a state was determined exclusively by the extent of its dealings in sugar.”\(^{23}\) Since Cuba was the largest producer of sugar, according to the treaty this actually granted Cuba great economic power. Thus, the trade treaty would increase Cuba’s economic sovereignty in relation to the US.

The Cuban government, however, did not want its economy to entirely depend on sugar export. Accordingly, Cuban delegates linked League economic doctrines of rationalization to Cuban economic development plans. Sugar was Cuba’s principal commodity and everyday life was acutely affected by fluctuating sugar prices. What is more, Cuban League delegates had direct personal stakes in Cuba’s sugar economy and its emerging commercial

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\(^{21}\) See for e.g. Fernando Henrique Cardoso & Enzo Faletto, trans. by Marjory M. Urquidi, *Dependency and Development in Latin America* (Berkeley: University of California Press, 1979 [1971]).

\(^{22}\) Guerra, *supra* note 20 at 76. Guerra did not take an anti-US stance but was arguing to improve conditions in Cuba.

\(^{23}\) Freeman, *supra* note 10.
and industrial enterprises. Thus, the government, knowing it had to diversify its economy, still had to try to stabilize the price of sugar with the hope of obtaining as much return from sugar exports as possible in order to maintain social stability. The result was that the 1937 empowered the sugar-producing periphery in relation to the industrial core, but tragically provided little to the peripheral states to try and restructure their economy from relying on one commodity.

Of course, the Cuban story is not the only one that can be told to understand how imperialism constructed and affected trade doctrine related to the League. For example, we could look at life in Java and its relationship to the Netherlands “home country.” Java dominated sugar production in the Eastern hemisphere. Dutch delegates were the primary protagonists in trying to advocate for lower tariffs in the world; their particular trade ideology and engagement in League debates was likely affected by conditions in the sugar-cane fields of Java and sugar-beet fields of the Netherlands.24 Moreover, others have noted the competition between cane growers in Java with cane growers in Cuba.25 Nevertheless, Cuban delegates were the principal advocates for an international sugar treaty, which was one of the League’s few successful economic treaties. Thus, Cuban experiences and contexts can provide some insight into the economic functions of the League.

**B. Writing Neocolonial Cuba Into the History of the League**

Cuban delegates would employ the economic discourse of the League and successfully advocate for an international sugar agreement which adopted the doctrine of rationalization. What is remarkable is that despite the lack of unanimity at general League

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24 See for e.g. Peter Boomgaard, “Treacherous Cane: The Java Sugar Industry Between 1914 and 1940”, in Bill Albert & Adrian Graves, eds., *The World Sugar Economy in War and Depression 1914-40* (London: Routledge, 1988) 157 (examining the social and commercial characteristics of the Java sugar industry); Prinsen-Geerligs, *supra* note 139 at 76-84; Miriam S. Farley, “Sugar – A Commodity in Chaos” (1935) 4 Far Eastern Survey 172 (situating the Java sugar industry within the international sugar economy of the time); J.W.F. Rowe, “Sugar”, in *Royal Economic Society, Memorandum No. 69 Stocks of Commodities* (London: Royal Economic Society,1937) 23 at 25-26 (showing moments when the Dutch opinions regarding the Java sugar industry correlating with changes in Dutch international sugar negotiations).

economic conferences, the treaty put into effect specific and popular conceptions of League economic doctrine: that international agreements were necessary to rationally stabilize markets before tariffs could be reduced. In order to appreciate the context of how and why the legal structure and function of the 1937 ISA enacted League doctrine, we must first query how and why Cuban government officials were the primary protagonists for an international sugar treaty.

1. The League as a European Story

As will be outlined below, the economic aspects of the League are usually overlooked despite it holding three major world economic conferences. The common story is that the 1920 International Financial Conference focused on Europe’s reconstruction, the 1927 International Economic Conference unsuccessfully attempted to stave off protectionist tendencies to improve world trade conditions, and the 1933 International Monetary and Economic Conference was an attempt to stabilize international currencies in response to the Great Depression. Economic experts dictated the conference agenda and they focused on how doctrines of rapprochement and rationalization would improve world trade and economic development. According to this account, all these conferences failed because no consensus could be reached among the delegates.

The common account of the conferences is usually through the lens of European interests. After the Great War, League delegates and experts listed the economic recovery of Europe as a priority. They were responded to how the war left few European countries exempt from the destruction of physical and institutional structures. Many European delegates and

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politicians were also concerned that while European economic development was impeded by the war, non-European countries, which included former colonies and the US, advanced their industrial and commercial capabilities. That meant that the reconstruction of Europe was thought to be part of the broader context of “catching-up” with the rest of the world and reinstating Europe back to its central position in the world economy. The following statement from the Final Report of the 1927 League of Nations World Economic Conference captures many European delegates’ apprehension that their countries had lost their economic position to newly industrialized countries:

After a whole century, during which other countries were willing to supply Europe with raw products in return for the manufacturers which Europe alone was in the position to make, a careful observer in 1905 or 1906 – or possibly twenty years earlier in the case of the United States – could have perceived a new chapter was opening in the history of these distant countries, the chief characteristic of which was the endeavor to establish manufacturing industries of their own. The war greatly stimulated this development by restricting and diverting foreign trade between Europe and the rest of the world. But at the moment of facing this new situation, Europe finds herself severely handicapped.

This frustration that former colonies that used to supply Europe with raw material had economically surpassed Europe during the war made agriculture an “international”

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problem. The predominant sentiment expressed by European and North American League delegates was that access to raw materials for industry and foodstuffs was necessary to ensure Europe recovered after the war.\textsuperscript{29} This meant that within the context of the League, European interests were a priority. If a concern was made for the economic prosperity of the “indigenous inhabitants,” it was secondary to ensuring Europe received its necessary agricultural products.\textsuperscript{30}

European interests were universalized in a way that ensured that the agricultural periphery served the industrial core. The common assumption was Europe’s economic recovery was the best way to ensure world peace and prosperity and was a necessary precondition to resume normal trade relations. This assumption in turn informed the notion that Europe’s economic recovery was understood to be of international interest.\textsuperscript{31} Europe’s access to agricultural products was thought to be necessary for its recovery, and the world’s interest was Europe’s interest. In the words of one author examining the League’s economic functions, agricultural products and other raw materials were the “world’s heritage.”\textsuperscript{32} Therefore, raw materials had to be internationally regulated for the greater good of the world, understood as Europe’s interest.

Cuba delegates agitated for an international sugar agreement starting from 1927 until the final League sugar treaty was concluded in 1937. Cuba was a case of one of those former colonies which benefited from the “European” war. The Cuban economy depended on the export of sugar. This meant that when European sugar beet fields were ravaged by war and


\textsuperscript{30} See for e.g. 1927 World Economic Conference Final Report, \textit{ibid.} at 50.

\textsuperscript{31} See for e.g. Clemens Lammers, trans. by Karl Scholz, “The Cartel Question at the World Economic Conference” (1927) 134 Annals of the American Academy of Political and Social Science 145 at 150.

\textsuperscript{32} McClure, \textit{supra} note 4 at 410.
Allies needed to ensure a steady supply of sugar, Cuban sugar producers went through an economic boom.\textsuperscript{33} Throughout the League’s history, Cuban representatives would continue to be the main protagonists vying for an international sugar agreement. Sugar was one of only two agricultural products that would be regulated by an international trade agreement under the auspices of the League (the other was wheat).\textsuperscript{34}

So for example, at the 1927 World Economic Conference Luis Marino Perez, the Cuban commercial attaché in Washington D.C. and League delegate, was careful as to how he articulated Cuba’s interests as part of efforts of post-world war rapprochement. In his opening speech he emphasized how the economies of Europe and America (meaning the countries of Central and South America) were interdependent in a way that did not challenge the notion that the European economy was paramount in the world economy. Rather, he linked European interests to American interests. Marino criticized the conference for predominantly focusing on the highly industrialized nations of Europe and not the countries of America which mostly depended on agriculture and raw materials as a source of wealth. But he quickly followed his sharp remarks by shifting the emphasis to Europe by maintaining that that the conclusions of the conference are crucial to the Americas as they are to Europe, “because whatever tends to increase the prosperity of the Old World will also substantially and directly benefit America.”\textsuperscript{35}

Orestes Ferrara’s experiences when he was Cuban ambassador to the US and later as president Cuban delegate to the 1933 World Economic Conference are another example. His frustrations with the US and proposals at the League illustrate how Cuba turned to the League to try and obtain more economic sovereignty from the US. On two separate occasions in 1927 during the sugar depression, Ferrara made requests from the US for

\textsuperscript{33} Jenks, \textit{supra} note 45 at 175-205.


\textsuperscript{35} \textit{Report and Proceedings of the World Economic Conference} vol. 1, \textit{supra} note 3 at 149 (The delegate was looking to devise an agreement regulating the production of sugar and to gain increased access to the European market).
some form of relief, each of which was denied. He tried to convince the US government to increase the preferential for Cuban sugar from 20% to 40% or as a second best option to create a sliding scale preferential that adapted to the fluctuating price of sugar – a preferential that was high when the price was high, low when the price was low. That same year Ferrara informed the State Department that the Platt Amendment made Cuba appear less sovereign and independent; Ferrara (and later Machado) did not request to eliminate the legislation, but rather wanted to change the form so Cuba “would look better to the world.” Thus refuted, Cuban delegates turned to the League as a forum to attempt stabilize the international price of sugar and try to negotiate increased economic sovereignty from the US at the 1927 World Economic Conference by requesting the creation of an international sugar agreement. Cuban delegates would continue with this tactic and employ League economic doctrines until it would finalize the 1937 ISA.

2. Cuba and Transnational Sugar Interests

The social, political, and economic conditions of sugar production in Cuba provide context of what likely influenced Cuban delegates to adopt the economic discourse of the League. Republican Cuba was highly dependent on sugar. In 1913, sugar made up 72% of Cuba’s exports and by 1920 it was 92%. Sugar not only provided people in Cuba a principal source of income from exports but it also structured social and economic life. For the first two decades of Cuban independence from Spain, sugar mills provided communities the main means for social and economic development. Indeed, the production of sugar stratified social dynamics in Cuba. Recall from Chapter II that sugar cane needed to be harvested by agricultural workers, and then had to be processed by a mill near the sugar cane fields. The mill would extract the raw sugar in order to send it to a refinery (often in a

36 Smith, supra note 49 at 49-50

37 Smith, ibid. at 120.

38 A classic text examining the central role that sugar played in forming Cuban life is Fernando Ortiz, trans. by Harriet de Onís, Cuban Counterpoint: Tobacco And Sugar (New York: A.A. Knopf, 1947).

more to industrialized economy) that would then process the raw sugar for the purpose of consumption.

“Sugar barons” and their families owned and ran large-scale sugar mill complexes (centrales) throughout Cuba. These elite mill owners created sugar mill towns providing health care, education, electricity, radio stations, railroads, and social services to the hundreds of workers and their families. Their wives usually provided charity to workers and their families. Since the Cuban state provided little of these social and economic benefits, jobs in sugar mill jobs were the most valued in Cuba. Many of these mill owners were fascinated with progress and efficiency and competed to develop the most modern towns. Nevertheless, with this economic progress and social charity came repression. Sugar patriarchs considered their acts of philanthropy to be mechanisms of social control and worker appeasement. They did not hesitate in beating or exiling workers thought to be rebellious or disruptive and suppressed any worker movement to organize.40

Many sugar mills received their raw sugar from surrounding cane farmers (colonos). Colonos were from a variety of backgrounds. Many were political bosses who were leaders in the 1895-98 war of independence against Spain. Moreover, amongst the colonos they were disparities in economic power. Some grew cane on their own land, some rented out their land to subcolonos, while others farmed on land rented from a central. Colonos had a tenuous relationship between the centrales and US financial interests. The colonos would sometimes present themselves to the government and business community as partners with the sugar mill corporation for the purpose of sugar export – the planters provided the labour and sugar while the sugar mill would provide the railroads, mills, and access to international markets. Other times the colonos would present themselves as nationalist Cuban farmers who were the largest employers of Cuban labour and oppressed by US interests and elite sugar mill owners. There were times when the colonos would organize themselves threatening to strike in order to negotiate better returns from the corporations.

40 Gillian McGillivray, Blazing Cane: Sugar Communities, Class and State Formation in Cuba, 1868-1959 (Durham: Duke University Press, 2009) at Chapters 4 and 5. McGillivray examines two exemplary sugar mills and provides an excellent study of the role of sugar mills in Cuban life and politics with a focus on the first two decades of the Cuban republic (c. 1900-1920)
The colonos had to compete with large US-owned sugar mills which purchased sugar cane farms and harvested cane using company workers (this was called administración sugar). Nevertheless, some of the more wealthy colonos developed some close personal and commercial ties with Cuban sugar mill owners and US financiers. McGillivray outlines how the colonos formed an emerging middle class during the 1920s which obtained great economic and political power by the 1933 revolution Cuba. Thus, sugar provided transnational commercial ties between US finance and the Cuban elite. The sugar mills in Cuba were often financed or owned by US businessmen and banks. The Cuban sugar mill elite had close personal ties with these US financiers; they were often educated or had business ventures in the US. Even though Cuban sugar elite had close ties to the US, they used the League to renegotiate this relationship. This was because the US devised reciprocity treaties to regulate international economic relations that determinately affected the lives of many in Cuba – and because these treaties contravened League consensus

Cuban delegates had some added opportunity to express their interests in the international institutions.

Up until the 1920s, the centrales and colonos was the primary source of social and economic welfare for most people in Cuba. As will be discussed below, it would not be until Gerardo Machado y Morales became president in 1925 when the Cuban state would play a more active role in the social and economic life of Cubans. Indeed, by the 1920s, a distinctive Cuban sugar interest was forming which represented a significant economic class with close ties to or was overlapping with the Cuban political class. This coincided with an increase in Cuban nationalist rhetoric. Thus, the Cuban state, starting with

41 Ayala, supra note 43 at 121-147.

42 Gillian McGillivray, “‘Dear President Machado”: Colono Nationalism During Cuba’s Turbulent 1920s and 1930s” (2003) 37 J. of Caribbean History 70.


44 See McGillivray, supra note 40 at 126, 145-146, and 189.
Machado’s tenure, mostly represented the interests of the Cuban sugar mill owners and colonos.

Moreover, the demarcation of “US interests” and “Cuban interests” was never very clear. Cuban sugar planters and mill owners relied on US finance and were at the mercy of US political decisions. What was complicated was that even though US financial interests intertwined with Cuban sugar interests, the rising Cuban colonos and elite sugar interests were often at odds with US political interests. Cubans had begun to diversify their economic investments and amass more wealth than before. Even though Cuban sugar planters and mill owners relied on US finance, they were at the mercy of US political decisions.

3. Cuba and its Neocolonial Relationship with the US

Cuba’s relationship with the US, starting from its independence from Spain in 1902 until the 1958-59 revolution, was marked by various degrees of political and economic dependence. Republican Cuba was a neocolonial state in relation to the US during this time – Cuba maintained the semblance of formal political independence from the US, but its economic policies were directly affected by decisions made in the US or by US actors in Cuba. Jenks, in his classic study of the US’s economic imperial relationship with Cuba, links the emerging Cuban nationalist fervor of the twenties with Cuba’s role in the League:

A host of imponderables assisted to build up Cuban consciousness of national personality. Cuba had signed the Versailles treaty and joined the League of Nations in 1920. And when the American Senate refused to endorse the diplomacy of President Wilson, Cuba was left for the first time in an international position where she was not under the wing of the United States. The benefits of the expanded international horizon were emphasized in 1922


46 For a classic study on neocolonialism see Kwame Nkrumah, Neo-colonialism: The Last Stage of Imperialism (London: Nelson, 1965).
when a Havana jurist, A.S. de Bustamante, was chosen one of the judges of the World Court. In 1923, another Cuban lawyer, Cosmé de la Torriente, served as president of fourth assembly of the League. The rapidity with which Cubans have made their abilities recognized in the arena of world politics is further illustrated by the election of Cuba, for the year 1927-28, to a temporary seat on the Council of the League.\textsuperscript{47} [emphasis added]

Considering how central sugar was to every aspect of life in Cuba, the Cuban proposal for a sugar convention at the League of Nations 1933 World Monetary and Economic Conference and the 1937 ISA was an attempt by the Cuban state to exert economic sovereignty in response to domination by US financiers and US-owned \textit{centrales}.

From 1902 until 1934, the US maintained formal political and military influence over Cuba through the Platt Amendment, which was a treaty between Cuba and the US and was incorporated into the Cuban constitution. The treaty outlined the political relationship between the two countries and provided the circumstances in which the US may intervene in Cuban domestic and international politics. Accordingly, Cuba was sovereign to manage its political affairs subject to the exceptions enumerated in the Platt Amendment for when the US may elect to intervene.\textsuperscript{48} After the 1933 revolution, the US and Cuba signed a new treaty as part of Roosevelt’s Latin American “Good Neighbor Policy”; the 1934 Treaty of Relations abrogated the Platt Amendment and reduced the US’s right to have a military presence in Cuba to maintaining a naval base in Guantánamo Bay.\textsuperscript{49}

The US also held powerful economic influence over Cuba through a series of domestic sugar legislation and bilateral reciprocity trade treaties. From 1920 to 1933, especially during Machado’s presidency, Cuban government officials and Cuban industry vigorously lobbied the US government to keep sugar tariffs low and preferential amounts high. Despite

\textsuperscript{47} Jenks, \textit{supra} note 45 at 271.

\textsuperscript{48} Jenks, \textit{ibid}. at 75-103.

Cuba sugar’s preferential access to the US market, the US government often set tariffs so high that offset the benefits of the preferential rate for Cuban sugar – Cuban sugar producers were adversely affected because they could not compete with domestic sugar. The fluctuating price of sugar further frustrated Cuban sugar producers and workers added considerable instability. Some workers sang songs tinged with anger and irony expressing their frustration with the US government’s ability to dictate the fate of their lives with its domestic sugar quotas.

Not only did US sugar laws and treaties destabilize Cubans’ lives, but they also crippled the Cuban’s ability to industrialize and economically diversify by ensuring that sugar would continue to be Cuba’s principal source of wealth. The 1903 Reciprocity Treaty granted Cuban agriculture a 20% duty preferential and Cuba granted the US a 20% preferential on most items with 24, 30, and 40% on selected categories. The 20% preferential for US goods was on products which already dominated the Cuban market and therefore the reduction of the tariff was not expected to affect trade. The higher tariff reductions were for goods for which US officials anticipated competition from other industrialized countries. Since the Reciprocity Treaty allowed cheap US manufactured goods to flood into Cuba, it made it very difficult for the nascent Cuban industry to develop. In addition, the preferences granted to Cuban sugar was only for raw sugar. This meant that there was little incentive for refineries to be built in Cuba. Hershey’s Chocolate and bottlers of carbonated beverages such as Hires Root Beer lobbied the US government for low duties on all Cuban sugar – they had started to build refineries in Cuba to ensure access to cheap sugar. Refined sugar generated a higher profit margin than raw sugar and therefore US refiners successfully

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50 Smith, *ibid.* at 42-71.

51 McGillivray, *supra* note 40 at 1. See also Smith, *supra* note 49 at 71 for a letter to the editor with the same sentiments.


lobbied their government to ensure that only raw sugar was granted preferential access.54 The US State Department considered the treaty to be a way to stimulate the Cuban sugar economy (which was dominated by US owned sugar mills) and ensure that the US had a monopsony on Cuban sugar.55 Thus, the Cuban economy not only depended on sugar but also on the US.

4. Rationalization and Cuban Sovereignty

Rationalization, defined as the control of economic conditions of production, distribution and consumption in a way that ensured economic efficiency and improved a community’s welfare, was a popular domestic and international economic policy during the interwar period. The emerging Cuban state would attempt to rationalize the domestic production of sugar, coordinate the rationalization of global sugar production, and rationalize the export of Cuban sugar. The Cuban government did this because it had little control over capital in Cuba leaving only trade policy as the principal policy tool to serve domestic needs of economic development. Moreover, the Cuban state would use rationalization to seek more freedom from the US so it could dictate its own economic policies.

Within five days of Machado being overthrown on January 1, 1934, the US abrogated the Platt Amendment and started negotiating a new Reciprocity Treaty.56 Many Cubans thought that the revolution would change Cuban politics and economics. US laws, however, ensured that the Cuban economy remained dependent on sugar and the US. The new treaty had much the same effect as its 1903 predecessor and ensured that Cuba would remain dependent on sugar until the 1950s.57 The Reciprocity Treaty, as part of the New Deal, was coupled with the 1934 Jones-Costigan Act. The Jones-Costigan Act shifted US policy from regulating the import of trade through tariffs to regulating through the import quotas. The combination of the Reciprocity Treaty and Jones-Costigan Act allowed the US government

54 McGillivray, supra note 40 at 75-77.
55 Pérez, supra note 52 at 122.
56 McGillivray, supra note 40 at 223.
57 McGillivray, ibid. at 260.
to navigate between US international economic interests and competing interests in the domestic sugar industry.\footnote{Smith, supra note 49 at 157-164.}

The Cuban economy was hurt by the way the Jones-Costigan Act set quotas. The act based on previous years of production and Cuba had in the past voluntarily reduced its production (through the 1931 Chadbourne Agreement) in attempt to raise sugar prices and counter the sugar depression. As a result, it was locked into a quota that was far below 1925 levels.\footnote{Ayala, supra note 43 at 239-340.} The post-1933 Cuban elite agreed to the treaty and US sugar laws because they thought that they had to ensure, at least in the short-term, that Cuba had access to a stable sugar market.

The Cuban partial response to the US sugar laws and reciprocity treaty was the 1937 Sugar Coordination Act. To some Cubanist historians, this act epitomized the post-1933 empowerment of the colonos. The Sugar Coordination Act would be the cornerstone of Cuban economic and political system until 1959. It regulated the production of sugar cane in favour of the colonos. The act provided a minimum quota for the grinding of cane from colonos, fixed the colonos rent at a very low rate, and linked the wages of workers according to the price of sugar.\footnote{McGillivray, supra note 40 at 243; Ayala, supra note 43 at 241; Dominguez, supra note 45 at 85; Brian Pollitt, ”The Cuban Sugar Economy in the 1930s”, in Bill Albert & Adrian Graves, eds., \textit{The World Sugar Economy in War and Depression 1914-40} (London: Routledge, 1988) 97 at 98.} In response to the US, the interests of colonos and Cuban sugar mill owners' interest were coalescing into a Cuban sugar producer interest. Thus, we will see how the 1937 ISA was part of this same effort to respond to US sugar laws and improve the interests of Cuban sugar planters and construct the new Cuban state all within the gambit of rationalization.
II. Economic Aspects of the League of Nations

A. Economic Conceptions of the League

The few authors that focused on the League's economic aspect still characterized the League's primary purpose to be about achieving political stability. They also considered the scope and efficacy of the League's economic work to be limited by the political will of states, which was thought in turn to be shaped by domestic policy.\(^61\)

When the League's institutional structure was being negotiated, not everyone conceded to this political conception of the League. In December 1918, Jan Smuts, the prominent white South African and British Commonwealth statesman and military leader, published his famous pamphlet, entitled *The League of Nations: A Practical Suggestion*.\(^62\) One of Smuts's opening statements was that that:

> economic functions of the league would not be confined to the prevention of wars or of an unauthorized belligerent, but would be extended to the domain of ordinary peaceful intercourse between members of the league.\(^63\)

Even though Smuts's pamphlet would influence how the League was constructed, his economic prescriptions would not be incorporated into the Covenant.

During the Paris Peace Conference in 1919, a vocal dissent were concerned that the Wilson-inspired Covenant did not include significant economic provisions. John Maynard Keynes wrote a scathing and influential indictment against the Peace Conference and

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\(^{63}\) Smuts, *ibid.* at 24.
resigned from the conference as principal representative of the British Treasury in the midst of negotiations.  His primary concern was that the emerging consensus for the League by and large ignored the necessity of economically reconstructing Europe and had the effect of economically punishing Germany and Austria. Keynes proposed a plan outlining what international action was necessary to ensure international economic stability and the economic development of Europe. Keynes's opinions aligned with broader criticisms that proposals for the League were too focused on ethnic, strategic, and political considerations, leaving out the economic and financial causes and consequences of war.

B. Economic Functions of the League

Despite the criticisms of the Paris Peace Conference and ensuing Covenant, the narrow scope of Article 23 did not predetermine the actual scale of economic and financial organization of the League. In practice, a great amount of time, effort and resources went into examining international economic issues and attempting to form international consensus on how to organize international economic life. A commonly held sentiment for those few examining the economic work of the League was that:

There is only one direct reference in the Covenant (Article 23) to economic cooperation – the undertaking to “make provision to secure and maintain

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65 Keynes, ibid.


67 Walters, supra note 12 at 423; Webster & Herbert, supra note 12 at 223; Howard-Ellis, supra note 11 at 132. Despite these authors’ emphasis of how influential, important, and independent the economic workings of the League were, they devote relatively little space to analyze this aspect compared to the political elements.
freedom of communications and transit and equitable treatment for the
course of all Members of the League.” But a large part of the work done
under the auspices of the League finds its raison d’etre in its general purpose,
as defined in the widely drawn Preamble to the Covenant – “to promote
international co-operation and to achieve international peace and security.”

The League Assembly and Council directed international economic questions to its
permanent staff and through a series of world economic conferences. The League’s
Assembly oversaw six committees. The Second Committee, which was entrusted to attend
to “technical organizations”, was composed of several sections addressing economics,
finance, health, communications and transit, and technical questions. The Economic and
Financial Section was the largest of the “technical organizations” within the League and the
most active. The work of this section, staffed by economic experts, was understood to be
the comprehensive collection of statistical information relating to economic matters and
the use of economic theory to interpret this information for the purpose of devising
practical solutions to international economic problems. Despite this characterization of
the work of these economic experts as technical and non-political, the Economic and

68 Economic and Financial Section, Report on the Economic Work of the League (Geneva: League of Nations,
1927) (1927.II.43; C.E.I.41) at 3.

69 The League Assembly, which comprised representatives from all the member countries each country
having one vote, is often understood as performing more legislative functions. The League Council, which was
composed of four permanent members and up-to 10 rotating non-permanent members, is often understood
as having an executive role. The six committees under the auspices of the Assembly were 1) Constitutional
and Legal Question; 2) Technical Organizations; 3) Reduction of Arms; 4) Budget; 5) Social and
Humanitarianism; 6) Political and Minorities Questions. For the structure of the Assembly’s Committees and
Sections see Howard-Ellis, supra note 11 at 135.

70 Hans Aufricht, Guide to League of Nations Publications (New York: Columbia University Press, 1951) at 212-
214; McClure, supra note 4 at 21-23; Hill, supra note 4 at 109. The organization of sections within the 2nd
Committee changed over the years. In March 1922, the Economic Section and Financial Section functioned as
separate but related entities under the same secretariat until 1931.

71 Hill, ibid. at 1-11
Financial Section were considered to be essential components to the formation of world order.\textsuperscript{72}

This was in part because the sections provided all the information that would form what was assumed to be relevant background for the series of world economic conferences held under the auspices of the League. The three conferences that addressed general world economic problems were the 1920 International Financial Conference (the League’s first conference of any kind), the 1927 International Economic Conference (commonly known as the World Economic Conference), and the 1933 International Monetary and Economic Conference (sometimes called the 1933 World Economic Conference). The League’s experts would determine the problems that needed to be addressed and devise the agenda that would structure the international conferences. The section would retain external experts to provide memoranda outlining the intellectual and statistical background on certain topics. The information provided by the League’s permanent staff and expert memoranda would often be referenced during conference discussions and debates as authoritative sources. The first two world economic conferences, however, were not constituted by government officials representing their respective country’s official position.\textsuperscript{73} Instead, governments would send their own “experts” of high-level civil servants, academics, industry leaders, union leaders, and the like. Even though these national experts negotiating at the conference were considered to be attending in their personal capacity, they often took positions reflecting national interests or were from high-level national institutions. After the delegates spent some time deliberating and when, according to one League historian, “both the theoretical and practical differences of opinion have been sufficiently reconciled, and appropriate reports made the League, ... the results may be submitted to conferences

\textsuperscript{72}See for e.g. H.R.G. Greaves, \textit{The League Committees and World Order: A Study Of The Permanent Expert Committees Of The League Of Nations As An Instrument Of International Government} (London: Oxford University Press, 1931)

\textsuperscript{73}The International Monetary and Economic Conference, 1933 had both experts and representatives of national governments attend as delegates.
of the plenipotentiary representatives of the national governments to be put into form as conventions...”

C. Experience of War and Rule by Economic Experts

After the Great War, a great amount of intellectual and artistic energy went towards attempting to create a “new world order”, “new era”, or “new man”. Many conceived the League as part of this effort to create a new world of international solidarity. Despite this desire to break away from the war, the experience of war had a great influence on how the League’s economic activities were devised.

Even with their different conventions for the primacy of the League’s economic activities, both Wilson’s and Smuts’s thinking of how the League would address economic

74 McClure, supra note 4 at 101.

75 See for e.g. “Biography of Woodrow Wilson”, online: The White House <http://www.whitehouse.gov/about/presidents/woodrowwilson/>.

76 See for e.g. Roland William Boyden, ed., The Economic Consequences Of The League; The World Economic Conference (London: Europa Publishing Company 1927) at 53, 92, and 101.

77 See for e.g. Jean Clair, ed., The 1930s: The Making of the “New Man” (Ottawa: National Gallery of Canada, 2008).


I doubt whether it would be wise at this venture or very soon to call together a commercial conference to discuss the best method by which the resources of the world, our own included, can be correlated in order to render the best service in the critical times now at hand. Happily, there are international agencies of the conference and cooperation now in existence growing out of the war which not only can be used but are already being used to consider cooperation.

80 Smuts, supra note 62 at 24:

Quite recently the practice of the Allies in controlling and rationing food, shipping, coal, munitions, etc., for the common purposes through the machinery of Inter-Allied Councils has led to the idea that in future a league of nations might be similarly used for the common economic needs of the nations belonging to the league – at any rate for the control of articles of food or raw materials or transport in respect of which there will be a shortage.
problems, was influenced by the inter-allied efforts to ensure a supply of primary commodities (for food and industry) and equipment. During the war, the Allies responded to naval blockades and shortages of supply by co-coordinating their efforts and organizing the supply of goods. They created a series of inter-allied organizations which at first coordinated shipping purchases for the armed forces and later controlled commodities for civilian needs. These organizations linked together government departments by creating ongoing relationships: “[t]he French wool official dealt with the British and Italian wool officials and was not concerned with what his colleagues for cotton or timber or coal were discussing with the corresponding experts.”

This experience of the war in effect transformed the conceptualization of the economic function of the state. The experience of wartime organization provided evidence that governments could effectively and efficiently plan and manage the production and distribution of goods. The system of coordination was thought to be so successful that plans were made to use the organizations for the purpose of European economic relief and reconstruction – an idea that was supported by the fact that the inter-allied organization coordinated a large number of neutral country’s foodstuffs during the war.

Sir J. Arthur Salter headed the inter-allied coordination efforts and would carry this new conceptualization of the state through to the economic functioning of the League. Salter was the head of the Economic and Financial Section of the League from 1922 –1931 and was considered by many to be one of the most influential and active directors of the Economic and Financial Section. He attributed the efficacy of the inter-allied system to the

81 Hill, supra note 4 at 14-18.


83 Hill, supra note 4 at 13.

84 McClure, supra note 4 at 66-74; Hill, ibid. at 15-16

85 McClure, ibid. at 66-74; Hill, ibid. at 109; Zimmern at 404. Salter would describe this time as the “happiest period of my work life,” Lord Salter, Memoirs of a Public Servant (London: Faber and Faber, 1961) at 17. See
fact there was no external authority but that “it was national organizations linked together for international work and themselves forming the instrument of that work.”\textsuperscript{86} Salter’s words describing the principles he developed during the war capture how administration of economic policy during war informed the League’s economic functions. In them are the traces of the concepts of rapprochement and rationalization (discussed below) that would permeate the League’s economic policies and conferences:

[International administration] will work through the executive organization of national Governments. It will influence, co-ordinate, perhaps control their work. But it will not replace them. It will obtain its power, not from an authority conferred by delegation, but by continuous pressure and influence on the centres of national power. ... Sometimes its objects may be achieved merely by securing that national decisions, even if it still made nationally and on national grounds, are made after full recognition of their effect upon other countries and other of countries’ views and opinions. ... the method of direct contact over a wide surface, of linking these departments together by the association of their crucial officers, will prove more effective and successful than any form of external influence and control. The method is capable of infinite variations for particular needs, but in one form or another it will be applied to most of the really important work touched by international administration. This principle, valuable as an instrument of administration, is the more interesting and important because it is in accord with the fundamental purposes and policy of the League of Nations.\textsuperscript{87}

W. Arthur Lewis described the interwar period as a time when “[d]emocracies and dictatorships alike resolved that society should no longer be at the mercy of economic events, and sought gropingly, and in conflicting and contradictory ways, to control events

\begin{footnotesize}
\textsuperscript{86} Salter, supra note 82 at 252.

\textsuperscript{87} Ibid. at 254. Salter commented after his tenure in the League that his experience during the war informed his work as head of the Economic and Financial Section, see Salter, supra note 85 at 177.
\end{footnotesize}
by government agency.”  

This reconceptualization of the state would later influence the ideas that informed the Bretton Woods institutions and the International Trade Organization. Keynes was not only affected by wartime efforts to ensure the supply of goods when considering the League, but he returned to the idea of controlling the supply of commodities when devising a plan for after World War II (which he would discuss with his friend, Salter). Keynes would further promulgate the desire for state action to play a decisive role in managing international economy and influence the structure of post-WWII international economic institutions.

Around the turn of the 21st century, some have argued that we currently live in an unprecedented, though underappreciated, “new world order” ruled by networks of government officials and experts. According to this account, the network of government officials must be further supported and improved in order to respond to economic globalization as well as the global networks of “terrorists, arms dealers, money launderers, drug dealers, traffickers in women and children, and the modern pirates of intellectual property” which threaten the world. Nevertheless, the experience of the World War I had already buttressed the idea, promoted by Salter and the League, that coordinated experts and government officials (not heads of state) could establish ideal policies for the control of global social development. This was part of a transnational “new world order” which was expected to rationally ensure peace and prosperity after the Great War.

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88 Lewis, supra 26 at 12.


90 Markwell, supra note 64 at 140-141; 165. Post-WWII institutions will be further discussed in the next chapter.


92 Slaughter, *ibid.* at 1.

93 Clavin & Wessels, *supra* note 17.
D. Economic Doctrines

The underpinning consensus regarding the post-war world economic reconstruction was that decisive state action was necessary to reconstruct and manage the international economy so that economic interdependence could be maintained and encouraged thereby securing prosperity and peace. The assumption was that experts would determine the ideal policy and the League would institutionally implement this ideal policy.

More specifically, the League’s economic purpose was understood by many to be two-fold. It was thought that the League had the ideational purpose of guiding public opinion, which meant citizens and governments, towards the adoption of sound economic and financial policies. Its practical purpose was considered to be the economic reconstruction of Europe. The method of implementing these purposes was through several economic doctrines. The most debated doctrines, rapprochement, rationalization and freer trade, would provide the context for how the League would regulate the world sugar trade.

1. Rapprochement

The President of the 1927 World Economic Conference began his closing speech by outlining the overriding spirit of the conference:

It was necessary to clear away through the thicket and chaos of the problems which hindered the nations of the world in their progress. It was necessary to bring into harmony the conflicting policies and desires of many interests and many great movements. ... The danger of confusion and of controversies, which many pessimists considered practically certain, has, thanks to the generous effort at rapprochement, not only been avoided but actually eliminated.95

94 See for e.g. Ten Years of World Cooperation, supra note 61 at 178-206; Fanshawe & Macartney, supra note 11 at 19-26; Webster & Herbert, supra note 12 at 223-238; Arthur Salter, “Contributions of the League of Nations to the Recovery of Europe” (1927) 134 Annals of the American Academy of Political and Social Science 132.

95 Theunis, infra note 127 at 8.
This principle of rapprochement was similar to the *doux commerce* thesis first articulated by Montesquieu – “everywhere there are gentle mores [*des moeurs douce*], there is commerce and that everywhere there is commerce, there are gentle mores.” To Montesquieu, commerce had the natural effect of leading to peace among nations and also civilized by “polishing and softening” [*il polits et adoucit*] barbarous manners. According to League doctrine, commerce would lead to the desired peace and prosperity.

The first “General Resolution” from the Conference recognized “that the maintenance of world peace depends largely upon the principles on which the economic policies of nations are framed and executed” and recommended that “recognized principles [be] designed to eliminate those economic difficulties [*sic*] which cause friction and misunderstanding in a work which has everything to gain from peaceful and harmonious progress.”

The League experts could not definitively reach a consensus regarding what specific mechanisms of economic cooperation would lead to peace and progress. One expert report written as preparatory material for the conference distinguished between political and economic approaches to “economic rapprochement.” The three political methods were multilateral commercial treaties, bilateral preferential systems, and customs unions. The report noted that multilateral commercial treaties, regulating states’ systems of tariffs and duties, were ideal but very difficult because of the complex character of classifying goods. The report was reluctant to endorse bilateral preferential treaties because they would lead to protectionism (i.e. high tariffs) and hinder free trade. The report thought a customs

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97 Montesquieu, *ibid.* at 338 (Part 4, Ch. 2). But see Montesquieu, *De L’Esprit des Lois*, t. 2, by Robert Derathé (Paris: Garnier Frères, 1973) at 501 (suggesting that Montesquieu did not use the term “commerce” to include all economic activity and international commerce at large. He may have excluded agriculture in his use of the word).


union was ideal for Europe which could model itself upon how the different states in the USA functioned as one market. The 1902 Brussels Sugar Convention was examined as ideal model for the multilateral regulation of commerce and as a basis for a customs union.\footnote{Grossman, \textit{ibid}. at 26.}
The report defined the economic method to be about international economic rapprochement among producers and concludes they are problematic because the grant producers too much power.

Amongst these different options, delegates at the economic conferences focused most on and fiercely debated between two specific doctrines of economic rapprochement: the economic method in the form of industrial agreements under the doctrine of “rationalization”, and the political method in the form of multilateral commercial treaties under the doctrine of “freer trade” or “liberty of trade”.

\textbf{2. “Freer” Trade and Development}

The theory of free trade was so contentious that many felt it wise that conference delegates deliberately avoided the issue between “free-traders” and “protectionists.”\footnote{Sir Arthur Salter, “The League’s Contribution”, in Roland William Boyden, ed., \textit{The Economic Consequences Of The League; The World Economic Conference} (London: Europa Publishing Company 1927) 1 at 5.} Conference delegates at the world economic conferences, authors of conference final reports, and commentators in articles emphasized that they were advocating for “liberty of trade” or “freer trade” which, as they would almost always state, was not to be confused with “free trade.”\footnote{See for e.g. Theunis \textit{supra} note 127 at 10; Economic and Financial Section, “Extract from the Minutes of Meetings on the Council”, \textit{Report and Proceedings of the World Economic Conference} vol. 1 (Geneva: League of Nations, 1927) 21-27 (C.356.M.129; C.E.I.46).} “\textit{Freer trade}” was defined as policies geared towards ending tariff increases and instability and moving to reduce, if not eventually remove, tariffs.\footnote{1927 World Economic Conference Final Report, \textit{supra} note 28 at 31.} War and naval blockades forced countries to adopt economic policies of self-sufficiency; according to Salter, high tariffs were instilled soon after the war to ensure countries could remain economically self-sufficient and maintain home industries in order to avoid sudden radical
economic changes that would lead to severe unemployment and dislocation. During this time, despite the experts’ best efforts to convince governments and the public of what they felt was a pragmatic policy, rising tariff levels and economic policies of “self-sufficiency” continued after the First World War and into the Second.

