II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 18 July 1994

concerning the conclusion of the International Coffee Agreement 1994

(94/570/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 in conjunction with Article 228 (2) first sentence thereof,

Having regard to the proposal from the Commission,

Whereas the International Coffee Agreement 1994 is open for signing as well as for ratification, acceptance or approval from 18 April to 26 September 1994;

Whereas the International Coffee Agreement 1993 as extended expires on 30 September 1994 and the new Agreement, in accordance with Article 40 thereof, provides for its entry into force, provisionally or definitively as of 1 October 1994;

Whereas the objectives pursued by the Agreement fit into the context of the common commercial policy;

Whereas the Member States are called upon to participate, by financial contributions, in the actions provided for by the said Agreement;

Whereas all Member States have expressed their intention to sign, and to submit for ratification the Agreement; whereas the Community should therefore sign the Agreement lodged with the Secretary-General of the United Nations Organization and notify, by 26 September 1994, its approval thereof,

HAS DECIDED AS FOLLOWS:

Article 1

The International Coffee Agreement 1994 is hereby approved by the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorized to designate the person empowered to sign the Agreement and to deposit the instrument of approval on behalf of the Community by 26 September 1994.

Done at Brussels, 18 July 1994.

For the Council
The President
K. KINKEL

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INTERNATIONAL COFFEE AGREEMENT 1994

PREAMBLE

THE GOVERNMENTS PARTY TO THIS AGREEMENT,

Recognizing the exceptional importance of coffee to the economies of many countries which are largely dependent upon this commodity for their export earnings and thus for the continuation of their development programmes in the social and economic fields;

Recognizing the need to foster the development of productive resources and the promotion and maintenance of employment and income in the coffee industry in Member countries, thereby bringing about fair wages, higher living standards and better working conditions;

Considering that close international cooperation on trade in coffee will foster the economic diversification and development of coffee-producing countries, will contribute to the improvement of political and economic relations between coffee exporting and importing countries, and will provide for increasing consumption of coffee;

Recognizing the desirability of avoiding disequilibrium between production and consumption which can give rise to pronounced fluctuations in prices harmful both to producers and to consumers;

Considering the relationship between the stability of the trade in coffee and the stability of markets for manufactured goods;

Noting the advantages derived from the international cooperation which resulted from the operation of the International Coffee Agreements 1962, 1968, 1976 and 1983;

HAVE AGREED AS FOLLOWS

CHAPTER I

OBJECTIVES

Article 1

Objectives

The objectives of this Agreement are:

1. to ensure enhanced international cooperation in connection with world coffee matters;

2. to provide a forum for intergovernmental consultations, and negotiations when appropriate, on coffee matters and on ways to achieve a reasonable balance between world supply and demand on a basis which will assure adequate supplies of coffee at fair prices to consumers and markets for coffee at remunerative prices to producers, and which will be conducive to long-term equilibrium between production and consumption;

3. to facilitate the expansion of international trade in coffee through the collection, analysis and dissemination of statistics and the publication of indicator and other market prices and thereby to enhance transparency in the world coffee economy;

4. to act as a centre for the collection, exchange and publication of economic and technical information on coffee;

5. to promote studies and surveys in the field of coffee; and

6. to encourage and increase the consumption of coffee.

CHAPTER II

DEFINITIONS

Article 2

Definitions

For the purposes of this Agreement:

1. *Coffee* means the beans and cherries of the coffee tree, whether parchment, green or roasted, and includes ground, decaffeinated, liquid and soluble coffee.

These terms shall have the following meaning:

(a) *green coffee* means all coffee in the naked bean form before roasting;

(b) *dried coffee cherry* means the dried fruit of the coffee tree; to find the equivalent of dried coffee cherry to green coffee, multiply the net weight of the dried coffee cherry by 0,50;

(c) *parchment coffee* means the green coffee bean contained in the parchment skin; to find the equivalent of parchment coffee to green coffee, multiply the net weight of the parchment coffee by 0,80;

(d) *roasted coffee* means green coffee roasted to any degree and includes ground coffee; to find the equivalent of roasted coffee to green coffee, multiply the net weight of roasted coffee by 1,19;

(e) *decaffeinated coffee* means green, roasted or soluble coffee from which caffeine has been extracted; to find the equivalent of decaffeinated coffee to green coffee, multiply the net weight of the decaffeinated coffee in green, roasted or soluble form by 1,00, 1,19 or 2,6 respectively;

(f) *liquid coffee* means the water-soluble solids derived from roasted coffee and put into liquid form; to find the equivalent of liquid coffee to green coffee, multiply the net weight of the dried coffee solids contained in the liquid coffee by 2,6; and

(g) *soluble coffee* means the dried water-soluble solids derived from roasted coffee; to find the equivalent of soluble coffee to green coffee, multiply the net weight of the soluble coffee by 2,6.

