

VII. International Trade Law

(i) Introduction

A. Legislative Activities of the United Nations and other Organizations concerned with International Trade Law

The Secretariat presented a report on the recent legislative developments in the field of international trade and commerce. The purpose of such reports is to keep the Member Governments abreast with the recent legislative developments in this area in such organizations as UNCTAD, UNCITRAL, UNIDO, UNIDROIT and the Hague Conference on Private International Law.

B. WTO As a Framework Agreement and Code of Conduct for the World Trade

As from 1 January 1995, the GATT structure has been replaced by the World Trade Organization (WTO), a new international economic organization. GATT lacked any permanent organizational and institutional structure. This lacuna has been removed in WTO with a proper regulation of membership, including accession, withdrawal and suspension. The note prepared by the Secretariat outlined the role of the WTO as a framework agreement and code of conduct for the world trade with a view to inviting views of the Member Governments as to what areas needed to be undertaken for study by the AALCC Secretariat.

Thirty-Fifth Session : Discussions

The *Deputy Secretary-General* Ambassador Wafik Zaher Kamil while introducing the Secretariat report on the item stated that the Secretariat study covered the recent legislative activities of UNCITRAL, UNCTAD, UNIDO and UNIDROIT. The activities of the Hague Conference on Private International Law could not be covered as relevant information was not available with the Secretariat. He pointed out that the UNCITRAL's work was focussed on independent guarantees and stand-by letters of credit, a

Model Law on EDI and Related Means of Communication; Guidelines on Arbitral Proceedings; Cross-border Insolvency; Model Law on Assignments; and BOT Projects. Its work on independent guarantees and stand-by letters of credit had recently culminated in the adoption of a United Nations Convention on Independent Guarantees and Stand-by Letters of Credit.

As for the legislative work of UNCTAD, the Deputy Secretary-General pointed out that the Secretariat study outlined the recent developments in the areas of commodities, transfer of technology, restrictive business practices, ECDC and maritime and multimodal transport of goods.

As for the legislative work of UNIDO, the Deputy Secretary-General stated that this had mainly consisted of preparation of model contracts, checklists of contractual clauses, and manuals intended to assist the developing countries in their industrial and infrastructure development.

As for the work of UNIDROIT, the Deputy Secretary-General stated that the Secretariat report outlined the progress made on such topics as international interests in mobile equipment, franchising agreements, programme of legal co-operation and the establishment of a UNIDROIT databank on uniform law.

The *Observer for UNIDROIT* in her presentation gave an account of the UNIDROIT's activities completed since the last meeting attended by them in Kampala (1993) or still underway. The items concluded included the adoption by a diplomatic conference of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the UNIDROIT Principles of International Commercial Contracts.

The Observer stated that the aim of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was twofold: in the first place it sought to deal with the technical problems resulting from differences among national rules and to draw upon the progress that had been permitted by evolution of ideas; in the second place, it was intended to contribute to fight against the increase in the illicit traffic in cultural objects and to show how the national character of the protection of cultural heritage might be adapted to, or accompanied by the growth of solidarity between States. She pointed out that the countries which had since signed the Convention included Burkina Faso, Cambodia, Ivory Coast, Croatia, France, Guinea, Hungary, Italy, Lithuania, Zambia, Georgia and Finland and that the Convention required 5 ratifications/accessions to enter into force.

The Observer further stated that the UNIDROIT Principles constituted a system of rules of contract law specifically adapted to the special

requirements of modern commercial practice which might in a number of important ways be of service to the international community. They might in particular be chosen by the parties as the law governing their contract or referred to by arbitrators in the settlement of disputes; be used as a means of interpreting or supplementing existing international uniform law instruments such as the 1980 United Nations Convention on Contracts for the International Sale of Goods and also serve as a model for international legislators when drafting new legal instruments or for national law-makers when adapting domestic law to meet modern requirements.