The freer trade debate was about the how quickly tariffs should be lowered. There was consensus that eventually tariffs should be lowered and that trade should be made “free”, but the divisive question was about how soon and to what degree should tariffs be reduced (much like debates within the WTO). Salter’s words are worth quoting at length:

from our present point of view of the peace of the world and international good will, it is not so much tariffs as the arbitrary methods by which they are framed, imposed and changed that are a serious element in international relations. From this point of view, therefore, it may well to concentrate attention rather on tariff-making methods than on the general issue of Free Trade or Protection. Free Trade may be preferable in the interests of general world prosperity, and if it could be secured might also involve the removal of many serious dangers to international relations. But in existing circumstances we may secure a larger return by concentrating upon a more immediately practicable goal than that of abolishing tariffs. What we most need is to reform their abuses.


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104 Arthur Salter, ”The Economic Conference: Prospects and Practical Results” (1927) 6 J. of the Royal Institute of International Affairs 350 at 353.

105 Andreas Hermes, <no title>, in Boyden 65 at 73; Webster & Herbert, supra note 12 at 231-232.

106 See for e.g. Economic and Financial Section, “Report Submitted to the Commerce Committee By Its Coordination Committee”, Report and Proceedings of the World Economic Conference vol. 2 (Geneva: League of Nations, 1927) at 118.

107 Arthur Salter, ”The Economic Causes of War”, in Arthur Salter et al., The Causes Of War: Economic, Industrial, Racial, Religious, Scientific, And Political (New York: The Macmillan Company, 1932) 1 at 14-15 (emphasis added). See also Preparatory Commission of Experts, Monetary and Economic Conference; Draft Annotated Agenda (Geneva: League of Nations, 1933) at [C.48.M.18]: Some of us have felt a greater freedom of international trade is not the sole remedy for the present crisis, that the crisis has revealed profound disorganisation of production and
Those labeled as “free traders” thought that the ideal policy was the complete removal of tariffs as soon as possible.\textsuperscript{108} Others, critically labeled “protectionists” or sympathetically called “tariff reformers”,\textsuperscript{109} were concerned that “the protagonists of this school of thought [free trade] fail to take into consideration the varying level of economic development among the different nations of the world. The economic relations of one country towards other foreign countries must depend on its own material prosperity, which in turn depends on the development of its own powers of production, either of manufactured goods or agricultural products.”\textsuperscript{110} To some, a policy of “tariff reform” allowed for a way of thinking akin to the idea of “infant industries” theory expounded by Alexander Hamilton\textsuperscript{111} and commonly attributed to Freidrich List.\textsuperscript{112} The delegates from British Raj India articulated this theory when they argued that states with infant or immature industries must be protected from imports and allowed to develop until they reach a stage that they are able to compete with other nations’ industries not for the purpose of self-sufficiency but in order to attain an ability to trade with other nations. In other words, protection of an infant industry was an exceptional and temporary measure until conditions

\begin{align*}
\text{distribution, and that, on this point also, joint action by the Governments is necessary for the recovery of an economic system threatened by bankruptcy.}
\end{align*}

Despite the 1927 Convention for the Abolition of Imports and Export Duties failing to come into operation, not everyone felt that lowering tariffs was entirely untenable under the League, see for e.g. Jacob Viner, “National Monopolies of Raw Materials”, in Arthur Salter et al., \textit{The Causes Of War: Economic, Industrial, Racial, Religious, Scientific, And Political} (New York: The Macmillan Company, 1932) 185.


\textsuperscript{109} See for e.g. Comments by Sir John Power, in Salter, \textit{supra} note 104 at 363.


\textsuperscript{111} Alexander Hamilton, \textit{Reports of the Secretary of the Treasury on the Subject of Manufactures} (1791).

\textsuperscript{112} Freidrich List, trans. by Sampson S. Lloyd, \textit{The National System Of Political Economy} (London: Longmans Green, 1885).
allowed for free trade. This approach would be later adopted in Article XVIII of the GATT 1947.

What is telling about arguments to maintain tariffs for the support of infant industries is that they remained under the rubric that what was common for the time – that “free trade” was indicative of normal international economic relations and the unchecked rise in tariffs would lead to the break-down of rapprochement. The orthodox thinking amongst League experts was that rising levels of tariffs was symptomatic of an international economic system that was not functioning normally. The tariffs were thought to be remnants of exceptional, war-time economic policies emphasizing self-sufficiency and prohibiting imports and exports. Therefore, League experts made a determined effort to remove the barriers to trade in order to revert back to pre-war “normal” trade relations. It was thought that certain political and financial preconditions had to be met before trade could be free; there needed to be political stability, financial and monetary stability, and the improvement of transportation, before trade could resume to what was thought to be “normal.”

For example, when addressing the two major economic crises after the Great War, the 1920s reconstruction of Europe and the 1930s Great Depression, the one consensus was that financial currencies needed to be stabilized and the matter of war reparations


114 See for e.g. Information Section, The Monetary and Economic Conference (London, 1933) An Account of the Preparatory Work for the Conference and an Outline of the Previous Activities of the Economic and Financial Organisation of the League of Nations (Geneva: Secretariat of the League of Nations, 1933) at 66-67: “[In 1928 a] really determined effort was made to abolish import and export prohibitions and restrictions. ... The object was to effect a return to the situation considered normal before the war by abolishing existing prohibitions on imports and exports....” [emphasis in original].


116 For comments espousing that the International Financial Conference Brussels 1920 was the necessary precursor before tariffs and trade could be addressed see for e.g. Theunis, “Report By M. Theunis, President of
needed to be resolved\footnote{117} in order to provide the “normal” economic preconditions that allow for free trade. During the interwar period there was always a crisis at hand (post-war European reconstruction, the global agricultural crisis, and the Great Depression) and so many thought the preconditions for freer trade were not met. As such, rationalization would be a very influential economic doctrine within the League.

This line of thinking, where “free trade” is the norm unless exceptional circumstances warrant policies to improve national economic development, also manifested in how the League addressed other economic exceptions. So for example, Article 23(e) of the League Covenant, the “economic equality” provision, stated that the Members of the League “will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League.” But then, countries such as France and Belgium wanted “special protection” during the period of European reconstruction.\footnote{118} Therefore, Article 23(e) also provided the exception that “special

\footnote{117} See for e.g. Keynes, supra note 64. Later, the 1932 Lausanne Conference finalized the issue of reparations concluded with a call for a world economic conference which enabled preparations for the 1933 World Monetary and Economic Conference. See Information Section, \textit{The Monetary and Economic Conference (London, 1933) An Account of the Preparatory Work for the Conference and an Outline of the Previous Activities of the Economic and Financial Organisation of the League of Nations} (Geneva: Secretariat of the League of Nations, 1933) at 15.

\footnote{118} Florence Wilson, \textit{The Origins of the League Covenant: Documentary History of Its Drafting} (London: Published by Leonard and Virginia Woolf at The Hogarth Press, 1928) at 97.
necessities of the regions devastated during the war of 1914-1918 shall be borne in mind.”

To some, the application of Article 23(e), economic equality could only be provided among equally civilized nations. In other words, only when countries are made of similar economic, political, and social status can they then be treated equally, leaving exceptional states that are more backwards to be treated by exceptional means. Indeed, the hierarchy established within the Mandate System confirms this view that the less civilized a nation was, the less the normal rules of “free trade” were applicable. The Mandate System of the League was devised to provide supervision for the peoples of the Middle East, Africa, and the Pacific who were previously ruled by Germany or the Ottoman Empire. The stated purpose was to shepherd these colonial nations into becoming civilized, sovereign nations. Mandates were classified according their degree of advancement: ‘A’ mandates were considered the closest to being civilized and accorded the most independence, followed by ‘B’ mandates, and ‘C’ mandates were considered to be the most backward and therefore required Mandatory powers to administer them as integral parts of its own territory. ‘A’ and ‘B’ mandate treaties contained detailed policies when and how economic equality applied, whereas treaties for the less civilized ‘C’ mandates provided no guarantees for economic equality, implying that these mandates were not developed enough to warrant international competition. Mandatory countries imposed extremely high tariffs in their ‘C’ mandates, without any controversy from the Permanent Mandates Commission, which provided the Mandatory power privileged access to the mandate’s goods. This was in line with conceiving of colonies as sources of agricultural products and

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119 See for e.g. Miller, vol. 1 supra note 62 at 23-24.

120 See for e.g. ibid.

121 Anghie, supra note 14.

122 League of Nations Covenant, Art. 22

123 Benjamin Gerig, The Open Door and the Mandates System: A Study of Economic Equality Before and Since the Establishment of the Mandates System (London: George Allen & Unwin Ltd., 1930) at 15-16; 109-112. Within the context of colonies and mandates the “economic equality” policy was also known an as the “open door” policy.
was consistent with the provision that 'C' mandates be considered as internal to the Mandatory power.\textsuperscript{124}

3. Rationalization

The final report for the 1927 World Economic Conference defined rationalization to be:

the methods of technique and of organization designed to secure the minimum waste of either effort or material. It includes the scientific organization of labour, standardization both of material and of products, simplification of processes and improvements in the system of transport and marketing.\textsuperscript{125}

As one World Economic Conference delegate commented, “the heading ‘rationalization’, a word like ‘solidarité’ and ‘homme de bonne volonté’, seems to thrive in the air of international conferences.”\textsuperscript{126} The delegates, however, did not come to a clear consensus as to the merits of rationalization as a viable way to improve the conditions of industry.\textsuperscript{127} This debate was framed as whether rationalization, an idea thought to have proved successful in practice in the United States, was applicable in Europe at this time. Many questioned whether Europe’s devastated infrastructure and economy was actually capable of implementing rationalization policies.\textsuperscript{128} Others were concerned that rationalization

\textsuperscript{124} McClure, \textit{supra} note 4 at 390-392. Several countries raised complaints to the Permanent Mandates Commission contesting how other countries were (mis)applying the economic equality provision in 'A' and 'B' mandates.

\textsuperscript{125} 1927 World Economic Conference Final Report, \textit{supra} note 28 at 41.


\textsuperscript{128} See for e.g. Lammers, \textit{supra} note 31.
would decrease wages and employment, thereby further exacerbating dire work conditions.\textsuperscript{129} The \textit{Secrétaire de l’Union syndicale Suisse à Berne} had existential concerns akin to the anxieties from across the political spectrum and that were expressed in the films \textit{Metropolis} (1925) and \textit{Modern Times} (1936); he feared that rationalization would have psychological effects on people because their whole life would be enslaved to the demand of the machines in factories.\textsuperscript{130}

Moreover, even though a large number of experts advocated for increased rationalization, there was disagreement as to what was the best method of rationalization. The debate ranged between two approaches. Those that advocated for “scientific management” wanted to leave rationalization to standardizing products, materials, machines, tools and methods.\textsuperscript{131} From industry’s perspective, rationalization’s purpose was to stabilize and control economic conditions of production, distribution and consumption in a way that increased a community’s welfare by cheapening, multiplying and improving the quality of commodities produced.\textsuperscript{132}

The others that called for “cartels” or “industrial agreements” wanted to control and coordinate production and distribution (with an eye to influencing consumption) through mechanisms such as quotas, granting of monopolies, or formations of trusts.\textsuperscript{133} These


\textsuperscript{131} See for e.g. H.S. Pearson, “Scientific Management and Cartels”, in \textit{Two Memoranda Presented at the World Economic Conference May 1927} (Geneva: International Management Institute, 1927) [starts on page 1]; David Houston, \textit{Memo on Rationalization in the United States} (Geneva: League of Nations, 1927) [C.E.C.P.20(I)]

\textsuperscript{132} H.M. Spitzer, “Rationalization and Cartels”, in \textit{Two Memoranda Presented at the World Economic Conference May 1927} (Geneva: International Management Institute, 1927) [starts on page 1].

agreements would not *determine* the price “by marginal or average cost, but [act] as an instrument for the administration of industry, so as to prevent the fluctuations which take place around the market.” The main criticism against the industrial agreement argument was that the price system of the market, rather than government imposed monopolies, was a most efficient mechanism to regulate the flow of labour, goods, and capital.

Delegates establish one dominant theory of how rationalization related to rapprochement. The general understanding of the 1927 World Economic Conference was that it was an attempt to establish the economic conditions necessary for rapprochement. According to one expert report prepared for the conference, rationalization was an economic instance of rapprochement. The report preferred “political” approaches to coordinating national economic policies though coordination of tariffs and duties. To another expert report and some delegates at conference, however, the cordial relationships established through rapprochement provided the conditions necessary to ameliorate or prevent the detrimental effects of rationalization. Economic rationalization was desirable, but the worst of its “contingent abuses” had to be tempered by technical and commercial coordination amongst experts and officials.

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(Memoranda released for publication for the Preparatory Committee for the World Economic Conference, 1927).


136 Theunis, *supra* note 127 at 7-10.


III. The Rise of the Neocolonial Cuban State

Cuban delegates would employ the economic discourse of the League and successfully advocate for an international sugar agreement which adopted the doctrine of rationalization. The 1937 ISA would represent an “industrial agreement” which controlled and coordinated production and distribution (with an eye to influencing consumption) through mechanisms such as quotas. Moreover, the treaty would adopt a conception of rapprochement which considered political coordination of domestic legislation or quota adjustments by state governments as necessary to counter the potential limits of rationalization. What is remarkable is that despite the lack of consensus at general League economic conferences, the treaty put into effect particular definitions of dominant League economic doctrine. Before, however, examining how the legal structure and function of the 1937 ISA enacted League doctrine, we must query how and why Cuban government officials were the primary protagonists for an international sugar treaty.

The social, political, and economic conditions of Cuban sugar growing provide context of what likely influenced Cuban delegates to adopt the economic discourse of the League. Part of these conditions included Cuba sugar planters’ transnational relationship with the US government and financiers. This was because the US negotiated reciprocity treaties to regulate international economic relations that not only contravened League consensus, but also would determinately affect the lives of many in Cuba.

A. Cuba and World Sugar Crises

During WWI, the same system of commodity control that was intended to ensure the supply of essential goods to Allied forces and war-ravaged Europe would contribute to Cuba’s economic boom. The US and British governments would purchase Cuba’s entire sugar crop at a controlled yet profitable price. As such, Allied Europe’s primary source of
imported sugar was Cuba and Cuba’s only export market was the Allied countries. It is likely that the Cuban sugar producers’ wartime experience, much like Salter, would influence their decision to later advocate for and create an international sugar agreement based on theories of rationalization.

Many Cuban sugar mill owners were not pleased with the arrangement of selling sugar at a price determined by others. They only agreed after the US government threatened Cuba with economic sanction. Nevertheless, demand for Cuban sugar increased during the war and production almost doubled from 1914 to 1918. For many Cubans, this was a time of increased wealth especially since Europe increasingly demanded imported sugar.

The system of price control ended after the war in November 1919. Even though Cuban sugar producers were not pleased by a system of price control during the war, they were impressed in the last two years by the system with the advantages of a stable price. After the wartime system of price control ended, the price of Cuban sugar fluctuated in New York from 7 cents to approximately 20 cents within a year. US and European consumers were experiencing a sugar famine while US financiers and Cuban elites took advantage of this price fluctuation during 1919-20. Investors placed so much faith in speculation and exchanged so much debt and credit with such frenzy that Cuban that journalists called this phenomenon the “dance of the millions”.

All this came crashing down in 1920 when the price of sugar throughout the world rapidly dropped. While Europe was recovering from the Great War and entering a period of economic development Cuba was devastated by a world sugar crisis. During the planting

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140 Jenks, supra note 45 at 196-205.

141 Rowe, supra note 139 at 5, 42; Jenks, ibid. at 207.

142 Jenks, ibid. at 215.

143 Rowe, ibid. at 5; Jenks, ibid. at 206-228.
season that coincided with the “dance of the millions”, Cuban producers, after two decades of increasing demand, planted more cane than ever. They did not anticipate the sudden collapse of sugar prices that same year before the cane was ready to harvest.144 Despite the crisis of 1920, the price of sugar remained at enough of a profitable level for Cuban sugar producers to gradually recover.145

Domestic Cuban banks, however, did not fare so well. During the Brussels International Financial Conference of 1920, Europe was looking to stabilize its currencies in order to improve economic conditions that would eventually rebuild Europe and increase world trade. Meanwhile, the Cuban financial crisis was far more dire. Domestic banks, all of which had lent money on sugar and mills, collapsed. North American banks remained as the sole financiers on the island.146 These foreign banks found themselves possessing considerable equity in mostly domestic-owned sugar mills that had run into difficulty. Foreign investment in Cuba had previously been from foreign private parties. Now, foreign banks, such as National City Bank and the Royal Bank of Canada, were the primary source of capital. The foreign banks’ interests, which were already entangled with US Atlantic seaboard refineries importing raw Cuban sugar and private investors with capital in Cuba, now had a direct stake in Cuban sugar mills.147

Thus, the crash after the “dance of the millions” probably made the wartime system of price control seem like an ideal and viable idea.

**B. The Cuban State, Economy, and Identity**

Much like how League experts’ took from the war the idea of using rationalization for the purpose of economic development, the Cuban government would experiment with


145 Rowe, supra note 139 at 5, 42.

146 Jenks, supra note 45 at 229-245.

147 Rowe, supra note 139 at 11-13.
domestic and international institutions to attempt to stabilize and control the price of sugar. The 1920 sugar crisis marked the beginnings of the Cuban state being used to affect the Cuban economy. This spurred two decades of debate in Cuba regarding the relationship between the state and the market in regards to sugar marketing policies.\textsuperscript{148}

The building of the Cuban state coincided with often-violent contestations of Cuban identity. One historian of Cuba notes that, “the economic collapse in 1920–22 led to the contradictory policies of continuing importation of West Indians (because sugar companies pressed harder for cheaper labor) as well as to the much-publicized government-financed expulsions of West Indians. Racist attacks against West Indians blamed them for the economic crisis at the same time that the government approved plantation appeals for new import permits.”\textsuperscript{149} Another example of government involvement, as a response to the crisis the Cuban government established its first postwar sugar control agency, the Sugar Finance Committee, which took over the sale of crops during 1920-22. Six of the seven-man committee were representatives from North American banks and US sugar mill owners in Cuba, with only one representative for larger Cuban planters.\textsuperscript{150}

Indeed, the composition of the Sugar Finance Committee exemplifies the complex relationship between Cuban national identity, US private interests, and US and Cuban government interests. We discern very little if we speak of “US interests” and “Cuban interests”. This is especially true in Cuba during the 1920s and early 1930s where Cuban mill owners and colonos had close ties to US financiers but at the same time empowered the Cuban state in order to enhance their own economic sovereignty. In 1918-19 US-owned sugar mills accounted for 51.4% of harvest. By 1927, US-owned sugar mills accounted for 62.5% of production, which by 1934 rose to 68.1%. Even though US-owned mills were outnumbered by Cuban-owned mills, their total production yield was higher because US

\textsuperscript{148} Boris C. Swerling, “Control of an Export Industry: Cuban Sugar” (1951) 33 J. of Farm Economics 346.

\textsuperscript{149} Aviva Chomsky, “Barbados or Canada?: Race, Immigration, and Nation in Early-Twentieth-Century Cuba” (2000) 80 Hispanic American Historical Review 415 at 453.

\textsuperscript{150} Boris C. Swerling, International Control of Sugar, 1918-41 (Stanford: Stanford University Press, 1949) at 33-34.
owners had more access to capital generating larger and more technologically advanced centrales.\textsuperscript{151} The Cuban sugar and commercial elite often worked alongside US business interests and comprised most government positions including the presidency.\textsuperscript{152} Cuban sugar-field labourers protested the pressure from Cuban elites and US imperial interests while also resenting Haitian and Jamaican workers who worked for lower wages. The rise of the Cuban state during the 1920s and 1930s involved the continuous negotiation and contestation amongst these interests.\textsuperscript{153}

In Cuba during the 1920s and 1930s, ideas and movements such as radical nationalism, pan-hispanism, anti-imperialism, Afro-Cubanism, and labor activism contended with each other.\textsuperscript{154} To some Cubanist historians, these two decades would significantly influence contemporary Cuban identity.\textsuperscript{155} Moreover, technological innovations in the sugar industry were significantly changing the Cuban sugar industry.\textsuperscript{156} Throughout the colonial world, the agricultural depression in the 1920s, which was further exacerbated by the Great Depression in the 1930s, caused social and political discontent forming the basis for many anti-colonial national movements.\textsuperscript{157}

\textsuperscript{151} Dominguez, \textit{supra} note 45 at 22.

\textsuperscript{152} For an overview of US financial and economic interests in Cuba see Smith, \textit{supra} note 49.


\textsuperscript{154} Chomsky, \textit{supra} note 149 at 453-459.


During this time, according to Chomsky, “both anti-imperialism and economic nationalism became themes in the early 1920s, and a group of younger writers made the first tentative attempts to address class and race issues as well.” Nevertheless, some of nationalist rhetoric of the time took racist stances against the influx of labourers from Haiti and Jamaica who worked for cheaper wages thereby precluding visions of a Cuban identity that extended beyond the island. The “exclusionary aspirations” of the new nationalist mood met with resistance from the Cuban branches of the United Negro Improvement Association of Marcus Garvey, calling for black “racial pride”, and the Cuban Communist party and elements of the growing labour movement, emphasizing class alliances.

C. Cuba and US Tariffs

One factor that would galvanize the different interests in Cuba would be the reaction against economically depending on sugar exports and the US. Many Cubans argued against this dependency on one commodity or would call for socio-economic changes that would make the domestic sugar economy more equitable. The contradictory streams of rising Cuban nationalism meant something different from the “nationalism” criticized within the League. The League worked to overcome a nationalism that consisted of high tariffs and self-sufficiency which would devastate most lives in export-dependent Cuba. Indeed, this nationalism abhorred at the League would be what Cuban would react against in its relationship with the US.

Despite the 1903 and 1934 Reciprocity Treaty’s granting Cuban sugar preferential access to the US market, many Cubans argued that this was not reciprocity because the US only made concessions on a few products since Cuba was only capable of exporting a small number of products whereas Cuba made concessions on a wide range of products. Cuban

158 Chomsky, supra note 149 at 454.

159 Marc C. McLeod, “Undesirable Aliens: Race, Ethnicity, And Nationalism In The Comparison Of Haitian And British West Indian Immigrant Workers In Cuba, 1912-1939” (1998) 31 J. of Social History 599.

160 Carr, supra note 155 at 84-85.

161 See for e.g. Guerra, supra note 20.
exporters, however, were pleased because the treaty granted some preferential access to US market and created a boom in sugar production. This preferential access meant that Cuban sugar competed with domestic cane and beet sugar, and US colonial cane sugar from Hawaii, Puerto Rico and Philippines (which all received duty-free status). Because Cuban sugar was granted preferential but not duty free status, Cuban sugar producers had an advantage against other imported sugar in the US but had to ensure that its cost of production was low enough to compete with domestic and US colonial sugar. Cuban sugar producers managed to practically displace full-duty sugar by 1912. This meant that until the 1930s, that the vast majority of sugar consumed in the US was domestic, colonial duty-free, and Cuban preferential sugar.\footnote{Jenks, \textit{supra} note 45 at 128-140; Swerling, \textit{supra} note 150 at 21; Dominguez, \textit{supra} note 45 at 35; Philip G. Wright, \textit{Sugar In Relation to the Tariff} (New York: McGraw Hill Book Company, 1924) at 64-65.}

Farmers in the US missed out on the opulence of the roaring twenties given that they were enduring a depression. As a result, the US government raised tariffs for agricultural products, including for Cuban sugar. As the agricultural depression continued, the 1922 Tariff Act (through the so-called “flexible provisions”) allowed the President to adjust tariffs according to the cost of production for a foreign competitor. The purpose was to “equalize” the cost of production between US and foreign producers. This meant that if the Cuban cost of production decreased, and the President decided to accordingly increase the tariff thereby stabilizing the US price of refined sugar, the US domestic sugar producer and US treasury would benefit. If Cuban cost of production decreased, and the president decided to do nothing, the price of US refined sugar would decrease thereby benefiting the US consumer, US refiners importing raw Cuban sugar, and US investors in Cuban sugar properties.\footnote{Wright, \textit{ibid.} at 58-60, 237-243; John E. Dalton, \textit{Sugar: A Case Study of Government Control} (New York: McGraw Hill Book Company, 1937) at 60-61.} One complaint in Cuba was that this granted the US too much economic power over Cuba and stagnated the Cuban sugar industry – for all Cuban efforts to decrease production costs, usually by decreasing labour wages, the US has the ability to transfer...
those savings to US government coffers.\textsuperscript{164} While US sugar tariffs fluctuated, Cuba sought other markets with limited success. The other significant sugar consumer, the UK, had reduced its dependency on European sugar and established a trade policy that included colonial preference for cane-sugar and subsidization of a domestic beet-sugar industry.\textsuperscript{165}

Under these conditions, which lasted until 1930, demands for the stabilization of tariffs at the League of Nations were acutely relevant for sugar producers in Cuba. As US tariffs would fluctuate and rise, often to the detriment of Cuban sugar, US financiers would adjoin with Cuban sugar producers to create international sugar agreements (informed by theories of rationalization) intended to stabilize and raise the price of sugar. This relationship, however, was never stable especially as Cuban sugar producers tried to negotiate the presence of US capital on the island while at the same time trying to assert an increased degree of economic sovereignty.

IV. Cuba and International Sugar Agreements

By exploring how Cuban sugar elite would use the League of Nations to assert the Cuban state's economic sovereignty in light of sugar production conditions in Cuba, we can appreciate how \textit{colonos} and small mill owners would emerge from the multi-faceted contestation of Cuban national identity and promote their particular national vision of Cuba through the League. We also can consider how the empowerment of the \textit{colonos} after the 1933 revolution would contribute to the formation of the 1937 ISA.

A. The 1925 Sugar Crisis and 1927 World Economic Conference

In 1925, while most continental Europeans and North Americans were living through a period of prosperity,\textsuperscript{166} Cubans were experiencing a time of dissonance. A sugar crisis

\textsuperscript{164} Guerra, \textit{supra} note 20 at 107-114.


\textsuperscript{166} Lewis, \textit{supra} note 26 at 38-50.
struck the world sugar producers in 1925 when the rate of production far surpassed the rate of consumption. Cuba, which by this time accounted for 25 percent of the world’s sugar production, was hardest hit only a few years after recovering from the 1920 collapse of prices. The sugar crisis of 1925 in Cuba ushered in President Gerardo Machado y Morales; his administration would mark a time of state building and social unrest in Cuba and would culminate in riots, student revolts, and a military coup d’etat.

Machado was also part of the “nationalist” fervor of the time, except that his was a “business nationalism.” This “business nationalism” characterized Cuban sugar producers’ interests (which dominated the Cuban government) well past Machado and through Cuban history until 1958. Machado politely but consistently attempted to gain increased political independence from the US but made sure it was not tarnished with anti-US sentiment and offence to US commercial interests; he still believed the welfare of Cuba was interlaced with the interests of the US.

During the first two years of Machado’s administration, the state became active in national economic development and spent millions of dollars on public works projects. A historian of Cuba outlines Machado’s plan of national industrial development and economic diversification:

The government provided agricultural credit and, most important, tariff support. In 1927, the government enacted the Custom-Tariff Law, arguably one of the most important pieces of economic legislation of the early republic. For the better part of a decade, Cuban industrialists had clamored for protectionist measures. Machado delivered them. The Customs-Tariff Law pursued actively agricultural diversification and industrial development: duties on raw materials were decreased as a means to promote local manufacturing activity; the tariff on crude oil was reduced to encourage the

\[167\text{ Smith, supra note 49 at 113.}\]

\[168\text{ Smith, ibid. at 121; McAvoy, supra note 1 at 183; Luis E. Aguilar, Cuba 1933; Prologue To Revolution (Ithaca: Cornell University Press, 1972) at 45-68.}\]
expansion of refining facilities; sisal was exempted from duties to promote local rope and cordage manufacturing; duties on cotton were lowered to encourage textiles; lower duties on machinery and heavy equipment stimulated the expansion of industrial facilities.\textsuperscript{169}

To be sure, Machado’s “development” plan did not directly envision social welfare or improvement of the conditions of the poor and working class. Machado made it clear to US banks and financiers that he intended to maintain stability and contain the “radical” forces of social unrest, most notably the labour movement and communist party, in order to ensure their investments in these public projects were secure (a promise which he kept using violent repression). This was a development plan intended to benefit US financiers and Cuban entrepreneurs.\textsuperscript{170} Machado also stood to personally gain from his program of public works because of investments in the Cuban Electric Company.\textsuperscript{171}

Machado needed vast amount of capital to execute his economic development plans. Foreign funds were a primary source of finance for public works. Machado’s administration became extremely indebted to North American banks, especially Chase Bank.\textsuperscript{172} Also, US private investment in sugar increased ten-fold from 1906 to 1927. These investments maintained a structure of sugar industry that primarily served to export raw sugar to the US. In 1925, Hershey Corporation established Cuba’s first modern sugar refinery and began the first significant vertical integration of industry (from soil to supermarket).\textsuperscript{173}

Although US capital dominated Cuba and its government, its sugar interests in the US Congress were subordinate to the interests of domestic producers and the US-colonial


\textsuperscript{170} Ibid. at 178-179.

\textsuperscript{171} McAvoy, supra note 1 at 165.

\textsuperscript{172} Smith, supra note 49 at 122-129.

\textsuperscript{173} Dominguez, supra note 45 at 21.
territories of Hawaii, Puerto Rico, and the Philippines. Thus, Machado and US commercial interests in Cuba aligned to become one and the same. As the president of the American Chamber of Commerce of Cuba stated in 1926: “If our commercial intention is to continue, we must identify ourselves with her [Cuba’s] purposes and make common cause with her in favour of her nationalistic program.”

Even though many Cuban mill owners feared the influence of US capital, the more the US increased its tariffs on Cuban sugar, the more Cuban-owned and US-owned mill interests united against this common economic impediment.

The Cuban state, however, was not simply a proxy for US commercial interests in Cuba. From 1925 to 1933 many mills were forced to cease production. Since American-owned mills had easier access to capital and tended to be technologically superior, the vast majority of those mills that suspended operation were Cuban-owned. These mills were the economic and social core and directly and indirectly benefited their surrounding rural communities and provincial towns. Therefore, when mills closed down, not only was the livelihood of employees and suppliers arrested, but entire communities degenerated.

Similarly, forests were being cleared to make way for sugar fields and railroads at such a high rate that many in Cuba feared that the “health of the island” and the public interest was in danger. In 1926, Machado completely reversed a hundred years of indiscriminate cutting and burning of forests to clear fields for sugar cane and prohibited the clearing of high woodlands regardless of whether the land belonged to the government or private citizen.

174 Pollitt supra note 60 at 98.

175 Quoted in Jenks, supra note 45 at 390, fn.4

176 Rowe, supra note 139 at 15.

177 Swerling, supra note 148 at 348.

178 Reinaldo Funes Monzote, trans. by Alex Martin, From Rainforest to Cane Field in Cuba: An Environmental History Since 1492 (Chapel Hill: University of North Carolina Press, 2008) at 1, 256-257.
Machado also did not want to appear to his compatriots as a patsy for the Americans.\textsuperscript{179} In an attempt to self-restrict sugar production, in 1926 the government passed legislation that called for a 10 per cent reduction in output for each mill but granted priority to sugar delivered from (Cuban) \textit{colonos} over sugar from land owned by the (US owned) mill themselves. Even though this legislation was limited in scope and only lasted two years, it is indicative of how the Cuban state was negotiating the interest of US capital and Cuban planters.\textsuperscript{180} After the revolution of 1933, the Cuban state's balance of interests would tip in favour of Cuban producers over US capital interest.

Compared to the past, Machado's reign was a remarkably different role for the Cuban state. From 1914 to 1920, the government had no monetary power; neither the government nor any institution under its influence, such as a central bank, created money. The US dollar had free circulation in Cuba during this period and so the government could not alter exchange rate. Also, Cuba had no banking legislation which meant the government had no effective control over regulating and inspecting banks or the establishment of new banks. Accordingly, during the 1920s and most of the 1930s, foreign banks and balance of payments determined the volume of the money supply in Cuba.\textsuperscript{181}

Since the Cuban government had little control over the foreign banks, it was left with experimenting with its trade policy to serve the domestic needs of economic development. Cuban delegates were therefore eager to organize an international sugar agreement regulating world production in sugar at the 1927 World Economic Conference. While League delegates could not come to any sort of conceptual consensus regarding what definition of “rationalization” would best ensure international economic stability and

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\textsuperscript{179} McAvoy \textit{supra} note 1 at 185.
\textsuperscript{180} Pollitt, \textit{supra} note 60 at 100.
\textsuperscript{181} Dominguez, \textit{supra} note 45 at 33.
\end{flushleft}
prosperity, the Cuban delegates presented a specific outline and advocated (though un成功) for an international sugar treaty that would control the price of sugar.\textsuperscript{182}

The attempt to create an international sugar agreement in the late 1920s reflected the balancing act of Cuban “business nationalism”. It was “nationalist” in that an agreement would provide control of sugar production to the Cuban government, and it was “business-friendly” since the majority of sugar produced in Cuba came out of US-owned mills. Saving the Cubans sugar industry would directly benefit US investors, US banks, Cuban elite, and US Atlantic seaboard refiners (who depended on Cuban raw sugar).

**B. Sugar Crisis and the Great Depression: Prelude to International Sugar Rationalization**

From 1925-29, in an effort to raise sugar prices, the Cuban government devised a variety of administrative arrangements intended to restrict the production of sugar.\textsuperscript{183} This was a difficult time for Cuba which, along with the Dutch colony of Java, was the world’s largest producer of sugar for export. Cuba initiated a policy to restrict sugar production for two purposes. First, it was an attempt to raise sugar prices in the US. Cuban sugar would greatly benefit from a price rise because thanks to the Reciprocity Treaty, Cuban sugar had supplanted all full-duty sugar purchased by the US. Second, it was an attempt to induce other countries to follow the same policy of restriction in order to reduce world supply and achieve balance between supply and demand.

The policy affected different components of the Cuban sugar industry in competing ways and different groups rallied for or against restriction. By this time, North American sugar-refining companies and sugar-using industries (for e.g. confectioners, soft drink makers) purchased a number of centrales on the island; it was in their interest to maintain low


\textsuperscript{183} Rowe, *supra* note 139 at 19-29.
sugar prices since their profit derived from refined sugar, not sugar production; as price of sugar went down, their profit would go up. Another group that opposed sugar-production restriction were the _centrales_ owners and _colonos_ that had some advantage over smaller operations for various reasons (more capital, more fertile land, more modern machinery, cheaper immigrant labor-force, etc.) and sold to markets that did not provide preference for Cuban sugar; these owners would benefit if the price drop eliminated the weakest mills. Those that supported restriction were the smaller _centrales_ owners and _colonos_ that would face ruin from overproduction and hoped that restriction, as a last resort, would increase the price of sugar and save them from their dire conditions. Labourers, whose wage rate varied as did the market value of sugar, were damned regardless of whether sugar production was restricted or not. With overproduction, labourers would obtain more days of employment a year, but a miserable wage. With restriction, they would earn somewhat better pay but would work fewer days.\textsuperscript{184}

Cuba’s policy of self-restriction did little to affect world prices and quell discontent. Between 1925 and 1927 the Machado government launched a devastating attack against the Cuban National Labour Confederation (CNOC) and the Communists. Labour leaders were deported or assassinated and their political parties were banned. Revolts broke out in Cuba in 1928 challenging the stability of Machado’s power.\textsuperscript{185} Cuba’s sugar economy was further exacerbated by the US agricultural crisis of 1929 that preceded the oncoming Great Depression. The 1930 Smoot-Hawley Tariff Act, a response to the agricultural crisis, further strained sugar producers in Cuba; the US raised its tariffs and restricted Cuban access to the US. Cuban sugar producers, who had already been experiencing a sugar crisis when prices started to drop in 1925, were pummeled when the Great Depression vanquished any hope of recovery for the price of sugar in the world.\textsuperscript{186}

\textsuperscript{184} Guerra, _supra_ note 20 at 158-161.

\textsuperscript{185} Kindleberger, _The World in Depression 1929-1939_, _supra_ note 26 at 81 (Kindleberger states that these insurrections would “stimulate fifty revolutions in Latin America” that would spread across the region until 1933).

\textsuperscript{186} Dalton, _supra_ note 163 at 62-68.
Even with some semblance of government control over social discontent, the Cuban economy was collapsing, wages were declining, and politicians were joining the opposition. Beginning with the general strike in 1930, workers, most of them under Communist direction, waged a continuous battle against the Machado government until he “resigned” in 1933. Many in Cuba considered that no amount of domestic policy could save Cuba and relief would come from international stabilization measures that would rationalize the global production of sugar. However, it would take multiple attempts before a final agreement would be reached in 1937.

C. The Chadbourne Agreement – The First Agreement to Rationalize the International Sugar Market

After the enactment of the Smoot-Hawley Tariff in 1930, US investors and sugar mill owners tried to work out an international market stabilization plan. To Manuel Rionda, one Cuba’s most powerful sugar baron’s, the 1902 Brussels Convention was proof that “men of different nations could be brought to consensus by intersecting self-interests.” Delegates from Cuba, Colonel José Miguel Tarafa and Dr. Viriato Guitérrez Valladon, had toured throughout Europe during 1929-30 in an unsuccessful attempt to form an agreement amongst the world’s sugar producers to reduce production. Rionda had backed both Tarafa and Guitérrez on their European tour. Indeed, Rionda had seen Tarafa off and must have passed along his faith in the 1902 Brussels Convention. Tarafa brought Rionda a stabilization proposal by H.C. Prinsen Geerligs entitled “Project of the Reconstruction of the Brussels Convention of 1902” which he carefully studied on the ship back from Europe. Prinsen Geerligs was a preeminent Dutch sugar scientist who not only provided one the

187 Dominguez, supra note 45 at 51.


189 McAvoy, ibid. at 224.

190 McAvoy, ibid. at 225.
best studies of the 1902 Brussels Convention around the time of treaty, but would later be commissioned by the League to draft an influential memo outlining the world’s sugar situation.

Even though at the World Economic Conference of 1927, there was no consensus as to what form an industrial agreement embodying “rationalization” would take or even whether industrial agreements were desirable, attending Cuban experts proposed to devise a international sugar agreement to control world production. The Cubans’ determination contrasted with their League colleagues’ disagreement is understandable in light of how acute the sugar crisis was in Cuba by this time. The League’s only action was to relegate the question of the sugar crisis to experts for study. While the consensus amongst League experts including the Cuban delegation was that protective duties and subsidization of domestic industry worsened the sugar crisis there was disagreement as to what should be done. The Cuban eagerness to negotiate a treaty through the League was hampered by the 1929 expert memo which concluded that there was no consensus and that the sugar industry can address the problem without “external aid” from the League.

It was while the League economic experts studied the world sugar situation that Tarafa and Guitérrez were on their unsuccessful European tour. One reason that the Cuban delegation failed to reach an agreement was that Dutch-controlled Java refused to enter into an agreement; Java was the world’s other largest sugar producer and the had the lowest cost of production. In 1930, the world price of sugar dropped so low, that even the Java


192 Infra note 194.

193 Supra note 182.


195 The World Sugar Situation, ibid. at 15. Notably, however, Prinsen-Geerlgs, provided his technical expertise in sugar during the negotiations of the Chadbourne Agreement, see McAvoy, supra note 1 at 234-235.
producers no longer made any profit and were now ready to negotiate an international agreement.\textsuperscript{196}

Cuban-owned mills had historically resented the more efficient and wealthy mills flush with US capital. The Smoot-Hawley Tariff, however, coalesced the interests of all mill owners in Cuba, regardless of nationality, against the high US tariffs excluding all sugar from Cuba. After Tarafa and Guitérrez’s unsuccessful European tour, Cuban sugar mill owners selected Thomas Chadbourne, a Wall Street lawyer with investments in sugar in Cuba, to try and organize the world production sugar in an attempt to stabilize if not raise the price of sugar.\textsuperscript{197} One historian captures the competing world interests and explains why Cuban sugar mill owners chose Chadbourne to form an international agreement:

It was, after all, desirable that the New York banks play a role in an operation that to succeed would have to bring not only U.S. beet interests but also the hacendados [sugar field owners] of Puerto Rico, Hawaii, and the Philippines as well as the European and Javanese producers to heel in negotiations. Tarafa and Guitérrez alone, representing only Cuba, had held few bargaining chips abroad. But National City, J.P. Morgan, and Chase were backed by the authority of millions in floated bonds worldwide. If German beets as well as Colorado’s and California’s must be dragged to the bargaining table, the banks could help a great deal in the dragging, although Java, the competitor to be most feared, was less vulnerable because of the independent wealth of the Netherlands.\textsuperscript{198}

With the League’s tepid response to the sugar depression of the 1920s and the Great Depression intensifying the sugar crisis, Chadbourne’s task was made all the more urgent.