2. *Bag* means 60 kilogrammes or 132,276 pounds of green coffee; *tonne* means a mass of 1 000 kilogrammes or 2 204,6 pounds; and *pounds* means 453,597 grammes.

3. *Coffee year* means the period of one year, from 1 October to 30 September.

4. *Organization* and *Council* mean, respectively, the International Coffee Organization and the International Coffee Council.

5. *Contracting Party* means a Government or intergovernmental organization referred to in paragraph 3 of Article 4 which has deposited an instrument of ratification, acceptance, approval or provisional application of this Agreement in accordance with the provisions of Articles 39 and 40 or has acceded thereto in accordance with the provisions of Article 41.

6. *Member* means a Contracting Party; a designated territory or territories in respect of which separate membership has been declared under the provisions of Article 5; or two or more Contracting Parties or designated territories, or both, which participate in the Organization as a Member group under the provisions of Article 6.

7. *Exporting Member* or *exporting country* means a Member or country, respectively, which is a net exporter of coffee; that is, a Member or country whose exports exceed its imports.

8. *Importing Member or importing country* means a Member or country, respectively, which is a net importer of coffee; that is, a Member or country whose imports exceed its exports.

9. *Distributed simple majority vote* means a vote requiring more than half of the votes cast by exporting Members present and voting and more than half of the votes cast by importing Members present and voting, counted separately.

10. *Distributed two-thirds majority vote* means a vote requiring more than two-thirds of the votes cast by exporting Members present and voting and more than two-thirds of the votes cast by importing Members present and voting, counted separately.

11. *Entry into force* means, except as otherwise provided, the date on which this Agreement enters into force, whether provisionally or definitively.

12. *Exportable production* means the total production of coffee of an exporting country in a given coffee or crop year, less the amount destined for domestic consumption in the same year.

13. *Availability for export* means the exportable production of an exporting country in a given coffee year, plus accumulated stocks from previous years.

CHAPTER III

GENERAL UNDERTAKINGS BY MEMBERS

Article 3

General undertakings by Members

1. Members undertake to adopt such measures as are necessary to enable them to fulfil their obligations under this Agreement and fully cooperate with one another in securing the attainment of the objectives of this

Agreement; in particular, Members undertake to provide all information necessary to facilitate the functioning of this Agreement.

2. Members recognize that Certificates of Origin are important sources of information on the trade in coffee. Exporting Members, therefore, assume responsibility for ensuring the proper issuing and use of Certificates of Origin according to the rules established by the Council.

3. Members recognize further that information on re-exports is also important for the proper analysis of the world coffee economy. Importing Members, therefore, undertake to supply regular and accurate information on re-exports, in the form and manner determined by the Council.

CHAPTER IV

MEMBERSHIP

Article 4

Membership of the Organization

1. Each Contracting Party, together with those territories to which this Agreement is extended under the provisions of paragraph 1 of Article 43, shall constitute a single Member of the Organization, except as otherwise provided for under the provisions of Articles 5 and 6.

2. A Member may change its category of membership on such conditions as the Council may agree.

3. Any reference in this Agreement to a Government shall be constructed as including a reference to the European Community, or any intergovernmental organization having comparable responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements.

4. Such intergovernmental organization shall not itself have any votes but in the case of a vote on matters within its competence it shall be entitled to cast collectively the votes of its Member States. In such cases, the Member States of such intergovernmental organization shall not be entitled to exercise their individual voting rights.

5. Such intergovernmental organization shall not be eligible for election to the Executive Board under the provision of paragraph 1 of Article 17 but may participate in the discussions of the Executive Board on matters within its competence. In the case of a vote on matters within its competence, and notwithstanding the provisions of paragraph 1 of Article 20, the votes which its Member States are entitled to cast in the Executive Board may be cast collectively by any one of those Member States.

Article 5

Separate membership in respect of designated territories

Any Contracting Party which is a net importer of coffee may, at any time, by appropriate notification in accordance with the provisions of paragraph 2 of Article 43, declare that it is participating in the Organization separately with respect to any of the territories for whose international relations it is responsible, which are net exporters of coffee and which it designates. In such case, the metropolitan territory and its non-designated territories will have a single membership, and its designated territories, either individually or collectively as the notification indicates, will have separate membership.