The Observer pointed out that the ongoing items in UNIDROIT included the international interests in mobile equipment and franchising agreements. While on the former item, UNIDROIT proposed to draft a Convention, on the latter, it was intended to prepare a legal guide in particular for master franchise agreements which was expected to be completed by the end of 1997. The Observer further pointed out that while these topics, together with the programme of legal co-operation were key items on the UNIDROIT's work programme for the triennial period 1996-98, another item proposed for priority was the setting up of a databank on uniform law.

The Observer stated that the UNIDROIT had convened a meeting of international organizations in Rome last month to discuss its proposed databank, its size and objectives as well as the extent of co-operation which could be had from them. Since the AALCC was unfortunately not able to attend that meeting, her presence at the session might enable her to pursue the matter forward.

The Delegate of the People's Republic of China stated that since UNCITRAL and UNIDROIT made significant contributions to the unification of trade law, China had been actively participating in the work of these organizations. He informed the plenary that China's first Foreign Trade Law entered into force on 1 July 1994 and related rules and regulations were issued for enforcement soon thereafter. China would continue efforts to set up a complete framework of foreign trade law as soon as possible.

The Delegate of Pakistan enquired about the possible distinction between the UNIDROIT's Uniform Law on International Sales (ULIS) and the Vienna Convention on International Contracts for the Sale of goods, 1980.

The UNIDROIT Observer clarified that while the Vienna Convention had largely supplanted the ULIS Conventions, those Conventions were still in force amongst some European States.

The Plenary then proceeded to take up the item "WTO as a Framework Agreement and Code of Conduct for the World Trade".

The *Deputy Secretary-General* Ambassador Wafik Zaher Kamil introducing the Secretariat study on this item observed that post-World War II international economic relations were regulated by the World Bank, IMF and the GATT. GATT, however, suffered from a number of imperfections. These imperfections had now been removed in the Agreement establishing the WTO, a successor to GATT.

The Secretariat study on WTO, he said, described the organizational structure and the role and functions of the WTO; attempted to bring out the salient features of the various agreements set forth in the four annexes to the WTO Agreement, namely the GATT 1994, alongwith the sectoral agreements; the General Agreement on Trade in Services; the TRIPS Agreement; the Dispute Settlement Machinery; the Trade Policy Review Mechanism, and the Plurilateral Trade Agreements. In attempting a brief analysis of these agreements, the focus of the study was on pinpointing the extent and level of obligations that devolve on Member States of the WTO including the developing countries, and the flexibility provided to the latter. Lastly, the study described the overall impact of the WTO membership on the developing countries.

The Deputy Secretary-General stated that since the WTO Agreement imposed a general obligation on each of its Member States to ensure the conformity of its laws, regulations and administrative procedures with the various obligations provided in the various agreements, developing countries were required to bring their domestic legislation into line with the aforesaid general obligation before the expiry of the relevant transitional periods stipulated in the agreements. He submitted for consideration whether the AALCC as a major forum for Afro-Asian co-operation should assume the role of rendering assistance to its Member Governments in enacting or revising their legislation so as to meet their obligations under the WTO system.

The *Delegate of Pakistan* stated that the issues raised in the Secretariat were extremely important and complex and there was not enough time left to give indepth consideration to such issues. He recalled that such matters were earlier used to be discussed in the Trade Law Sub-Committee which was the right forum. He suggested that the Secretariat should concentrate on some select issues arising from the WTO and prepare studies for discussion either by a group of experts or in the Trade Law Sub-Committee.

The *Delegate of Singapore* endorsing the views of the Pakistan delegate pointed out that Singapore would be hosting the Ministerial Conference of the WTO towards the end of this year which would discuss *inter alia*

the linkage between Trade and Environment. He hoped all the Member States of the AALCC who are WTO Members would attend that meeting and suggested to the Secretariat to prepare a study on Trade and Environment for that purpose.

The *Delegate of the People's Republic of China* stated that the establishment of WTO signified a new stage for the world multilateral trading system. His government maintained that developing countries should have more and equal opportunities to participate in the new trade system, and the principle of special and more favourable treatment should be fully reflected to enhance the interests of the developing countries, particularly the least-developed countries.