\textsuperscript{197} McAvoy, \textit{ibid.} at 190-191, 225-226; Smith, \textit{supra} note 49 at 53-71.

\textsuperscript{198} McAvoy, \textit{ibid.} at 226. See also von Graevenitz, \textit{supra} note 25.
Despite League experts’ and delegates’ inability to clearly articulate a doctrine of rationalization or determine what to do in light of the sugar crisis, the Chadbourne Agreement would be the first agreement to attempt to rationalize the international sugar market.\(^{199}\) To Chadbourne himself, the agreement provided the best mechanisms to stabilize the international price of sugar because it did not fix a set price, but instead was an industrial agreement that attempted to “restore the balance between production and consumption in a commodity the demand for which is relatively inelastic.”\(^{200}\) This to him constituted a “league of nations on sugar affairs.”\(^{201}\) According to Chadbourne, by organizing the world’s sugar producers, the agreement overcame the perceived impossibility for “producers in any one nation by concerted action, much less by tariff barriers, to check that unbridled, catch-as-catch-can competition which drives industry into bankruptcy and worker into poverty and misery.”\(^{202}\) To some, the Chadbourne Agreement (and the 1937 ISA)\(^{203}\) could have the secondary ability of reducing high tariffs. The thinking was that by raising the price of sugar producers would have less of a claim from their governments to support them through tariffs.\(^{204}\) This reflected the pattern of thinking at the League, that economic rationalization should be addressed first before trying to implement freer trade policies.

In 1931, representatives from the sugar industries of the participating countries signed the Chadbourne Agreement. In fact, the agreement expanded upon what was previously an unwritten “gentleman’s agreement” that was concluded that previous year between the

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\(^{199}\) See for e.g. Julius Henry Cohen, “The Practice of Law as a Franchise” (1932) 66 U.S. L. Rev. 25 (celebrating the Chadbourne Agreement because it was an example of rationalization); Samuel Mermin, “Sugar: A Rugged Collectivist” (1936-1937) 31 Ill. L. Rev. 320 (criticizing the Chadbourne Agreement because it was an example of rationalization).

\(^{200}\) Thomas L. Chadbourne, “The International Stabilization of Sugar” (1931) 21 Am. Lab. Legis. Rev. 383 at 384

\(^{201}\) McAvoy, supra note 1 at 233.

\(^{202}\) Chadbourne, supra note 200 at 383.

\(^{203}\) Rowe, supra note 196 at 28

\(^{204}\) Prinsen-Geerligs, supra note 139 at 28-29.
sugar producers from the US, the US’s “insular possessions” (i.e. Puerto Rico and the Philippines), and Cuba. Some economists celebrated the fact that this was an agreement concluded by producers and not by government representatives:

An economic approach to an international economic problem augurs well for its success. No political complications are added to the already existing economic difficulties. Negotiations are carried on, agreements are reached, and policies are executed by the direct action of producers. They are vitally interested in, and consequently keenly alert to, the conditions of their industry.

Since implementation was delegated to national governments, the established International Sugar Council acted as a coordinating inter-industry agency, much like the WWI commodity regulating agencies. National producers each were allocated a number of votes, and a majority vote authorized Council decisions. The Council’s role was to supervise the operation of the Agreement. Since the Agreement provided the details of determining production and surplus quotas, the Council’s role was namely the monitoring, investigating, and advising in relation to sugar prices and quotas. The Chadbourne Agreement only anticipated disputes involving factual determinations of whether quotas were exceeded. If national producer representatives could not agree that quotas were exceeded or if another dispute arose, then they had to resolve the matter between themselves without employing any institutional support from the Council.

205 “Chadbourne Committee Meeting” Weekly Statistical Sugar Trade Journal (28 August 1930) 427 (text of the “gentleman’s agreement”).

206 Clifford L. James, “International Control of Raw Sugar Supplies” (1931) American Economic Review 481.

207 Art. IV (f)

208 Art. I(e), Art. IV(i) see Art. V

209 Art. VIII (Establishing a board of arbitrators to resolve matters of fact regarding export quotas)

It was not that the national governments had no presence at the negotiations or that their role was not anticipated in the Chadbourne Agreement. Rather, the producers represented the state. In most cases, the national producer organizations, like the Cuban Sugar Stabilization Institute, were government agencies empowered to represent the national sugar industry. Once the agreement was finalized, national governments enforced the agreement either through direct means such as enacting laws that explicitly enforced the agreement (as was done in Cuba) or through indirect means such as adjusting duties and export taxes.\textsuperscript{211}

This characterization of the state according to sugar production was formalized in the voting scheme. The agreement distributed power to the sugar producers by allocating votes in the Council roughly along the lines of sugar production. Therefore, the significant number of votes went to the Cuban corporation (35 out of 90) and the Java corporation (30 out of 90).\textsuperscript{212}

The Chadbourne Agreement provided two ways to increase the price of sugar: reducing the accumulation of surplus stocks\textsuperscript{213} and the production of sugar.\textsuperscript{214} Despite the agreement, sugar stock remained in surplus in most countries. Many considered this to be a technical miscalculation and attributed the problem to the fact that the agreement “failed to anticipate that further stocks could be accumulated despite conformance with its terms.”\textsuperscript{215} Sugar producers generally honoured the stipulated production quotas thereby reducing sugar production.\textsuperscript{216}

\textsuperscript{211} Wilk, \textit{supra} note 210 at 871-873. The only exception was Belgium, which enacted no laws.

\textsuperscript{212} Art. IV(d)

\textsuperscript{213} Arts. I-II

\textsuperscript{214} Art. II

\textsuperscript{215} Swerling, \textit{supra} note 150 at 47. Surplus was calculated in the agreement based on consumption patterns in 1929, based on the assumption that consumption is fairly inelastic. See also Stocking & Watkins, \textit{supra} note 25 at 39; Prinsen-Geerligs, \textit{supra} note 139 at 35.

\textsuperscript{216} Prinsen-Geerligs, \textit{ibid}. 
Despite the reduced production and occasional moderate rise in price, the Chadbourne Agreement was considered dead by the 1933 World Economic Conference, and officially lapsed in 1935.\footnote{Swerling, supra note 150 at 49-50.} Few criticized the implementation of the Chadbourne Agreement since the assumption was that it was economically sound in principle. Cuban delegates at the 1933 World Economic Conference stated that the sugar crisis continued despite the Chadbourne Agreement because the Great Depression significantly reduced consumption. They also argued that Chadbourne was successful because signatory producers decreased production according to the agreement, but non-Chadbourne countries (namely the US and its territories, and European countries) neutralized the benefits of production control when they raised their tariffs or subsidized their domestic industry thereby increasing production.\footnote{League of Nations, Journal of the Monetary and Economic Conference 112 (28 June 1933). For similar views see J. W. F. Rowe, Markets And Men; A Study Of Artificial Control Schemes In Some Primary Industries (Cambridge: University Press, 1936) at 83-85; Swerling, supra note 150 at 48.} In League parlance, Cuban delegates blamed Non-Chadbourne countries for engaging in policies of “economic nationalism” or “self-sufficiency.” The thinking was that Chadbourne producers had underestimated the extent that European countries’ high tariffs and subsidies would rejuvenate the post-war domestic beet-sugar industry.\footnote{See for e.g. James, supra note 206 at 493.} Cuba was hardest hit due to its dependency on the US market, and despite US investors’ and Cuban sugar producers’ intent, the Chadbourne Agreement did little to ameliorate the effects of the Smoot-Hawley Tariff. Cuban sugar lost nearly half its market share in the US from 1930 to 1933, while the share of domestic production in the US rose along with duty-free sugar from the Philippines, Hawaii, and Puerto Rico.\footnote{Smith, supra note 49 at 70.} The solution, according to the Chadbourne producers, was to expand the membership of the international sugar agreement to include more countries, in order to rationalize the entire world production, distribution, and consumption of sugar.\footnote{Smith, ibid. at 70; Wilk, supra note 210 at 871; Swerling, supra note 150 at 50.}
The Chadbourne Agreement was more akin to a public international treaty than a private international agreement amongst producers. Nevertheless, the fact that the agreement expanded upon what was previously an unwritten “gentleman’s agreement”, meant the agreement operated more like a contract between nations than a treaty establishing an economic organization.\textsuperscript{222} The 1937 ISA’s innovation would be the institutionalization of world sugar rationalization.

D. The 1933 World Monetary and Economic Conference and the 1933 Cuban Revolution

At the 1933 World Monetary and Economic Conference, the Cuban delegation made a detailed proposal for a sugar agreement.\textsuperscript{223} Their proposal stood in contrast to the League discussions which remained at the level of generalities and focused on trying to find a conceptual consensus on “freer trade”. One reason the Cuban delegates brought forth a detailed proposal could be because they learned their lesson from the League platitudes regarding the sugar crisis of the 1920s.\textsuperscript{224} Moreover, a lot was at stake for Cuba to ensure a stable sugar market. The League conference spanned from June 12 to July 27 1933 during which time the Cuban delegates were negotiating against the backdrop of peasant revolts, labour strikes, student protests, the rise of the military’s political power, and US embassy intrigue.

The US government was concerned that Machado’s diversified economic interests in Cuba would mean he would not likely be amenable to allow US imports to compete with his and his cronies’ investments. They were also concerned with the rising political instability and sent Ambassador Sumner Welles to Havana in May 1933 to mediate between the competing political forces. Washington D.C. also instructed Welles to negotiate a reciprocal agreement with Cuba because it was thought that a new treaty would “not only revivify

\textsuperscript{222} Supra note 205.

\textsuperscript{223} This proposal was seconded by the Chadbourne International Sugar Council. See infra 235.

\textsuperscript{224} Prinsen-Geerligs, supra note 139 at 28, 40 (Prinsen-Geerligs was involved in the expert meetings and concluded that “their effect was absolutely nil.”)
Cuba but will give us practical control of a market we have steadily losing for the past ten years not only for our manufactured products but for our agricultural products in such categories as wheat, animal fats, meat products, rice and potatoes.”225 Philip Jessup was hired by several US companies in order to suggest how to go about establishing a new reciprocity treaty with Cuba that would allow for the importation of US goods. Jessup wrote:

Cuba has been endeavoring to get away from being practically a one crop country. She has built up a number of industries which may or may not be suitable for permanent development. Some of these infant industries are owned or controlled by President Machado; Cuban interests in their maintenance might well therefore depend somewhat upon whether or not Machado remains in power.226

Many of the Cuban delegates to the League – such as Orestes Ferrara y Marino,227 Oscar B. Cintas,228 Viritiato Gutiérrez Valladon,229 and José Manuel Goméz Mena230 – were commercially, personally, and politically close to Machado. Their commercial interests were directly linked to Machado and his economic diversification plans and competed with US capital in Cuba. Moreover, Ferrara (who was the Cuban Secretary of State for Foreign

225 Welles to Secretary of State, 13 May 1933, 837.00/351, DS/RG 59, quoted from Louis A. Pérez, supra note 52 at 305.

226 Philip Jessup, “Confidential Memorandum on the Cuban Situation” not dated [ca. early 1933] Philip Jessup papers, quoted from Pérez, ibid. at 303. Jessup would use this experience to argue that multilateral trade treaties were too complicated and that the US should focus on negotiating a series of reciprocity treaties, see Philip Jessup, “Negotiating Reciprocity Treaties” (1933) 27 Amer. J. Int’l L. 738.

227 Pérez, supra note 52 at 144, 229, 303; MacAvoy supra note 1 at 91, 96-97,165. Ferrara, a Cuban jurist born in Italy, would write a monograph in English in support of Wilson’s Fourteen Points and the League upon its formation, see Oreste [sic] Ferrara, Lessons of the War and the Peace Conference (New York: Harper & Brothers, 1919).

228 Pérez, ibid. 310, 312-314, Aguilar, supra note 168 at 140-141.

229 MacAvoy supra note 1 at 150, 165, 196, 202.

230 MacAvoy, ibid. at 183; 214-215; 225.
Affairs and President of the delegation)\textsuperscript{231} and Cintas (who was the Cuban ambassador to the US)\textsuperscript{232} were hardly sympathetic to Ambassador Welles and had tried to directly negotiate more sovereignty with the US. In February of that year during student riots, Gutiérrez would usually travel well guarded in an armoured car.\textsuperscript{233} Ferrara’s house would be ransacked less than a month after the end of the World Economic Conference.\textsuperscript{234}

These high stakes likely contributed to the Cuban delegates insistence at the world conference that negotiations for a detailed sugar treaty between sugar producers and importers be conducted immediately.\textsuperscript{235} The Cuban delegates proposal embodied the League’s economic doctrines. They proposed to rationalize the world sugar industry by halting the construction of new sugar factories and reducing the production of existing factories.\textsuperscript{236} The also proposed a “freer trade” policy which disallowed the increase of the tariff on duties no more than a certain rate.\textsuperscript{237} And contrary to what previous League experts suggested, the Cuban delegates, like in the 1902 Brussels Convention, stipulated that no new subsidies be granted to the production or export of sugar in an effort to raise sugar prices.\textsuperscript{238} British delegates at the 1902 Brussels Convention intended to abolish European subsidies in order to increase West Indian sugar production. Cuban delegates at

\textsuperscript{231} Pérez, supra note 52 at 154-155; Aguilar, Cuba 1933 at 110-111, 148-149

\textsuperscript{232} Supra note 228.

\textsuperscript{233} MacAvoy supra note 1 at 241-248.

\textsuperscript{234} “Cuba: Loot the Place!” TIME (21 August 1933), online: <http://www.time.com/time/magazine/article/0,9171,753906-1,00.html>

\textsuperscript{235} League of Nations, Journal of the Monetary and Economic Conference 112 (28 June 1933) and 116-117 (29 June 1933).


\textsuperscript{237} Art. III

\textsuperscript{238} Art. II
the 1933 World Economic Conference, however, drew a different lesson from the Brussels Convention and looked to reduce subsidies in order to reduce world sugar production.\footnote{Gutiérrez had closely studied the 1902 Brussels Convention, see MacAvoy at 225.}

Delegates at the World Economic Conference could not come to an agreement because, amongst other reasons, the British and Indian delegates insisted on retaining the ability to dictate national sugar policy.\footnote{“Sugar at the World Economic Conference”, (1933) 25 International Sugar Journal 293.} The Cuban delegate withdrew its proposal and the matter was left for the Chadbourne International Sugar Council and League Conference Bureau to continue work towards further negotiations.\footnote{League of Nations, \textit{Journal of the Monetary and Economic Conference} 200 (20 July 1933).}

One month after the 1933 conference in London, social unrest turned in Cuba to revolution. This was a time of anti-imperialists protest, labour strikes, student uprisings, pro-US maneuvers, and military empowerment; these popular movements complicate historical determinations of what social changes were ushered in by 1933 revolution.\footnote{See for e.g. McAvoy, \textit{supra} note 1 at 245-258; Smith, \textit{supra} note 49 at 144-164; Aguilar, \textit{supra} note 168; Pérez \textit{supra} note 169 at 178-201; Walker Evans & Gilles Mora, \textit{Walker Evans: Havana 1933} (New York: Pantheon Books, 1989); Jorge Mañach, “Revolution in Cuba” (1933/34) 12 Foreign Affairs 46.} On August 12, 1933 Cuban Army officers asked President Machado to resign. Machado agreed and by resigning acquiesced to US Ambassador Welles's plans.\footnote{Aguilar, \textit{supra} note 168 at 149.} The post-1933 Cuban government was beleaguered by political instability, violent clashes, and frequent rotation of the presidency, an office which often relied on Batista's military support until Batista himself became president in 1940.\footnote{Dominguez, \textit{supra} note 45 at 76-80.}

The Cuban political order in 1933-34 went through interrelated changes: a change in the form of US government control in Cuba, and an increase of Cuban government's independence from the US. In the past, the US government had been concerned with the details of internal rule. After 1933, the US government’s primary concern was the overall
structure of the Cuban political system – “the identity of the incumbents mattered to the United States only when it affected the legitimacy and stability of the system as a whole. The United States would no longer mediate between rivals for power who accepted the basic rules of the game.”

The role of US investors would also change. By 1933, US capital was losing some its previous influence in Cuba while Cuban entrepreneurs’ clout grew. After 1934, there was no report of any Cuban mill passing into foreign ownership. Of course, US commercial interests in Cuba still had a significant presence especially since most of the Cuban commercial and political elite (which were virtually one and the same) had financial interests or direct involvement as executives in US companies in Cuba.

As always, Cuban politics involved a constant negotiation of power amongst domestic Cuban elite, the US government, and US commercial interests. And like before, this relationship was complicated by the fact that the interests were intermingled. What differed after 1933, was that Cuban domestic interests and the Cuban state would increase in power and effectiveness over many aspects of the Cuban sugar industry (such as labour regulation and production quotas). What remained consistent from before 1933 and afterwards during the carousel of presidents was that the Cuban state continued to regulate and control sugar and increasingly did so in ways that benefited Cuban colonos. Recall that Cuban colonos and small mill owners directly benefited the most in Cuba from a stabilized international sugar market. The 1937 ISA would reflect how the Cuban state would continue to define itself by its role in sugar production and buttress the interests of Cuban colonos and mill owners.

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245 Dominguez, ibid. at 54.

246 Dominguez, ibid. at 67-70; Pollitt, supra note 60 at 104.

247 McAvoy, supra note 1.

248 Smith, supra note 49 at 144-186.

249 Pollitt, supra note 60 at 101; Swerling, supra note 148 at 352-354.

250 Pollitt, ibid.; McGillivray, supra note 42.
E. The 1937 Sugar Conference

Even after the 1933 revolution, Cuban international sugar politics was still represented by the members of the same Cuban sugar political and commercial elite that ruled during Machado’s presidency. The Cuban delegates represented the sort of “business nationalism” that delicately negotiated between US capital and Cuban sugar growers. This was the same elite which during Machado’s administration were becoming less intertwined with US capital. The delegates were not necessarily “anti-American” nor were they willing to concede everything to US interests. The head of the delegation, José Manuel Goméz Mena, who had diverse business interests such as real estate and banking, served on the Machado-era sugar control agency. The agency barely lasted a year and was marked by rivalry between Cuban and US interests.252 Aureleio Portuondo Barceló, another prominent delegate, was active in the Cuban cane grower community. He was close to Machado and had decades of experience lobbying for Cuban interests in Washington.253 As the Great Depression wore on and sugar prices remained low, these men, who were acutely aware of the role of sugar in Cuban life, personally felt the high stakes in achieving an international sugar agreement.

When Portuondo made Cuba’s opening speech at the International Sugar Conference, he emphasized the central role of sugar in Cuban life. This meant, according to Portuondo, the sugar market had to be economically viable in order to prevent hardship and social unrest; he stated that by ensuring a stable world sugar market, Cuban standard of living would improve, which would increase people’s purchasing power and promote the growth of international trade.254 Portundo not only echoed the common sentiment at the conference, that a rationalized sugar market would lead to increased trade, but he was also speaking

251 The delegates included José Manuel Goméz Mena, Aureleio Portuondo Barceló, Aurturo Mañas, Rafael Maria Angulo, and Edelberto Farrés. See International Sugar Conference, ibid. at 23.

252 McAvoy, supra note 1 at 183, 214-215, 225.

253 McAvoy, ibid. at 176, 185, 196, 259-260.

254 International Sugar Conference, supra note 9 at 31-33.
from personal experience. In September 1933, when collapsing sugar prices triggered political upheaval and social strife that would lead to revolution, Portuondo's family had to flee when rebels sacked their house.255

Editors at *The Economist*, impressed by the number of distinguished diplomats for the sugar conference, thought that there was more at stake than simply regulating the sugar trade: “What has brought these statesmen to London is the hope of initiating a decisive move towards freer trade.”256 Yet, while reducing tariffs was on the mind of some delegates, those that in the past who had championed “freer trade” now conceded that the sugar crisis, which generated an “abnormal variation in price”, warranted an attempt to rationalize sugar production first, in an effort to reduce incentives for protection.257 Thus, like at the League world economic conferences, “freer trade” remained secondary to “rationalization”.258

Participants included (a) countries that produced almost exclusively for export – Cuba, Java (represented by the Netherlands), Peru, Dominican Republic, Haiti; (b) exporters that also enjoyed a sizable internal market – for e.g. South Africa, Australia, Belgium, Brazil, Czechoslovakia, Hungary, Japan, Poland, Portugal, the USSR, and Yugoslavia; (c) countries largely self-sufficient in sugar – France, Germany, and India; and (d) countries requiring large imports – Canada, China, the US, and the UK, each of which also had some level of domestic production.259

Two obstacles had been removed which allowed for the International Sugar Conference to proceed: disagreement between ex-Chadbourne countries regarding the division of the “free market” (discussed below) and uncertainty as to the US sugar policy. The US clarified

255 McAvoy, *supra* note 1 at 253.

256 “Now or Never” *The Economist* 127:4885 (10 April 1937) 65.

257 *International Sugar Conference, supra* note 9 at 35, 74, 82.

258 *International Sugar Conference, supra* note 9 at 81-82 (lists countries position in regards to protective duties, subsidies, bounties, etc.).

259 Swerling, *supra* note 150 at 55.
its sugar policy in 1934 when, as part of Roosevelt’s New Deal, it passed the Jones-Costigan Act\textsuperscript{260} (which would determine sugar policy in Cuba until the 1959 revolution).\textsuperscript{261} This legislation established quotas for how much sugar the US imported, essentially acting as a preferential trade treaty. US business interests in Cuba were quite satisfied with the several New Deal strategies that promised to provide the economic and political stability necessary to secure their capital in Cuba.\textsuperscript{262} Cuban sugar producers held that the new quota system diminished the place of Cuban sugar in the US market.\textsuperscript{263} The quota was based on average shares in the market between 1931-1933, a time when Cuba reduced its production according to the Chadbourne Agreement and US increased its domestic and colonial sugar production displacing Cuban sugar’s market share by almost half.\textsuperscript{264}

Cuban sugar producers were now intent on protecting their market share in the US and reducing the influence of US capital. Under Machado, some basic legislation (with little effect) was enacted to protect smaller Cuban mills. The Cuban Sugar Stabilization Institute (ICEA), originally created by the Cuban government to represent the national sugar industry for the purpose of the Chadbourne Agreement, was used to strengthen the Cuban voice in the island’s sugar industry. The ICEA regulated the production and marketing of sugar in Cuba in way that reduced the financial advantages enjoyed by US-owned mills with close ties to the US market. The ICEA had eighteen members, six represented the larger (mostly US-owned) mills, six the (mostly Cuban-owned) smaller mills, and six represented the (mostly Cuban) colonos. By 1937, the colonos had obtained many of their demands through the Sugar Coordination Law which increased sugar growers’ financial and


\textsuperscript{261} José Alvarez, \textit{Cuba’s Agricultural Sector} (Gainesville: University of Florida, 2004) at 29.

\textsuperscript{262} Smith, \textit{supra} note 49 at 163-164.

\textsuperscript{263} Pollitt, \textit{supra} note 60 at 101.

\textsuperscript{264} Smith, \textit{supra} note 49 at 70.
commercial security.\textsuperscript{265} With this increased clout, the Cuban delegation, all members of the ICEA, headed out to the International Sugar Conference.\textsuperscript{266} Now that colonos had more power within the Cuban state, and international political-legal conditions were clearer, the major sugar producing and consuming nations of the world would negotiate an agreement.

V. 1937 International Sugar Agreement

Many would deem the Chadbourne Agreement a failure because it did not achieve its purported ultimate goal of stabilizing and raising the price of sugar.\textsuperscript{267} But the Chadbourne Agreement’s failures were usually attributed to problems of implementation, which suggests that there was some conceptual consensus. This agreement exemplified how “rationalization” informed conceptions of international trade agreements.\textsuperscript{268} What is telling about the assumptions is how negotiators and commentators characterized what was problematic about the Chadbourne Agreement and how the 1937 ISA was thought to remedy the previous sugar agreement’s shortcomings.\textsuperscript{269} In other words, by understanding what needed to be “corrected” we can discern the economic and institutional assumptions underlying the consensus about the way rationalization was to be implemented through international trade agreements.

The 1937 ISA would employ the same assumptions as Chadbourne, namely that an international agreement is necessary to enforce required production quotas calculated by experts. The 1937 ISA was thought to “correct” the failures of Chadbourne by devising more flexible quotas and involving governments and including consumer countries. So, the 1937 ISA is evidence of how claims that the state is necessary to regulate commodities in

\textsuperscript{265} Pollitt, \textit{supra} note 60 at 102-103.

\textsuperscript{266} \textit{International Sugar Conference, supra} note 9 at 23.

\textsuperscript{267} Rowe, \textit{supra} note 218 at 82.

\textsuperscript{268} Rowe, \textit{ibid}.

\textsuperscript{269} See for e.g. Wilk, \textit{supra} note 210 at 864.
an effort to increase prices are buttressed. The agreement also shows how sugar was considered to be an “international” issue that needs to be regulated under the auspices of the League of Nations in order capture all the interests in the world in an effort to achieve rational compromise. The most central tenet of both sugar agreements was that the state was characterized according to its role in the international sugar market. In the Chadbourne Agreement, sugar producers were the signatories, but they in effect were supported and empowered by their national governments. The 1937 ISA was negotiated by national governments and formal voting power was allocated according to the proportion of the amount of sugar exported or imported.

Thus, “rationalization” and to a lesser degree “freer trade” would inform how the sugar treaty was structured and how it was intended to operate. By unpacking the mechanics of the treaty we are then able to discern how power was allocated to states according their economic role in the sugar market. This would illuminate the specificities of how power was distributed in a complex fashion and thereby allow us to examine how Cuba would negotiate its economic sovereignty with the US via the 1937 ISA. On one hand Cuba would further legitimize its dependency on the US for its sugar export, and on the other hand it would create opportunities for it to export sugar elsewhere and it would obtain more power in regulating the international sugar market.

**A. Defining the “Free market”**

Central to the conference negotiations was the delimitation of what was called the “free market”.270 The world was divided between countries that were self-sufficient or exported to a preferential market and countries that exported to the “free market” (entailing all markets that were not self-sufficient or offered preferences).271 The treaty thus established the free market as the norm and non-free markets as the exception.

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270 *International Sugar Conference, supra* note 9 at 26-27.

271 Art 1(6)
The reasoning, in light of the Chadbourne countries frustration with non-Chadbourne countries in the past, was that countries exporting to the free market would make an effort to raise plunging sugar prices by reducing production. For this policy to be effective, however, importing/self-sufficient countries/exporters to preferential markets must make some concessions that they will not increase production and export to the free market (effectively at a reduced price).272 Or, in the words of the treaty, countries not exporting to the free market had to “contribute...to the maintenance and if possible the expansion of the free market for sugar.”273

The intent was to limit the influence of the non-free market countries over free market countries without disrupting the respective sugar markets. Free market countries were allowed to maintain their status quo since no provisions were made to encourage or require countries to reduce existing tariffs or subsidies. As a concession to the US and UK (the world’s largest sugar consumers), the status quo of preferential/colonial arrangements was maintained as much as possible.274

B. Cuban Sugar Exports

The agreement reflected Cuban sugar producers’ complicated relationship with the US – they were not necessarily anti-US and in the short-term wanted to maintain their preferential access to the US market, but they also wanted to reduce their dependency on the US. The ISA regulated the US preferential market along with US access to the free market but in a way that reflected US legislation. The result was that Cuban sugar’s dependency on the US market was maintained and further legitimized.

272 *International Sugar Conference, supra* note 9 at 46.

273 Art. 8

274 For example, the agreement allotted to the UK a baseline quantity of domestic production reflected the quantity established by its domestic legislation. (Art.11(a)). The Agreement also outlined the amount that the UK could import from its colonial empire (Art. 11(b)), Australia, and South Africa. (Art. 12-14). The free market would supply the remainder the UK’s demand for sugar. It was stipulated that as UK and British Empire demand increased, free-market exporters were to retain the proportion of the total which they had supplied in the year ending in August 31, 1937 (Art. 14(d)).
Cuban sugar exported to the US as per the Jones-Costigan Act quotas was excluded from the ISA’s definition of “exports to the free market”\textsuperscript{275}. This meant that Cuba’s sugar exported to the US, like the US colonies, would be dictated by US policy. The complicated relationship between US Atlantic seaboard refiners and Cuban raw sugar exporters continued. Cuban sugar exported to the US but then re-exported from the US to another country was deemed to be an “export to a free market”. According to the ISA, this meant that sugar exported by these US sugar refiners counted towards Cuba’s allocated export quota and not the US net imports thereby intermingling the US refining industry with Cuban sugar production in international sugar market calculations\textsuperscript{276}.

Even though the US was Cuba’s largest market for sugar, Cuban sugar producers wanted to use the ISA to increase the viability of exporting sugar to the free market. The agreement would provide this opportunity to Cuba through the allocation of free market export quotas\textsuperscript{277}. Thus, Cuba still had preferential access to the US but also opened up opportunities to other markets.

### C. The Ensuing Trade Institution

Even though the treaty retained Cuba’s dependence on the US, the treaty would also provide Cuba with more power to regulate the world sugar market. Indeed, the internal structure of the international sugar institution made this possible. An International Sugar Council was established to administer the agreement and provided powers that were more expansive than under the Chadbourne Agreement. The Council had the general powers that were necessary to operate the complicated system of quotas such as information gathering and advising\textsuperscript{278}. It was also empowered to decide upon matters that were substantive to

\textsuperscript{275} Art. 6(a).

\textsuperscript{276} Art 6(a); Art. 9(a)

\textsuperscript{277} Art. 19.

\textsuperscript{278} Arts. 3, 6, 7, 14, 15, 24, 33(f), 34
the agreement such as determining and adjusting the annual quota for the free market\textsuperscript{279} and securing accessions from non-signatory governments.\textsuperscript{280} Moreover, the Council had the legal function to interpret provisions\textsuperscript{281} and resolve disputes between members.\textsuperscript{282} The dispute resolution system, under Article 44, was characterized as a “special meeting of the Council” which made a decision according to three-fourths of the votes cast. Its jurisdiction was to “decide whether any infringement of the Agreement has taken place, and if so, what measure shall be recommended to the Contracting Governments.”

Cuba was granted considerable power to determine how the ISA was to operate. The Council constituted a delegation from each country.\textsuperscript{283} Each country’s delegation was allotted a number of votes which roughly reflected the proportion of sugar a country imported or exported.\textsuperscript{284} Exporting countries combined were allotted fifty-five votes, Cuba receiving the highest number (10) followed by the Netherlands (Java) (9). Importing countries combined were allotted forty-five votes, the US and UK receiving the highest number (17 each). For most issues, a simple majority dictated the Council’s decisions.\textsuperscript{285} The ISA ensured that exporters would always retain voting power over importers by maintaining the 55-45 proportion if non-signatory countries acceded to the agreement.\textsuperscript{286} So, even though Cuba had less votes than the US, its largest market, it had the most influence in the exporting country voting bloc. Cuba’s power within the ISA, however, was tempered by the fact that the majority of its sugar still went to the US and was regulated by

\textsuperscript{279} Art. 20, 21, 24, 32 (c)
\textsuperscript{280} Art. 33(g)
\textsuperscript{281} Art. 28, 46.
\textsuperscript{282} Art. 44
\textsuperscript{283} Art. 31 (the provision stipulates that the delegation was to consist of not more than three “members” and three “advisers”)
\textsuperscript{284} Art. 37 (a)
\textsuperscript{285} Art. 38. Some notable exceptions include a three-fifths majority required to provide temporary adjustment to quotas (Art. 20) and a three-fourths majority required to resolve disputes (Art. 44(b)).
\textsuperscript{286} Art. 37(c)
US laws. Nevertheless, this system still provided Cuba with the ability to affect sugar quotas (with the intent of regulating price) in the world free market, marking Cuban sugar producers’ ambition to increase their economic sovereignty.

The Council could delegate most of its quota-determining powers to an Executive Committee. The Executive Committee was to be composed of three representatives of governments of importing countries, three representatives of governments of cane-sugar producing countries, and three representatives of governments of beet-sugar producing countries. The composition roughly reflected power dynamics established by the extent of sugar import or export crystallizing exporters’ power over importers, the difference of the needs between beet-sugar growers and cane-sugar growers, and the power of individual countries. The UK and US were permanent importer representatives while the third seat annually alternated between India and China. Cuba and the Netherlands were permanent cane-sugar representatives while the third seat annually rotated amongst Australia, Dominican Republic, Peru, South Africa, and Brazil. No beet-sugar producer maintained a permanent seat and so membership rotated amongst Czechoslovakia, Germany, USSR, France, Poland, Belgium, and Yugoslavia. Indeed, within this matrix, Cuba and Dutch-controlled Java, who produced the largest amount of sugar in the world, were granted most formal power.

D. Regulating the Price of Sugar

Most participating sugar producing countries had domestic sugar control agencies akin to Cuba’s ICEA, a domestic administrative body which under the Chadbourne Agreement had proven to be a successful means of enforcing international production quotas. What delegates had to determine was what amount of sugar would be allocated to the free

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287 Art. 40-41. The Council could delegate any power to the Executive Committee except reducing quotas, allotting additional quotas, determining adherence conditions for non-signatories, determining treaty withdrawal conditions, and dispute resolution.

288 Art. 39.

289 Swerling, supra note 150 at 46.
market. Disagreements regarding the details of export-quota levels almost caused the conference to break down.\textsuperscript{290} The Chadbourne Agreement was thought to be overly rigid and so the new agreement included more flexible elements anticipating variations in calculated production, consumption, and surplus stock levels.\textsuperscript{291} The fact that debates over export-quota levels almost caused the treaty negotiations to fail emphasizes the centrality of such “technical” details to any rationalization scheme such as the ISA.

The delegates adopted the general concept of rationalization promoted by Salter when he had headed the Economic Section of the League. And therefore the heart of the matter was the control of sugar prices through the regulation of production and export. \textit{How} sugar prices were to be controlled reflected the negotiation of power between sugar importers (consumers) and sugar exporters (producers). Fluctuating sugar prices were deleterious to all; however, rising prices provided an initial benefit to sugar producers and decreasing prices provided an initial benefit to sugar consumers. The ISA would in effect, empower sugar importers to use domestic measures to regulate the flow of sugar whereas it empowered sugar exporters to use treaty’s international institution to regulate the export of sugar. Thus, Cuba gained the power to regulate the world sugar trade under the treaty, whereas the US reinforced its domestic power.

Under the chapter entitled “General Undertakings”, Article 4 was the most detailed provision suggesting government action. This provision outlined what principles were to guide governments in times of rising sugar prices. One must keep in mind the fears associated with rising sugar prices. If prices rise, the sugar producers were the first to benefit. If prices continued to be high, there was the fear that consumption of sugar would decrease and producers would generate an excess of sugar, which in turn could cause sugar prices to drop.

The provision first reaffirmed each states’ economic sovereignty:

\textsuperscript{290} \textit{International Sugar Conference, supra} note 9 at 49-57.

\textsuperscript{291} Chapter Four; Chapter Five.
While recognizing that all Government measures relating to agrarian policy and to State assistance to the sugar industry are governed by the internal conditions of each country and in many cases require the approval of a Parliament

The provision went on to provide that:

the Contracting Governments agree that it is desirable that (a) If and when prices on the free market rise, all necessary steps should be taken to prevent the rise of in world prices from leading on one hand to an increase of internal prices for consumers such as would be likely to check consumption, and on the other hand to a rise of wholesale prices (beyond the level required to secure a fair return for growers and producers) to such a point to stimulate excess production not justified by the requirements of the market, thus defeating the object of the present Agreement;

The initial impression is that the language is not very binding – "the Contracting Governments agree that it is desirable". This language, however, must be understood in the mindset of ensuring that governments should rationally react to rising sugar prices. The opening phrase reaffirms state economic sovereignty, and outlines what needs to be done as if it were a proviso of sovereignty. Instead, it actually empowers states to take "any necessary steps" to react to the rising price of sugar. In other words, it restricts sovereignty in that it directs state action, but it also empowers states by allowing any means necessary.

Moreover, Article 4’s language indicates some imperative when contrasted with Article 5 (encouraging the consumption of sugar) which provides: “The Contracting Governments agree that, as far as possible, favourable considerations should be given to all proposals having for their object [principles encouraging the increase of sugar consumption].”

The travaux préparatoires from the 1937 International Sugar Conference provide some context as to what was meant by “any necessary steps.” The opening speech of the conference president Ramsay MacDonald identified one of the purposes of the conference to have been to ensure that all countries:
if and when prices on the free market rise to an economic level, they will do what is possible to adjust protective duties, subsidies, etc., so as to prevent their internal prices rising to a point which would check consumption and stimulate new production and thus defeat the object for which we are working.292

Thus, one can imagine the US under this provision, in light of rising international sugar prices, raising tariffs and subsidizing the domestic production of sugar to reduce the price of sugar – thereby detrimentally affecting sugar producers such as Cuba while still benefiting domestic producers and consumers. However, during the conference Report of the Committee on General Questions was unequivocal when addressing the adjustment of protective duties, subsidies, etc. in the event of the increase of world sugar prices, despite the treaty’s ambiguous language:

> It is above all things essential that the successful conclusion on an International Agreement should not aggravate the situation by proving a fresh stimulus to production through an improvement in selling-prices.293

Thus, the treaty left it as a matter of interpretation as to what domestic measures would be deemed an appropriate “necessary step” to keep the rising price of sugar in check.

According to MacDonald, another purpose of the sugar treaty, was to ensure countries exporting to the free market “keep supplies at a level appropriate to probably demand.”294 The exception to this principle of tempered production would apply if sugar prices dropped. The ISA, however, never explicitly outlines what was to be down if sugar prices drop. Instead, Article 21(a) empowers the Sugar Council (where producers held the most power) to reduce export quotas “if, after a survey of the probable requirements of the


293 *Ibid.* at 75.

market for the year in question, it decides such reduction is necessary.” In effect, this allows sugar exporters to coordinate production reduction in light if dropping sugar prices.\textsuperscript{295}

The dispute settlement power enforcement mechanism of the Council’s dispute settlement duty emphasized how the primary objective of the treaty was to regulate the production of sugar:

\begin{quote}
If the Council shall decide that it is desirable that the other Contracting Governments shall prohibit or restrict the import of sugar from the country which has infringed the agreement, the taking of such measure shall not be deemed to be contrary to any most-favoured nation rights which the offending Government may enjoy. [emphasis added]\textsuperscript{296}
\end{quote}

This anticipated that any infringement would likely be by an exporting country. It left it unclear, though probably unlikely in light of Article 4’s language, that the Council could deliberate on domestic measures, such as subsidization or tariff levels, affecting the import of sugar. Indeed, since exporting countries had the most power in the Council, it probably would have been unacceptable to importing countries for it to determine whether its domestic laws infringed upon the ISA.