Article 6

Group membership

1. Two or more Contracting Parties which are not exporters of coffee may, by appropriate notification to the Council and to the Secretary-General of the United Nations at the time of deposit of their respective instruments of ratification, acceptance, approval, provisional application or accession, declare that they are participating in the Organization as a Member group. A territory to which this Agreement has been extended under the provisions of paragraph 1 of Article 43 may constitute part of such Member group if the Government of the State responsible for its international relations has given appropriate notification thereof under the provisions of paragraph 2 of Article 43. Such Contracting Parties and designated territories must satisfy the following conditions:

(a) they shall declare their willingness to accept responsibility for group obligations in an individual as well as a group capacity; and

(b) they shall subsequently provide satisfactory evidence to the Council that:

  (i) the group has the organization necessary to implement a common coffee policy and that they have the means of complying, together with the other parties to the group, with their obligations under this Agreement; and

  (ii) they have a common or coordinated commercial and economic policy in relation to coffee and a coordinated monetary and financial policy, as well as the organs necessary to implement such policies, so that the Council is satisfied that the Member group is able to comply with the group obligations involved.

2. Any Member group recognized under the International Coffee Agreement 1983 shall continue to be recognized as a group unless it notifies the Council that it no longer wishes to be so recognized.

3. The Member group shall constitute a single Member of the Organization, except that each party to the group shall be treated as if it were a single Member in relation to matters arising under the following provisions:

(a) Articles 11 and 12; and

(b) Article 46.

4. The Contracting Parties and designated territories joining as a Member group shall specify the Government or organization which will represent them in the Council on matters arising under this Agreement other than those specified in paragraph 3 of this Article.

5. The voting rights of the Member group shall be as follows:

(a) the Member group shall have the same number of basic votes as a single Member country joining the Organization in an individual capacity. These basic votes shall be attributed to and cast by the Government or organization representing the group; and

(b) in the event of a vote on any matters arising under the provisions of paragraph 3 of this Article, the parties to the Member group may cast separately the votes attributed to them under the provisions of paragraph 3 of Article 13 as if each were an individual Member of the Organization, except for the basic votes, which shall remain attributable only to the Government or organization representing the group.

6. Any Contracting Party or designated territory which is a party to a Member group may, by notification to the Council, withdraw from that group and become a separate Member. Such withdrawal shall take effect upon receipt of the notification by the Council. If a party to a Member group withdraws from that group or ceases to participate in the Organization, the remaining parties to the group may apply to the Council to maintain the group; the group shall continue to exist unless the Council disapproves the application. If the Member group is dissolved, each former party to the group will become a separate Member. A Member which has ceased to be a party to a group may not, as long as this Agreement remains in force, again become a party to a group.

7. Any Contracting Party which wishes to become party to a Member group after this Agreement has entered into force may do so by notification to the Council provided that:

(a) other Members of the group declare their willingness to accept the Member concerned as party to the Member group; and

(b) it notifies the Secretary-General of the United Nations that it is participating in the group.

8. Two or more exporting Members may, at any time after this Agreement has entered into force, apply to the Council to form a Member group. The Council shall approve the application if it finds that the Members have made a declaration and have provided satisfactory evidence in accordance with the requirements of paragraph 1 of this Article. Upon such approval, the Member group shall be subject to the provisions of paragraphs 3, 4, 5 and 6 of this Article.

CHAPTER V

THE INTERNATIONAL COFFEE ORGANIZATION

Article 7

Seat and structure of the International Coffee Organization

1. The International Coffee Organization established under the International Coffee Agreement 1962 shall continue in being to administer the provisions and supervise the operation of this Agreement.

2. The seat of the Organization shall be in London unless the Council by a distributed two-thirds majority vote decides otherwise.

3. The Organization shall function through the International Coffee Council, the Executive Board, the Executive Director and the staff.

Article 8

Privileges and immunities

1. The Organization shall have legal personality. It shall in particular have the capacity to contract, acquire and dispose of movable and immovable property and to institute legal proceedings.

2. The status, privileges and immunities of the Organization, of its Executive Director, its staff and experts, and of representatives of Members while in the territory of the United Kingdom of Great Britain and Northern Ireland for the purpose of exercising their functions, shall continue to be governed by the Headquarters Agreement concluded between the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the host Government) and the Organization on 28 May 1969.

3. The Headquarters Agreement referred to in paragraph 2 of this Article shall be independent of this Agreement. It shall however terminate:

(a) by agreement between the host Government and the Organization;

(b) in the event of the headquarters of the Organization being moved from the territory of the host Government; or

(c) in the event of the Organization ceasing to exist.

4. The Organization may conclude with one or more other Members agreements to be approved by the

Council relating to such privileges and immunities as may be necessary for the proper functioning of this Agreement.