He pointed out that his Government had always held that participation in WTO and its integration with the world economy would be in conformity with China's basic State policy of reform and opening up to the outside world and the goal of establishing a socialist market economic system. However, China would only accede to this multilateral trade system with its status as a developing country. His country will in no way sacrifice its fundamental interests in order to accede to the WTO. China was the largest developing country in the world. Without China's participation, WTO would be incomplete. China needed WTO and WTO also needed China. Therefore, China's early accession to WTO would be beneficial not only to China but also to the world at large.

(ii) Decisions of the Thirty-Fifth Session (1996)
Agenda item : International Trade Law

(Adopted on 8.3.96)

A. Agenda item "Legislative Activities of the United Nations and other International Organizations Concerned with International Trade Law"

The Asian-African Legal Consultative Committee at its Thirty-Fifth Session

Having taken note of the Report concerning the Legislative Activities of the United Nations and other International Organizations concerned with International Trade Law contained in Doc. No. AALCC/XXXV/Manila/96/9;

Having heard the statement of the Observer for UNIDROIT and views of member delegations;

1. *Expresses* its appreciation for the brief of documents prepared by the Secretariat on the recent developments in the field of International Trade Law;
2. *Also expresses* its appreciation for the continued co-operation with the various international organizations competent in the field of international trade law and hopes that this cooperation will be intensified in the future; and
3. *Requests* the Secretary-General to continue to monitor the developments in the area of international trade law and present a report thereon to its Thirty-sixth session.

B. Resolution on "WTO as a Framework Agreement and Code of Conduct for the World Trade"

The Asian-African Legal Consultative Committee at its Thirty-Fifth Session

Having taken note of the Secretariat study on "WTO as a Framework Agreement and Code of Conduct for the World Trade" contained in Doc No. AALCC/XXXV/Manila/96/8;

Having heard the comprehensive statement of the Deputy Secretary-General;

Realizing the importance and complexity of the issues raised in the Secretariat study for the Member States for which adequate time was not available at the present session;

1. *Requests* the Secretary-General to consider convening an *ad hoc* working group of experts meeting to examine the issues raised by the Secretariat study and to report the outcome thereof to the next session;
2. *Directs* the Secretariat to continue to monitor the developments related to the code of conduct for the world trade; and
3. *Decides* to place the item on the agenda of its Thirty-sixth Session.

(iii) Secretariat Brief

A. Report on Legislative Activities of United Nations and Other Organizations Concerned with International Trade Law

I. United Nations Commission on International Trade Law (UNCITRAL)

The twenty-eighth session of the United Nations Commission on International Trade Law (UNCITRAL) was held in Vienna from 2 to 26 May 1995. The substantive topics before this session were: (i) Draft Convention on Independent Guarantees and Stand-by Letters of Credit; (ii) Draft UNCITRAL Model Law on Electronic Data Interchange and Related Means of Communication; (iii) Draft Notes on Organizing Arbitral Proceedings; (iv) Assignment of Receivables; (v) Cross-border Insolvency; and (vi) Built-Operate-Transfer (BOT) Projects.

At this session, the Commission finalized and formally adopted the text of a Draft Convention on Independent Guarantees and Stand-by Letters of Credit and transmitted it to the fiftieth session of the UN General Assembly along with a request to establish a UN Convention on Independent Guarantees and Stand-by Letters of Credit on the basis of the Draft Convention by means of a resolution. The Commission began reviewing the text of a draft Model Law on Legal Aspects of EDI and Related Means of Communication and was able to adopt draft Articles 1 and 3 to 11 of the draft Model Law. The Commission also carried out a review of the Draft Notes on Organizing Arbitral Proceedings and requested the secretariat to revise the Draft Notes in the light of the comments and suggestions made during the session and to submit the revised text at its next session for final approval. On the new topics of Assignment of Receivables, Cross-