Not all signatory countries ratified the international sugar treaty. Nevertheless, signatory countries agreed to give effect to the treaty amongst themselves; the International Sugar Council operated in full for two years until the outbreak of Second World War (the ISA would not formally lapse until 1944).\textsuperscript{297}

\textsuperscript{295} Article 21(a) applied to 1937 and 1938. For the years thereafter, Article 21(b) stipulated that the Council could recommend reduced production but only if all countries entitled to a basic quota or participate in the reserve (i.e. sugar producers) consent to it.

\textsuperscript{296} Art. 44(a)

\textsuperscript{297} Wilk \textit{supra} note 210 at 869; Stocking & Watkins \textit{supra} note 25 at 43-49.
VI. Conclusion

Chimni has argued that transnational capital interests dominate international financial institutions and UN agencies much to the detriment of the subaltern communities. He has suggested that a possible response would be to consider the following:

the neo-colonial state, despite its collaboration with the [transnational capitalists class], is the subject of complex contradictory pressures. The resistance of ordinary people compels it to oppose hegemonic states from time to time. It would therefore be a mistake to completely disregard its potential in bringing about reform in [international institutions].

Even though the sugar elite in Geneva were hardly the ordinary people imagined by Chimni, the story of Cuba and League highlights the complex contradictory pressures of Cuban national identity at play with the transnational commercial interests between US financiers and Cuban elite. What made the 1937 ISA remarkable was that it crystallized a particular conception of the League doctrine of rationalization. In doing so, the sugar treaty was a space of potential reform for neocolonial Cuba within the League. To Europeans, the League’s economic conferences were a failure, to the Mandates the League was domineering, but to the elites who ruled Cuba the League was a place that allowed them to augment their development plans.

The Cuban elite and middle classes’ “business nationalism” would reflect the same posture held by many other local leaders in the colonial and postcolonial world during the interwar period. According to Edward Said, nationalist leaders in the African continent such as Herbert Macaulay, Leopold Senghor, J.H. Casely Hayford, Samuel Ahuma, in the Arab world such as Saad Zaghloul, Nuri as-Said, and Bishara al-Khoury, and leaders that would later become revolutionaries, such as Ho Chi Minh, were not clearly or completely anti-West.

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PART III. IMPLICATIONS OF INSTITUTIONALIZATION

CHAPTER FIVE. THE INTERNATIONAL TRADE ORGANIZATION: EXPLICITLY LINKING RATIONALIZATION WITH DEVELOPMENT

I. Introduction

Economic doctrines developed in the League of Nations would continue to influence international economic institutions even after the League's lapse. This was partially because the 1937 International Sugar Agreement (ISA) would be the model for the next fifty years of international sugar agreements.¹ During the Second World War, however, there would be a shift of emphasis in League economic discourse. In a 1942 publication that would influence how the League was understood in the second half of the twentieth century, the League would essentially ignore rationalization and prioritize freer trade and the reduction of tariffs as the principal issue of international commercial policy.² Later on, official General Agreement on Tariffs and Trade (GATT) interpretative guides,³ the World Trade Organization (WTO) Dispute Settlement Panel,⁴ Appellate Body,⁵ and contemporary


trade scholars⁶ would sometimes look to the League for purposes of GATT interpretation. They too would ignore how rationalization was a dominant economic doctrine of the time and would instead reference the League’s tariff policies and one (failed) League tariff treaty.⁷

The League doctrines of rapprochement, rationalization, and freer trade would continue to influence trade institutions after the war. Yet, their implications and configurations would change after the League. Recall that there was debate as to the institutional form of rationalization, and from this debate international commodity agreements (ICAs) were the most popular amongst League experts. By the 1960s and 1970s there was little debate that international rationalization was to operate in the form of ICAs. By this time rationalization had less to do with rapprochement as during the League, and increasingly to do with global redistribution of wealth. Rationalization would be mostly associated with the interests of developing countries and the Third World project through institutions such as United Nations Conference on Trade and Development (UNCTAD) and international commodity agreements (ICAs). Whereas the Cuban delegates delicately negotiated their neo-colonial relationship with the US whilst trying to modernize their state, develop their economy and regulate the world sugar market, post-colonial Third World delegates would more clearly and explicitly link rationalization to development and vehemently challenge the First World.

At the same time, freer trade was no longer the corollary to rationalization. Freer trade became the principal doctrine championed by the US and associated with manufactured products and developed countries thereby only applying to trade institutions such as the

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GATT. To many in North America, developing countries’ trade and development demands expressed through rationalization were misguided.

Despite the increasing antagonism between the First World and Third world, the institutionalization of rapprochement was not entirely lost. The first attempt was to balance rationalization and freer trade through the International Trade Organization (ITO). When that failed, ICAs became the sites of legal conciliation and distributive negotiation.

I consider how rapprochement, rationalization, and freer trade were redefined and realigned when institutionalized in the ITO. In order to follow the postwar changes in these economic doctrines, I revisit postwar accounts of embedded liberalism. First I suggest that embedded liberalism’s international liberal trade policies were not only institutionalized by the GATT, but can be found earlier in the ITO, and later in UNCTAD and ICAs. In doing so, I also argue that embedded liberalism made significant provision for development theories and demands.

Second, I emphasize how the idea of rationalization became more clearly associated with development and linked to the postcolonial Third World. I consider how and why development demands within the framework of embedded liberalism prescribed rationalization and ICAs. I do so by mapping out how the ITO tried to establish some balance between rationalization and freer trade doctrines concomitantly with First World and Third World demands.

What differed between the ITO and the League is that rationalization was the League’s principal doctrine and freer trade was secondary whereas the tension between freer trade and rationalization would eventually fracture the ITO into the GATT, UNCTAD, and ICAs. Later, in the next chapter studying the 1977 ISA, I provide an account of the implications of the fragmentation of international trade law – how each economic doctrine was formalized by different institutions thereby continuing to transform conceptions of rapprochement, rationalization, and freer trade.
II. Revisiting Embedded Liberalism

A. The Orthodox Account of Embedded Liberalism

After World War II, Cuba would again play a central role in constituting the international economic system. Havana would host the final negotiations and signature of the ITO Charter. By 1950, however, the ITO was declared a failure and many developed countries would turn to the GATT as the principal treaty for the regulation of international trade.

Accordingly, postwar histories of international trade usually focus on the rise of the GATT after the demise of the ITO. In these accounts, the GATT would institutionalize a concept of trade espoused by British and US scholars and government officials that Ruggie would call “embedded liberalism.”

Embedded liberalism was both a normative general framework that defined the appropriate scope and goals of domestic policy and international institutions and a description of the specific institutional arrangements accordingly constructed. It was an attempt to achieve both domestic and international economic stability, where domestic and international goals conditioned each other. Policymakers learned from the interwar period that great political and institutional effort was necessary to combine the twin goals

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12 Ruggie, supra note 10 at 398.
of stable domestic welfare and multilateral international institutions in order to avoid war and depression.\textsuperscript{13} According to Ruggie, economic nationalism of the 1930s and liberal international policies of the gold standard and free trade created the conditions that led to the Second World War. Post-war policies, however, were a compromise between the domestic social needs and liberal internationalism. Drawing from Polanyi, Ruggie suggests that the policies were based on the premise that the market was “embedded” within the nation-state and domestic stability was predicated on domestic state regulation. The compromise was “liberal” in that it was multilateral in character.\textsuperscript{14}

Embedded liberalism had two interlinked trade goals. It was to ensure that domestic pressures would not lead states to raise trade barriers in such a way to prompt a protectionist “race to the bottom” eventually leading to pervasive war and depression. It also had to minimize social disruptions in domestic industries caused by international functional differentiation and tariff level reduction.\textsuperscript{15} To Howse, the “miracle” of embedded liberalism's trade policies was that:

\begin{quote}
tr​ade liberalization was embedded within a political commitment, broadly shared among the major players in the trading system of that era, to the progressive, interventionist welfare state; in other words, to a particular political and social vision, including at the same time respect for diverse ways of implementing this vision – with greater use of microeconomic intervention...\textsuperscript{16}
\end{quote}

\begin{enumerate}
\item[] \textsuperscript{13} With thanks to Robert Wai who reminds us that modern trade lawyers have always been and still are preoccupied with avoiding the twin specters of war and depression.
\item[] \textsuperscript{14} \textit{Ibid.} at 393-394.
\item[] \textsuperscript{15} \textit{Ibid.} at 399.
\item[] \textsuperscript{16} Robert Howse, “From Politics To Technocracy—And Back Again: The Fate OfThe Multilateral Trading Regime” (2002) 96 Amer. J. Int’l L. 94 at 97(emphasis in original).
\end{enumerate}
Embedded liberalism envisioned a state that focused on full employment, economic growth, and welfare of the citizens “in an environment of multilateralism”. The state was thought to be necessary for redistributive policies, managing demand, redistributing wealth through fiscal policy and job creation, and market regulation. This included controlling capital mobility and expanding public expenditure and social programs. Embedded liberalism also designed postwar international trade and financial institutions in a way that allowed states to manage their domestic economies with the aim of achieving social welfare and political stability and offset the risk of world war and depression from such domestic policies.

Within this shared political commitment and policy framework there was great diversity in what sort of domestic and international institutional arrangements were accepted as legitimate. According to Ruggie:

> If [embedded liberalism] was the objective of postwar institutional reconstruction, there remained some enormous differences among countries over precisely what it meant and what sort of policies and institutional arrangements, domestic and international, the objective necessitated or was compatible with. This was the stuff of negotiations on the postwar international economic order. [emphasis added]18

Under the purview of embedded liberalism, Northern countries were preoccupied with demarcating the line between state and market in domestic regulation. The US and UK implemented policies such as infrastructural investments, agricultural price supports, and social expenditures; they differed in the extent to which Keynesian economics influenced government policy and the degree to which the state played an active role in socio-economic regulation.19

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17 Ruggie, supra note 10 at 395.

18 Ibid. at 393.

19 Ibid. at 394.
With respect to trade, the GATT prohibited quantitative restrictions but allowed for exceptions that were deemed necessary to safeguard the balance of payments; these enumerated exceptions included payments difficulties that resulted from domestic policies designed to secure full employment and domestic price support programs for agriculture. Moreover, GATT “accepted not only countries with markedly different levels of industrial development, but also countries with dramatically different viewpoints with respect to structuring economics.” To Jackson, such an “interface” system would recognize the different economic systems and ameliorate the international tensions caused by those differences. What significantly differed among countries was the form of regulation, but what was rarely challenged was the premise that regulation was necessary.

The common account of embedded liberalism is that it was an attempt by industrialized countries to reconcile liberal multilateralism with the welfare state. The compromise and ensuing institutions of embedded liberalism would be the result of conflict, dissonance, and competing postwar objectives mainly between the US and UK. The history of how these interests jostled and interacted and finally conciliated is well documented. Suffice it to say, there were great debates within the US and UK amongst scholars and industry leaders as to what was to be done to secure an economically viable system of multilateral trade alongside domestic needs of full employment and economic redistribution.

20 Ibid. at 397.


22 Ibid.

23 Ruggie, supra note 10 at 393-394.

24 Ruggie, supra note 10 at 393-394. See Lang, supra note 10 at 93.

B. Augmenting Historical Understandings of Embedded Liberalism

1. Space for Development Concerns

According to the account thus far, embedded liberalism only reflected and responded to the needs of industrialized countries. Ruggie’s concern was that developing countries were subject to liberal international institutions such as the IMF and the GATT, but did not have the domestic political and institutional capacity to nationally redistribute the benefits of liberal international economic institutions or the ability to ameliorate the domestic unemployment caused by liberal international economic institutions.

Ruggie and others regard embedded liberalism’s exclusion of developing country’s interests to be problematic. Some have raised the concern that embedded liberalism is an account of the postwar international trade regime that silences of important concerns by marginalized communities. Lang notes that development issues are lost in our previous and current understandings of international trade and calls for a new story of international trade that does not necessarily normatively reinvent embedded liberalism for today but instead rethinks international trade. However, we may have to augment our historical understanding of embedded liberalism before we rethink the future of international trade.

First, the embedded liberal compromise was not only determined by the negotiation of interests within the global North but also by tensions between the North and South. Havana’s geographic location between the global North and South would reflect the

26 See for e.g. Steffek, supra note 11 at 53; David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005) at 11.


28 Lang, *supra* at 10 at 100.

tensions between developed and developing countries that would shape the ITO Charter.\textsuperscript{30} According to Helleiner, many of the ideas that would later inform Bretton Woods negotiations can be traced back to international relations between the US and Latin American countries during the late 1930s and early 1940s in early plans for creating regional multilateral economic institutions such as an Inter-American Bank. In this context, the US supported ideas such as import-substitution industrialization, the creation of an international debt arbitration mechanism, commodity price stabilization, and larger international development assistance. This was partly an extension of US ideas generated during the New Deal. This was also partly a product of the US reacting against the growing influence of Nazi Germany in Latin America, during World War II.\textsuperscript{31}

Helleiner suggests that scholars would later forget the Southern dimension of embedded liberalism because after the war the US moved its attention away from Latin America and focused more on Europe, and because state-led New Deal-style development policies were not as popular in the post-war Communist fearing era. By 1949, with the onset of the Cold War, the US espoused international development ideas focused more on free market and free trade policies.\textsuperscript{32}

The second expansion of embedded liberalism is that it had more room for development concerns than originally imagined. We see some evidence from of this in statements made by Harry Dexter White, who would lead the US negotiators at Bretton Woods. He would take some these ideas from the US-Latin American experience to his proposal for the International Bank for Reconstruction and Development (IBRD, later known as the World

\textsuperscript{30} See Interim Report of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/117 Rev.1, UNESCO, (9 July 1947) at 8; Report of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/186, UNESCO, (22 August 1947) at 81, online: <http://www.wto.org/gatt_docs/English/SULPDF/92290240.pdf> [Geneva Draft]. According to the conference records, Havana was deemed a desirable location for the conference because it was in the western hemisphere and because Lake Success, which was the United Nations’ temporary headquarters at the time, was deemed not to have the logistical capacity for such a large and complicated conference as was expected.


\textsuperscript{32} \textit{Ibid.} at 963-964.
White proposed that the IBRD help stabilize the prices of primary commodities through an “International Commodity Stabilization Corporation”. The US State Department would, however, later remove commodity stabilization from the Bank’s final functions.

White espoused a generally liberal disposition towards trade policy:

the interested reader in his search for sound [tariff] policy will find the complexity of the problem is apt to increase with the profundity of his reading. Yet one conclusion is certain to emerge from his study of the subject, namely, that most import duties are too high, than many duties remain too long, that few are imposed for sound reasons, and almost none of them are reevaluated often enough by the law-making bodies in light of changing needs and conditions.

White’s plan highlights that embedded liberalism was informed by notions of “freer trade” i.e. the gradual and negotiated reduction of tariffs. Embedded liberalism saw domestic tariff policy and international trade policy as deeply interconnected where international and domestic freer trade policies were monetarily sound alongside a protective redistributive purpose.

Moreover, White in his Stabilization Fund proposal included some room for Southern concerns regarding development. White's words provide exemplary insight into how embedded liberalism allowed for development concerns, and are therefore worth reproducing in some length

The belief that reduction in all import duties increases trade and yields a higher standard of living for all countries under all circumstances and in all

33 Ibid. at 958.
34 Ibid. at 960.
stages of their economic evolution assumes that countries are utilizing virtually all their capital and labor; that a country chiefly agricultural in its economy has as many economic, political and social advantages as a country whose economy is chiefly industrial, or as a country which has a balanced economy... These assumptions, essential to the belief that “Free Trade” policy is ideal, are not valid. They are unreal and unsound. “Free Trade” policy grossly underestimates the extent to which a country can virtually lift itself by its bootstraps in one generation from a lower to a higher standard of living, from a backward agricultural to an advanced industrial country, provided always it is willing to pay the price. The view further overlooks the very important fact that political relationships among countries being what they are, vital considerations exist in the shaping of the economic structure of a country other that of producing goods with the least labor.\textsuperscript{36}

Thus, White highlights that since developing countries rely on agriculture then international trade policies must take into account global political imbalances between agriculturally dependent countries on the periphery and industrialized countries at the centre. White also suggests that developing states have significant domestic socio-economic challenges that must be overcome in order for it to economically develop.

\textit{2. Institutional Diversity}

There is not only ideational support for how embedded liberalism made room for development, but there is also institutional evidence. The problem has been that Ruggie and others have focused on the notion that developing states did not have the \textit{domestic} capacity to ensure full employment and redistribution. To Steffek, embedded liberalism was a division of labour between the national and international level of policy-making. International rules’ purpose was only to establish and maintain a functioning world market and domestic rules’ function was to ensure the market was embedded in a legitimate domestic social purpose:

\textsuperscript{36} \textit{Ibid.}
If the twin goals of a modern democratic society are wealth and equality, for example, a market economy might be established to generate wealth but then be complemented with political redistribution to achieve equality. In the conception of the modern welfare state both tasks are managed by the same political entity, the nation-state. Embedded liberalism, in contrast, allocates some tasks to global governance and others to the state level. International cooperation is to establish a functioning world market while only national politics is supposed to realize overarching political goals such as redistribution and social stability. This fundamental division of labor between national politics and international governance is still viewed as valid by many governments, even if the preferred means for its implementation might have changed.37

In view of that, to Steffek, the GATT reflected embedded liberalism and the ITO and later UNCTAD were beyond the purview of embedded liberalism because they prescribed goals such as full employment and redistribution as a function of international institutions.

However, embedded liberalism was not one specific set of institutional arrangements. Rather we should consider it to have been “a dynamic commitment to allowing countries to be different within a multilateral framework.”38 Recent discussions emphasize that there is no one necessary institutional configuration of embedded liberalism. For example, Ruggie and others are trying to reconcile the compromises of embedded liberalism with contemporary structures of global governance. In doing so, they are looking to integrate a wider range of states, international institutions, and transnational social actors into

37 Steffek, supra note 11 at 4-5,

working out how to maintain a multilateral world order international order along with
domestic welfare concerns.39

Embedded liberalism’s pervasiveness derived in part from its variety of policies and
institutions both domestic and international. Since embedded liberalism was not a
predetermined plan regarding levels of social spending or tariff amounts it allowed for
diverse policy tools to implement its underlying purpose of reconciling a liberal trade
regime with domestic economic welfare and stability.40 Therefore, when states in the South
operationalized embedded liberalism within the context of meeting development needs
they were able use different policy instruments than those used by states in the North.
Developing countries were not able to use the state to achieve the domestic aims of
embedded liberalism and therefore they had to look to international institutions to ensure
full employment and social stability.

It therefore behooves us to consider that if embedded liberalism included the aims and
interests of developing countries, then embedded liberalism comprised more international
institutions than originally thought and the postwar history of international trade law
includes more than a focus on GATT.

According to Ruggie, the postwar international trade order focused on manufactured
products and had little to do with regulating the flow of agricultural goods. This was
because, “[a]part from oil, North-South raw material trade has posed few problems for
industrialized countries, both because of their overall domination of world trade and
because of the characteristics of the raw materials sector.”41 This account is not entirely
complete – because countries in the South often depended on the export of agricultural
products, during the 1960s and 1970s many challenged the North’s conception of an

39 See for e.g. Rawi Abdelal & John G. Ruggie, "Principles of Embedded Liberalism: Social Legitimacy and
Global Capitalism", in David Moss & John Cisternino, eds., New Perspectives on Regulation (Cambridge: The
Tobin Project, 2009) 151.

40 Supra note 38.

41 Ibid. at 403.
international trading system that excluded agriculture. This resulted in the formation of UNCTAD, which we will see institutionalized embedded liberalisms’ goals but with an emphasis on developing countries’ socio-economic conditions and geopolitical context.

This chapter provides a revised account of embedded liberalism that highlights how the ITO institutionalized embedded liberalism and included compromises between developed and developing countries. The next chapter traces how after the end of the ITO, embedded liberalism would institutionally fragment into the GATT and UNCTAD. What is also significant is that the institutional make-up of embedded liberalism also included ICAs such as the 1977 ISA. It is here that embedded liberalism regulated the international trade of agriculture, where North and South would negotiate their interests, and where UNCTAD and GATT ideas would meet. ICAs institutionalized embedded liberalism in a most sophisticated way, and yet until now their story has been marginalized in the history of international trade.

To Ruggie, embedded liberalism, “presupposed the existence of national economies, engaged in external transactions, conducted at arm’s length, which governments could mediate at the border by tariffs and exchange rates, among other tools”.\(^\text{42}\) This may be true if we only look at how the GATT related to embedded liberalism’s domestic goal of ensuring full employment and tempering social adjustment costs that open markets would inevitably produce. By including the ITO, UNCTAD and ICAs into embedded liberalism’s international institutional landscape what emerges is that policy-makers in the North and South not only looked to domestic institutions but also to international institutions to ensure global market conditions, namely commodity prices, were regulated in such a way to ensure desired domestic socio-economic conditions in different countries.

3. **International Trade Organization: Centrality of Development**

If we consider that embedded liberalism included theories of development, and if we understand the ITO to institutionalize embedded liberalism, what is still missing from

\(^{42}\) Ruggie (2003), *supra* note 27 at 94 [emphasis in original].
contemporary accounts of the ITO is an emphasis of the role that development as an idea and developing countries as a negotiating bloc played in the drafting of the ITO Charter.\footnote{Notable exceptions include Richard Toye, "Developing Multilateralism: The Havana Charter and the Fight for the International Trade Organization, 1947-1948" (2003) 25 Int'l History Rev. 253 (focuses on the Havana conference); Rorden Wilkinson & James Scott, "Developing Country Participation in the GATT: A Reassessment" (2008) 7:3 World Trade Review 473 (showing how developing countries actively participated within the GATT from its beginnings).}

This is likely because the majority of these histories draw from a handful of texts written around the time of the US ratification debate by US officials who either participated at the highest level in the negotiations or were involved in developing the US’s international commercial policies.\footnote{See for e.g. James G. Fulton and Jacob J. Javits, The International Trade Organisation: An Appraisal of the Havana Charter in Relation to the United States Foreign Policy, with a Definitive Study of its Provision U.S. Congress, House Committee on Foreign Affairs (Washington, DC: 80th Congress, 2nd Session, 1948); Clair Wilcox, A Charter for World Trade (New York: Arno Press, 1949); Brown, supra note 25; Diebold, supra note 9; E.F. Penrose, Economic Planning for the Peace (Princeton: Princeton University Press, 1953).} These texts remain to be the most comprehensive English-language analyses of the Havana Conference which led to the ITO. Only a few academic studies have since focused on the ITO\footnote{There has been some references to the ITO in contemporary arguments as a source for different ideas regarding how to structure the WTO or for historic interpretive value, see for e.g. (1993-1994) 14:2 N. Ill. U. L. Rev (Special Issue); Jean-Christophe Graz, “The Political Economy of International Trade: The Relevance of the International Trade Organization Project” (1999) 2 J. Int'l Rel. and Development online; Mark Levinson, “Trading Places: Globalization From The Bottom Up” (2002) 11 New Labor Forum 20; Judith Goldstein & Joanne Gowa, “US National Power and the Post-war Trading Regime” (2002) 1 World Trade Review 153; Susan George, “Alternative Finances: The World Trade Organisation We Could Have Had” Le Monde Diplomatique (24 January 2007), online: <http://tiny.cc/3oh5o>; Steve Charnovitz and John Wickham, “Non-Governmental Organizations And The Original International Trade Regime” (1995) 29 Journal of World Trade 111; Mexico – Tax Measures On Soft Drinks and Other Beverages (1995), WTO Doc. WT/DS308/R at para. 8.176 (Panel Report) and WTO Doc. WT/DS308/AB/R at para. 78 fn. 175.} – and even those studies usually consider the ITO in light of compromises mainly between US-UK\footnote{The most influential account has been Gardner, supra note 25. See also Graz, ibid. (this is an shortened English-language version of Jean-Christophe Graz, Aux Sources de l'OMC La Charte de La Havane [Precursor of the WTO The Stillborn Havana Charter 1941 – 1950] (Geneva: Librarie Droz, 1999).) For a Canadian perspective see Michael Hart, ed., Also Present at the Creation: Dana Wilgress and the United Nations Conference on Trade and Employment at Havana (Ottawa: Centre for Trade and Policy, 1995).} or from the perspective of competing US interests.\footnote{See for e.g. Steve Dryden, Trade Warriors: USTR and the American Crusade for Free Trade (New York: Oxford University Press, 1995); Susan A. Aaronson, Trade and the American Dream: A Social History of Postwar Trade Policy (Lexington, KY: University Press of Kentucky, 1996).}
These early influential comprehensive accounts of the ITO were written to persuade the US intelligentsia of the Charter’s merits for the purpose of encouraging Congress’s approval – it did not help the authors’ cause to focus too much on the role of development which had been an extremely contentious issue with US negotiators. The US officials who wrote comprehensive examinations of the ITO Charter did refer to the role of development and developing countries. Wilcox, who wrote one of the most authoritative accounts of the ITO Charter, stated that at Havana “the most violent controversies at the conference and the most protracted ones were those evoked by issues raised in the name of economic development.”

Nevertheless, these authors would discuss development as a reaction against their counterparts from developing countries. Development was usually relegated as a secondary issue in regards to understanding the function and purpose of the ITO. Thus, the historical accounts written by US officials would contribute to the marginalization of the idea of development in contemporary histories of international trade institutions.

By highlighting how North American diplomats did still mention development issues along with referencing some of the ITO primary material, we can get a better sense of how development was a central issue throughout the ITO negotiations and that there was a divide between “developed” and “underdeveloped” countries. Those countries whose economy that depended on exported foodstuffs and raw materials coalesced together as “underdeveloped countries.” These were countries, primarily led by Australia, India and Latin American states, who insisted that their infant industrial capacity needed to be protected in order to develop. Underdeveloped countries considered international trade to be inextricable from development issues. The fact that Canada, a British settler colony

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48 Wilcox, supra note 44 at 48-49.

49 All parties commonly used the term “underdeveloped” at the time. I use it throughout this chapter to indicate the countries which self-identified at the time as such and not as a judgment of their socio-economic condition at the time. I will use “underdeveloped” and “developing” interchangeably.

50 We can assume that Australia self-identified as underdeveloped due to its reliance on agriculture and very little industry at the time. See Gary W. Wynia, “Opening Late-Industrializing Economies: Lessons from Argentina and Australia” (1990) 23 Policy Sciences 185.

that had some industrial capacity, self-identified as developed and Australia, a British settler colony that had little industrial capacity at this time, self-identified as underdeveloped highlights the fact that development was equated with industrialization. Many of the statements made by underdeveloped country representatives during ITO negotiations indicate their skepticism towards the developed countries’ proposals. Underdeveloped countries delegates stated at the outset of the Havana conference that the lack of including development issues in the working ITO Charter draft was not simply a shortcoming of institutional design, but actually created a bias against them. Their wariness stemmed from a concern that industrialized countries, like in the colonial past, were seeking cheap access to the raw materials of commodity-dependent postcolonial countries.

III. ITO: Institutionalizing Embedded Liberalism, Comprising Freer Trade and Rationalization

Jacob Viner, the renowned trade economist, captured the prevailing liberal trade doctrines at the time of the ITO:

Only the traditional free trader can deal with the problem of the desirable level of trade barriers as a clear-cut question of principle. He wants the reciprocal reduction of trade barriers carried as far as governments can be persuaded to carry it, even to the point of total elimination of tariffs, subject

52 The Canadian delegate noted with some irony (but ignoring Canada’s industrial capacity) that by this definition Canada would be an “underdeveloped country”, UN Conference in Trade and Employment, Heads Of Delegations Summary Record Of Meeting, Havana, Cuba, on 24 December 1947 (E/CONF.2/23) at 4.

53 See infra note 113.

54 Wilcox, supra note 44 at 47-49.

to a few debatable exceptions such as protection of infant industries and those which are strategically important. The free trader objects to trade barriers both as obstacles to international specialization of production in accordance with comparative national advantages for production, and as sources of international friction. But there are few free traders in the present-day world, no one pays any attention to their views, and no person in authority anywhere advocates free trade. The practical issue turns on whether existing trade barriers should be reduced, and, if so, how much; and on these points there is perhaps nearly as much division of opinion within countries as between countries.56

The debates that led to the ITO were not doctrinaire discussions of “free trade”, but rather, like during the League of Nations, it was about “freer trade”. ITO delegates argued over how low and how quickly tariffs were to be reduced if at all and over exceptions to reducing tariffs.57 Moreover, like the League, the ITO would recognize exceptions to freer trade in which infant industries could be rationally buttressed to develop one’s economy and possible create a comparative advantage (and for strategically sensitive areas).

The Southern perspective regarding the ITO is best reflected by the Colombian delegate’s speech during discussion of convening an international conference on trade and employment:

For the United State, full employment is to be achieved by the expansion of world trade within a system of economic freedom.

For us, the words “full employment” have a special and quite different meaning. What, indeed, can it mean to us that all our workers are employed

56 Jacob Viner, “Conflicts of Principle in Drafting a Trade Charter” (1947) 25 Foreign Affairs 612 at 613 [emphasis added].

57 International Trade Organization, Hearings Before the Committee on Finance, Part I, U.S. Senate, 80th Congress, 1st Session (1947) at 3 [hereinafter ITO Senate Hearings]; George Bronz “The International Trade Organisation Charter” (1949) 62 Harv. L. Rev. 1089 at 1093; Diebold, supra note 9 at 14-24; Toye, supra note 43 at 290.
so long as they work in the least productive branches of economic life for wages ten times lower than those of other nations? And how can we ensure stability in this “full employment” if we are limited to producing a single commodity which is exposed, as coffee is, to such violent fluctuations of price and volume of consumption on the international market?

We are of the opinion that full employment in reasonable conditions is inseparable from the attainment of two fundamental objectives: variety of production, and increase in manufacturing industries which, through their ability to command higher wages than those which are normally attained in extracting industries, can raise the standard of living and shape a mentally and morally superior working class. The [United Nations Economic and Social Council] should ask itself if such an evolution can be assured by depriving young industries of all protection, and if it is not more natural that a policy of trade freedom should be developed in harmony with the peculiar conditions prevailing in industrially backward countries.58

The Colombian comments highlight that the question of trade and employment for developing countries was not only a question of domestic stability, but also one of development. Moreover, these comments emphasize that the aims of embedded liberalism manifested in different social, political and economic contexts for developing countries and thereby demanded different policy tools and institutional arrangements. What is also remarkable is that, unlike import substitution industrialization (ISI), which was a popular development policy at the time (discussed below), the Colombian delegate considered avant la lettre international trade to be a central feature of a development plan that included industrialization and diversification. Unlike the Northern concerns within the purview of embedded liberalism, the delegate was not as concerned with demarcating the between the state and the domestic market. Instead, he wanted to bring the international trade institutions in line with domestic development concerns.

This section outlines how developed countries would emphasize the freer trade aspect of the ITO and developing countries the rationalization aspect. This tension would be provide the context of how the GATT and UNCTAD would spin out of the collapse of the ITO, and how trade and development concerns would be institutionally separated from trade and industrial interests. This section also traces these ideas back to the League of Nations noting how the relationship between freer trade and rationalization would change after the Second World War.

A. Northern Concerns Within Embedded Liberalism: Freer Trade and the Emphasis on Industry

“Freer trade” was defined in Chapter IV of the ITO Charter. US commentators considered this chapter to encompass the key provisions of the ITO Charter. One central feature of this chapter would be its definition of the most favored nation principle, which would carry over into the GATT.

The chapter’s principal purpose was to outline the boundaries between the domestic and international markets, and the state and market. Delegates negotiated the degree to which the ITO Charter allow for government market regulation and what preferences would be allowed as exceptions to the MFN principle. Recall that the purpose of embedded liberalism, and the ITO International Conference on Trade and Employment, was to create a multilateral trade regime that avoided destructive protectionism and ensured domestic stability. Thus, the negotiations were framed by determining what forms of domestic regulation would be allowed as exceptions to principles of freer trade. More specifically, delegates worked out exceptions to prohibitions against quantitative restrictions and


60 Art. 17.

61 Ibid. at 394. Exceptions included imperial and post-imperial preferences for the UK, US, Portugal, France, Belgium, and the Netherlands (Article 16.2(a)-(d)); and preferences for enumerated countries forming regional blocs in the Levant and Latin America (Article 16(e)).
increasing tariffs. It was through these exceptions that agriculture was separated from industry.

Agriculture was carved out of Chapter IV of the ITO Charter as an exception to the rule prohibiting quantitative restrictions (i.e. quotas, import or export licences, and the like). An allowance for quantitative restrictions was for the purpose of domestic agricultural price control. The fact that other exceptions to quantitative measures focused on domestic stability and welfare implies that quantitative restrictions on agriculture were deemed necessary to ensure for domestic economic stability.

B. Southern Concerns Within Embedded Liberalism: Rationalization and the Emphasis on Agriculture

1. ITO and Development

Many underdeveloped countries’ (as they were called) during this time depended on primary commodities. The corollary of such dependence meant that the frequent commodity price fluctuations would devastate domestic socio-economic conditions within these countries more so than in developed countries. Accordingly, while developed countries used embedded liberalism to regulate domestic industry to ensure full employment and buffer the socio-economic disruptions caused by an international economic regime, developing countries employed embedded liberalism to stabilize commodity prices in the short-term with a view to diversifying and industrializing the economy.

Chapter III of the ITO Charter (entitled “Economic Development and Reconstruction”) captured the Southern concerns within embedded liberalism. It institutionalized

\[62\text{ Art. 20.1.}\]
\[63\text{ Articles 20.2, 20.3, and 20.4.}\]
\[64\text{ Other exceptions made for quantitative restrictions: avoiding a serious decline in monetary reserves and maintain a country’s balance of payments (Art. 21); and postwar economic recovery for approved countries held to be in a transition period (Art. 23).}\]
rationalization on an international scale by providing for multilateral co-operation through intergovernmental organization facilitating industrialization by ensuring an increase of capital, materials, technology, and technical skills (Articles 10 – 12). It also legitimized government subsidization for the purpose of development, but provided certain provisions outlining how prior approval would have to be obtained through negotiations to allow for this sort of government assistance (Article 13). The first provision of this article, like the exceptions to MFN in Chapter IV, highlights the compromise of embedded liberalism between domestic and international. It also notes the relationship between industry and agriculture as a central feature of development:

The Members recognize that special governmental assistance may be required to promote the establishment, development or reconstruction of particular industries or branches of agriculture, and that in appropriate circumstances the grant of such assistance in the form of protective measures is justified. At the same time they recognize that an unwise use of such measures would impose undue burdens on their own economies and unwarranted restrictions on international trade, and might increase unnecessarily the difficulties of adjustment for the economics of other countries.

2. ICAs and Development

The ITO would not be the only international institution that developing countries would turn to. To understand why developing countries would eventually utilize ICAs as a means for development in the late 1960s and 1970s, it is necessary to first outline development policies immediately after the Second World War. By the 1950s, these countries, were frustrated with fluctuating commodity prices, the dependence on industrialized countries for manufactured goods, and the meager economic returns from export primary commodity products as they had done for much of their colonial history in the 19th and
early 20th century. Thus, in the 1950s and early 1960s, many developing countries, with some support from the World Bank and IMF, turned to ISI policies.

Development economists during this time assumed that economies were national, and “saw the economy as an enormous cycle of inputs and outputs in which labor is deployed with a given technology and capital stock to produce income.” Development meant modernization and modernization meant the Global South had to industrialize in order to reproduce the Global North’s economic achievements. The thinking was that ISI would decrease international hindrances to a country’s socio-economic development by reducing the dependence on agriculture and imported manufactured products, and enhance development by industrializing the domestic economy.

The experiences of Latin America, the Arab world, and the South Asian subcontinent are most often treated as exemplars of ISI policies in the 1950s and early 1960s. ISI’s purpose was to establish firms within a domestic economy that would produce manufactured goods for local consumption to replace imported goods. ISI was considered to be inward-looking because infant industries would be subsidized for the purpose of


67 Ibid.


69 See for e.g. Maurice Girgis, Industrialization and Trade Patterns in Egypt (Tübingen: Mohr, 1977)

domestic consumption not for export. It was a policy that emphasized autarky often at the expense of economic growth and efficiency.\textsuperscript{71} Even if manufacturers wanted to export their goods, the high cost of production under ISI often made it prohibitive to do so.\textsuperscript{72}

ISI was possible to implement through a variety of policy instruments, which included: tariffs; exchange controls; special preferences for domestic and foreign firms importing capital goods for new industries; preferential import exchange rates for industrial raw materials, fuels and intermediate goods; cheap loans implemented by government development banks for certain industries; the construction of infrastructure to buttress certain industries; and direct participation of government in certain industries especially when neither domestic nor foreign private capital was willing or able to invest.\textsuperscript{73} During the heyday of ISI, much of the international pressure was not necessarily against ISI as such, but rather against certain policy instruments such as quotas and multiple exchange rates, thereby pushing ISI countries to rely more on raising tariffs.\textsuperscript{74} Moreover, different countries relied on different sources of capital that was used to import the technology and know-how necessary to industrialize. Latin American countries, for example, often relied on multinational corporations and foreign capital,\textsuperscript{75} whereas Egypt had a nationally centralized system of capital control.\textsuperscript{76}

With all this variety of policy tools and capital regulation in hand, ISI policy makers were indiscriminate in deciding which specific industries they concentrated on. That is, government officials and technocrats rarely publicly justified which industries were favoured nor did they necessarily advance industries that might have had a comparative

\textsuperscript{71} Baer, \textit{supra} note 68 at 104; Diaz \textit{supra} note 68 at 228-230; Krueger, \textit{supra} note 70 at 3-4.

\textsuperscript{72} Bulmer-Thomas, \textit{supra} note 68 at 275.

\textsuperscript{73} Baer, \textit{supra} note 68 at 98; Krueger, \textit{supra} note 70 at 22-34.

\textsuperscript{74} Bulmer-Thomas, \textit{supra} note 68 at 270-271; Krueger, \textit{supra} note 70 at 114-116.

\textsuperscript{75} Baer, \textit{supra} note 68 at 98; Bulmer-Thomas, \textit{supra} note 68 at 273.

\textsuperscript{76} Girgis, \textit{supra} note 69 at 25.
advantage. They did however favour industry over agriculture, shifting resources from the historical rural communities and agricultural sectors to the burgeoning urbanized and manufacturing sectors. This meant that ISI policies often made developing countries’ agricultural products less competitive to export to the international market.

Even though ISI policies neglected stimulating traditional exports, during the 1950s and 1960s, Latin American exports were still mostly primary commodities. In some countries in the early 1960s such as Argentina, Colombia, and Mexico, governments were not able to attract enough capital to counterbalance the decline in export receipts; later efforts to try stimulate trade in primary commodities were too little too late. This generated perverse result in some countries where ISI policies lead to further dependency on industrial countries (for capital) more than ever before.

As a result, one major criticism of ISI was that it ignored the potential benefits of using international trade to socio-economically develop. Others criticized the increased inequality that ISI created between traditional rural sectors and emerging urban manufacturing sectors. These criticisms, along with external shocks such as industrialized countries de-linking from gold and adopting floating currencies, the sudden rise in the price of commodities, and the OPEC-driven oil price spike, changed countries’ development policies in the late 1960s and 1970s. More and more advisors argued that developing countries should stimulate commodity export whilst attempting to diversify exports. Raúl Prebisch and the Economic Commission for Latin America (ECLA) who were ISI’s more

77 Baer, supra note 68 at 98; Girgis, supra note 69 at 25; Krueger, supra note 70 at 114-117; Lewis, supra note 70 at 104.

78 Baer, supra note 68 at 105; Díaz Alejandro supra note 68 at 236; Girgis, supra note 69 at 12, 18; Dutt supra note 70 at 106-108.

