

SETTLEMENT OF THE INTERNATIONAL TIN COUNCIL LITIGATION

The purpose of the Sixth International Tin Agreement was to stabilize the price of tin by means of a buffer stock and export controls. After the entry into force of the Agreement in 1982, in response to an oversupply of tin on world markets the International Tin Council (ITC) borrowed large sums to enable it to intervene in the forward market to control an ever increasing quantity of tin. On October 24, 1985 the ITC was unable to meet its financial commitments and it ceased buffer stock operations. Thereafter the ITC and its creditors (banks and brokers) attempted to arrive at a settlement that would have preserved the solvability of the ITC and avoided a collapse of the price of tin. Following the failure of these efforts in March 1986, many creditors of the ITC launched legal proceedings against the ITC and its member states. The principal actions have been pursued in the UK where the ITC has its headquarters, but others have been undertaken in a number of other member states. In Canada Rudolf Wolff & Co. Ltd. has sued the Government of Canada, and this action is currently before the Supreme Court of Canada on a jurisdictional question unrelated to the substance of the claim.

The numerous actions brought before the English courts have required consideration of a variety of issues that includes sovereign immunity, the relationship between international law and English law, and the justiciability in English courts of rights and obligations established in international law. Thus far the ITC member states have been successful before the English courts in defending the basic legal principle that member states are not liable for debts of an international organization that has a distinct legal personality. In April 1988, a majority of the English Court of Appeal found in favour of the member states in a consolidation of appeals brought by creditors in actions concerning the direct (contractual) liability of member states, a petition to wind up the ITC and a petition for the appointment of a receiver for the assets of the ITC. An appeal from the Court of Appeal was heard by the House of Lords in June 1989 and a decision is expected shortly. Some creditors are also suing member states in tort in a separate series of actions. In those actions, on February 21, 1989, the English High Court dismissed the member states' claim to sovereign immunity from legal suit by finding that certain activities of the member states within the ITC were commercial transactions, thus falling within an exception to immunity under the UK State Immunity Act of 1978. The Court found that the plaintiffs' claims of fraudulent misrepresentation could proceed to trial. Member states are pursuing an appeal of the High Court judgement. Notwithstanding the success of the member states in the English courts, UK judges have been very critical of member states' behaviour and have asserted that they have at the very least a moral obligation to enable the ITC to meet its debts.