

change of government plans on account of public interest, national defence or security;

- (viii) Another common feature of the laws is a provision for the transfer of the complete project to the government, free of charge and liabilities, upon expiry of the concession period;
- (ix) Many of the legislations also provide for the law governing the project agreement. Some provide for private law as they believe a concession agreement is private in nature, whereas others specify application of a public law or administrative law;
- (X) Generally, laws provide for a dispute settlement clause or mechanism. This may be in the form of conciliation, arbitration, or judicial settlement by courts.

Award of Concession

Some laws provide for the percentage share of investment in a BOT contract. Other matters such as eligibility criteria for a concession agreement, equity share, allowing foreign nationals to hold shares, restricted foreign ownership are also legally provided for. Some laws make a specific mention of preference to domestic entities in matters relating to grant of concession, if local labour force, products and contractors are used. Laws also provide for floating of tenders by which a BOT contract is granted. Such tenders include price to be charged by the concessionaire, governmental subsidies and duration of the concession. A range of issues need to be examined in a project agreement between the government and the concessionaire. These include: (a) the type and amount of financial guarantee given to the government (b) rights to benefit the concessionaire which also include obligations, assignment of sub-concessions and other related encumbrances.

Governmental Obligations.

The support of the host Government is regarded as an essential facet for the successful realization of a BOT project. It has to be a vigilant overseer, monitoring the progress of the project. It has to ensure a favourable legal climate for the smooth operation of a BOT contract. Its specific obligations include:

- (i) Providing financial incentives in cases of emergency. Though a BOT project does not encroach on public funds, it may sometimes become necessary to organize public money for a big project;
- (ii) Guaranteeing easy convertibility of foreign exchange;
- (iii) Transfer of proceeds of a BOT project to a foreign country or repayment of loans;
- (iv) Tax exemption by way of a preferential revenue tax, a preferential rate for expatriated profits or exemption from certain regulations;
- (v) It may have to make legal provisions for price setting. Though the Government retains a control in this regard, it must see, that the prices are just, fair and reasonable.

Comments

In fast expanding national economies and interdependent world, the economy of a State is determined by changing trends in globalization and liberalization. The private sector has come to play a major role in the economic development of a number of States. The BOT project, unlike the traditional ones wherein the government assumes responsibility, is novel in approach. The financing of a project is done by a project consortium, which besides not using public funds, provides technical expertise and manages the project for a specified period of time. The project is transferred back to the Government on the lapse of the

concession. By involving itself in the management of public infrastructure projects such as power, railways and water treatment, BOT projects to a large extent can reduce the burden of the government. BOT projects can thus play a role in shaping economic policies of developing countries which are short of funds due to decreasing borrowing power and falling budgetary resources. It must, however, be borne in mind, that BOT projects involve drawing up of complex inter-related agreements, involving a host of parties like the host government, project consortium, institutional investors, foreign investors, private investors, contractors and engineers. To facilitate and signing of BOT agreements, the host government may have to create a transparent legal climate that offers a just, fair and reasonable framework. Interdependence calls for increased cooperation amongst States, UN agencies and other institutions.

In the view of the AALCC Secretariat, national laws may offer different solutions to similar problems but they need to be harmonized and made uniform. One way this could be brought about might be by securing the wider adherence to the various UNCITRAL Conventions and Model Laws. The other way would be the projected preparation of a legislative guide by UNCITRAL to assist States in enacting or modernizing their legislation related to BOT projects in general or specific areas as also the preparation of a legal guide on contractual clauses of project agreements between governments and concessionaires that give rise to difficulties. The AALCC Secretariat also feels, that the good work undertaken by the Commission should be continued with a certain amount of priority, as it would have a bearing on the economic policies of the States concerned.

B. United Nations Conference on Trade and Development (UNCTAD)

a. Introduction

The United Nations Conference on Trade and Development (UNCTAD) was established in 1964 to promote international cooperation in trade, and development and the economic development of developing countries. Its institutional set-up comprises the Conference, the Trade and Development Board (TDB) and a number of subsidiary bodies serviced by a permanent Secretariat.

Held every four years, the Conference is the organization's highest policy-making body. It formulates policy guidelines and decides on the programme of work. Nine Conferences have been held so far: Geneva(1964), New Delhi(1968), Santiago(1972), Nairobi(1976), Manila(1979), Belgrade(1983), Geneva(1987), Cartagena de Indias, Colombia(1992) and Midrand(1996).

b. Significance Of UNCTAD-IX

The Ninth session of the United Nations Conference on Trade and Development(UNCTAD IX) was held in Midrand (South Africa) from 27 April to 11 May 1996 on the theme "Promoting growth and development in a globalizing and liberalizing world economy". The outcome of the session is reflected in the Midrand Declaration and the final document titled "A Partnership for Growth and Development", adopted by the Conference.

The Midrand Declaration, in the light of the rapid economic changes and the consequent challenges to the global economy, affirmed the need to continue vigorously *The Spirit of Cartagena* heralded by UNCTAD-VIII (1992), to foster a new approach to assisting development. The Declaration recognized that the creation of the World Trade Organization (WTO) has opened up new opportunities for sustainable development and growth. The rules-based system of the WTO will facilitate

positive integration of countries into the global trading system if the commitment to this objective is strengthened.