79 Baer, supra note 68 at 106.

80 Baer, supra note 68 at 101-108. See also for e.g. Krueger supra note 70 at 111-113; Dutt, supra note 70 at 106-18; Omar Noman, The Political Economy of Pakistan 1947-85 (London: KPI, 1988) at 15-21.
famous advocates in the 1950s and 1960s, would become more critical of ISI policies in the mid-1960s and 1970s.\textsuperscript{81}

This would lead developing countries, ECLA, and development economists to shift their development prescriptions towards the more export-oriented or "outward looking" development policies which married international trade policies with domestic industrialization and diversification.\textsuperscript{82} This would also maintain modernization theory assumptions that informed ISI policies. Also, like ISI these outward looking policies assumed that the national economy was "an enormous cycle of inputs and outputs".\textsuperscript{83} The fundamental difference was that now the market was thought to be \textit{global}.

Again, this new development theory manifested through a variety of different policies. Export promotion policies attempted to encourage the export of goods produced through ISI policies, export substitution policies sought to shift resources out of protected sectors, and primary-export development policies aimed to exploit the rise in world commodity prices.\textsuperscript{84} It was during this outward looking moment that ICAs would play a prominent role in development policies. Countries that had significant agricultural sectors would look to ICAs to stabilize (if not ensure high) world commodity prices.

Both developed and developing countries had agricultural sectors and thus turned to ICAs. This would adhere to the logic of embedded liberalism since it would be a multilateral instrument intended to ensure some domestic economic growth and social stability. Developing countries had the added dimension in that they often depended on a small number of agricultural commodities which disproportionately exposed them to fluctuating

\begin{itemize}
  \item \textsuperscript{81} John Toye & Richard Toye, \textit{The UN & Global Political Economy} (Bloomington: Indiana University Press, 2004 at 138-140, 147, 159.
  
  
  \item \textsuperscript{83} \textit{Supra} note 66.
  
  \item \textsuperscript{84} Bulmer-Thomas, \textit{supra} note 68 at 315.
\end{itemize}
world prices. Thus, developing countries quite acutely needed stable commodity prices to maintain domestic social stability. But developing countries also wanted to change their economic structure; they wanted ICAs in order to increase capital flows into the economy in the short-term in order provide some time and resources to subsidize industrial capacities. And so developing countries would also participate in GATT to ensure that their development needs were addressed so that when they had the ability to competitively export manufactured good they would have access to Western markets and reduce their dependence on primary commodities.

C. The Confrontation Between North – South (and US – UK) Within the ITO

1. Inherited Dynamics from the League

ITO doctrines of freer trade drew from what were characterized as political methods of economic rapprochement during the League, whereas ITO doctrines of rationalization drew from economic methods of economic rapprochement. Those that emphasized freer trade were preoccupied with tariffs, quantitative restrictions, and the principle of most-favoured-nation. League publications such as Commercial Policy in the Interwar Period: International Proposals and National Policies would influence US drafters of the ITO Charter’s commercial provisions.85 Drafters also looked to the 1927 International Convention for the Abolition of Import and Export Prohibitions and Restrictions86 – this


86 International Convention for the Abolition of Import and Export Prohibitions and Restrictions, 8 November 1927, 97 L.N.T.S. 391; Martin Hill, The Economic and Financial Organization of the League of Nations: A Survey of Twenty-Five Years’ Experience (Washington D.C.: Carnegie Endowment for International Peace, 1946) at 45-47; Wallace M. McClure, World Prosperity Through the Economic Work of the League of Nations (New York: MacMillan Company, 1933) at 354-369; Commercial Policy, ibid. at 33-45, 93. The treaty was riddled with conditional ratifications and was brought into force by special arrangement on a short-term basis on January 1, 1930. By the middle of 1934 the treaty was denounced by all the parties.
treaty never went into operation but trade diplomats and jurists looked to it as intellectual precedent and as a case-study to understand why such a treaty failed.\textsuperscript{87}

Delegates from the North would emphasize all the economic “failures” of the League to liberalize trade.\textsuperscript{88} What they rarely mentioned is that ICAs were one of the few economic agreements that were successfully signed, ratified, and operationalized under the auspices of the League. Those who favoured rationalization relied on League publications such as, \textit{Industrialization and Foreign Trade}\textsuperscript{89} as well as experiences from the 1933 International Wheat Agreement and the 1937 International Sugar Agreement\textsuperscript{90} and most likely drew from the many expert memos on the subject.

During the time of the League, experts and delegates differed as to whether the international economic policies should focus more on questions of freer trade or rationalization.\textsuperscript{91} Sir Arthur Salter, the most influential and active directors of the Economic and Financial Section (1922 –1931) and John Maynard Keynes held the view that due to post-war economic crises, international rationalization would best address exceptional economic circumstances. They argued that certain economic and financial conditions needed to be met before a tariff-reducing policy of freer trade could be adopted. This


\textsuperscript{88} \textit{Supra} notes 85 and 87.

\textsuperscript{89} League of Nations Economic, Financial and Transit Department, \textit{Industrialization and Foreign Trade} (Geneva: League of Nations, 1945); Toye & Toye, \textit{supra} note 81 at 46, 48.

\textsuperscript{90} See Toye & Toye, \textit{ibid.} at 214. Also, amongst Albert Viton’s papers regarding ISA’s of the 1940s and 1950s is a copy of the 1937 ISA and documents pertaining to voting scheme negotiations of the 1937 ISAs. Viton was not at the 1937 ISA negotiations suggesting that Viton may have referred to these during the 1940s and 1950 ISA negotiations: International Sugar Conference, London, April 1937, Negotiating Committee, “Suggested Basis for Voting, Proposal submitted by M. du Toit” (Union of South Africa) (28 April 1937) CONF./SUGAR/NEG.24; “Suggested Basis for Voting, Proposal submitted by Dr. Hartmand (Netherlands)” (28 April 1937) CONF./SUGAR/NEG.26; “Suggested Basis for Voting, Proposal submitted by Dr. Sachs (Poland)” (28 April 1937) CONF./SUGAR/NEG.27; “Report by Negotiating Committee” (19 April 1937) CONF./SUGAR/NEG.20, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 1, Folder 2).

\textsuperscript{91} See Chapter Four.
perspective would prevail over those who wanted to prioritize freer trade policies during the interwar period. The predominant focus of the League's economic conferences was to determine how to employ ideas of rationalization to stabilize the world economy and rebuild war-torn Europe; international trade was to be part of a government-directed program of rationalization and industrialization.

The tension between concepts of a liberalizing trade regime and a rationalization trade regime replayed after the League during ITO negotiations. In November 1945, the US Department of State provided early blueprints for a post-war international trade organization in a publication entitled *Proposals for Expansion of World Trade and Employment*.\(^{92}\) *Proposals*, though published by the US, was the product of Anglo-American discussions and negotiations.\(^{93}\) One month after it was published, the US invited a number of other nations to convene an international conference on trade and employment.\(^{94}\) In January 1946, this invitation was taken to the newly created United Nations Economic and Social Council (ECOSOC). Formally, ECOSOC assumed and continued the “non-political” work of the League, which included the economic and financial functions.\(^{95}\) One of the first topics at ECOSOC was the US resolution calling for a convening of an “International Conference on Trade and Employment.”\(^{96}\)

\(^{92}\) US Department of State, *Proposals for Expansion of World Trade and Employment* (Washington D.C.: Department of State, 1945) (Commercial Policy Series No. 279) [*Proposals*].


\(^{94}\) “Trade Negotiation Proposed” (13 December 1945) 13 Department of State Bulletin 970 (press release). The countries invited were Australia, Belgium-Luxembourg, Brazil, Canada, China, Cuba, Czechoslovakia, France, India, the Netherlands, New Zealand, South Africa, USSR, and the UK. The USSR would not participate in any ITO negotiations or conferences.

\(^{95}\) *Non-Political Functions and Activities of the League of Nations*, ESC Res. 12(I), UN ESCOR, 1st Sess., (1946) 133.

At first development was not on the conference agenda, forewarning the institutional fracture that was to follow. The moment the US presented a draft resolution regarding an international trade conference at ECOSOC developing countries expressed concern that their needs were not being met. This would set the tone for all subsequent negotiations – the issue of development was raised and became a permanent point of debate until the conclusion of the Havana conference. Pursuant to the ECOSOC resolution nineteen countries were invited to form a preparatory committee to set the stage for an international trade conference. The Preparatory Committee would hold three meetings: the First Session in London from October to November 1946; a meeting of the Drafting Committee of the Preparatory Committee held at Lake Success, New York from January to February of 1947; and the Second Session held in Geneva from April to October of 1947.

Before the Preparatory Committee first met in London, the US published the Suggested Charter for and International Trade Organization of the United Nations. This draft was immediately controversial and negotiations in London almost broke down when underdeveloped countries, represented by Australia, India, China, Lebanon, Brazil and

97 Ibid.; Wilcox, supra note 44 at 31-32.

98 The Calling of an International Conference on Trade and Employment, ESC Res. 13(I), UN ESCOR, 1st Sess., UN Doc. E/22 (1946) 133. The countries invited were Australia, Belgium, Luxemburg, Brazil, Canada, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Netherlands, New Zealand, Norway, South Africa, Union of Soviet Socialist Republics, the United Kingdom, and the United States of America.


101 Geneva Draft, supra note 30. Colombia, Denmark, Mexico, Peru, Poland and Syria sent observers to the First Session. Colombia and Mexico sent observers to the Drafting Committee. The following countries sent observers to the Second Session, in addition to those that were represented at the First Session: Afghanistan, Argentina, Ecuador, Egypt, Greece, Iran, Saudi Arabia, Siam, Sweden, Turkey, Uruguay, Venezuela, and Yugoslavia.

Chile, accused the US of ignoring its concerns regarding development and demanded freedom to utilize import quotas to promote industrialization. Until London, neither the US nor UK took seriously the industrialization programs announced by underdeveloped countries. The controversy was resolved when the US agreed to include a chapter on economic development, which framed development demands as an exception and provided the details of how and when such an exception applied. Thus, a “London Draft” of the ITO Charter was produced. The London Draft was discussed in Geneva at the Second Session of the Preparatory Committee. Here, India led the battle by underdeveloped countries in their demands to remove pre-approval for the use of import quotas and other restrictions. Even though underdeveloped counties were unsuccessful in removing prior permissions, they managed to shorten the approval process in order to reduce the chance of “obstructionist delays.”

After the Preparatory Committee finalized the penultimate draft of the ITO charter in Geneva, the whole process opened up to all potential member countries at the United Nations Conference on Trade and Employment held in Havana, Cuba from November 1947 to March 1948. Fifty-six nations attended and the divide between developing and developed countries would generate the most vociferous debates at the conference.

2. How the Role of Rationalization Would Change from the League to the ITO

What differed between the ITO and the League is that rationalization would be the predominant conception of trade in the League, whereas the tension between freer trade and rationalization would contribute to the fracture of the ITO.

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103 Gardner, supra note 25 at 365.
104 Wilcox, supra note 44 at 42.
105 Supra note 99.
106 Wilcox, supra note 44 at 45.
Within the League, regardless of the conception of trade, the principal consensus was that rationalization policies, which included government control of tariffs, quantitative restriction or international negotiations of commodity agreements, were necessary only under exceptional circumstances; the norm was held to be a policy of freer trade. The debate was therefore often framed as whether the conditions of the world economy were exceptional enough to require international and national rationalization policies.

On its face, the ITO Charter appears to follow this same pattern of freer trade as the norm and rationalization as the exception. The ITO’s demise, however, is indicative of how tenuous the compromise was that led to this form of norm-exception. In fact, throughout the entirety ITO multilateral negotiations, the two different conceptions of international trade were antagonistic. The confrontation between developed and developing countries and their respective conception of trade threatened to scuttle ITO multilateral negotiations at every step.

US (and some UK) negotiators found rationalization on an international level not just exceptional but antithetical to their conception of what the ITO’s form, function, and purpose should be.\footnote{Edminster, \textit{supra} note 59 at 312-314; Wilcox, \textit{supra} note 44 at 30-32, 42-49, 140-142, 152; Penrose, \textit{supra} note 44 at 112-113; Brown, \textit{supra} note 25 at 153-155; Gardner, \textit{supra} note 25 at 365.} According to William Taylor Phillips, Acting Chief, Division of International Resources, Department of State, the US only begrudgingly included ICAs in the ITO Charter:

\begin{quote}
The attempt here in this chapter [addressing intergovernmental commodity agreements] is to admit that there probably will be agreements. We are not trying to encourage such arrangements nor to prohibit them, but we feel that whatever agreements are entered into should follow the specific rules of the game, the most important of which is the requirement that consuming interests should have an equal voice in determinations with the production interests.\footnote{ITO Senate Hearings, \textit{supra} 57 note at 476.}
\end{quote}
US actively tried to exclude international rationalization conceptions of trade. According to Wilcox, who represented the US throughout the ITO negotiations, developing countries were caught up with a “fetish of industrialization” which threatened any consensus on a multilateral trade agreement. To emphasize why views from developing countries were misguided he summarized the problem as such:

In backward areas throughout the world, there is an insistent demand that standards of living be improved and an irrational belief that this improvement is to be obtained only through a rapid industrialization of their economies. Almost everywhere it is the view that this industrialization cannot be achieved unless severe restrictions are imposed on trade.110

To Wilcox and some other North Atlantic delegates, the whole premise of drafting international rules that encouraged domestic industrialization was foolish and not worth engaging; this had the effect of discounting demands made by underdeveloped countries.111 To the US diplomats, the goal of economic development was legitimate, but international economic rationalization was a misguided idea that frustrated Anglo-American plans. The Northern argument in response to development needs was that the Charter would indirectly contribute to industrialization. The thinking was that markets would be more open thereby making it easier to earn funds to finance new industries.112

The underdeveloped countries were unified in their general criticism of US proposals for not addressing their economic development needs.113 Many feared that the US wanted to

110 Wilcox, ibid. at 30. Wilcox would also write, “Some of the proposals advanced in the name of economic development must be seen to be believed.” (at 142).


112 Wilcox, supra note 44 at 141; Edminster, supra note 59 at 312-314.

113 See for e.g. UN ESCOR, United Nations Conference on Trade and Development, UN Doc. E/Conf.2/23 (24 December 1947); UN ESCOR, United Nations Conference on Trade and Development, UN Doc. E/Conf.2/36 (4 February 1948). See also Herbert Feis, “Suggested Charter for an International Trade Organization of the United States by United States Department of State” (1947) 55 J. Political Economy 84 at 85 (anticipating the problems that underdeveloped countries would have with US proposals); Bidwell & Diebold, supra note 51.
reduce tariffs in order to flood the world with manufactured goods and prevent others from building competing factories.\textsuperscript{114} The position of many Latin American countries, however, was criticized by the US as being the most extreme. These Latin American delegates would demand a series of policies intended to redistribute the wealth between rich and poor nations and reduce global economic inequality;\textsuperscript{115} these demands would be precursors to the demands made under the New International Economic Order put forward through UNCTAD in the 1970s.

The issue of quantitative restrictions was the most contentious and was consistently cause for nearly ending ITO negotiations. One reason that embedded liberalism made some allowance for quantitative restrictions under exceptional circumstances was because the British wanted to ensure that quantitative restrictions remained a legitimate and viable domestic policy tool.\textsuperscript{116} Keynes would carry his views from the time of the League to his views on post-WWII trade institutions. Keynes was a harsh critic of trade-liberalization proposals from the US and the UK governments. He was more sympathetic to policies that allowed for quantitative restriction after WWII and went so far as to characterize quantitative restrictions as the norm and not exception.\textsuperscript{117}

Keynes unwittingly supported the position held by developing countries. Developing countries, reflecting the goals of embedded liberalism, wanted the freedom to impose quantitative restrictions for the purpose of development and grant the ITO power to review such measures after the fact and order discontinuance.\textsuperscript{118}

\textsuperscript{114} Bidwell & Diebold, \textit{ibid.} at 198.

\textsuperscript{115} Wilcox, \textit{supra} note 44 at 32.

\textsuperscript{116} Gardner, \textit{supra} note 25 at 165-187.


\textsuperscript{118} Wilcox, \textit{supra} note 44 at 42, 45, 48-49.
There are several reasons why the conceptions of trade within the League co-existed without threatening the institution’s existence but were so contentious as to contribute to the end of the ITO. First, rationalization lost some of its credibility after World War II. The success of the government control of goods in World War I contributed to rationalization’s viability. Similar methods were employed by the Allies in World War II in which national representatives of different sectors were organized into a transnational network through a government-regulated board.\textsuperscript{119} The UK, however, could no longer rely on its colonies to secure the supply of goods which made it more difficult to rationally control the supply of primary commodities. Moreover, the UK entered into a Lend-Lease Agreement with the US. This agreement was a different system than the regulatory boards and left the UK heavily in debt to the US for war-time supplies. Addressing this debt was one of the US and UK’s first order of business for recovering the world economy; this had the effect of pushing the idea of rationalization to the side.\textsuperscript{120} Second, the US had more international power and influence after WWII and state-led rationalization had always been an unpopular idea in the US State Department.\textsuperscript{121} Finally, after WWII different interests employed rationalization discourse. While Cuban delegates had used rationalization in the interwar period to increase its economic sovereignty and conclude an international sugar agreement, at that time it made sure to frame its position as part of European interests; Cuba was using a development framework originally devised to reconstruct Europe after WWI. Now, underdeveloped countries came together as a political bloc and used this same rationalization discourse despite US interests.


\textsuperscript{120} Gardner, \textit{supra} note 25 at 165-178.

\textsuperscript{121} \textit{Ibid.} at 101-109; see also the discussion of rationalization in Chapter Four.
D. ICAs: Rapprochement Between North – South, US – UK, and Industry – Agriculture

To the US delegates ICAs presented a challenge since the official US position was that the purpose of the ITO was the reduction of government intervention in trade. Ideologically, US negotiators from the Department of State would be against the idea of ICAs. But the US government could not take a principled position against ICAs as such. First, this was because of the compromise between the US and UK which generated embedded liberalism; the British insisted on not eliminating ICAs as a viable idea worth investigating.122 To Keynes, the international regulation of agriculture presented the strongest argument for quantitative restrictions.123 This was also because domestic agricultural policy within the US and the UK was actually consistent with theories of rationalization and ICAs. In the 1940s, US and UK agriculturalists in government were at odds with industrialists and wanted as much freedom as possible to use quantitative restrictions.124 Within the US, the Department of Agriculture, who were strong advocates of ICAs, were at odds with the State Department, who were skeptics of ICAs.125 This made US ITO negotiators, who were from the State Department, uncomfortable because they were instructed to support ICAs, which contravened their conception of a liberalizing trade regime.126 This also highlights the fact that during ITO negotiations, the US would usually characterize itself as an industrialized country whose interests were as a consumer of primary commodities; this relegated US domestic agricultural interests as secondary to industrial and consumers interests within the US.127

122 Penrose, supra note 44 at 63-86, 114.

123 Letter to Overton (3 February 1943), supra note 117.

124 Penrose, supra note 44 at 108-110; Gardner, supra note 25 at 149.

125 Bidwell & Diebold, supra note 51 at 221.


127 See for e.g. supra note 109.
Not surprisingly, during ITO negotiations the US would generally present the narrowest role for ICAs, sometimes in response to underdeveloped countries and at other times in response to the UK.\textsuperscript{128} US negotiators would imagine ICAs as public agreements amongst countries intended to stabilize price and supply of a primary commodity in exceptional times of commodity surplus, with shared representation by consuming and producing countries.\textsuperscript{129} They were clear that they did not envision ICAs as mechanisms intended to shift domestic resources and manpower from unproductive industries into new and more industrious occupations. In other words, to the US, ICAs were not to be used as mechanisms for domestic market regulation. Rather, they held that the purpose of ICAs was to respond to primary commodities unique world price inelasticity and ensure long-term price stability.\textsuperscript{130} Thus, international market regulation would be demarcated from domestic economic policy. Various Latin American countries unsuccessfully tried to obtain amendments to US proposals which would exempt ICAs from requirements of prior approval, allow for ICAs without consumer representation, and establish formulas for a minimum price.\textsuperscript{131} To them, ICAs were a legitimate form of domestic and international market regulation. Unlike the US, Latin Americans imagined domestic and international markets as inseparable.

The result was that ITO Charter allowed for ICAs but only under specific conditions and with prior approval by the ITO. Primary commodities were deemed to be affected by “special difficulties” (i.e. disruptive price fluctuation and inelastic demand)\textsuperscript{132} which therefore necessitated “special treatment” in international trade through ICAs (Art. 55). Chapter VI of the Charter outlined how ICAs were to be created for example by listing general principles that would govern ICAs (Art. 60), providing the particular conditions

\begin{itemize}
\item \textsuperscript{128} Brown, \textit{supra} note 25 at 119-125.
\item \textsuperscript{129} ITO Senate Hearings, \textit{supra} 57 note at 18-19.
\item \textsuperscript{130} ITO Senate Hearings, \textit{ibid.} at 480-484.
\item \textsuperscript{131} Wilcox, \textit{supra} note 44 at 120.
\item \textsuperscript{132} \textit{Ibid.} at 114.
\end{itemize}
which an ICA was allowed (Art. 62), and the substantive requirements for the content of ICAs (Art. 63). Chapter VI of the ITO, as an instrument of commodity regulation, was unique for two reasons. First, it established a multilateral framework to govern all commodities within one institution. Second, it granted countries whose interests were mainly as consumers equal voting power with producer countries (Art. 63(a)). The irony was that US would set legal boundaries around the use of ICAs, and these boundaries would be the starting point for UNCTAD’s attempt to organize all international commodities against US wishes approximately three decades later.

At the time of the signing ITO there were only two major ICAs that the ITO would have to approve. They were the 1937 ISA (which was in effect defunct by this time) and the 1949 Wheat Agreement.\textsuperscript{133} ICAs were still a provisional idea and the ITO was thought by some to “create a framework for international experimentation in a field in which competition has been particularly unmerciful in the past.”\textsuperscript{134}

The Food and Agricultural Agency (FAO) would compete with the ITO and call for the creation of agricultural ICAs under its purview.\textsuperscript{135} Concurrent with ITO negotiations, FAO proposed to create a World Food Board whose purpose would be to rationally organize world food production and distribution in order to eliminate hunger. Part of this entailed organizing agricultural ICAs and setting up a comprehensive system of a buffer stock, surplus-disposal, and relief operation. US and British diplomats reacted against this idea and insisted that these discussions be under the ITO.\textsuperscript{136} Thus, FAO was granted the right to participate in ITO negotiations in an advisory capacity with respect to agricultural ICAs. FAO made the utmost use of its ITO negotiations “advisory” role and continued to advocate

\textsuperscript{133} Brown, supra note 25 at 354.
\textsuperscript{134} Bronz, supra note 57 at 1113.
\textsuperscript{136} Staples, ibid. at 89.
for a World Food Board – which was defeated by the US.\textsuperscript{137} FAO would continue to be a prominent player in international commodity policy and negotiations until the 1980s.\textsuperscript{138}

IV. Conclusion

By extrapolating the central role theories of development and Third World interests played in forming both policies of embedded liberalism and its ensuing trade institutions we better appreciate how post-League economic doctrines were reconfigured. Rationalization was transformed through the ITO but not by the Third World. Delegates from the developing countries espoused League-era assumptions that rationalization and industrialization were necessary preconditions to freer trade. Delegates from developed countries, especially from the US, however, were hostile to rationalization and did not consider development demands to be a priority of international trade policy.

Thus, the ITO delicately, albeit unsuccessfully, tried to balance these competing ideas and interests all within the framework of embedded liberalism. And within the ITO, ICAs provided the site for possible rapprochement between developed and developing countries.

\textsuperscript{137} Wilcox, \textit{supra} note 44 at 42. The Havana Charter would still provide a role for FAO to participate in developing ICA studies regulated under by the ITO, Art. 67.

\textsuperscript{138} See Chapter Six.
CHAPTER SIX. THE 1977 INTERNATIONAL SUGAR AGREEMENT: AN EXEMPLAR OF INTERNATIONAL COMMODITY AGREEMENTS AND EMBEDDED LIBERALISM

I. Introduction

The 1977 International Sugar Agreement (ISA) was the last sugar agreement to include provisions that purported to regulate the sugar market. Without these so-called economic provisions, subsequent sugar agreements are characterized as administrative since their focus is the sharing and dissemination of information. Many in the world of international sugar diplomacy considered the move from economic sugar agreements to toothless administrative sugar agreements to be the result of ISAs’ failure to stabilize the price of sugar. However, only now can we appreciate that the end of sugar agreements with economic provisions was not only a result of the 1977 ISA’s functionality. It would coincide with the end of international commodity agreements (ICAs) in general, the end of embedded liberalism, and the advent of the World Trade Organization (WTO).

In order to understand how the 1977 ISA was created and what its demise meant, in the previous chapter I introduced the context of postwar trade policies as defined by embedded liberalism. In this chapter I continue my institutional account of embedded liberalism outlining the relationship amongst the United Nations Conference on Trade and Development (UNCTAD), the General Agreement on Tariffs and Trade (GATT), and ICAs. This expands the common understanding thus far that embedded liberalism left out development concerns and only institutionalized international trade through GATT.

The 1977 ISA was one the most sophisticated ICAs created during a time when North-South relations were the most charged.¹ Thus the 1977 ISA provides excellent insight into how an

¹ Post-war ICA negotiations were notorious for providing few public records and flimsy official records regarding the details of the negotiations, see Khan, supra note 6 at 88. And so this chapter draws from sugar industry reports and sugar experts of time and retrieves insights from primary sources and personal archives rarely examined with respect to the 1977 ISA. I am indebted to the Albert Viton Papers and staff at the Virginia Kelly Karnes Archives and Special Collections Research Center, Purdue University, West Lafayette, IN, USA.
ICA was negotiated within the purview of embedded liberalism. It also exemplifies how international trade institutions were designed to meet embedded liberalism’s domestic welfare and development demands.

This chapter first situates the 1977 ISA within the broader history of the rise and fall of ICAs as an idea. Then it outlines tensions between developed and developing countries as manifested both within and between GATT and UNCTAD. During the creation of UNCTAD, developing countries debated amongst each other and negotiated with developed countries as to what the nature of UNCTAD’s relationship with the GATT would be. The common account has been that that developing countries attempted to use UNCTAD to do away with the GATT all together. A focus on the relationship between UNCTAD, GATT, and ICAs, however, reveals that developing countries, especially those whose economy depended on international trade, were not necessarily using UNCTAD to destroy the GATT. Most developing countries would navigate between using UNCTAD to generate trade policies conducive to development and to continue to enhance and improve ICAs while at the same time participating in GATT in an effort to ensure access to developed countries’ markets. That is, developed and developing countries confronted each through the doctrine of freer trade within GATT and through the doctrine of rationalization within UNCTAD, but found some compromise within ICAs.

Therefore, it was through ICAs where any attempt of rapprochement could be institutionalized. As such, I detail the negotiation and function of the 1977 ISA in order to better appreciate how ICAs were a site of rapprochement and compromise where countries negotiated multiple configurations of interests as between developed/developing countries, exporters/importers, and large/small sugar producers and consumers. Finally,

\[\text{\footnotesize \textsuperscript{2} Cf. Balakrishnan Rajagopal,} \textit{International Law from Below: Development, Social Movements and Third World Resistance} \text{(Cambridge: Cambridge University Press, 2003) 73-94.}\]

\[\text{\footnotesize \textsuperscript{3} John Toye & Richard Toye,} \textit{The UN & Global Political Economy} \text{(Bloomington: Indiana University Press, 2004) at 193-198.}\]

\[\text{\footnotesize \textsuperscript{4} See for e.g. Michael L. Hoffman, “Can the G.A.T.T. System Survive?”} \text{(1964) 73 Lloyds Bank Review 1 at 7. See also Weiss,} \textit{infra} \text{note} 98 \text{at} 195; \textit{contra} Mohammed Bedjaoui,} \textit{Towards a New International Economic Order} \text{(Paris: UNESCO, 1979) at 208-209.}\]
to account for the death of ICAs as an idea, I unpack how ICAs became associated with UNCTAD and NIEO.

Sugar treaties are an excellent case study of the international politics and economics of ICAs because they would be one of the more popular commodity agreements after the Second World War. In the absence of the ITO Charter, which was intended to regulate all ICAs, governments continued to negotiate freestanding commodity agreements. The first set of these independent ICAs were signed in 1953 and regulated sugar, tin, and wheat. According to one agriculturalist, the tin agreement was only tacitly supported by tin importers, the wheat agreement was actually opposed by wheat importers, but the sugar agreement “received a considerable acclaim” from all parties involved – even the Anglo-Americans and Soviets found common ground over the sugar agreement.5

ICAs in general have a rich history of international political and economic policies that were not simply the technical calibration of commodity prices. According to Khan:

Contemporary commodity agreements are of longer duration and once in force tend to be quasi-permanent through successive re-negotiations. They attract larger numbers of members, and aspire to achieve wider and positive purposes. A mere statistical approach to the determination of basic export entitlements is no longer adequate or acceptable. On various grounds – transient, specific, socio-economic – and on principle of international policy, adjustment, supplementation or even abandonment of the statistical criterion is adumbrated.6


Chimni also emphasized how ICAs’ institutional structure and legal instruments were not only a technical matter because they reflected and affected the multitude of international economic, political, and social preoccupations of the time. Thus, a legal and institutional study of the 1977 ISA will provide insight into the international political, and economic issues regarding how a key ICA was negotiated and operated during the apex of commodity agreement popularity.

II. Situating the 1977 ISA: The Idea of ICAs

A. The Life and Death of ICAs

We can only determine how the 1977 ISA was an exemplary commodity agreement, and what made it was unique by situating its specificities within the broader ideational context of ICAs. The 1977 ISA would come into effect on January 1, 1978 but by 1980 many were already losing confidence in the treaty’s ability to stabilize sugar prices.

Nevertheless, this loss in faith in the ISA was not simply because of the sugar treaty’s failure to function as intended. The lack of confidence in the early 1980s regarding the 1977 ISA was part of the general trend of the eroding faith in ICAs in general. The collapse of the International Tin Agreement and the bankruptcy of the International Tin Council and its stabilization fund in 1985 sounded the death knell of ICAs as an idea. There was also a shift from discussing ICAs in terms debating appropriate “economic” mechanisms

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7 B.S. Chimni, *International Commodity Agreements: A Legal Study* (London: Croom Helm, 1987) at 6-7. Chimni was the author of the last legal treatise on international commodity agreements.

8 See for e.g. “The International Agreement: Address by William K. Miller, Executive Director, International Sugar Organization to the Sugar Club, New York, May 14, 1980”, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 9 Folder 10).


regulating prices to suggesting that international commodity organizations should focus on “administrative” functions such as research, consultation and international cooperation.\textsuperscript{11} During the demise of the ICAs, those from the North and South who had not given up entirely on ICAs as an idea started to increasingly call for exploring the GATT instead of UNCTAD as the institutional umbrella for ICAs.\textsuperscript{12}

The frustration with sugar and commodity agreements was part of an even broader development. In retrospect, we notice that the loss in confidence in the 1977 ISA coincided with the rise of neoliberal thought in the late 1970s and early 1980s with its descriptive aversion to conceiving of markets in terms of institutions, normative penchant for deregulation, and adamant privileging of markets as a means for dictating social relations. After a decade of the waning confidence in ICAs, their death was declared\textsuperscript{13} around the same time that trade policies significantly changed because of the triumph of neoliberal thought and the emergence of the WTO in 1994.

Thus, before going into the details of the 1977 ISA, it is helpful to contextualize the sugar treaty within the broader history of ICAs. After the war, ICAs were considered to be a legitimate mechanism for the international regulation of commodities, thereby continuing an interwar trend. By the 1970s, ICAs were conceived by many to be a feasible way to

\textsuperscript{11} Sir Alister McIntyre, “Summary and Conclusions by the Moderator” in Budi Hartantyo & Hidde P. Smit, eds., International Commodity Development Strategies (Amsterdam: VU University Press, 1993) 423 (This is a collection of papers by heads of all International Commodity Bodies at seminar held by Common Fund for Commodities, UNCTAD from 22-25 June 1993, Brussels). For early recommendations to this effect see Fiona Garden-Ashworth, \textit{International Commodity Control: A Contemporary History and Appraisal} (London: St. Martin’s Press, 1984) at 286. Most ICAs today only have administrative functions.


\textsuperscript{13} Quill, \textit{ibid.}; Gilbert, supra note 10. One of the earliest reassessments of ICAs, which at the same time declared their death, was Marcelo Raffaelli, \textit{Rise and Demise of Commodity Agreements} (Cambridge: Woodhead Publishing Limited, 1995).
ensure that trade led to development; this was either through plans to stabilize or raise the price of commodities. Sometimes, developing countries’ reliance of ICAs was politically interpreted as an attempt to reconfigure international economic relations in relation to developed countries. Starting in the mid-1980s, ICAs’ viability began to be seriously questioned, end eventually abandoned.

In the few instances that contemporary international trade law texts do mention ICAs, it is only as a minor point treated as an anomaly within the history of trade. The result is that decades of post-WWII institutional political and economic debates about how international trade should be regulated are ignored. Since the declaration of the death of ICAs in the mid-1990s, the 2000s has seen some renewed interest in their history. The purpose of these recent examinations of ICAs’ record is to explore different mechanisms that regulate international trade in primary commodities and to discuss the role of government in regulating the market, all within the broader scope of investigating the relationship between trade and development. One study captures the disappointment with ICAs of the past and the tentative hope for the future:

It is not easy to judge the effectiveness of commodity agreements, in part because of the ambiguity of their objectives, and in part because some the agreements were either poorly funded or lacked the membership to achieve any significant objective. Overall, the agreements appear to only have marginal effect on reducing price variability, which was their declared


objective, but when given adequate resources, they do appear to have raised prices over and above those which would otherwise have prevailed.\textsuperscript{16}

Systemic examinations of ICAs have been consistently characterized by this tentative approach and discussions of development. ICAs gained some popularity during the League of Nations, and in the 1930s there were a small number of systemic studies of ICAs (apart from the expert memoranda commissioned by the League).\textsuperscript{17} What is meant by systemic studies is the examinations of the multitude of ICAs whose purpose is to discern general patterns and principles of institutional structure, world affairs, and economic theory. One of these studies concluded with one of the earliest call for a sort of “international economic law” (though the term was not used), to establish common rules between producing and consuming countries to resolve trade disputes.\textsuperscript{18} It would not be until the final years of the Second World War when systemic ICA studies first became popular.\textsuperscript{19} In it is in these


\textsuperscript{17} See for e.g. J.W.F. Rowe, Studies in the Artificial Control of Raw Material Supplies (London: Royal Economic Society, 1930 [Memorandum No. 23]), J.W.F. Rowe, Markets And Men; A Study Of Artificial Control Schemes In Some Primary Industries (Cambridge: Cambridge University Press, 1936).


studies that English-speaking scholars and commentators from different disciplines (law, economics, politics, diplomacy) debated with each other about the relationship between international trade and development. By the mid-1970s no one could discuss “global interdependence” and commodities without prioritizing the issue of development.20

Part of the frustration of examining ICAs systemically and determining whether they were “successful” stemmed from the fact that ICAs took several general forms. International buffer-stock schemes involved the creation of an international agency to buy and maintain surpluses. Trade quota schemes involved establishing permissible price ranges where producing countries were allotted quotas in times of surplus while consuming countries were allotted quotas in times of shortage. Purchase contract schemes regulated long-term agreements between producers and consumers that set the price and quantities of trade.

The working premise of systemic studies of ICAs was that severe fluctuations of commodity prices are detrimental to almost all countries. Hence, studies centred on what the role of government should be in relation to the market and examined the different mechanisms employed by different ICAs to stabilize commodity prices. The difficulties lay in measuring the results of ICAs in light of the unique contexts of each commodity, the different mechanisms used by different agreements, and the unclear purposes by which agreements’ success or failure was determined. Also, ICAs were usually examined with an acute awareness that many developing countries depended on a small number of primary commodities and were particularly vulnerable to fluctuating world prices.

These systemic reviews of ICAs regularly mentioned the international institutional environment of time. The focus in the mid-1940s was on the relationship of ICAs to the ITO, FAO, and ECOSOC. In the 1960s, ICAs were discussed in light of institutions such as the GATT, IMF, FAO and the Commission on International Commodity Trade (coordinating UN organs and GATT); during this time there was increased interest in the commodity

"Intergovernmental Agreements Approach to the Problem of Agricultural Surpluses" (1949) 34 Iowa Law Review 230.

agreement implementing agencies’ structures and policies. Some legal scholars considered the ICAs and their respective implementing agencies as forming a particular sort of international institution with legal personality, quasi-judicial functions, and norm-generating capabilities.

The 1970s and very early 1980s marked the highpoint of ICA studies in terms of vigor and quantity. Table 6.1 highlights the variety of purposes and mechanisms in select ICAs of the time. The industrial core focused more on ensuring stable commodity prices, whereas the agricultural periphery wanted stable and “remunerative” prices. Many ICAs made explicit provision for alleviating domestic economic hardships such as the prevention of unemployment or under-employment. Those that did not have these explicit purposes, such as the sugar agreement, took domestic development concerns very seriously and allowed for special and differential treatment for developing countries.

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22 See for e.g. Charles Henry Alexandrowicz, World Economic Agencies: Law and Practice (New York: Praeger, 1962) at 252-278.
<table>
<thead>
<tr>
<th></th>
<th>Sugar</th>
<th>Cocoa</th>
<th>Coffee</th>
<th>Natural Rubber</th>
<th>Tin</th>
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<tr>
<td><strong>A. Price and Earnings Objectives</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Price Stability</td>
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<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>2. Earnings Stability and growth</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td><strong>B. Long-term Development Objectives</strong></td>
<td></td>
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<tr>
<td>1. Market access and supply reliability</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>2. Diversification and industrialization</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>3. Competitiveness of natural products</td>
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<td>4. Market structure and marketing, distribution, and transportation</td>
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<td></td>
<td></td>
<td>✓</td>
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<td>5. Increased consumption</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
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<td><strong>C. Other Objectives</strong></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>1. Alleviation of serious economic difficulties</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>2. Prevention of unemployment or under-employment</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
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<tr>
<td><strong>D. Price and Earnings Policy Instruments</strong></td>
<td></td>
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<tr>
<td>1. Buffer Stock</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<td></td>
</tr>
<tr>
<td>2. Export Quotas</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

*Table 6.1: Objectives and Instruments of Select ICAs from the mid-1970s to early 1980s*<sup>23</sup>


Underlying the ongoing debates as to whether ICAs effectively regulated commodity prices was the assumption that the range of objectives that ICAs served mattered.24 The continuing concern was to determine which multilateral international organization was to organize ICAs and regulate the world trade in commodities. In light of commodity price fluctuations, during the early 1970s, editors of the *Journal of International Economics* felt it necessary to revisit Keynes’s ideas regarding the international control of primary commodities in order to be able understand how commodities were inextricably part of the “international economic order” which included monetary and trade policies.25 Debates were often framed as a divide between the interests of developed and developing countries. With respect to agricultural primary products, developed countries’ interests were characterized as stemming from their general position as importers, consumers, rich, and industrialized versus developing countries which were exporters, producers, poor, and dependent on a few primary products.

Coinciding with the increased number of ICAs and their respective institutional structures, legal scholars now had a lot to say about ICAs. Economists tried to determine which were the best mechanisms to stabilize commodity prices (for example, buffer stocks or export


quotas), while political scientists and jurists considered how to organize all ICAs within or alongside multilateral institutional structures.

**B. International Sugar Agreements**

The history of sugar agreements spans the life and death of ICAs. The four post-war ISAs were signed in 1953, 1958, 1968, and 1977. All four agreements relied upon a mix of export quotas, target prices, and stocks to stabilize the price of sugar. Moreover, all the agreements made some attempt to benefit developing countries. The 1977 ISA did continue certain sugar treaty trends but was also unique in its level of sophistication.

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28 A 1973 ISA would be ratified but parties could not agree to “economic provisions” which regulated the price of sugar making the treaty practically irrelevant to most sugar-related interests; *International Sugar Agreement*, 1973, 13 October 1973, 906 U.N.T.S. 69.


The 1953 ISA is commonly referred to as the “First International Sugar Agreement”\(^\text{34}\) Nonetheless, the 1937 ISA was “the direct lineal ancestor” of all post-WWII sugar agreements – this agreement included sugar exporters and importers, divided votes based on production and import amounts, and its enumerated purpose was to stabilize the world price of sugar using a system of production quotas\(^\text{35}\) All subsequent agreements were the result of additions or modifications to the interwar sugar treaty. Postwar ISAs also followed the requirements setout in the ITO Charter (which are still reflected in the GATT) to ensure that that the total number of votes for importing and exporting countries, acting as proxies for producers and consumers, would be equal\(^\text{36}\) The 1953 ISA established the International Sugar Council that was deemed to accept the “records, assets and liabilities” of the 1937 International Sugar Council\(^\text{37}\) The subsequent ISAs would follow suit by renewing or replacing the subsequent agreement and its respective organization\(^\text{38}\)

Table 6.2 summarizes some the main regulatory features of the 1937 and post-war sugar agreements\(^\text{39}\) They all relied on export quotas to regulate price and at least some reference to supply commitments. We see how references to supply commitments and domestic stocks over time were regulated through international mechanisms. Moreover they all recognized the interconnectedness between the “free market” and “preferential markets” (or “special arrangements”) (discussed further below).

\(^\text{34}\) See for e.g. Burger et al., supra note 16 at 21.

\(^\text{35}\) G.B. Hagelberg & A.C. Hannah, “The Quest For Order: A Review of International Sugar Agreements” (1994) 19 Food Policy 17 at 24. See also Khan, supra note 6 at 137.

\(^\text{36}\) Hagelberg & Hannah, ibid. at 25; Burger et al., ibid. Votes would still be delegated to each country in proportion to their level of sugar export or import.

\(^\text{37}\) 1953 ISA: Art. 27(5)

\(^\text{38}\) 1958 ISA: Art. 27(5), 46; 1968 ISA: Art. 3(1); 1977 ISA Art. 3(1).

\(^\text{39}\) For summaries of these agreements see also Raffaelli, supra note 13 at 86-127.
Table 6.2: Summary of Main Regulatory Features of International Sugar Agreements, 1937-1977

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<tr>
<td>Export quotas</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Hardship Fund providing increased emergency quotas for developing countries</td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Exemptions for preferential markets</td>
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<tr>
<td>Supply commitment language</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>Supply commitment mechanisms</td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>Limit to imports from non-members</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Provision for domestic stocks</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>International regulation of domestically held stocks for purpose of price control</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Price Range (US cents per lb)</td>
<td>“Reasonable prices”</td>
<td>3.25 – 4.35</td>
<td>3.15 – 4.00</td>
<td>3.25 – 5.25</td>
<td>11.00 – 23.00</td>
</tr>
</tbody>
</table>

Source: Respective ISAs

40 Price range for 1978 11.00 – 21.00 subject to revision every year. In April 1980 range was increased to 12.00 – 22.00 and in November 1980 to 13.00 – 23.00.
The 1953 and 1958 sugar treaties were the most comparable in principle and purpose as the 1937 ISA. These treaties used similar mechanisms, such as export quotas, to stabilize the price of sugar. After the 1958 ISA, however, there would be a shift in the function and purpose of ISAs. Once again, Havana and its relationship to sugar would embody broader geopolitical power struggles. The 1958 ISA took effect on January 1, 1959, which was also the day Batista fled Cuba while Fidel Castro and his small band took over the island. Castro’s attainment of power would prelude a change in international sugar politics. Sugar treaties subsequent to the 1958 ISA, like Castro and sugar-dependent Cuba, would be part of the rising wave of the “Third World” project. This was a time when many former colonies came together to navigate the power struggle between the capitalist first world and communist second world in an effort to change international politics and economics in a way that served the socio-economic needs of the world’s poorest communities in these newly formed states.

The 1968 ISA marked two shifts of power. The 1968 sugar treaty reflected sugar importer countries’ growing clout by introducing supply commitment mechanisms. Also, looking at the table above the inclusion of a special fund for developing countries highlights that development needs in postcolonial states were a rising concern within broader trade politics.

The 1968 sugar agreement was the result of the close personal and institutional working relationship amongst Ernest Jones-Parry, Executive Director of the International Sugar Council (ISC), Raúl Prebisch, Secretary General of UNCTAD, and Albert Viton, Senior Director of the Food and Agriculture Organization (FAO). This relationship, however, was not always easy since each man and respective institution held a different view of the role

41 Abbott, supra note 33 at 184-185; Gordon-Ashworth, supra note 139 at 173-175.

42 1968 ISA: Art. 30. See Khan, supra note 6 at 139; Abbott, ibid. at 187-189.

43 International Sugar Organization, “Statement by Dr. Prebisch to the Council on 27 January 1969”, Press Summary 69(1) (20 February 1969), West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 1 Folder 1).
of ICAs in development plans. Viton was acutely concerned with development issues yet had very little patience for “Third World” rhetoric; he sympathized with North Atlantic perspectives and conceived ICAs to be about stabilizing commodity prices primarily through setting quotas and prices.\textsuperscript{44} Jones-Parry would present a draft ISA in 1965, which Prebisch regarded as representing the “spirit of UNCTAD”.\textsuperscript{45} This was because the 1968 ISA was one of the first treaties to widen “the terms of reference of international commodity agreements from dealing with special problems of a particular commodity to the role commodity trade should play in stimulating the economic development in developing countries.”\textsuperscript{46} Nevertheless, there was tension between the ISC and UNCTAD. ISC’s institutional politics involved navigating between sugar importer and exporter interests. At times the ISC derided UNCTAD’s approach to political economy as utopian. UNCTAD was driven by its desire to create new international economic order on a global scale and saw international sugar political economy as part of this larger plan – this did not always coincide with ISC’s interests.\textsuperscript{47} To be sure, according to UNCTAD’s official history, even though the 1968 ISA was thought to be an important treaty since it was part of UNCTAD’s policies of the time and UNCTAD considered sugar to be a “core” commodity, the sugar treaty “was more the culmination of a long series of consultations dating back to 1966 than the result of the resolution adopted at UNCTAD II [calling for a sugar treaty].”\textsuperscript{48} The negotiation amongst FAO, UNCTAD and the ISC’s different perspectives would continue from the 1960s into the 1970s.

\textsuperscript{44} Viton, supra note 12 at 122.

\textsuperscript{45} Ibid. at 124.

\textsuperscript{46} Haggelberg & Hannah, supra note 35 at 26.

\textsuperscript{47} Ibid. at 133. Viton suggests that personality clashes amongst the three may have also contributed to some of the tension.

The 1977 ISA was considered be a “state-of-the-art” ICA due to its technical innovation, regulatory breadth, and wide-ranging membership.49 Looking back at Table 6.1, the fact that the treaty aimed to regulate sugar within such a relative broad price range is indicative of the negotiators’ ambition. This sugar agreement was also important because it was a principal focal point in North-South dialogues of the time. The 1968 ISA was negotiated under the auspices of UNCTAD with the personal involvement of Prebisch. In fact, Prebisch and others considered this agreement as one his successes during his tenure at UNCTAD.50

The sugar treaty addressed developing country needs by providing exceptions and leeway especially since smaller developing countries that depended on sugar were the most vulnerable to price fluctuations.51 Unlike when special and differential treatment for developing countries was brought into GATT, this was not a controversial idea in ISA negotiations. What will therefore be elucidated is how countries from the North and South negotiated their domestic and international interests within the purview of embedded liberalism though ICA negotiations.

III. Situating the 1977 ISA: The Fragmented Institutional Landscape

With the League of Nations and ITO, ICAs were covered as part of a broader economic agenda. After the end of the ITO, however, embedded liberalism’s compromises would unravel and spin-off into two different institutional forms. GATT would regulate the international trade of manufactured products and was thought to primarily reflect Northern interests. UNCTAD would focus on the international trade of agricultural

49 See for e.g. Vincent A. Mahler, “The Political Economy of North-South Commodity Bargaining: The Case of the International Sugar Agreement” (1984) 38 Int’l Org. 709 at 719; Khan, supra note 6 at 142; Abbott, supra note 33 at 195.

50 Prebisch ISC statement, supra note 43 at 7-8 (Prebisch would use the opportunity of presenting the 1968 ISA to also discuss his resignation). See also John Toye & Richard Toye, The UN and Global Political Economy (Bloomington: Indiana University Press, 2004) at 209.

51 Brazil Statement [u.d.], likely circulated at the beginning of negotiations in April 1977, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 16) at 5; UNCTAD, Economic Committee, Report by Chairman of Working Group I, TD/SUGAR.9/EX/C.1/R.10 (30 September 1977).
products and was thought to primarily reflect Southern interests. Since the 1902 Brussels Sugar Convention, countries always had different understandings regarding the purpose of trade and the function of multilateral trade institutions. What is remarkable is that the demise of the ITO marked the first time in modern trade history that the different conceptions of trade would separate and manifest into separate international institutions.

By the 1970s the intuitional landscape of international trade/economic law was fragmented into functionally differentiated institutions. ICAs had some degree of independence from these other trade institutions, but they were also somewhat connected to them through doctrine and institutional affiliation. GATT had only one reference to agriculture and it was an exception to a rule – GATT generally prohibited quantitative restrictions (quotas, import/export licences and the like) on the import and export of products, but allowed some exceptions for agricultural products.52 These products could be restricted if they were used as part of a domestic price support system, which according to the logic of embedded liberalism many developed countries used to secure full employment.53 Developed and developing countries would then use UNCTAD to negotiate their interests in the international regulation of trade in agricultural products while using GATT for manufactured products. This also meant that GATT was informed by embedded liberalism for the purpose of maintaining domestic and international stability in industry, whereas UNCTAD would be informed by embedded liberalism for the purpose of ensuring domestic and international stability in agriculture.

52 GATT Art. XI.2(c)

53 John Gerald Ruggie “International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order” (1982) 36 Int’l Org 379 at 397. See also Article XVI(3) which allowed subsidization of primary products as (which included agricultural products) but only to the extent that subsidies “be applied in a manner which results in that contracting party more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.”
A. The Fracture of the ITO

The end of the ITO provides crucial historical understanding as to why international trade law was fragmented by the 1960s and 1970s. The end of the ITO is well documented. But what is often forgotten or ignored is that with the end of the ITO two trade institutions emerged with “a kind of independent existence” – the GATT and the Interim Co-coordinating Committee for International Commodity Agreements (ICCICA).54

During ITO negotiations, various committees were set up to focus on different policies – Committee II was charged to address “general commercial policy” (i.e. manufactured product tariffs) and Committee IV was charged to address “inter-governmental commodity arrangements”.55 According to the Preparatory Committee, because negotiated tariff schedules “cannot easily be held in abeyance pending action by the International Conference on Trade and Employment and the adoption of the Charter by national legislature”, tariff negotiations would lead to a separate “General Agreement on Tariffs and Trade” in order “to safeguard the value of tariff concessions.”56 Thus, the Preparatory Committee expected the GATT to “be legally independent of the Charter and [to] be brought into force as soon as possible after its signature and publication” while still conforming “in every way to the principles laid down in the Charter and ... not contain any provision which would prevent the operation of any provision of the Charter.”57
Thus, while delegates continued to negotiate the ITO, the GATT was signed and came into force two months before the ITO Charter was signed.\textsuperscript{58} When the ITO Charter was not ratified the GATT stood as an independent international legal treaty. The end of the ITO, however, was not the end of ICAs. In 1947, the United Nations Economic and Social Council (ECOSOC) was granted provisional status with regards to regulating the international trade in commodities much like the GATT was originally granted provisional status with regards to international tariffs. According to Finlayson and Zacher, this was actually at the behest of Western industrialized countries since it would allow them to maintain the principles they negotiated from the ITO Charter regarding commodity trade.\textsuperscript{59}

ECOSOC continued to apply the principles established by the ITO Charter regarding ICAs: ICAs would be adopted only to deal with severe market disruption; their aim would be price stabilization and not price increases; and importing and exporting countries would have equal power voting power.\textsuperscript{60} ECOSOC also set-up the ICCICA (Interim Co-coordinating Committee for International Commodity Agreements) to implement and co-ordinate efforts to conclude commodity agreements. A number of ICAs for commodities such as sugar, coffee, tin and wheat were concluded under the direction of the ICCICA.\textsuperscript{61}

Even without the ITO, ICAs and the GATT retained a legal relationship through ECOSOC that, in theory, remains today.\textsuperscript{62} Despite this connection between the GATT and ECOSOC (and the ICCICA), during the 1950s, delegates from developed countries more or less


\textsuperscript{60} \textit{Interim Co-coordinating Committee for International Commodity Agreements}, ESCOR Res. 30(IV), 4\textsuperscript{th} Sess., UN Doc. E/403 (28 March 1947) 3.


\textsuperscript{62} Because the 1947 GATT was drafted to be in compliance with the ITO, it allows for international commodity agreements as long as they conform to ECOSOC Resolution 30(IV) (Article XX(h) and the interpretive note in Annex I).
succeeded in directing trade issues away from ECOSOC because of the belief that GATT should be the sole forum to discuss international trade. There had always been hostility toward the ITO from interests within the US. And even before the ITO was deemed to be over, there were arguments that the US shelve the ITO Charter and focus on the GATT since it contained the most important provisions.

B. ITO Fragments: UNCTAD & GATT

1. UNCTAD

In the 1960s, developing countries began coalescing their interests as the G-77 within the UN. The General Assembly declared the 1960s to be the “development decade” and trade was considered to be the primary instrument for development. In this spirit, UNCTAD was created and came into effect in 1964.

UNCTAD would inherit the functions performed by the ICCICA. This meant that UNCTAD would be the primary international institution responsible for negotiating and coordinating international commodity policy. Raúl Prebisch, UNCTAD’s first and most famous secretary-general (1964-1969), took this mandate very seriously, especially in the context of the development decade. In his first UNCTAD report, Prebisch emphasized the importance of analyzing the international trade in primary commodities with a view to determining how it affected lives in developing countries. To Prebisch, UNCTAD would clarify ideas that

63 Finlayson & Zacher, supra note 59 at 739.
68 GA Res. 1995(XIX) at para. 23(a).
were still vague and confusing at the Havana ITO Conference.\textsuperscript{70} UNCTAD would look to Chapter VI of the ITO Charter and the ICAs of the 1930s (which included sugar, wheat, rubber, tin, and tea) and use these historical moments to provide legitimacy to the idea of ICAs.\textsuperscript{71}

In 1974, the New International Economic Order (NIEO) was proposed under the leadership of UNCTAD’s secretary-general Gamani Corea (1974-1984).\textsuperscript{72} NIEO was an attempt to represent Third World interests by focusing on institutional issues that created or structured the economic disparity between the developed and developing countries. Many considered NIEO to be the Third World’s response to the First World’s interests as institutionalized through the IMF, World Bank and GATT. “North-South” dialogue and debate was a predominant political and intellectual theme.\textsuperscript{73} The regulation of primary commodities was the first thing on the list of the NIEO Programme of Action.\textsuperscript{74} The thinking was that Third World countries would export primary commodities as they had for decades, but now with the added purpose of generating capital to invest in industry, thereby improving countries’ ability to create economic growth and reduce their reliance on imported manufactured goods. As such, stabilizing and increasing the price of commodities via ICAs was central to the project of development. One of UNCTAD’s most


\textsuperscript{70}Toye & Toye, \textit{supra} note 3 at 41-42.

\textsuperscript{71}Ibid. at 214.

\textsuperscript{72}Ibid. at 39. Corea had also represented what was then known as Ceylon at the ITO Havana Conference. There he would be the draft Charter’s key critic from developing countries and argue for ICAs that represented the interests of producers.


important institutional mechanisms, the Integrated Programme for Commodities, was created in 1976 as a unifying institutional framework for all ICAs.\textsuperscript{75}

NIEO and the Integrated Programme for Commodities coincided with the GATT Tokyo Round of negotiations (1973-1979). By the Tokyo Round, not only did GATT membership increase by just under 60\% from the Kennedy Round (1964-1967), but for the first time developing countries constituted the majority of GATT making-up a little over 66\% of the 102 participating countries.\textsuperscript{76} Developing countries used UNCTAD as a forum to organize their interests for negotiations in the Tokyo Round.\textsuperscript{77} Meanwhile amongst the large number of experts and scholars in developed and developing countries that examined ICAs, there was a consensus that a general structure was needed to organize ICAs (despite each commodity's unique context) with little confidence that the GATT was the appropriate forum.

It would be erroneous, however, to think that UNCTAD represented a homogenous bloc interest of “developing countries”. Developing countries found themselves in a wide range of economic, political and geographic conditions that were not necessarily a cohesive whole. Corea, however, suggests why the disparate interests in the developing countries might come together:

\begin{quote}
You have NICs [newly industrialized countries], the least developed countries, and the landlocked countries. But again I feel that this does not negate the logic of the developing countries coming together. There is one important reason, and that is that in multilateral negotiations, despite their differences, the only strength they have comes from the strength of their
\end{quote}

\textsuperscript{75} The Integrated Programme for Commodities, Res. 93(IV), UNCTADOR, 4th Sess. (1976).


numbers.... Despite the allusions to the differences among developing countries, which come a lot from the North, the North itself does not recognize that much differentiation when they talk of developed countries.\footnote{Weiss, supra note 98 at 200.}

Thus, the formation of “developing countries” as a bloc within UNCTAD (and international politics in general) can be understood as a political project in response to the dominating power of developed countries.\footnote{Cf. Vijay Prashad, The Darker Nations: A People’s History of the Third World (New York: New Press, 2007).} We will see, however, that in relation to the 1977 ISA international trade politics interests were complexly divided – countries would add to the developed and developing dynamic and organize their interests between importers and exporters, as well as between larger exporters and small exporters, large importers and small importers.

Nonetheless, developed countries also played a role within UNCTAD (and ICAs) and actively tried to shape its policies in their own interests.\footnote{Kenneth Klein, “International Commodity Agreements” (1976) 6 Ga. J’l & Comp. L. 275.} One reason that developed countries participated in UNCTAD was to temper developing countries’ international policies.\footnote{The US was at first very reluctant to create UNCTAD but was forced to play an active role. The G-77 adopted a clever tactic around Western opposition to the creation of UNCTAD. It was not going to be a specialized UN agency, which by definition would have meant countries could refuse to join. Instead, it would be a subsidiary body under the UN General Assembly according to Article XXII of the UN Charter thereby creating a system of one-nation, one-vote. It also meant, Western countries would have to pay for UNCTAD whether they liked it or not. By this formula, developed country governments thought it would be more prudent to try and temper developing country proposals through UNCTAD as much as possible than to try and oppose it. Vijay Prashad, The Darker Nations: A People’s History of the Third World (New York: New Press, 2007) at 194.} Additionally, Adlai Stevenson, the US ambassador to the UN, suggested the US stop its opposition and accept some of the less developed countries’ demands for the creation of UNCTAD. His fear was that embittered developing countries would play into Soviet hands.\footnote{Charles L. Robertson, “The Creation of UNCTAD”, in Robert Cox, ed., International Organisation: World Politics; Studies in Economic and Social Agencies (London: Macmillan, 1969) 258 at 268.} The result was that developed countries would restrain developing countries policies within UNCTAD, ranging from the formation of UNCTAD’s founding
principles to proposals for the Integrated Programme for Commodities and Common Fund for Commodities.\textsuperscript{83} 

Politics was not the only reason that developed countries participated in UNCTAD. The other was functional. Until the 1991 “Dunkel Draft”, GATT only regulated trade in manufactured products. If developed countries wanted to shape international trade law and policy in international agriculture, then UNCTAD and ICAs provided the only available fora.

Thus, UNCTAD was not only a site for developing countries to oppose the GATT, but it was also a site of contestation and compromise between developed and developing countries.

\textbf{2. GATT}

The same tension between developed and developing countries present within UNCTAD was also present within GATT where the power dynamic was reversed. Developed countries considered GATT to be the only appropriate institution for international trade and dismissed UNCTAD as irrelevant at best. Developing countries agitated within GATT against developed countries to reform GATT’s international economic policies, which they thought were anti-development.\textsuperscript{84} Several GATT cases and provisions examined below mark how developing countries attempted to change the GATT by negotiating changes within the GATT and using existing GATT structures.

The conflict between developed and developing countries during the Havana ITO conference carried into GATT Article XVIII.\textsuperscript{85} This provision allowed for deviation from GATT rules for the purpose of subsidizing an infant industry. Under the provision’s original language in 1947, prior consent of GATT Contracting Parties was necessary for such a

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{84} See Ismail, \textit{supra} note 76.
\item \textsuperscript{85} Jackson, \textit{supra} note 58 at 638.
\end{itemize}
\end{footnotesize}
deviation. A 1955 GATT Review Session changed the language that maintained the consent requirement but characterized a developing country’s decision to support a particular industry in a more positive light.\footnote{Ibid. at 640.}

Soon after that GATT session, the Contracting Parties would commission a panel of experts to examine past and (then) present trends in international trade in an effort to understand why international trade flows between industrial areas and non-industrial areas decreased in the mid-1950s and why trade did not improve socio-economic conditions in less-developed countries as rapidly as it did developed countries.\footnote{Gottfried Haberler et al., Trends in International Trade: Report by a Panel of Experts (The Contracting Parties to the General Agreement on Tariffs and Trade: Geneva, 1958); GATT, Ministerial Declaration on Promotion of the Trade of Less-Developed Countries, 30 November 1961, 10th B.I.S.D. (1961) 26; GATT, Ministerial Meeting May 1963: Conclusions and Resolutions Adopted on 21 May 1963, 12th B.I.S.D. 36 [Action Program of 1963].} The Haberler Report, as the expert report was commonly known, would later lay the groundwork for GATT provisions addressing the needs of developing countries.\footnote{Jackson, supra note 58 at 640-663.}

By 1965, developing countries were now a majority in GATT, and they introduced a new section known as Part IV.\footnote{Part IV comprises Arts. XXXVI-XXXVII of GATT, 1947. See The Developing Countries and the GATT: The New Chapter on Trade and Development (General Agreement on Tariffs and Trade: Geneva,1965) on the introduction of Part IV into GATT, 1947.} This section was important because it would provide the foundations for special and differential treatment for developing countries in GATT (and later the WTO). Not only did Part IV carve out some exceptional space for developing countries with GATT, but it also expanded what little room the GATT allowed for ICAs.\footnote{See GATT, Part IV, Art. XXXVI.4:}

In effect, Part IV brought in some rationalization policies into GATT.

\footnote{Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products, there is need to provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of}
In 1961 Uruguay filed a legal complaint under Article XXIII of the GATT against fifteen developed countries; these countries constituted the entire developed country membership of GATT at the time. Uruguay listed in its complaint 576 restrictions against its exports in the fifteen developed country markets and argued that these restrictions seriously reduced its exports. To some commentators this case represented Uruguay’s dramatic use of “showpiece litigation”\(^91\) to others it evidenced developing countries active participation within GATT.\(^92\)

Developing countries debated amongst each other and developed countries as to what the nature of UNCTAD’s relationship with GATT would be.\(^93\) Most developing countries established a sophisticated two-pronged approach, using UNCTAD to generate trade policies conducive to development and to (continue to) enhance and improve ICAs while at the same time participating in GATT in an effort to ensure access to developed countries’ markets.\(^94\)

3. *International Commodity Agreements’ Uneasy Relationship Between UNCTAD and GATT*

Even though UNCTAD, from its origins, was always linked to debates about world primary commodity trade, according to one commentator, “UNCTAD was launched and defended for tactical purposes as a commodity conference.”\(^95\) Since ICAs had their own institutional

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\(^92\) Ismail, *supra* note 76 at 57.

\(^93\) Toye & Toye, *supra* note 3 at 193-198.

\(^94\) *Supra* note 4.

\(^95\) Robertson, *supra* note 82 at 270. Robertson would also note that even though UNCTAD would present itself as primarily an international organization addressing primary commodities, “By the autumn of 1962 everyone accepted that it would inevitably have to consider virtually all fields of trade and finance.” See also Sidney Dell, “The Origins of UNCTAD”, in Michael Zammit Cutajar, ed., *UNCTAD and The North South Dialogue: The First Twenty Years; Essays in memory of W.R. Malinowski* (Oxford: Pergamon Press, 1985) 10.
histories predating UNCTAD, ICA and UNCTAD and secretariats had an uneasy relationship. Indeed, by the late 1970s, UNCTAD moved away from notions of embedded liberalism which would still inform ICAs – UNCTAD no longer attempted to negotiate *domestic* and international socio-economic structures and interests and instead only focused on changing *international* economic structures for the purpose of development.

Representatives from developed countries would oppose UNCTAD’s commodity policies from the very beginning.\(^{96}\) Nevertheless, Western opposition to UNCTAD’s commodity policies was not primarily motivated by a principled stance against ICAs but was likely instigated as a reaction against UNCTAD. US delegates (from the Department of State) could not be entirely antagonistic to the idea of ICAs because of domestic pressures from its agricultural industry and the Department of Agriculture. President Kennedy shifted his position from strict opposition to measured support for ICAs.\(^{97}\) UK delegates, influenced by Keynesian economics, were even more sympathetic to the idea of ICAs; this sentiment probably informed the GATT’s agricultural exception for agricultural commodities. In fact, the US was the principal instigator of the 1983 International Coffee Agreement because it suited US foreign policy to provide stability for coffee trade in Latin America.\(^{98}\) The International Dairy Arrangement is another example of a Western-friendly ICA. This agreement was negotiated as part of the GATT Tokyo Round, and would later be renewed and incorporated into the WTO.\(^{99}\) In 1955, GATT Contracting Parties would attempt to


\(^{97}\) Toye & Toye, *supra* note 3 at 197. George Ball, undersecretary for foreign affairs, however, made firm distinction between international mechanisms that address the volatility of commodity prices and those mechanisms that permanently raise them above the long-run average market price. Ball conceded that that US agriculture would support the latter, but Congress would not ratify them.


introduce commodity regulation into GATT in a failed attempt for the Special Agreement on Commodity Arrangements and then again at the Kennedy Round.\textsuperscript{100}

III. The Function and Purpose of the 1977 International Sugar Agreement

A. 1977 ISA as Exemplar

Since the 1977 ISA was negotiated at UNCTAD facilities during NIEO, many assumed that that the agreement was part of UNCTAD policies especially since the sugar treaty made many references to UNCTAD and its Integrated Programme for Commodities.\textsuperscript{101} In fact, the agreement opens with reference to UNCTAD’s Integrated Programme for Commodities.\textsuperscript{102} Moreover, the sugar treaty would be negotiated under the auspices of UNCTAD and make explicit reference that the International Sugar Council must keep UNCTAD (and FAO) apprised of its work.\textsuperscript{103} However, scholars would be divided as to how much the 1977 ISA reflected the “spirit of UNCTAD”.\textsuperscript{104}

Nevertheless, the 1977 ISA is an example of how both developing and developed countries created and employed international mechanisms of market regulation to ensure that the domestic goals of embedded liberalism were achieved.


\textsuperscript{101} Arts. 1 and 14.

\textsuperscript{102} Art. 1.

\textsuperscript{103} Art. 14.

Like previous sugar treaties, the ISA 1977 created the International Sugar Organization (ISO) that was the international institution intended to regulate sugar trade. The ISO mainly functioned through International Sugar Council, the Executive Committee, and the Executive Director.\textsuperscript{105} The International Sugar Council was made up of representatives from member countries with the power to make determine quantitative restrictions,\textsuperscript{106} interpret provisions,\textsuperscript{107} and resolve disputes.\textsuperscript{108} Much like the 1937 ISA, sugar exporting and importing capacity determined power within the sugar organization. Exporter and importers were each allocated 1000 votes as a bloc. Each year those 1000 votes would be divided amongst the individual exporters and importers determined by export and import levels.\textsuperscript{109}

What was unique about the 1977 ISA compared to previous sugar agreements was that not only did it include traditional importer-exporter politics but it was also the meeting-point for policies from GATT and UNCTAD. The GATT Panel had little problems with the 1977 ISA and treated it as matter of fact when describing the international sugar market.\textsuperscript{110} Likewise, the ISO accepted that the GATT was an uncontroversial multilateral trade

\begin{footnotesize}
\textsuperscript{105} Art. 3.

\textsuperscript{106} Art. 19(1).

\textsuperscript{107} Art. 8.

\textsuperscript{108} Art. 70.

\textsuperscript{109} The 1000 exporter votes would be distributed pro rata weighted according to the following factors: a) BET (50%); b) total net exports to the free market (18%); c) total net exports under special arrangements (7%); total production (25%) (Art. 11(4)). Nine hundred of the one thousand importer votes would be allocated based on the average net imports from the free market of the highest three out four preceding years; the remaining 100 votes would be distributed pro rata based on the proportion of imports under special arrangements for the preceding year as compared to total imports under special arrangements of all importing members for the preceding year (Art. 11(5)).

\end{footnotesize}
organization. In practice the ISA and GATT were not divided by fundamental intellectual underpinnings and there was no anxiety associated with the fragmentation of international trade law. Instead the two trade treaties were distinguished by their different functions. The GATT would be like the 1902 Brussels Sugar Convention in that it was used by large sugar exporters to try to reduce domestic subsidies granted to European sugar producers; the 1977 ISA was like the 1937 ISA in that it was used by sugar exporters and importers to regulate sugar production in an effort to stabilize the price of sugar. In alignment with UNCTAD and NIEO, the 1977 ISA included special and differential treatment for developing countries. The sugar treaty incorporated these exceptions with little controversy when compared with the vociferous debates in GATT regarding exceptional treatment for developing countries.

The reason that the 1977 ISA is often characterized as one of the most sophisticated ICAS was because it was negotiated with an aim to create a sugar treaty that was as flexible and progressive as possible. The concern was that previous agreements were too reflective of short-term market conditions and the status quo of sugar production and consumption patterns and were not forward-looking enough to adequately respond to changes in the

111 UNCTAD, UN Sugar Conference, "Note by the Chairman on the Consultations Held in London, 20-29 July 1977", TD/SUGAR.9/EX/R.4 (8 August 1977 at 7. The International Sugar Organization Executive Director and Conference Chair, Ernest Jones-Parry, contemplated the following relationship between GATT and the ISO:

Suggestions were made that developed importing countries should give serious consideration to the effects that tariff and non-tariff barriers on imports of sugar had on sugar exports by developing exporting countries. What was required was the introduction of measures to remove obstacles to increased imports from free market exporting countries by stimulating sugar consumption and discouraging protected production as well as the manufacture of substitute sweeteners.

Whilst it is recognized that this matter was being discussed in the context of the multilateral trade negotiations by GATT, it was urged that it also be included among the topics to be considered by the resumed Conference.

See also ISO, ISC, Report of the Proceedings of the Eighth Session (19-20 November 1979), ISC-Report-8 (11 January 1980) at 5-6; ISO, ISC, Exports of Sugar by the European Economic Community – Resolution by the Council, C(79)29 (20 November 1979) at 2; ISO, ISC, Exports of Sugar by the European Economic Community (Draft Resolution), C(79)28 (19 November 1979), with handwritten notes by Albert Viton, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 9, Folder 8).
market.\textsuperscript{112} Sugar agreements had traditionally focused on regulating the disequilibrium between supply and demand, usually by reducing sugar production levels. ISAs rarely survived radical changes in the sugar market such as production or consumption level shifts or technological innovations.\textsuperscript{113} Other flexibilities were negotiated in order to not only respond to market changes but also to allow for the increase of quotas in light of domestic sugar shortages or the development needs of small sugar producers.\textsuperscript{114}

As with other sugar treaties, the most tense negotiations involved allocations of annual quotas to sugar exporters through what was called “basic export tonnages” (BETs) in order to stabilize the world price of sugar. The theory was that in times of high prices BET allocations would be raised thereby increasing supply, while in times of low prices BETs would be decreased thereby reducing supply. This is where the highest stakes of sugar trade politics would be negotiated since a country’s domestic quota was dictated by BET allocations. It would too simple to think that only large exporters (Australia, Brazil, and Cuba) and large importers (USA, Japan, USSR, and Canada) differed as to how to calculate BETs. Amongst the three largest exporters there were significantly varying views as to how to calculate BETs.\textsuperscript{115} There were also tensions between small and larger exporters

\textsuperscript{112} See for e.g. ISO, Statement by the USS Representative, Mr. V.N. Polejajev, at the Meeting of the Advisory Group of the International Sugar Council (London, 7 April 1976), Conc.C-Report-5 Annex (9 April 1976); “Notes and Comments” The International Sugar Journal 77: 917 (May 1975) 129.

\textsuperscript{113} Khan, supra note 6 at 138.

\textsuperscript{114} See UNCTAD, Preparación de una Acuerdo Internacional que Contenga Medidas Internacionales Consideradas Deseables; Tonnages de Exportación; Propuestas presentadas por el Coordinador de la Conferencia, TD/SUGAR.9/EX/R.6 (30 September 1977); Commodities Bulletin No. 26 [International Sugar Colloquium] (7 March 1975) at 9.; Viton, supra note 12 at 230.

\textsuperscript{115} Brazil Statement [u.d., April 1977?], likely circulated during conference, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 16) [preferred BETs to be expressed as percentages and not tonnages i.e. a global quota would be determined and divided into market shares]. Cuba Statement, [u.d., April 1977?], likely circulated during conference, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 16); Statement by Mr. Marcelo Fernandez Font, Minister of Foreign Trade of Cuba, the United Nations Sugar Conference, 1977 (non-official translation) (20 April 1977) West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 16). [Cuba preferred BETs to be expressed in quantities.]. Even though one conference Working Group Chairman characterized this as a technical issue, the ensuing differences would be more than one of calculation since each proposed method would benefit the respective
regardless of whether they were developed or developing.\textsuperscript{116} Nevertheless, development still played a role and Cuba, in line with global South politics, argued (albeit without success) that the degree of dependence on sugar should be included as a factor of quota determination.\textsuperscript{117} What was clear to everyone, in light of declining sugar prices, was that current production amounts had to be severely cut.\textsuperscript{118}

The 1977 ISA's other advanced feature was its price regulation system. Looking at Table 6.3, we see that the 1977 sugar treaty had the broadest price range any sugar treaty attempted to regulate.

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\textsuperscript{116} Developing exporting members were defined to be all exporting members in Latin America, including the Greater Caribbean area; Africa, except South Africa; Asia; Oceania, except Australia; Romania. No importing countries were designated as developing at the time of drafting the Agreement but provision was made in Annex III for a review whether new importer members were developing countries upon their membership. Least developed countries were enumerated in Annex IV according to UN designation. And although developing countries were defined in the Agreement (Annex III) to include all Latin American countries including the Greater Caribbean areas smaller developing country exporters did not always look favorably upon the larger exporters such as Brazil and Cuba.

\textsuperscript{117} Viton, \textit{supra} note 12 at 211-212.

\textsuperscript{118} UNCTAD, \textit{Preparation of an International Agreement Embodying International Measures Considered Desirable; Basic export tonnages; Proposals submitted by the Chairman of the Conference}, TD/SUGAR.9/EX/R.5 (9 September 1977) at 1
Table 6.3: Price range of post-war ICAs

<table>
<thead>
<tr>
<th>Year</th>
<th>Minimum Price (cents)</th>
<th>Maximum Price (cents)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1953</td>
<td>3.25</td>
<td>4.35</td>
</tr>
<tr>
<td>1958</td>
<td>3.15</td>
<td>4.00</td>
</tr>
<tr>
<td>1968</td>
<td>3.25</td>
<td>5.25</td>
</tr>
<tr>
<td>1977</td>
<td>11.00</td>
<td>21.00</td>
</tr>
</tbody>
</table>

Source: ISA 1953, Art. 20; ISA 1958, Art. 21; ISA 1968, Art. 48; ISA 1977 Art. 44

Policymakers probably thought that such a range would allow for the scope and flexibility needed to regulate more than the disequilibrium between supply and demand and respond to major changes in the market.\(^{119}\) Indeed, the price-regulating scheme was also quite innovative because it included a complex system of quotas and stock release that allowed for flexible responses to rising and dropping sugar prices.\(^{120}\)

Despite these highly developed price-regulating mechanisms, the 1977 ISA is often characterized as a failure for several reasons. One is that the sugar commodity agreement failed to respond to plummeting sugar prices and stabilize the world price of sugar – a result often attributed to some poorly worded provisions in the treaty’s otherwise

\(^{119}\) Khan, supra note 6 at 138-139. (Khan implies this argument). Nevertheless, the price of sugar was often significantly below or above the ISA price range, see Raffaelli supra note 13 at 120.

\(^{120}\) Arts. 41, 44, and 57.
advanced price stabilizing mechanism. Another attributed reason is the European Economic Community’s (EEC) lack of signing and the US’s delay in ratifying the agreement. Because the pre-1974 US Sugar Act and EEC sugar policies included high tariffs and substantial subsidies, they were thought to contribute to sugar price caprice. They were also criticized for unfairly and inefficiently supporting technologically advanced sugar sectors, and as such were labeled as protectionist and considered to be structural impediments to a liberal sugar trade regime. Many states resented the fact that the EEC would participate in negotiations with great obstinacy and not sign the final treaty. When the 1977 ISA was signed members immediately reduced the production of sugar by approximately 2.2 million tonnes in 1978, and again in 1979 in an attempt to control plummeting sugar prices. Many thought that the EEC’s lack of participation in the sugar treaty allowed it to reap the potential benefits of the treaty without having to adhere to international market regulation or treaty costs, allowing it become the world’s largest sugar producer.

Even though these criticisms of the functionality of the sugar treaty may have been accurate at the time, this does not answer why the 1977 ISA was the last sugar commodity agreement with economic provisions. Moreover, this sort of functional evaluation misses

121 Gilbert, supra note 10 at 5; Ian Smith, “Prospects of a New International Sugar Agreement” (1983) 17 J. World Trade Law 308 at 318; Viton, supra note 12 at 230.

122 Viton, ibid. at 230.

123 Abbott, supra note 33 at 201.


125 Abbott, supra note 33 at 201.

126 Abbott, ibid.; Maizels, supra note 61 at 133; Viton publicly lambasted the EEC and his relationship with the European sugar industry, which thus far had been close, deteriorated; Letter from “Michel” (Comité Européan des Fabricant Sucre) to Albert Viton (FAO), 12 July 1978; Letter from G. Peroud (Confederation Internationale des Betteraviers European) to Albert Viton (FAO), 13 July 1978, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 9, Folder 3). Characterizing the lack of the EEC’s participation as a cause of the treaty’s failure was much like how delegates in the 1930s attributed the limitations of the Chadbourne Agreement’s ability to stabilize the price of sugar to stem from the lack of participation of some major exporters such as Dutch Java.
the broader perspective of understanding how the sugar treaty was part of embedded liberalism.

To appreciate what it meant for an international trade institution to structure the global market (in sugar) within the framework of embedded liberalism I sketch out how a central feature of the sugar treaty was delineating and defining the free market.127 The irony was that the US (until it signed the 1977 ISA) and ECC were never part of the international free market for sugar as defined by sugar commodity agreements. But to understand what the free market meant at that time, we would have to look to the 1977 ISA. Here we see the free market and free trade defined not through domestic tariff policies (as within GATT) but instead through adherence to the international price stabilization scheme. To use Polanyian terms, this is an example of how an international institution contributed to constituting an international market. It is here that we can appreciate that a sugar treaty was thought to be necessary in order to protect the price of sugar in the free global market from disruptions caused by preferential trade areas.

Then I detail how buffer stocks, a most unique and controversial feature, were introduced into the sugar treaty. It was this mechanism, and the fact that negotiations were negotiated under the auspices of UNCTAD, that caused the 1977 ISA to be associated with NIEO. Upon closer examination, however, we find that the introduction of buffer stocks had little to do with NIEO’s redistributive goals and more to do with embedded liberalism’s stabilization policies. Nonetheless, this association between ICAs in general and UNCTAD would spell the end of sugar commodity agreements with economic provisions.