In recognition of the fact that, the impact of globalization and liberalization is uneven as countries enter the multilateral trading system from very different starting points, the Declaration calls for a 'true partnership for development' between developed, developing and the least developed countries. It also emphasizes the benefit of involving the civil society in the partnership for development.

The final document adopted by the Conference, sets priorities for development in a globalizing world economy. The Conference reiterated the comparative advantages of UNCTAD as a focal point for tackling trade-related development issues, viz., trade, finance, technology, investment and sustainable development. Towards this end, the Conference agreed that UNCTAD should continue to facilitate the integration of developing countries and countries in transition with the international trading system. Its work should be action-oriented and provide guidance on national policies, with special focus on LDCs.

Outlining the priorities for UNCTAD, until the next session, the Conference decided to pay more attention in its analytical and deliberative work on the following areas:-

- Globalization and development
- International trade in goods and services, and commodity issues
- Investment, enterprise development and technology
- Services infrastructure for development and trade efficiency

Moreover, the Conference agreed that "interests of developing countries should be taken into account" in the built-in future work programme contained in the Uruguay Round Agreements, and consequently entrusted UNCTAD with policy analysis from a development perspective on topics on the international trade agenda. UNCTAD is called upon to analyse the "implications for development of

issues relevant to a possible multilateral framework on investment" and relevance to development. The new mandate includes, UNCTAD analysis on issues concerning environmental policies and measures, in particular competitiveness, market access eco-labelling, multilateral environmental agreements, and trade liberalization and sustainable development.

In the process of restructuring and streamlining the organisation, UNCTAD-IX established the following subsidiary bodies of the Trade and Development Board: (i) the Commission on Trade in Goods and Services, and Commodities; (ii) the Commission on Investment, Technology and Related Financial Issues; and (iii) the Commission on Enterprise, Business Facilitation and Development. These commissions will adopt an integrated approach in their respective areas of competence; they will meet once a year, unless otherwise decided by the Board.

Other substantive issues discussed at the session *inter alia*, include: need to revitalize the generalized system of preferences (GSP) as an instrument for the expansion of trade; steps towards integrating trade, environment and development; promotion of South-South cooperation through the sharing of development experiences among developing countries at different stages of development; trade liberalization through the Global System of Trade Preferences among developing countries (GSTP); the need to promote horizontal and vertical diversification by commodity-dependent developing countries and consideration of establishing a special Trust Fund for LDCs.

c. Other Legislative Activities

Since the establishment of UNCTAD in 1964, a number of multilateral legal instruments have been negotiated and adopted under its auspices: the General and Special Principles- to govern international trade relations and trade policies conducive to development in 1964; the Generalized System of Preferences (GSP) in 1971; the Convention on a Code of Conduct for Liner Conferences in 1974; the Charter of Economic Rights and Duties of States, proclaimed in 1974 by the General Assembly in resolution 3281(XXIX); the Agreement establishing the Common Fund for Commodities in 1980; the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business

Practices in 1980; the United Nations Convention on International Multimodal Transport of Goods in 1980; the United Nations Convention on Conditions for Registration of Ships in 1986; the United Nations Convention on Maritime Liens and Mortgages in 1993; and several international commodity agreements.

This note summarizes UNCTAD's current legislative activities concerning commodities, technology, restrictive business practices, economic co-operation among developing countries (ECDC) and maritime and multimodal transport.

1. Commodities

Within the United Nations system, UNCTAD is the principal organization responsible for the negotiation of international agreements on trade in commodities. Since 1965 conferences have been convened under the auspices of UNCTAD for the negotiation or renegotiation of international commodity agreements on cocoa, natural rubber, jute, tropical timber, olive oil, wheat, sugar and tin.

Conference resolution 93(IV) established a framework for international action to improve international trade in 18 commodities of export interest to developing countries, known as the Integrated Programme for Commodities (IPC). The IPC called for the establishment of a Common Fund and negotiation and renegotiation of international commodity arrangements.

The Common Fund for Commodities

The principal multilateral legal instrument in the context of the IPC's is the Agreement establishing the Common Fund for Commodities (TD\IPC\CF\CONF\25). This Agreement, which came into force on 19 June 1989, has established a new multilateral financial institution of a universal character aimed at facilitating the conclusion and functioning of ICAs, particularly concerning commodities of special interest to developing countries. The Common Fund's functions include the financing, through its first account of commodity stocks and, through its second account, of commodity development measures.

Adoption of New or Renegotiation of Existing ICAs

Cocoa: The International Cocoa Agreement 1986 was due to expire on 30 September 1987 but was extended by a decision of the International Cocoa Council for a further period of three years. The UN Cocoa Conference 1992 met in five parts: first from 21 April to 1 May; the second from 6 to 24 July; and the third from 2 to 13 November; the fourth from 22 February to 5 March 1993 and the fifth in July 1993. The last part of the Conference was able to establish the text of the International Cocoa Agreement 1993 (TD\COCOA.8\17\Rev.1). The Agreement came into force on 22 February 1994. It will remain effective for a period of five years from the date of its entry into force unless the International Cocoa Council decides to extend or terminate it. The Council has been authorized to extend the Agreement for two periods not exceeding two years each.