127 See for e.g. UNCTAD, UN Sugar Conference, Economic Committee, Report by the Chairman of Working Group V, TD/SUGAR.9/EX/C.I/R.8 (27 September 1977); UNCTAD, UN Sugar Conference, Economic Committee, Report by the Chairman of Working Group V, TD/SUGAR.9/EX/C.I/R.8 Add. 1 (27 September 1977); UNCTAD, UN Sugar Conference, Economic Committee, Report by the Chairman of Working Group V, TD/SUGAR.9/EX/C.I/R.8 TD/SUGAR.9/EX/C.1/CRP.32 (18 May 1977). Delegates would also spend significant time and energy in determining how exports and imports from non-members would be restricted in order to ensure the relevance and efficacy of the 1977 ISA.
B. Regulating the “Free Market”

During the 1970s many equated support for the ISA with support for the free market and liberal trade. Some even suggested that ever since 1937, ISAs were an effort to prevent protectionism. The minority view of the time held that the ideal market was an “unregulated” sphere of economic exchange. The common question, therefore, was not whether regulation was desirable or not. Rather, it was a matter of what sort of regulation was best and the ensuing debates were then a question of what was meant by “best” and best for whom. Thus the definition of the “free market” of the time allowed for international price-regulation when prices were so high or low as to cause socio-economic hardship in parts of the sugar sector.

In 1974, the world sugar industries, and especially the sugar producers, were quite disappointed with the 1973 ISA since it did not have any economic provisions and that meant that the international sugar market had no mechanisms to control the price of sugar. This disappointment was quickly overshadowed by a rise of sugar prices to a peak annual average of US 29.7 cents. But when prices suddenly dropped in 1976 to US 8.2 cents, a price estimated to be below the cost of production in most places, many thought that international sugar treaty negotiations would be inevitable.

Sugar experts were also slightly optimistic about the prospects of an effective sugar treaty because the US, which was the largest sugar consumer in the world, and the EEC, which was emerging as the largest sugar producers, were invited to participate in the upcoming sugar negotiations. They were also encouraged by the fact that important “structural” changes had taken place in the world sugar market, namely: the repeal of the US Sugar Act

128 Ibid.


130 Commodities Bulletin No. 26 [International Sugar Colloquium] (7 March 1975) at 8.

in 1974, the end of the Commonwealth Sugar Agreement, the end of the African and Malagasy Sugar Agreement, and the signing of the EEC Lomé Convention in 1975.\textsuperscript{132}

To appreciate why these were thought to be significant changes, it is necessary to understand that ever since the 1937 ISA, the world sugar market was divided between “special arrangements” and the “free market”. Special arrangements were either multilateral or bilateral treaties that granted preferential market access for certain sugar exporters often at a price higher than the world market.\textsuperscript{133} The free market was then characterized as “residual”, both because it was whatever sugar was exported after domestic consumption and special arrangement exports and because it constituted the minority amount of sugar produced in the world. In 1954, sugar exported to the free market was 19\% of sugar produced in the world, in 1961 it was 24\%, and in 1975 it would go down to 16\%.\textsuperscript{134} The end of the US Sugar Act marked the first time since the 1930s that the US domestic sugar would not be regulated by high tariffs and price controls and as such would be the first time that US would be included in the world “free market” of sugar.

Because the free market was characterized as residual, this meant that the for decades the international “free market” for sugar was actually quite structured – it was strongly determined by the market of specialized arrangements and its prices were regulated through international sugar agreements. Exporters in special arrangements depended on the free market to export their surplus sugar. Since the 1930s, Cuba, like many of the large sugar exporters, had been acutely sensitive to the fact that free markets prices were affected by special arrangement markets.\textsuperscript{135} Developing country exporters that depended


\textsuperscript{135} See for e.g. Address by the Chief of the Cuban Delegation, Raul Leon Torras, First Deputy of Foreign Trade, [n.d. 1968?], likely circulated during conference, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 1, Folder 1).
on sugar would advocate for ISAs that regulated special arrangements and the free market since price stability in both were interlinked. To some economists, specialized markets destabilized the price of sugar. To others, specialized arrangements distorted the price of commodities on the world market and therefore the wider the scope of the international free market the better.

C. Buffer Stocks

1. How the 1977 ISA Became Associated with UNCTAD and NIEO

Recall from the previous chapter that one of UNCTAD’s most important policies under NIEO was the Integrated Programme for Commodities, which was a plan to create international buffer stocks to stabilize commodity prices, and the Common Fund for Commodities, which was intended to be the world buffer stock fund to stabilize the price of certain commodities. Some suggested that the 1977 ISA negotiations were not only about sugar in the context of developed and developing countries, but also determined the future of the UNCTAD’s ambitious commodity programme. The 1977 ISA was negotiated at UNCTAD facilities, lending further credence to the characterization of the sugar agreement as an UNCTAD/NIEO treaty. Besides, this was the first ICA that explicitly referenced UNCTAD’s Integrated Programme for Commodities. To some, the sugar treaty’s buffer stock system was influenced and inspired by UNCTAD’s Common Fund for Commodities proposal which was negotiated around the same time.

136 See for e.g. "Notes and Comments" The International Sugar Journal 77: 914 (February 1975) 33.


138 Hagelberg, supra note 134 at 10.


However, assuming that UNCTAD influenced the inclusion of buffer stocks 1977 ISA seems unfounded, a hasty determination of causation based on mere correlation. Moreover, this assumption obfuscates our understanding of the trade politics of the time. Scholars were divided as to how much the 1977 ISA reflected the “spirit of UNCTAD” i.e. using international law and institutions to redistribute global wealth and power to benefit the poorer Third World. Buffer stocks were not a new idea to ICAs in general. They were part of agreements for other commodities such as tin, cocoa and natural rubber. Moreover, the negotiation record does not entirely support the idea that the idea of buffer sugar stocks originated from UNCTAD proposals. Nor was there strong support among sugar negotiators (such as developing countries who were large exporters) in including the reference to the Common Fund for Commodities.

While UNCTAD may have provided some intellectual legitimacy to the idea of internationally regulated buffer stocks, we must parse the various forms, functions, and implications of buffer stocks proposals within the context of sugar politics of the time to

141 Supra note 104.

142 Brown, ibid.; International Sugar Journal Vol. 78 No. 925 at 1.

143 India proposed late into negotiations that when the Common Fund would be established that the International Sugar Council "shall consider the relationship between the Agreement and the Common Fund, with a view to enabling appropriate advantage to be taken of the financial arrangements with the Common Fund." India brought forward this idea on behalf of several Asian exporters who were reacting against proposals for a buffer stock under the proposed sugar treaty that only contemplated preventing the "the rise of prices beyond an agreed level coupled with a quota mechanism to bring about a better balance between supply and demand." UNCTAD, UN Sugar Conference, Economic Committee, Working Group I, Article VII; Relationship With a Common Fund; Proposal By India, TD/SUGAR.9/EX/C.I/WG.I/CRP.12 (12 September 1977) [emphasis added]

To these Asian countries, only focusing of supply and demand of one commodity would still adversely affect resource and development plans of developing countries; “Statement made by the Indian Delegation on behalf of Philippines, Indonesia, Thailand and India on 23rd September, 1977”, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8 Folder 12).

The final language of the 1977 ISA in Article 55, however, was less binding that the original proposal:

At such time as a Common Fund is established within a framework of the UNCTAD Programme for commodities, the Council may consider and make appropriate recommendations regarding measures through which the Organization may take full advantage of any financial arrangements available under such a Common Fund. [emphasis added]
determine that the 1977 ISA in fact reflected the desire to stabilize the price of sugar to meet domestic welfare and development needs, not to redistribute global wealth.

What lends credence to notion that the idea of sugar buffer stocks did not necessarily originate from UNCTAD is the fact that the buffer stock proposed by UNCTAD had different implications than the one created by the 1977 ISA. During the sugar treaty negotiations, there were actually different conceptions of what sort of buffer stocks governments wanted and for what reasons. The 1977 ISA established nationally held, internationally financed and regulated sugar stocks, whereas UNCTAD proposed a global programme of internationally held, financed, and regulated stocks. Thus, under the UNCTAD proposal the international institution itself held more power over decisions than did individual countries. By examining the politics behind the various proposals we can understand the controversy surrounding buffer stocks, why the 1977 ISA was the first and only sugar agreement to rely on them to stabilize sugar prices, and why one buffer stock plan was taken up over others.

2. Buffer Stock Politics – EEC’s Proposal

The EEC made one of the first calls for a sugar agreement which principally regulated the price of sugar through buffer stocks.144 A buffer stock allowed for more production since excess sugar could be stored for future export. Under such a system, sugar prices were regulated by controlling sugar distribution, whereas a quota system determined sugar production in advance and was most often used to curtail the amount of sugar made. Large sugar exporters preferred a system that did not create incentive for others to increase their

144 Mauritius, a small African sugar island that depended on sugar, also wanted a sugar agreement whose principal price control mechanism was buffer stocks. Mauritius had very little resources to diversify its economy whether with other primary commodities or attempts at industrialization. Its only hope was to expand its sugar production capacities for the purposes of export. Sauzier’s proposal had one significant difference from the EEC – it contemplated an internationally financed scheme which meant more control of over by the ISC over the international regulation of nationally held stock than in the EEC nationally financed stock plan. ISO, Executive Director, “A Possible Approach to a New International Sugar Agreement” by Sir Guy Sauzier, C.B.E.), ISO Memo 76(18) (25 March 1976). Sauzier, however, distinguished his proposal for an “intervention stock” from a “buffer stock” even though two terms were commonly used interchangeably. But it is never clear what that distinction is. He never mentions UNCTAD and it is possible he want to distance his proposal from UNCTAD.
production levels, for not only did it create more competition but it also made it more difficult to ensure stable if not higher prices of sugar.

The EEC was also presenting an idea for buffer stocks that led to some of the most vigorous disagreements during negotiations. European delegates vehemently argued that the older system was outdated.\(^\text{145}\) The EEC would isolate itself from negotiations from the beginning by consistently rejecting export quotas and insisting on a buffer stock-only ISA.\(^\text{146}\) Some even thought that the EEC’s stubborn position regarding a buffer-stock only sugar agreement was disingenuous because the EEC was planning to continue to expand its sugar production and never intended to participate in the treaty.\(^\text{147}\)

The EEC officially noted its surprise that other countries reacted against their proposals, and referenced other ICAs that used buffer stocks as well as UNCTAD plans to buttress the legitimacy of their position.\(^\text{148}\) This reference to UNCTAD is misleading at best and insincere at worst. Even though both the EEC and UNCTAD had proposed buffer stocks as a means of stabilizing commodity (in this case sugar) prices, the implications and character of the two schemes were significantly different.

\(^{145}\) Albert Viton, handwritten notes from the International Sugar Council Preparatory Committee meeting 30 January [sic?] – 4 February 1977, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 15) at 10. See ISO, Preparatory Committee, Draft Agenda for the First Meeting of the Preparatory Committee, Prep.C/Agenda(77)1 (4 January 1977). Viton’s handwritten notes during the ISA Preparatory Committee right before the 1977 ISA negotiations meeting indicate that the EEC delegate characterized the previous system of quotas as outdated and not reflective of current realities akin to the Bourbon. The Australian and Cuban members responded that the EEC itself was the Bourbon.

\(^{146}\) Harris, supra note 128 at 359.

\(^{147}\) Gilbert, supra note 10 at 5.

\(^{148}\) UNCTAD, UN Sugar Conference, Economic Committee, Report by the Chairman of Working Group I, TD/SUGAR.9/EX/C.I/R.3 (24 May 1977). See also Comité Européan des Fabricant Sucre, “Some Thoughts on the Negotiation of a New International Sugar Agreement” (6 September 1977), West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 5) – The Confederation Internationale des Betteraviers European and Comité Européan des Fabricant Sucre, respectively representing European sugar beet growers and sugar refiners, supported (if not determined) the EEC policy and would also reference UNCTAD’s Common Fund as precedent to the idea of buffer stocks.
The UNCTAD proposal for buffer stocks was for an internationally controlled, held, and financed system of buffer stocks to be used to regulate the price of multiple commodities with the aim of ensuring stable and favourable prices for developing countries. Whereas the EEC proposed a sugar buffer stock system that was to be nationally held and financed and only internationally “coordinated”.149

It is important to remember that the price of sugar in 1977 was quite low and sugar producers were barely breaking even; thus the negotiators’ priority was to reduce sugar production through BET levels and quota reductions in order to increase the price of sugar. EEC sugar producers did not have to worry about low prices because they were heavily subsidized. And so the fact that the EEC never signed the 1977 ISA, increased its sugar production, and expanded its trade while ISA members tempered their production levels in an attempt to increase the price of sugar suggests that the EEC main priority was production expansion and not price stabilization.150


To Ernest Jones-Parry and the ISC Secretariat, introducing a buffer stock into sugar price regulation would make future ISAs more responsive to market changes.151 Jones-Parry presented his idea as one of technical necessity to ensure a flexible treaty that was most responsive to changes in the market. He suggested that the new sugar agreement be devised to protect minimum sugar prices. The argument was that a new sugar agreement would be the most flexible if it included both a system of quotas and a buffer stock – the stock protected a floor price and quotas ensured that sugar stock would not pile up. Moreover, Jones-Parry emphasized that such a system would stabilize sugar prices thereby


151 Commodities Bulletin No. 26 [International Sugar Colloquium] (7 March 1975) at 10-11.
underwriting developed exporter expansion, and safeguarding developing exporter interests. Importer needs would also be met since sugar supplies would be maintained.\textsuperscript{152}

Sugar delegates reacted vehemently against the EEC buffer stock proposal but eventually accepted the suggestion by Jones-Parry and the ISC Secretariat that the new agreement should include buffer stocks. Countries adopted Jones-Parry's buffer stock scheme which was internationally financed and controlled but nationally held thereby striking a balance between international cooperation and domestic control à la embedded liberalism. By contrast, the EEC's proposal was only superficially multilateral – which is one reason it was rejected by most countries.

At first, the vast majority of ISC members supported a "traditional" type of sugar agreement which focused on export quotas and there was little support for Jones-Parry's idea.\textsuperscript{153} Eventually, ISC members warmed up to the idea of buffer stocks and a working group was mandated to examine forthcoming sugar treaty negotiations. The general view was against any form of internationally owned stocks to defend minimum prices, but states were open to using nationally owned, internationally regulated stocks to defend a maximum range.\textsuperscript{154} The fact that major exporters such as Cuba and Australia going into the 1977 sugar negotiations were actually willing to contemplate a price regulating system primarily based on quotas but with some provision for buffer stocks suggests that one of the reasons that Jones-Parry's idea was eventually taken up was for the technical reasons he put forward.\textsuperscript{155}

\textsuperscript{152} Ibid.

\textsuperscript{153} The anticipated difficulties for such a scheme would be determining the minimum price, determining the price at which the stock manager had the discretion to release stock into the market, and the cost and logistics of actually holding and maintaining stock. Some major sugar producers were adverse to the idea because it was institutionally complex and financially costly. See for e.g. Memorandum by Albert Viton, "Recent Discussion of the International Sugar Council on a New International Agreement" (10 June 1975) likely an internal FAO memo, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 2); 77 International Sugar Journal No. 916 (April 1975) at 97.


\textsuperscript{155} See Australian memo, "The Possible Use of Stocks As a Short Term Market Regulating Device in Export Quota Type I.S.A." (January 1977), [probably circulated at the ISC Preparatory Committee meeting], West
Also, Jones-Parry’s buffer-stock proposal provided sugar regulation flexibility by providing exceptions and special funds through a “Hardship Reserve” for developing exporters that were small exporters. The working premise was that developing countries were more sensitive to sugar price fluctuations and often their only means of addressing domestic socio-economic instability was to export more sugar. Thus, this proposal adhered to embedded liberalism policy concerns and provided relief for when the international market worsened domestic socio-economic conditions.

In sum, a call for an ISA that primarily relied on a buffer stock scheme, regardless of whether the purpose was to provide a market for a subsidized sugar industry or to ensure the welfare of a developing country, was an argument that benefited sugar producers who wanted to expand sugar production despite more established exporters such as Cuba, Australia and Brazil. When we compare all the different buffer stock proposals we can see why it was eventually accepted in sugar negotiations.

In Polanyian terms, UNCTAD imagined sugar as embedded within a global primary commodities market which thereby demanded international institutional regulation. The EEC imagined sugar as embedded within a domestic/regional agriculture market regulated by regional institutions which would potentially benefit by some sort of international coordination. Jones-Parry’s proposal adhered to embedded liberalism’s sensibility in that it was a multilateral system that addressed domestic welfare and development concerns (while being sensitive to the interests of large sugar exporters and importers) – which is probably why it was the scheme that was eventually adopted.

4. Final Stock Proposal And Stock Financing

Thus Jones-Parry’s buffer stock proposal and the 1977 ISA included a sophisticated mechanism of price control through buffer stock and quotas. The remaining question was how the stock was to be financed. The US as the largest importer was concerned about

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156 TD/SUGAR.9/EX/R.6, supra note 114 at 1-2.
potential future shortages of sugar. It had opposed the EEC’s proposal which some interpreted as a principled position against any buffer stock system. Two days after the US made its opening statement at the 1977 conference it proposed a mandatory stabilization fund “which turned the Conference upside down….for which delegations were in no way prepared.”157

Through negotiation the final scheme was reserve stock which set aside a certain amount of sugar which would be financed by through a system of fees paid by importers and exporters paid to the ISO or its agents. These fees would constitute a Sugar Stabilization Fund for the purpose of administering the financial operation of the scheme.158 Not only did this scheme broadly align with Jones-Parry’s proposal, but it also provided importers the strongest assurance of supplies they ever had.159 The twist was that the US’s proposal for a Sugar Stabilization Fund seemed similar to UNCTAD’s Common Fund idea. The significant difference, however, was that the US’s proposal was intended to protected importer’s interests whereas UNCTAD’s Common Fund was an attempt to protect exporter’s interests.

Even though the US was structuring its domestic sugar policies around a successful ISA in mind, the Senate took two years to ratify its membership.160 The opposition was not against the agreement as such. Instead, the delay arose from the negotiation between domestic sugar interests who wanted to ensure that adequate domestic safeguards were put into place in light of the liberal sugar trade treaty. US Democratic Senator Frank

157 The 1968 ISA had allowed for 2 million tonnes of domestically held stock financed by exporting members. Like the 1968 ISA, the US proposed that the new treaty would have a minimum stock of 2 million tonnes. What was unique about the US’s proposal was that the fund would be financed by importers and exporters, and that there would be an additional “special stock” of 2 million tonnes “that would attract financial assistance.” This division of stocks was an idea which many found difficult to understand and the US created some further confusion when it did not specify how the special stock would be financed. TD/SUGAR.9/EX/R.4, supra note 111 at 2; Viton, supra note 12 at 200

158 TD/SUGAR.9/EX/R.4, ibid. at 2-3. The final scheme was a special stock of 2.5 million tonnes which was distributed and held by each exporting country pro rata according to their BET (Art.46(3)).

159 Khan, supra note 6 at 141.

160 Harris, supra note 128 at 364
Church, who was head of the Foreign Relations Committee, held up the process until Carter agreed to a price-support system which would benefit beet-growers in Church’s state of Idaho. This negotiation looked to be a continuation of embedded liberalism’s politics. But the effect of such a delay meant that the system of special stocks, which was included upon the US’s insistence, was financially constrained until the US ratified the treaty.161

IV. How Fragmentation Killed ICAs

A. UNCTAD’s Move Away from Embedded Liberalism

Recall that Northern countries were not against ICAs as such. Furthermore, ICAs were not antithetical to the GATT – the idea of ICAs was explored by GATT members and supported, albeit under very specific circumstances, in the Haberler Report.162 The death of the idea of ICAs can only be understood by examining how ICAs became associated with UNCTAD, while UNCTAD itself adhered less to embedded liberalism policies.

During ITO negotiations, the US would make a stark distinction between domestic and international markets. The North continued this view and espoused a policy of embedded liberalism that took each commodity as a separate case and not under the purview of any international institution. This suggested that they were informed by a particular conception of how the global commodity market was embedded in world society. The theoretical implication of such an approach was a belief that the world market was constituted by transnational regulation between governments. The role of the international institution was to manage all the different domestic markets for each commodity.

By contrast, Latin American countries during ITO negotiations would conceive of domestic and international markets as intertwined. Early UNCTAD and ICA policies would continue the Latin American perspective. International trade was inextricable from domestic development policies, and therefore the role of the international institution was to ensure

161 Viton, supra note 12 at 220-221.

162 Haberler Report, supra note 87 at 65-80.
that international rationalization complemented domestic industrialization and diversification.

UNCTAD’s proposals under NIEO, however, were a unique way of regulating international trade. Indeed, they marked a move away from embedded liberalism since they left out some of the domestic context for markets. UNCTAD working premise was that the global commodity market was primarily embedded in a global social context, and thus only a global institution would be able to regulate commodities.

Moreover, UNCTAD’s position by the time of NIEO was different from its earlier policies. At UNCTAD II, the focus was on creating an integrated commodity policy and the need for a “general agreement on commodity arrangements.” Prebisch would leave open the possibility of commodity-commodity negotiations, but would still suggest that this was not incompatible with laying down certain general principles to ensure ICAs would stabilize fluctuating commodity prices. This was in line with embedded liberalism in that Prebisch was trying to ensure both international and domestic stability, addressing both domestic and international market regulation.

NIEO language would be more programmatic than Prebisch’s call for general international principles. NIEO’s *Programme for Action* would be taken up at UNCTAD IV – Corea would operationalize the NIEO call and create the Integrated Programme for Commodities. The program was intended to be a central fund designed to finance international buffer stocks.


165 See *Programme for Action on the Establishment of a New International Economic Order*, *supra* note 74 at Sect. 1, para. 3(a)(iv), calling for:

[p]reparation of an over-all integrated programme, setting out guidelines and taking into account the current work in this field, for a comprehensive range of commodities of export interest to developing countries[.]
which would be used to stabilize commodity prices.\textsuperscript{166} The Common Fund for Commodities would act as the buffer stock fund to stabilize the price of certain commodities.\textsuperscript{167}

Until this point, ICAs were negotiated on a commodity-by-commodity basis by essentially independent bodies with no clear common objective.\textsuperscript{168} This was not the first time a fund was created to stabilize commodity prices. In partial response to UNCTAD II, the IMF created the Buffer Stock Facility.\textsuperscript{169} However, it was not empowered to finance internationally-controlled commodities and was put to little use.\textsuperscript{170}

The Integrated Programme for Commodities was the first time that one international organization attempted to bring all ICAs within a single institution directed by a single fund. Thus, the Integrated Programme for Commodities was innovative in its institutional ambition. The purpose of organizing all the ICAs through UNCTAD, however, was to ensure that all ICAs were rationally organized for the purpose of price regulation, in order to

\begin{itemize}
\item \textsuperscript{166} See Gamani Corea, \textit{Taming Commodity Markets: The Integrated Programme and the Common Fund in UNCTAD} (Manchester: Manchester University Press, 1992) (Examination of the negotiation history from the perspective of the UNCTAD Secretary-General 1974-1984); Brown, \textit{supra} note 83 at Ch. 3 (Brown was a member of the UNCTAD commodities division who would be critical of UNCTAD commodity policies and leadership); J.D.A. Cuddy, “Theory and Practice in NIEO Negotiations on Commodities”, in Gerald K. Helleiner, \textit{For Good or Evil: Economic Theory and North-South Negotiations} (Toronto: University of Toronto Press, 1982) 33 (Cuddy was a member of the UNCTAD commodities division who would support the Integrated Programme for Commodities); Maizels, \textit{supra} note 61 at Ch. 7 (Maizels was an influential and famous economist who would work with UNCTAD and contribute to developing the Integrated Programme for Commodities and Common Fund); Kabir-ur-Rahman Khan, \textit{The Law And Organisation Of International Commodity Agreements} (The Hague: Martinus Nijhoff, 1982) at Ch. 6.
\item \textsuperscript{168} Two ICAs were created under the auspices of the League of Nations, one for sugar and one for wheat. But there was little consensus within the League as to whether ICAs were desirable, how they were to function, and to what end. See Chapter Four.
\item \textsuperscript{169} J. Keith Horsefield, ed., \textit{The International Monetary Fund 1945-1965: Twenty Years of International Monetary Cooperation} vol. 1 (Washington D.C.: International Monetary Fund, 1969) at 609.
\item \textsuperscript{170} Brown, \textit{supra} note 83 at 99.
\end{itemize}
benefit countries of the Third World. UNCTAD’s proposal differed from the ITO Charter because regulation of international commodities was treated as the norm rather than exception. The Integrated Programme for Commodities was intended to cover a wide range of commodities in order to permit and encourage simultaneous negotiations which would allow for an overall balancing of interests. Also, the Common Fund was intended to promote the timely conclusion of ICAs since the question of financing would be prearranged.171

The Integrated Programme for Commodities was also radical in its politics. Western countries preferred to negotiate ICAs in a piecemeal fashion and had regularly opposed Prebisch’s suggestion of integrating commodity policies.172 According to some, OPEC’s success in raising oil prices in 1973 and 1974 provided evidence of the potential strength of commodity producers of the South in relation to the North.173 Despite its innovative institutional structure and radical politics, the Integrated Programme for Commodities was not a new idea. Keynes during the final years of the Second World War devised an economic recovery plan which included the creation an international buffer stock scheme to regulate the price of primary commodities. Keynes envisaged an international organization, albeit primarily driven by Anglo-American interests, to be created along with the International Monetary Fund and International Bank of Reconstruction and Development that stabilized commodity prices.174 Lest we forget, Keynes was inspired by

171 Maizels, supra note 96 at 106.

172 Maizels, supra note 61 at 114-115; Corea, supra note 166 at 44-45.


Salter’s work during the First World War and the League. Nicholas Kaldor, the famed economist, would revisit Keynes’ ideas and conclude that UNCTAD’s Common Fund had the same effect as Keynes’s proposal.

When the Integrated Programme for Commodities was launched in 1976 six ICAs were already in operation – tin, coffee, cocoa, sugar, wheat, and olive oil. ICAs had a history before the NIEO, Integrated Programme for Commodities, and the Common Fund and at best they had an ambiguous relationship with these UNCTAD programs. Cocoa, tin, sugar and wheat negotiations were thought by some to be nominally UN undertakings because G77 or NIEO ideology barely appeared in most commodity negotiations. With the exception of Prebisch’s involvement in the 1968 International Sugar Agreement negotiations, the UNCTAD secretariat’s main contribution during the negotiations was thought to be the provision of conference facilities.

Different ICAs, informed by embedded liberalism, employed diverse forms for market regulation all of which included the international regulation of commodity prices through both international and domestic institutions. However, the Integrated Programme for Commodities, as an institutionalization of NIEO, was unique in the history of international commodity regulation because it granted commodity-regulating powers traditionally held by national governments to an international institution. NIEO involved the control of international commodities though internationally held, controlled, and financed stock. Moreover, NIEO only focused on redistribution of wealth on an international scale, and did not address or make provision for domestic policies of redistribution.

See Chapter Four.


Corea, supra note 166 at 141.


This is discussed in more detail in Chapter Six.
This did not sit too easily with national governments. Commodity producers, especially Latin American countries, expressed anxiety in regards to Common Fund because they feared that they would lose decision-making power over certain products, such as setting maximum and minimum prices, to a forum where countries without an interest in those products would participate. What is also telling is that major commodity producers such as Brazil, Malaysia, Ivory Coast, Chile, and Colombia did not provide leadership for idea of Integrated Programme.¹⁸⁰

The fact that members of existing agreements held reservations to these plans causes one to query whether countries were also wary of UNCTAD’s rising power and influence in the global governance of international commodities. Their potential fears of losing control over commodity regulation from ICAs to UNCTAD would not have been unfounded. Members of the UNCTAD Secretariat thought that a single agency, most likely the Common Fund, could regulate commodity price fluctuation. UNCTAD’s original proposal placed very little emphasis on ICAs. According to Corea:

> in its original form, the thrust of the proposed Integrated Programme was clearly the establishment of international stocking arrangements rather than negotiation of a series of individual commodity agreements...¹⁸¹

This reasoning was that, “This would dispense with the frustrations that seemed inevitable in the negotiation of traditional commodity agreements.”¹⁸² In the end, UNCTAD did not submit this idea to the governments.¹⁸³ In fact, the Latin American countries would insist that the Common Fund would regulate commodity markets via individual ICAs.¹⁸⁴

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¹⁸⁰ Ibid. at 44-45.

¹⁸¹ Corea, supra note 166 at 34.

¹⁸² Ibid.

¹⁸³ Corea, supra note 166 at 33,44-46. Oil producers were also cool to the idea of the Integrated Programme for Commodities and Common Fund since they were asked to provide a significant amount of the financing and because they were commodity importers not exporters. The socialist countries of Eastern Europe responded favorably to the UNCTAD initiative but did not champion the Common Fund. They were not very enthusiastic about buffer stocks but made no objections. Their preferred contractual arrangements and quota
Industrialized countries, which had been receptive to the idea of commodity regulation and ICAs, reacted most vehemently against the idea of the Common Fund. Corea was the subject of these criticisms and therefore it is worth quoting him in some length:

The prospect of establishing a single institution with the authority and resources to intervene in commodity markets – possibly outside the framework of commodity agreements – was truly alarming among them [developed countries]. Their anxiety was all the greater in light of the prospect that the control of such an institution would not be in their hands, and that it would not be dependent on them for financing. To the developed countries the Common Fund was the most dangerous element of the Integrated Programme and the one to be resisted most fiercely. 185

From all this we can detect that national governments from both the North and South to some degree accepted ICAs yet they were either cautious or opposed outright to the idea of UNCTAD gaining power over the regulation of commodities.

B. The Death of ICAs

The viability of ICAs as an idea began to dissipate in early to mid 1980s while doubts as to whether ICAs were relevant and able to regulate commodity prices became more prominent. 186 The collapse of the International Tin Agreement and the bankruptcy of the International Tin Council in 1985 marked the moment when questioning the relevance of schemes over market operations by an intergovernmental agency. They were also cautious about joining an international financial institution.

184 Toye & Toye, supra note 3 at 245.

185 Corea, supra note 166 at 45.

ICAs became a central political and intellectual concern.\textsuperscript{187} By the late 1980s, in light the dubious status of the Common Fund for Commodities, this lack of confidence continued with ICAs and UNCTAD.\textsuperscript{188} By the mid-1990s experts would pronounce ICAs to be dead.\textsuperscript{189}

Gilbert argues that assuming that collapse of the Tin Agreement \textit{caused} the demise of ICAs is too simplistic in light of the complex results of ICAs and ignores moments in the history of ICAs when they succeeded in controlling prices. Rather, Gilbert argues, the collapse of the Tin Agreement in 1985 exemplified a moment in time when the \textit{idea} of ICAs had lost political and intellectual popularity.\textsuperscript{190}

This may have been caused by an assumption that ICAs were by definition intellectually related to UNCTAD and NIEO. UNCTAD’s commodity policy embodied by the Integrated Programme for Commodities and Common Fund for Commodities was the centerpiece for UNCTAD, G-77, and NIEO. The UNCTAD Secretariat would position the Integrated Programme for Commodities and Common Fund as an “all or nothing” component of NIEO,\textsuperscript{191} thereby interlinking the fate of the commodity policy with its ideology. Thomas Weiss, a former Senior Economic Affairs Officer in UNCTAD, would wonder, “If the past approach of UNCTAD had been more oriented toward individual commodities rather than

\textsuperscript{187} See for e.g. Sands, \textit{supra} note 186; B.S. Chimni, \textit{International Commodity Agreements: A Legal Study} (London: Croom Helm, 1987) at 197-215.

\textsuperscript{188} Abdulqawi A. Yusuf, “The Legal Framework for Stable, Remunerative and Equitable Commodity Prices in International Trade” in Detlev Chr. Dicke & Ernst-Ulrich Petersmann, eds., \textit{Foreign Trade in the Present and a New International Economic Order} (Fribourg: University Press Fribourg Switzerland, 1988) (Author was a member of UNCTAD secretariat. Concludes that the Common Fund for Commodities is a crucial element for the Integrated Programme for Commodities to succeed once it becomes operational in near future. Notes that the Integrated Programme for Commodities is currently at crucial moment where it may flourish with Common Fund for Commodities or erode due to lack of agreement.)

\textsuperscript{189} \textit{Supra} note 10.

\textsuperscript{190} Gilbert, \textit{supra} note 10.

\textsuperscript{191} Corea, \textit{supra} note 166; Brown, \textit{supra} note 83 at 78, 101; \textit{The History of UNCTAD 1964-1984, supra} note 83 at 64; Carol Geldart & Peter Lyon, “The Group of 77: A Perspective View” (1980-81) 57 Int’l Affairs 79 at 95; Weiss, \textit{supra} note 98 at 232-233.
global and confrontational, more might have been achieved and could still be achieved.”

In the late 1980s, in light the dubious status of the Common Fund, many expressed little confidence in UNCTAD and ICAs. The assumption that ICAs’ were linked to UNCTAD probably acted as a stigma against ICAs. The irony was that UNCTAD was cool to the idea of ICAs and in turn ICA member governments were cool to UNCTAD’s commodity proposals.

Many situate the end of UNCTAD as a Third World forum and the end of “North-South dialogue” at the Conference on International Cooperation held on 21-22 October 1981 in Cancún. This conference made it clear that developed countries had regained power in determining global economic policy. This also marked a shift in developing countries’ discourse. As Robert Cox quipped about this time, “The NIEO was killed by neoliberalism.” The institutionally corollary was that UNCTAD was killed by the GATT/WTO. Starting around 1979, UNCTAD started looking for a “different analytical base”. Soon after, UNCTAD went through a “crisis, retreat, and reinvention” and by the mid-1980s as the Uruguay Round began, UNCTAD and many developing country leaders decided that developing countries should take a much more active role in GATT.

Even those from the North and South who had not given up entirely on ICAs as an idea, started to look to the GATT, rather than UNCTAD, as the institutional milieu for ICAs.

192 Weiss, supra note 178 at 106.

193 See for e.g. (1987) 15:5 World Development [special issue addressing “commodity crisis”]; Yusuf, supra note 188 [Notes that the Integrated Programme for Commodities is currently at crucial moment where it may flourish with Common Fund for Commodities or erode due to lack of agreement.]


195 Weiss, ibid. at 258.

196 Ibid. at 198.


198 Supra note 12.
There was also a shift from discussing ICAs in terms debating appropriate “economic” mechanisms regulating prices to suggesting that international commodity organizations should focus on “administrative” functions such as research, consultation and international cooperation199 – which is the status of most ICAs today.

V. Conclusion: Theoretical Implications Of ICAs

One sugar economist caught a peculiar congruity between the 1977 ISA negotiations and UNCTAD:

   It is interesting that both the US and EEC proposals were closer to NIEO commodity agreement strategy in their emphasis on buffer stocks, than the draft prepared by the mainly developing country ISA membership.200

On its face the US and EEC proposals seemed to propose similar mechanisms as UNCTAD. But the context of those proposals within the politics of the ISA, the particular economics of sugar, and the specific forms of buffer stocks proposed show us that the 1977 ISA, the EEC plan, and UNCTAD’s Integrated Programme for Commodities each had very different intended functions and implications.

The fact that the 1977 ISA was the last sugar commodity agreement to include economic provisions was part of the larger end of ICAs. The waning popularity of ICAs resulted from GATT and UNCTAD competing over “which institution gets to decide” what were the definitions, subjects, and objects of international trade regulation.201


200 Harris, supra note 128 at 363.

interests would employ embedded liberalism and dominate GATT and Southern interests would also use embedded liberalism but would control UNCTAD. As such, interests within each respective trade institution negotiated according to the assumptions of embedded liberalism as developing countries tried to push GATT towards accepting concepts of trade that were inextricable from theories of development and developed countries tried to push UNCTAD towards trade policies that relegated international rationalization policies to as small a number of exceptions as possible. This was further complicated by the fact that agricultural interests in developed countries were sympathetic to international rationalization, and developing countries wanted to industrialize and ensure that GATT reduced tariffs so that their manufactured products would eventually have access to Western market. When GATT emerged triumphant over UNCTAD, rationalization and ICAs were no longer considered as legitimate free trade ideas by mainstream trade policymakers from both developed and developing countries.

From this description of how various countries in the global South and North looked to implement embedded liberalism we see different theories regarding what social structures the markets were embedded in. Many policymakers from the North, according to Ruggie and Steffek, imagined the market to be embedded within domestic social structures. According to this view, because each country’s economic policy affected the other, an international institution was necessary to manage the interface between different economic systems. In turn, the national governments had to ensure that the social disruption and dislocation resulting from international trade would be tempered, and full employment and stability would be maintained as much as possible. However, policymakers from the South and agriculturalists from the North would conceive markets to be both domestic and international, with no clear demarcation between the two. For example, fluctuating world commodity prices had severe domestic socio-economic consequences that domestic institutions (if any were in place and functioned) could not temper. Thus, an international institution was necessary not so much to demarcate between the domestic and international but to ensure that the international rules, such as the regulation of commodity prices, complemented domestic Southern policies of economic diversification and industrialization or Northern policies of price control and full employment.
Unlike most accounts, I suggest that early UNCTAD's policies were not beyond the purview of embedded liberalism (properly understood). Also, I differ from Steffek\(^{202}\) in that I argue that NIEO was different from embedded liberalism not because it looked to renegotiate international economic structures for purposes of global redistribution but because it only considered international economic redistribution with little regard to the interplay between domestic and world markets, institutions, and ensuing social conditions. UNCTAD's working premise under Corea was that the global commodity market was primarily embedded in a global social context, and thus only a global institution would be able to regulate commodities. All that mattered in these late-1970s UNCTAD policies was international political and economic relations. This differed significantly from ICAs, which were informed by local commodity production conditions and consumption demands within the context of international political economy.

UNCTAD would eventually lose power and prestige, and GATT would be supplanted by the WTO. But in a curious parallel, the WTO would mirror UNCTAD's NIEO in its move away from embedded liberalism. The advent of the WTO marked a moment when international trade law no longer became a system of negotiating the twin goals of domestic welfare and international cooperation within the context of different national economy systems. Instead, the WTO was a system of harmonization driven by a desire to ensure that the “global” market was structured by global rules.\(^{203}\)

Some have argued that we should return to an embedded liberalism that enmeshes the market in domestic social structures.\(^{204}\) Others, such as Ruggie and Howse, suggest that we must look to how the global market can be embedded in global and transnational social


processes, institutions, and practices. ICAs’ institutional history provides hitherto unexamined precedent to this attempt to enmesh global markets within global social structures while attending to embedded liberalism’s goals.

These discussions of embedded liberalism also relate to contemporary discussions regarding the “fragmentation” of international law. The general fragmentation narrative is that in recent years there has been a proliferation of international institutions that have overlapping and competing jurisdiction over the same matters; each institution is thought to possess its own rationality or politics. Most accounts of fragmentation have focused on the fragmentation of public international law. The common assumption is that the WTO represents a specialized political ethos or rationality of “free trade” and the question arises how the WTO interacts with “non-trade” institutions or general institutions and doctrines of public international law.

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207 Fischer-Lescano & Teubner, ibid.

208 Koskenniemi & Leino, ibid.

209 See for e.g. ibid. See also, Matthew Craven, “Unity, Diversity and the Fragmentation of International Law” (2003) 14 Finnish Y.B. Int’l L. 3.

210 Koskenniemi & Leino, ibid. at 572.

211 Fischer-Lescano & Teubner, ibid. at 1013.

The account herein, however, is not a narrative of a trade institution interacting or competing with a non-trade institution over a similar matter. Nor is it one of trade law's relationship to public international law. Rather, this is a historical narrative in which different conceptions of trade competed within an institution and between trade institutions over the conceptions of the function and purpose of trade.\textsuperscript{213}

It is worth returning to Polanyi to appreciate the implications of the fragmentation of international trade law. Polanyi suggested that the market was embedded in social relations, yet he never provided a clear definition of society that outlined what he meant by social relations.\textsuperscript{214} It is not surprising then that “embeddedness” has become a term of art with different uses.\textsuperscript{215} Polanyi’s lack of definition is not necessarily an analytical shortcoming. Establishing how a market is specifically embedded in particular institutions and social relations is a normative ideational and political struggle that shapes the market and respective institutions. Thus, the tension between North and South within the purview of embedded liberalism manifesting in GATT and early UNCTAD politics was a debate as to which international trade institution gets to decide how international trade should be regulated, the role of development in international trade law, and an embodiment of North-South politics. And it can also be understood as a disagreement as to how the market should be embedded in both domestic and international social relations. Likewise, the tension between UNCTAD’s NIEO commodity institutions and ICAs can be understood as a disagreement as to whether the market should be (or was actually) embedded in strictly international social relations or a domestic-international amalgam.

\begin{footnotes}

\footnote{213 For a similarly-styled account of international business transactions see Robert Wai, “The Interlegality of Transnational Private Law” (2008) 7 Law \& Contemp. Prob. 107.}


\end{footnotes}
A historical institutional account outlines how League ideas permeated post-WWII institutions. Developing countries took notions of rationalization which influenced the creation of UNCTAD and developed countries focused on doctrines of freer trade which led to the creation of the GATT. This account also reveals that ICAs provided ideological and institutional common ground. Each institution was the site of social struggles amongst various interests within and between the North and South that resulted in a different demarcation between domestic and international markets.
EPILOGUE

One day something happened which in a roundabout way was enlightening. It was a tiny incident in itself, but it gave me a better glimpse than I had had of the real nature of imperialism...¹

The history of modern international trade law usually begins after the Second World War. This account considers how the failure of the International Trade Organization and success of North Atlantic negotiations led to the General Agreement on Tariffs and Trade. In following an every-day food item like sugar, I have attempted to sketch an alternative history of trade law. It is a history in which modern trade law and doctrines of trade first came about from the colony's relationship with the metropole, transmogrified in social and economic meaning as the neo-colony negotiated with the neo-empire, and then continued to be redefined as the Third World challenged the First World.

My premise has been that international institutions are a constitutive element in the global economy. In today's discussions regarding globalization, law is often treated either as an epiphenomenon of global markets or it is mostly ignored.² However, my history of sugar shows how law, in this case manifested through international institutions, is one element that both reflects and defines the global economy.

I argue that there has been no fixed definition of free trade. Instead, by focusing on the multilateral institutional aspects of international trade I have outlined how different interests interacted within certain ideological frameworks of the time to determine the legal meaning and form of free trade. Then, by drawing from institutional historiographies, I examine how previous international trade institutions would in turn influence subsequent ideas and interests.


Tracking sugar throughout the history of international trade institutions identifies the shifting role of development discourse within these institutions. Whenever sugar’s prominence changes from one trade treaty to the next this signals that we may have to closely reevaluate the relationship between trade and development. It is not that there is a direct causal link between sugar and development discourse, rather sugar acts a correlative marker indicating that theories of development have possibly shifted.

For example, when sugar has been a central object of regulation in treaties such as the 1902 Brussels Convention, the 1937 ISA and 1977 ISA, development discourse has been the most explicit in relation to the respective treaty’s formation and assumed function. Where sugar is absent, as in the GATT, development is considered as something external to the institution’s function. We also gained insight into how for some treaties development discourse was used to maintain the centre-periphery relationship (1902 Brussels Sugar Convention), whereas development discourse in other treaties (1937 ISA and 1977 ISA) was employed to negotiate or overcome the centre-periphery power imbalance. What remained consistent was that trade law was always informed and in turn re-formed the relationship between interests in the industrial centre with interests in the agricultural periphery.

Modern trade law first emerged from the context of former slaves rebelling against white planters, colonial governors scrambling to stabilize the collapsing sugar economies, British sugar refiners searching for cheap sugar, and European bureaucrats looking to end domestic subsidization. What is most telling is that many of these interests – whether imperialists or anti-imperialists – deliberated using free trade theories of the time. Certainly, these free trade debates first began in the UK with the abolishment of all duties on imported sugar with the Sugar Duties Act in 1846; industry groups and policy makers vigorously argued as to what was the correct definition of free trade and who would benefit from such a definition. This would all culminate with the advent of the 1902 Brussels Sugar Convention which defined free trade to be free from government interference through subsidization. The fear was that government subsidization destabilized the price of sugar. And there we see the beginnings of free trade’s definition always being dictated by a configuration between tariff reduction and market regulation.
By the time of the League of Nations and the 1937 International Sugar Agreement, international trade was defined by the doctrines of rationalization, freer trade, and rapprochement. Even though League experts and delegates disagreed over the doctrines’ definitions and relationships, the sugar treaty would crystallize the dominant view of the time. Now, trade was free when it was not hampered by tariffs, but rationalization would be the precondition for reduced tariffs. It was through the hard work of Cuban delegates that one of the League’s few economic treaties was created and put into operation. And to understand why, the conditions of sugar production and export in Cuba provide crucial context. The Cuban sugar elite would hinge their state modernization plans and economic development policies upon this treaty. Their vision of “business nationalism” would be further empowered through the international sugar treaty, excluding other Cuban identities vying to define the emerging state. Moreover, they would use League doctrine to increase their economic sovereignty and renegotiate their neo-colonial relationship with US.

By the 1977 International Sugar Agreement, the Third World confronted the First World demanding a redistribution of global wealth through the transformation of the international economic order. The Third World prioritized development and injected it into every international economic legal negotiation. Free trade would once again be redefined – this time rationalization and freer trade were not as clearly interconnected and would uneasily sit side-by-side. Free trade for manufactured products was to be free of tariffs, whereas free trade for agricultural products was to be free from price fluctuations. Rapprochement was not found in an overarching institution like the League of Nations or International Trade Organization. UNCTAD and GATT were respectively functionally differentiated between agriculture and manufactured products. Moreover, development politics between and within UNCTAD and GATT were too fractured for any one institution to assume global multilateral legitimacy. Instead, international commodity agreements, like the 1977 ISA, would be the site of negotiation and conciliation between developed and developing countries, and between importers and exporters.

There are several claims that I make in this study that I would want to further explore.
What would be most interesting is to expand upon and buttress the claim that the 1902 Brussels Sugar Convention created the first modern multilateral trade institution. This could be done by comparing it to the 1885 General Act of the Berlin Conference on West Africa which organized trade through the regulation of territories. One could draw out the different theories of trade and imperialism in each of the treaties.

I would also augment what other colonial contexts were related to both sugar and trade institutions. One could draw in Dutch Java. But I would also want to investigate the notions of the colonial origins of international trade law to lands of settler colonies. Development discourse did not only apply to colonies of occupation that later created the Third World project. Intellectuals and policy makers in settler colonies such in Canada and Australia also employed development theories. During the late 19th century and early 20th century, free trade debates in Canada mirrored those in the UK and also focused on sugar: Canada was developing a sugar refining industry from cane and would later explore sugar beet growing. It would be interesting to see whether sugar could be added to Harold Innis’s list of staple commodities (such as fur, fish, wood, wheat, mined metals and fossil fuels) that contributed to the formation of Canadian culture and political economy.

Sugar has provided but one aspect of the history of modern international trade and institutions. Wheat would also be a viable subject since it is the only other commodity that is as prevalent in multilateral institutional trade history as sugar and was the subject of the famous 19th century British Corn Laws. But more broadly, future studies can use a focus on agriculture to enhance our historical knowledge of international economic institutions and historicize the WTO. On the latter, it would be interesting to situate the WTO’s Agreement on Agriculture within the longer institutional history of trade provided in this study. Of

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3 In regards to Canada see for e.g. O.J. Firestone, *Industry and Education: A Century of Canadian Development* (Ottawa: University of Ottawa Press, 1969). In regards to Australia see for e.g. ITO negotiations where Australia self-identified with underdeveloped agricultural producers, UN Conference in Trade and Employment, Heads Of Delegations Summary Record Of Meeting, Havana, Cuba, on 24 December 1947 (E/CONF.2/23) at 4.

4 Here I am drawing from exhibits in the Redpath Sugar Museum in Toronto, Ontario.

5 In this regard, the work of Harriett Friedmann is most helpful.
course, contemporary issues of agriculture are complicated by the expansion of agribusiness, the rise of biofuel, and debates regarding genetically modified organisms.

Admittedly, with the exception of the discussion regarding the 1902 Brussels Convention, this study focuses more on questions of sugar production and distribution much like the treaties themselves. It would beneficial to examine how patterns of sugar consumption may have related to the creation of international trade treaties. Any study after the 1977 ISA would have to take into consideration consumption patterns since after this treaty, sugar for mass consumption was no longer derived solely from beet and cane. Starting in the 1970s, high fructose corn syrup dominated the sweetener market radically changing the technology and geography of sugar trade politics and consumption habits.

We have seen in the history of the sugar trade how arguments were framed within the parameters of free trade. The debates were about how free trade was to be defined and what policies it would allow. Even though free trade has been the common discourse for the last century of trade law, the ensuing treaties have been incredibly diverse in their form and function. Therefore, we should not be hindered by any preconception of trade law’s structure and operation. If we were to reimagine how international trade should be organized, it may be worth redefining what an international commodity agreement’s purpose could be. Indeed, the Common Fund For Commodities (CFC) still exists as an international financial institution but is by and large inactive. As calls for international agriculture market stabilization emerge once again, this may be an opportunity to radically reenergize the CFC with the aim of discussing market regulation and international agricultural trade.

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One possibility would be to take advantage of new theories of regulation and advances in econometrics in order to determine whether new ICAs could be created to try and stabilize commodity prices. Indeed, this would be a continuation of the doctrine of rationalization. However, rationalization never proved to be an entirely convincing doctrine. Moreover, the effect of multilateral trade agreements and institutions upon development, whether they have been ICAs or tariff agreements, has never been entirely clear. What would be more helpful would be to reinvigorate debates regarding market regulation alongside tariff policies.

Institutionally, we could think about creating a new politics of trade law in which agreements focused on one commodity. Then we could determine how to organize the agreements together in some sort of plurilateral arrangement – much like the situation Prebisch explored. Thus, trade politics would not be like it is at the Doha Round which is stuck in agricultural negotiations. WTO negotiations are bogged by the Single Undertaking system of “all-or-nothing”. Instead, we could think of a system in which importers and exporters, developed and developing countries, agriculture and industry interests all negotiate within the specific context of one commodity. Then we would have to debate how the different commodity-specific agreements and the general trade system are to hang together. This would allow for all sorts of trade agreements and mechanisms to be tailored specifically for each commodity. This plurality of trade agreements may also allow for different countries to experiment and implement diverse socio-economic policies all while trying to maintain a stable international system.

I discovered a certain trend despite my attention to how trade law had no necessary definition, was historically contingent, and depended on decisions made by social actors. While focused on the permutations of history in my legal account of sugar, I found that throughout the last century trade law was informed by a structural bias of industry’s power over agriculture. This bias charges me to ask how in the future we can imagine international trade law in a way that privileges agriculture over industry.
Primary Material

I. The Long 19th Century

A. Official Documents

1. Treaties and Cases

*International Convention Relative to Bounties on Sugar*, 5 March 1902, Cd. 1535, 191 Parry 56, 1902 For. Rel. 80


*Protocol Relative to the Accession of Switzerland to the International Convention Concerning the Regime of Sugars of March 5, 1902, 26 June 1906, 202 Parry 79; Cd. 3301*

*Protocol Respecting the Accession of Russia to the Sugar Convention on March 5, 1902 and the Additional Act of August 28, 1907* (19 December 1907) 206 Parry 56, BTS 12 (1908), Cd. 3968 [entered into force 31 March 1908]

2. Diplomatic and Legislative Material

U.S., Senate Committee on Finance, *Proceedings of the Conference on the Question of Bounties Held At Brussels Jun 7 to 25, 1898* (Blue Book Commercial No. 6, 1898)


*Correspondence Relating to the Sugar Industry in the West Indies [1894-1897],* C. 8359 (1897)

*Report of the West India Royal Commission*, C. 8655, 8656, 8657, 8669 (1898)

*“N. Lubbock, Extract from 'Bulletin des Halles’”* (Jan. 29, 1898), C. 8780 (1898) 25

*“The Marquess of Salisbury to Sir F. Plunkett, Sir H. Bergne, Lord Ampthill, and Mr. E.C. Ozanne”* (31 May 1898), C. 8938 (1898) 1

*Correspondence Relating to the Sugar Conference At Brussels 1901-1902*, Cd. 940 (1902)

*Debate (24 November 1902) vol. 115, online: <http://hansard.millbanksystems.com/commons/1902/nov/24/brussels-sugar-convention#S4V0115P0_19021124_HOC_109>
On Thursday, April 28, 1898, at The Foreign Office

Report of Proceedings At The Deputation Of Members Of Parliament Received By The Right Hon. A.J. Balfour, M.P. On Thursday, April 28, 1898, At The Foreign Office (London: Anti-Bounty League, 1898)

-------. *Twenty Years Of Sugar Bounties: The Moral Of The "Policy Of Inaction" As Pointed In Speeches Delivered In The Debate On The Indian Countervailing Duties Act In The House Of Commons, June 15th, 1899* (London: Anti-Bounty League, 1899)

-------. *The "Open-Door" For British Sugar Industries In British Markets. The Case For Action, Summarised In The Speeches Delivered At The Public Meeting Held At Cannon Street Hotel, January 9, 1899, And At The Public Meeting Held At Birmingham, December 12, 1898, With Introductory Review, The Brussels Conference - And After?* (London: Anti-Bounty League, 1899)

Carrington, George. *Our West Indian Colonies; A Retrospect Of The Past, A Survey Of The Present, And A Plea For Justice In The Future. A Paper Read Before The Royal Colonial Institute, March 8th, 1898* (London: Anti-Bounty League, 1899)


**II. Interwar Period**

**A. Chadbourne Agreement**

“Chadbourne Committee Meeting” *Weekly Statistical Sugar Trade Journal* (28 August 1930) 427 [text of the Chadbourne "gentleman’s agreement"]

“The Brussels Sugar Convention of 1931” (1931) 33 Int’l Sugar Journal 391 [the “Chadbourne Agreement”]

**B. League of Nations: Official Documents**

1. Treaties

*International Convention for the Abolition of Import and Export Prohibitions and Restrictions*, 8 November 1927, 97 L.N.T.S. 391


2. Travaux Préparatoire


-------. Preparatory Committee for the International Conference, *Report on the First Session of the Committee (held at Geneva from April 26th to May 1st, 1926)* (League of Nations: Geneva, 1926)

-------. Economic and Financial Section, *Agenda of Conference* (Geneva: League of Nations, 1926) [1926.II.64; C.E.I.6]
3. Published Material


Secretariat of the League of Nations, *Ten Years of World Cooperation* (Geneva: Secretariat of the League of Nations, 1930)


4. Expert Memos

Gautie, Jules, Andreas Hermes, & H.A.F. Lindsay. *Agriculture and the World Crisis* (League of Nations; Geneva, 1927) [1927.II.39; C.E.I.43]


Hirsch, Julius. *National and International Monopolies From the Point of Labour, the Consuming Public and Rationalisation* (Geneva: League of Nations, 1926) [C.E.C.P.99]


de Rousiers, Paul. *Cartels and Trusts on Their Development* (Geneva: League of Nations, 1927) [1927.II.21; C.E.C.P.95]

Spitzer, H.M. “Rationalization and Cartels”, in *Two Memoranda Presented at the World Economic Conference May 1927* (Geneva: International Management Institute, 1927)

Viner, Jacob. *Memorandum on Dumping* (Geneva: League of Nations, 192) [C.E.C.P.36(I)]

Wiedenfeld, Kurt. *Cartels and Combines* (Geneva: League of Nations, 1927) [1926.II.70; C.E.C.P.57(I)]

C. Correspondence


III. Postwar General Trade Institutions

A. ITO


“Joint Statement By the United States and the United Kingdom” (6 December 1945) 13 Department of State Bulletin 912 (press release)

“Trade Negotiation Proposed” (13 December 1945) 13 Department of State Bulletin 970 (press release)


*Non-Political Functions and Activities of the League of Nations*, ESC Res. 12(I), UN ESCOR, 1st Sess., (1946) 133

*The Calling of an International Conference on Trade and Employment*, ESC Res. 13(I), UN ESCOR, 1st Sess., UN Doc. E/22 (1946) 133


*Interim Co-ordinating Committee for International Commodity Agreements*, ESCOR Res. 30(IV), 4th Sess., UN Doc. E/403 (28 March 1947)


UN Conference in Trade and Employment, Heads Of Delegations Summary Record Of Meeting, Havana, Cuba, on 24 December 1947 (E/CONF.2/23)


*International Trade Organization*, Hearings Before the Committee on Finance, Part I, U.S. Senate, 80th Congress, 1st Session (1947)


**B. UNCTAD**

International Trade As The Primary Instrument For Economic Development, GA Res. 1707 (XVI) UNGAOR, 16th Sess. (1961)


The Integrated Programme for Commodities, Res. 93(IV), UNCTADOR, 4th Sess. (1976)


C. ICAs


D. GATT

Protocol of Provisional Application of the General Agreement on Tariffs and Trade, 55 U.N.T.S. 308 (1947)


Gottfried Haberler et al., Trends in International Trade: Report by a Panel of Experts (The Contracting Parties to the General Agreement on Tariffs and Trade: Geneva, 1958)

GATT, Ministerial Declaration on Promotion of the Trade of Less-Developed Countries, 30 November 1961, 10th B.I.S.D. (1961) 26


The Developing Countries and the GATT: The New Chapter on Trade and Development (General Agreement on Tariffs and Trade: Geneva,1965)


E. WTO

*International Dairy Arrangement* GATT Doc. MTN/DP/8 (6 April 1979)


IV. International Sugar Agreements

A. Treaties

*International Agreement for the Regulation of the Production and Marketing of Sugar*, 16-31 October 1953, U.K. Cmd. 9004


B. Travaux Prépratoire

*Address by the Chief of the Cuban Delegation, Raul Leon Torras, First Deputy of Foreign Trade*, [n.d. 1968?], likely circulated during conference, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 1, Folder 1)

International Sugar Organization, “Statement by Dr. Prebisch to the Council on 27 January 1969”, Press Summary 69(1) (20 February 1969), West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 1 Folder 1)


Memorandum by Albert Viton, “Recent Discussion of the International Sugar Council on a New International Agreement” (10 June 1975) likely an internal FAO memo, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 2)


Australian memo, “The Possible Use of Stocks As s Short Term Market Regulating Device in Export Quota Type I.S.A.” (January 1977), [probably circulated at the ISC Preparatory Committee meeting], West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 15)

Albert Viton, handwritten notes from the International Sugar Council Preparatory Committee meeting 30 January [sic?] – 4 February 1977, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 15) at 10. See ISO, Preparatory Committee, Draft Agenda for the First Meeting of the Preparatory Committee, Prep.C/Agenda(77)1 (4 January 1977)

Brazil Statement [u.d.], likely circulated at the beginning of negotiations in April 1977, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 16)

Cuba Statement, [u.d., April 1977?], likely circulated during conference, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 16)

Statement by Mr. Marcelo Fernandez Font, Minister of Foreign Trade of Cuba, the United Nations Sugar Conference, 1977 (non-official translation) (20 April 1977) West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 16)

UNCTAD, UN Sugar Conference, Economic Committee, Chapters X-XII of the draft Agreement, Proposal by the European Economic Community, TD/SUGAR.9/EX/C.I/CRP.14 (6 May 1977)

Working Group I; [Personal] Progress Report of Chairman (12 May 1977), West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 16)


UNCTAD, UN Sugar Conference, Economic Committee, Report by the Chairman of Working Group I, TD/SUGAR.9/EX/C.I/R.3 (24 May 1977)

Statement by Australian Delegation on Methods of Determination of Export Quotas (25 July 1977), circulated during London Consultations (20-29 July 1977), West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 11)
UNCTAD, Report by the Chairman on the Consultations held in London, 20-29 July 1977; Note by the UNCTAD Secretariat, TD/SUGAR.9/EX/R.4 (August 1977)

Comité Européan des Fabricant Sucre, “Some Thoughts on the Negotiation of a New International Sugar Agreement” (6 September 1977), West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8, Folder 5)

UNCTAD, UN Sugar Conference, Economic Committee, Working Group I, Article VII; Relationship With a Common Fund; Proposal By India, TD/SUGAR.9/EX/C.I/WG.I/CRP.12 (12 September 1977)

“Statement made by the Indian Delegation on behalf of Philippines, Indonesia, Thailand and India on 23rd September, 1977”, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 8 Folder 12)

UNCTAD, Preparation of an International Agreement Embodying International Measures Considered Desirable; Basic export tonnages; Proposals submitted by the Chairman of the Conference, TD/SUGAR.9/EX/R.5 (9 September 1977)

UNCTAD, UN Sugar Conference, Economic Committee, Report by the Chairman of Working Group V, TD/SUGAR.9/EX/C.I/R.8 (27 September 1977)


UNCTAD, Preparation of an International Agreement Embodying International Measures Considered Desirable; Basic export tonnages; Proposals submitted by the Chairman of the Conference, TD/SUGAR.9/EX/R.6 (30 September 1977)

UNCTAD, Economic Committee, Report by Chairman of Working Group I, TD/SUGAR.9/EX/C.I/R.10 (30 September 1977)

Letter from “Michel” (Comité Européan des Fabricant Sucre) to Albert Viton (FAO), 12 July 1978; Letter from G. Peroud (Confédération Internationale des Betteraviers European) to Albert Viton (FAO), 13 July 1978, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 9, Folder 3)


ISO, ISC, Exports of Sugar by the European Economic Community (Draft Resolution), C(79)28 (19 November 1979), with handwritten notes by Albert Viton, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 9, Folder 8)

ISO, ISC, Exports of Sugar by the European Economic Community – Resolution by the Council, C(79)29 (20 November 1979)


“The International Agreement: Address by William K. Miller, Executive Director, International Sugar Organization to the Sugar Club, New York, May 14, 1980”, West Lafayette, The Virginia Kelly Karnes Archives and Special Collections Research Center – The Albert Viton Papers, Purdue University (Box 9 Folder 10)
Secondary Material


“Notes and Comments” *The International Sugar Journal* 77: 914 (February 1975) 33

Commodities Bulletin No. 26 [International Sugar Colloquium] (7 March 1975)

77 International Sugar Journal No. 916 (April 1975)

“Notes and Comments” *The International Sugar Journal* 77: 917 (May 1975) 129

(1987) 15:5 World Development (Special Issue)

(1993-1994) 14:2 N. Ill. U. L. Rev (Special Issue)

*WTO Law in a Fragmented, Decentralized International Legal Order Symposium,* (2008-2009) 6 Loyola Univ. Chicago Int’I L. Rev. 1

n.a., “Cuba: Loot the Place!” TIME (21 August 1933), online: <http://www.time.com/time/magazine/article/0,9171,753906-1,00.html>

n.a., “Sugar at the World Economic Conference” (1933) 25 International Sugar Journal 293

n.a., “Now or Never” *The Economist* 127: 4885 (10 April 1937) 65


Aguilar, Luis E. *Cuba 1933; Prologue To Revolution* (Ithaca: Cornell University Press, 1972)


Albert, Bill & Adrian Graves (eds.) *Crisis and Change in the International Sugar Economy 1860-1914* (Norwich: ISC, 1984)

--------. *The World Sugar Economy in War and Depression 1914-40* (London: Routledge, 1988)


Baer, Wener “Import Substitution and Industrialization in Latin America: Experiences and Interpretations” (1972) 7:1 Latin American Research Review 95


Bermann, George A. & Petros C. Mavroidis (eds.) *WTO Law and Developing Countries* (Cambridge: Cambridge University Press, 2007)


Black, Clinton V. *The History of Jamaica* 3rd ed. (London: Collins Clear Type Press, 1965)


Brown, Christopher P. *Primary Commodity Control* (Kuala Lumpur: Oxford University Press, 1975)

-----.. *The Political and Social Economy of Commodity Control* (London: Macmillan, 1980)


Cale, E.G. & O Zaglits. "Intergovernmental Agreements Approach to the Problem of Agricultural Surpluses" (1949) 34 Iowa Law Review 230

Carr, B. "Identity, Class, and Nation: Black Immigrant Workers, Cuban Communism, and the Sugar Insurgency, 1925-1934" (1998) 78 Hispanic American Historical Review 83

Castelot, E. “The Brussels Sugar Conference” (1902) 12 14 Econ. J. 217

--------. "High Prices of Sugar" (1905) 15 Econ. J. 1041


Charnovitz, Steve and John Wickham, "Non-Governmental Organizations And The Original International Trade Regime" (1995) 29 Journal of World Trade 111

Charnovitz, Steve "Exploring the Environmental Exceptions in GATT Article XX" (1991) 25 J. of World Trade
Chimni, B.S. *International Commodity Agreements: A Legal Study* (London: Croom Helm, 1987)

Chomsky, Aviva “Barbados or Canada?: Race, Immigration, and Nation in Early-Twentieth Century Cuba” (2000) 80 Hispanic American Historical Review 415


Cohen, Julius Henry. “The Practice of Law as a Franchise” (1932) 66 U.S. L. Rev. 25

Cohen, Morris. "Property and Sovereignty" (1927) 13 Cornell L. Q. 8

Colijn, H. “The World Economic Conference of 1927” (1927) 134 Annals of the American Academy of Political and Social Science 140

Cook, Walter Wheeler. “Privileges of Labor Unions in the Struggle for Life” (1918) 27 Yale L.J. 779

Cooke, E. Cozens. “The Sugar Convention and the West Indies” (1907) 17 Econ. J. 315

Corea, Gamani *Taming Commodity Markets: The Integrated Programme and the Common Fund in UNCTAD* (Manchester: Manchester University Press, 1992)


Crick, Daniel. Book review of Protection in the United States by A. Maurice Low & Protection in France by H.O. Meredith (1905) t. 7, 2eme serie, Revue de droit international et de législation comparée 253

Cropper, James. Relief of West Indian Distress: Shewing the Inefficiency of Protecting Duties on East-India Sugar and Pointing Other Modes of Certain Relief (London: Ellerton & Henderson, 1823)

Crosby, Jr., Alfred W. The Columbian Exchange; Biological And Cultural Consequences Of 1492 (Westport, Conn.: Greenwood, 1972)

Cuddy, J.D.A. “Theory and Practice in NIEO Negotiations on Commodities”, in Gerald K. Helleiner, For Good or Evil: Economic Theory and North-South Negotiations (Toronto: University of Toronto Press, 1982) 33


D., L. Book review of Le procès du libre exchange en Angleterre by Daniel Crick and Protection in France by H.O. Meredith (1904) t. 6, 2eme serie, Revue de droit international et de législation comparée 318


Davis, Joseph S. “Experience Under Intergovernmental Commodity Agreements, 1902-45” (1946) J. Poli. Econ. 193


Drage, Geoffrey. *The Imperial Organization of Trade* (London: Smith Elder & Co., 1911)


Edminster, Lynn R. “International Trade and Postwar Construction” (1943) 33 Amer. Econ. Rev. 303


Farley, Miriam S. “Sugar – A Commodity in Chaos” (1935) 4 Far Eastern Survey 172


Feis, Herbert. “Suggested Charter for an International Trade Organization of the United States by United States Department of State” (1947) 55 J. Political Economy 84


La Fontaine, H. “Histoire sommaire et chronologique des arbitrages internationaux (1794-1900)” (1902) t. 4, 2eme serie Revue de droit international et de législation comparée 349


Franck, Thomas M. ”Minimum Standards of Public Policy and Order Applicable to Collective International Commodity Agreements” (1978) 160 Recueil des Cours 395


Friedmann, Harriet. ”Feeding the Empire: The Pathologies of Globalized Agriculture” (2005) 41 Socialist Register 124

Freeman, Harrop A. ”International Administrative Law: A Functional Approach to Peace” (1948) 57 Yale L. J. 976


Funes Monzote, Reinaldo (trans. by Alex Martin). From Rainforest to Cane Field in Cuba: An Environmental History Since 1492 (Chapel Hill: University of North Carolina Press, 2008)

Gallagher, John & Ronald Robinson. “The Imperialism of Free Trade” (1953) 6 The Economic History Review 1


Gariepy, Richard N. "International Commodity Agreements" (1976) 25 Int'l Comp. L. Quarterly 677


Geldart, Carol & Peter Lyon. “The Group of 77: A Perspective View” (1980-81) 57 Int'l Affairs 79

George, Susan. “Alternative Finances: The World Trade Organisation We Could Have Had” Le Monde Diplomatique (24 January 2007), online: <http://tiny.cc/3oh5o>


Gilbert, Christopher L. "International Commodity Agreements: An Obituary Notice" (1996) 24 World Development 1

Girgis, Maurice. *Industrialization and Trade Patterns in Egypt* (Tübingen: Mohr, 1977)


Goldberg, Charlotte K. "Prospects for an International Sugar Agreement Note" (1977) 9 Law & Pol'y Int'l Bus. 591


Griffin, Charles S. “The Sugar Industry and Legislation in Europe” (1902) 17 The Quarterly Journal of Economics 1

Goodwin, Geoffrey & James Mayall (eds.) A New International Commodity Regime (London: Croom Helm, 1980)


Hager, L. Michael. “Commodity Agreements and the Developing Countries: A Collective Bargaining Approach” (1973) 7 Int’l L. 309

Hale, Robert. “Coercion and Distribution in a Supposedly Noncoercive State” (1923) 38 Political Science Quarterly 470

Hamilton, Alexander. Reports of the Secretary of the Treasury on the Subject of Manufactures (1791).


Hart, Michael (ed.) Also Present at the Creation: Dana Wilgress and the United Nations Conference on Trade and Employment at Havana (Ottawa: Centre for Trade and Policy, 1995)


Hayek, Friedrich. The Road to Serfdom (Chicago: University of Chicago Press, 1994 [1944])


Henrique Cardoso, Fernando & Enzo Faletto (trans. by Marjory M. Urquidi). Dependency and Development in Latin America (Berkeley: University of California Press, 1979 [1971])


Hoffman, Michael L. "Can the G.A.T.T. System Survive?" (1964) 73 Lloyds Bank Review 1

Holmes, Oliver Wendell. "Privilege, Malice, and Intent" (1894) 8 Harv. L. Rev. 1


-----. "GATT or GAB? The Future Design of the General Agreement on Tariffs and Trade" (1971) 80 Yale L. J. 1299

------. *Developing Countries in the GATT Legal System* (London: Trade Policy Research Centre, 1987)

------. *The GATT Legal System and World Trade Diplomacy*, 2d. ed. (St. Paul: Butterworths, 1990)


------. *Progress In International Organization, By Manley O. Hudson ... Published For The University Of Idaho Upon The Occasion Of The Inauguration Of The William Edgar Borah Foundation For The Outlawry Of War* (Stanford: Stanford University Press, 1932)

Ibrahim, Tigani E. “Developing Countries and the Tokyo Round” (1978) 12 J. World Trade Law 1

International Labour Office. *Intergovernmental Commodity Control Agreements* (Montreal: International Labour Organisation, 1943)


Ismail, Faizel. "Rediscovering the Role of Developing Countries in GATT before the Doha Round" (2008) 1 Law and Development Rev. 50, online: <http://www.bepress.com/ldr/vol1/iss1/art4/>


--------. "The Crumbling Institutions of the Liberal Trade System" (1978) 12 J. World Trade L. 93

--------. Restructuring the GATT System (London: The Royal Institute of International Affairs, 1990)

--------. "Economic Law, International", in Rudolf Bernhardt, ed., Encyclopedia of Public International Law vol. 2 (Heidelberg: Max Planck Institute, 1995) 20


--------. Sovereignty, the WTO and Changing Fundamentals of International Law (Cambridge: Cambridge University Press, 2006)


James, Clifford L. "International Control of Raw Sugar Supplies" (1931) American Economic Review 481


Jenks, Leland Hamilton. Our Cuban Colony: A Study In Sugar (New York: Vanguard Press, [1928])

Jessup, Philip. "Negotiating Reciprocity Treaties" (1933) 27 Amer. J. Int’l L. 738


--------. "Developments in the Tokyo Round of the Multilateral Trade Negotiations" (1979) 73 Amer. J. Int’l L. 520


Kaldor, Nicholas "The Role of Commodity Prices in Economic Recovery" (July 1983) 149 Lloyds Bank Review 21


------. *The International Style in Postwar Law and Policy* (1994) 1 Utah L. Rev. 7 59


Kennedy, Duncan. “The Stakes of Law, or Hale and Foucault!” (1991) 15 Legal Studies Forum 327


--------. “The Problem Of International Cartels And Intergovernmental Commodity Agreements” (1946) 55 Yale L.J. 1097

Koch, F. E. “Cartels as Instruments of International Economic Organization. Public and Private Legal Aspects of International Cartels” (1945) 8 Modern L. Rev. 130


Krueger, Anne O. *The Benefits and Costs of Import Substitution In India: A Microeconomic Study* (Minneapolis: University of Minnesota Press, 1975)

---.

"Introduction" in Anne O. Krueger (ed.) The WTO as an International Organization (Chicago: University of Chicago Press, 1998) 1


Levermore, Charles H. The First Yearbook of the League of Nations: What the League of Nations Accomplished in One Year (Brooklyn: Brooklyn Daily Eagle, 1921)


---.


List, Freidrich. The National System Of Political Economy, trans. by Sampson S. Lloyd (London: Longmans Green, 1885)


---.

-----.


Lugard, Lord Frederick. The Dual Mandate in British Tropical Africa, 5th ed. (Frank Cass: London, 1965 [1922])


-----.


-----.


-----.


Mañach, Jorge. "Revolution in Cuba" (1933/34) 12 Foreign Affairs 46


Martin, Will & L. Alan Winters (eds.) The Uruguay Round and Developing Countries (Cambridge: Cambridge University Press, 1996)


Martineu, George The Statistical Aspect of the Question of Sugar (London: Royal Statistical Society, 1899)

-----.

“The Brussels Sugar Convention” (1904) 14 Econ. J. 34;

Marx, Karl. On the Question of Free Trade (1848), online: <http://www.marxists.org/archive/marx/works/1848/01/09ft.htm>


McGillivray, Gillian. “Dear President Machado”: *Colono Nationalism During Cuba’s Turbulent 1920s and 1930s”* (2003) 37 J. of Caribbean History 70


McLeod, Marc C. “Undesirable Aliens: Race, Ethnicity, And Nationalism In The Comparison Of Haitian And British West Indian Immigrant Workers In Cuba, 1912-1939” (1998) 31 J. of Social History 599


Meir, Gerald M. "UNCTAD Proposals for International Economic Reform" (1967) 19 Stan. L. Rev. 1173


Mermin, Samuel. “Sugar: A Rugged Collectivist” (1936-1937) 31 Ill. L. Rev. 320


Miller, David Hunter. *The Drafting of the Covenant* (New York: G.P. Putnam's Sons, 1928)


-------. *Asian Drama* (New York: Pantheon, 1968)


North, Douglas C. “Markets and Other Allocation Systems in History: The Challenge of Karl Polanyi” (1977) 6 J. European Economic History 703

North-South Institute, *Commodity Trade: Test Case For A New Economic Order* (Ottawa: North-South Institute, 1978)
Notz, W.F. "International Private Agreements in the Form of Cartels, Syndicates, and Other Combinations" (1920) J. of Political Econ. 658


Odell, John (ed) Negotiating Trade: Developing Countries in the WTO and NAFTA (Cambridge: Cambridge University Press, 2006)


Okafor, Obiora Chinedu. "Newness, Imperialism, And International Legal Reform In Our Time: A TWAIL Perspective" (2005) 43 Osgoode Hall L.J. 171


Patterson, Gardner & Eliza Patterson. "The Road from GATT to MTO” (1994) 3 Minn. J. of Global Trade 35


Rhodes, Sir Campbell W. <no title>, in Roland William Boyden, ed., The Economic Consequences Of The League; The World Economic Conference (London: Europa Publishing Company 1927) 74


Poggi, E. Muriel. “The German Sugar Beet Industry” (1930) 6 Economic Geography 81


Pound, Roscoe. “Liberty of Contract” (1909) 18 Yale L.J. 454

Pradier-Fodéréé, P. “Le Congres de droit international Sud-Américain et les traités de Montevideo” (1889) t. 21, 1ere serie, Revue de droit international et de législation comparée 217


Prinsen-Geerlings, H. C. The World’s Cane Sugar Industry Past and Present (Manchester: Norm Rodger Altrincham, 1912)


Questel, Peter J. An Appeal On Behalf Of The British West Indies As Affected By The Late Proposed Reduction Of Duty On Foreign Sugar (London: Smith, Elder & Co., 1841)


“Commodity Conflict Revisited: From Nairobi to Belgrade” (1983) 5 Third World Quarterly 586

Richardson, Ben. “Restructuring The EU-ACP Sugar Regime: Out Of The Strong There Came Forth Sweetness” (2009) 16 Review of International Political Economy 1


Rowe, J.W.F. *Studies in the Artificial Control of Raw Material Supplies* (London: Royal Economic Society, 1930 [Memorandum No. 23])

------. *Markets And Men; A Study Of Artificial Control Schemes In Some Primary Industries* (Cambridge: University Press, 1936)


------. *Primary Commodities in International Trade* (Cambridge: Cambridge University Press, 1965)


------. “At Home Abroad, Abroad At Home: International Liberalization and Domestic Stability in the New World Economy” (1994) 24 Millennium 507


------. “Contributions of the League of Nations to the Recovery of Europe” (1927) 134 Annals of the American Academy of Political and Social Science 132

------. “The Economic Conference: Prospects and Practical Results” (1927) 6 J. of the Royal Institute of International Affairs 350


------. *Memoirs of a Public Servant* (London: Faber and Faber, 1961)


Sayre, Francis B. *Experiments in International Administration* (New York: Harper, 1919)


Shephard, C. Y. “The Sugar Industry of the British West Indies and British Guiana with Special Reference to Trinidad” (1929) 5 Economic Geography 149

Shepheard, Esq., Wallwyn P. B. “The Most-Favoured-Nation Article” (1902) 5 J. of the Society of Comparative Legislation 132


Singer, Hans W. “The distribution of gains between investing and borrowing countries” (1950) 40 American Economic Review 473


--------. "Prospects of a New International Sugar Agreement" (1983) 17 J. World Trade Law 308


The South Centre. *International Commodity Problems and Policies: The Key Issues for Developing Countries* (Geneva: South Centre, 1996)


Swerling, Boris C. *International Control of Sugar, 1918-41* (Stanford: Stanford University Press, 1949)

--------. “Control of an Export Industry: Cuban Sugar” (1951) 33 J. of Farm Economics 346


--------. “Comparative Advantage and the Normative Economics of International Trade Policy” (1998) 1 J. Int'l Econ L. 49


Taussig, F. W. The End of Sugar Bounties” (1903) 18 The Quarterly Journal of Economics 103


---------. The UN & Global Political Economy (Bloomington: Indiana University Press, 2004)


Viton, Albert. The International Sugar Agreements (West Layfayette, Indiana: Purdue University Press, 2004)


Warnotte, D. Book Review of *Free Trade* by the Right Honourable Lord Avebury (1905) t. 7, 2ème série, Revue de droit international et de législation comparée 611


The White House, “Biography of Woodrow Wilson”, online: <http://www.whitehouse.gov/about/presidents/woodrowwilson/>


Viner, Jacob. Dumping: A Problem in International Trade (Chicago: University of Chicago, 1923)


-----., “Conflicts of Principle in Drafting a Trade Charter” (1947) 25 Foreign Affairs 612


-----., “The GATT years: from Havana to Marrakesh”, online: <http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm>


Wynia, Gary W. “Opening Late-Industrializing Economies: Lessons from Argentina and Australia” (1990) 23 Policy Sciences 185