Although the principle aim of 1993 Agreement like that of its predecessor, is to maintain the price of cocoa beans between an agreed set of prices, it has the following distinctive features as compared with previous agreements:

- (i) the incorporation of discretionary intervention prices;
- (ii) the abandonment of the maximum and minimum prices;
- (iii) withholding scheme to supplement the buffer stock which remains, however, the main supply regulatory mechanism to achieve the principal aim of the Agreement;
- (iv) rules and procedures for the revision of price levels at an annual review;
- (v) the deletion of all references to borrowing and the denomination of the price levels in SDRS.

Jute: The 1982 Agreement was renegotiated at the UN Conference on Jute and Jute Products held under the auspices of UNCTAD from 30 October to 3 November 1989 and culminated in the International Agreement on Jute and Jute Products 1989. The 1989 Agreement entered into force on

12 April 1991 and will remain effective for a period of five years from the date of its entry into force unless extended or terminated by the International Jute Organization (IJO) in accordance with its provisions. The Council has been empowered to extend the agreement for not more than two periods of two years each.

The main features of the Agreement are much the same as those of the 1982 Agreement. It maintains the same basic aims and provides for the same means to achieve them. The objectives of the 1982 Agreement has, however, been spelled out in greater detail in the new Agreement. The most important of these objectives are: to enhance the competitiveness of jute and jute products; to maintain and enlarge existing markets as well as to develop new markets; to develop new, end-uses of jute, including new jute products; and to promote the expansion and diversification of international trade in jute and jute products. One new objective is to give environmental aspects due consideration in the activities of the IJO, particularly by creating awareness of the beneficial effects of the use of jute as a natural product.

Olive Oil: The United Nations Conference to negotiate a successor agreement to the International Agreement on Olive Oil and Table Oils 1986 met in Geneva from 8 to 12 March 1993 and adopted the "Protocol of 1993 extending the International Agreement on Oil and Table Oils, 1986, with amendments" (TD\OLIVE OIL\9\6). The Protocol came into force on 26 January 1994. The 1986 Agreement contains general provisions with respect to international cooperation and concerted action for the integrated development of the world economy for olive products and is aimed at trade expansion and standardization of olive products, modernization of olive cultivation and oil extraction, improvement of olive products and by-products industry with regard to the environment.

Tropical Timber: The international Tropical Council decided to extend the International Tropical Timber Agreement, 1983 for a further period of two years ending on 31 March 1992. The United Nations Conference for the negotiation of a successor agreement to the 1983 Agreement met in Geneva in four parts: the first from 13 to 16 April 1993; the second from 21 to 25 June; the third from 4 to 15 October and the fourth one from 10 to 26 January 1994. On 26 January 1994, the Conference adopted the final text of the International Tropical Timber Agreement 1994 (TD\TIMBER\2\16).

The 1994 Agreement seeks to promote the expansion and diversification of international trade in tropical timber from sustainable sources by improving the structural conditions in international markets, including access thereto. Pursuant to a meeting of producers and consumers of tropical timber convened in September 1996 under the auspices of UNCTAD, it was decided to provisionally put into force the ITTA-1994 with effect from 1 January 1997.

Natural Rubber: The International Natural Rubber Agreement (INRA), 1995 adopted on 17 February 1995 is intended to succeed the INRA - 1987, which expired on 28 December 1995. The overriding objective of the INRA is price stabilization. The buffer stock is the sole instrument for achieving price stabilization. The maximum size of the buffer stock remains 550,000 tonnes. Financing of the buffer stock is shared equally by producers and consumers, and according to their respective trade shares within each of the groups. The 1995 Agreement maintains the basic structure of the price range set in INRA-1987. The periodicity of reference price reviews has been shortened from 15 to 12 months. A new article provides that members shall endeavour to pay due attention to environmental aspects. INRA-1995, which has a duration of four years, is yet to come into force. The Secretary-General of the UNCTAD is holding consultations with the parties concerned to ensure its entry into force at the earliest time possible.

Sugar: The International Sugar Agreement 1992 entered into force on 20 January 1993 (TD\SUGAR\12\6). The main thrust of this Agreement is on export quotas and national stocks in order to stabilize prices.

Coffee: The International Coffee Agreement 1983, with its economic provisions suspended since July 1989, had been extended to 30 September 1993. In April 1992, the International Coffee Council had established a Negotiation Group for the negotiation of a new, market-oriented International Coffee Agreement on the basis of a universal quota supported by an effective system of controls. The negotiating Group was able to conclude the International Coffee Agreement 1994 in London on 30 March 1994 (EB/3467\94) which provisionally entered into force on 1 October 1994 and definitively on 19 May 1995.

Copper: The Terms of Reference of the International Study Group on Copper became effective as from 23 January 1992 (TD\COPPER\15)