5. The Governments of Member countries other than the host Government shall grant the Organization the same facilities in respect of currency or exchange restrictions, maintenance of bank accounts and transfer of monies, as are accorded to the specialized agencies of the United Nations.

CHAPTER VI

THE INTERNATIONAL COFFEE COUNCIL

Article 9

Composition of the International Coffee Council

1. The highest authority of the Organization shall be the International Coffee Council, which shall consist of all the Members of the Organization.

2. Each Member shall appoint one representative on the Council and, if it so desires, one or more alternates. A Member shall appoint one representative on the Council and, if it so desires, one or more alternates. A Member may also designate one or more advisers to its representative or alternates.

Article 10

Powers and functions of the Council

1. All powers specifically conferred by this Agreement shall be vested in the Council, which shall have the powers and perform the functions necessary to carry out the provisions of this Agreement.

2. The Council shall set up a Credentials Committee which will be in charge of examining the written communications made to the Chairman with respect to the provisions of paragraph 2 of Article 9, paragraph 3 of Article 12 and paragraph 2 of Article 14. The Credentials Committee shall report its proceedings to the Council.

3. The Council may set up any committees or working groups, other than the Credentials Committee, as it considers necessary.

4. The Council shall, by a distributed two-thirds majority vote, establish such rules and regulations, including its own rules of procedure and the financial and staff regulations of the Organization, as are necessary to carry out the provisions of this Agreement and are consistent therewith. The Council may, in its rules of procedure, provide the means whereby it may, without meeting, decide specific questions.

5. The Council shall also keep such records as are required to perform its functions under this Agreement and such other records as it considers desirable

Article 11

Chairman and Vice-Chairmen of the Council

1. The Council shall elect, for each coffee year, a Chairman and a first, a second and a third Vice-Chairman, who shall not be paid by the Organization.

2. As a general rule, the Chairman and the first Vice-Chairman shall both be elected either from among the representatives of exporting Members or from among the representatives of importing Members and the second and the third Vice-Chairmen shall be elected from among representatives of the other category of Member. These offices shall alternate each coffee year between the two categories of Member.

3. Neither the Chairman nor any Vice-Chairman acting as Chairman shall have the right to vote. His or her alternate will in such case exercise the voting rights of the Member.

Article 12

Sessions of the Council

1. As a general rule, the Council shall hold regular sessions twice a year. It may hold special sessions should it so decide. Special sessions shall also be held at the request of the Executive Board, of any five Members, or of a Member or Members having at least 200 votes. Notice of sessions shall be given at least 30 days in advance except in cases of emergency when such notice shall be given at least 10 days in advance.

2. Sessions shall be held at the seat of the Organization, unless the Council decides otherwise by a distributed two-thirds majority of vote. If a Member invites the Council to meet in its territory, and the Council agrees, the additional costs involved above those incurred when the session is held at the seat shall be borne by that Member.

3. The Council may invite any non-member country or any of the organizations referred to in Article 16 to attend any of its sessions as an observer. In case such invitation is accepted, the country or organization concerned shall send a communication to that effect in writing to the Chairman. If it so wishes it may in that communication request permission to make statements to the Council.

4. The quorum required for a Council session shall be the presence of more than half of the number of exporting Members representing at least two-thirds of the votes of all exporting Members and of more than half of the number of importing Members representing at least two-thirds of the votes of all importing Members. If on

the opening of a Council session or of any plenary meeting there is no quorum, the Chairman shall postpone the opening of the session or plenary meeting for at least three hours. If there is still no quorum at the new time set, the Chairman may again postpone the opening of the session or plenary meeting for at least a further three hours. If at the end of this new postponement there is still no quorum, the quorum required for opening or resuming the session or plenary meeting shall be the presence of more than half of the number of exporting Members representing at least half of the votes of all exporting Members and of more than half of the number of importing Members representing at least half of the votes of all importing Members. Representation in accordance with paragraph 2 of Article 14 shall be considered as presence.

Article 13

Votes

1. The exporting Members shall together hold 1 000 votes and the importing Members shall together hold 1 000 votes, distributed within each category of Member — that is, exporting and importing Members, respectively — as provided for in the following paragraphs of this Article.

2. Each Member shall have five basic votes.

3. The remaining votes of exporting Members shall be divided among such Members in proportion to the average volume of their respective exports of coffee to all destinations in the preceding four calendar years.

4. The remaining votes of importing Members shall be divided among such Members in proportion to the average volume of their respective imports of coffee in the preceding four calendar years.

5. The distribution of votes shall be determined by the Council in accordance with the provisions of this Article at the beginning of each coffee year and shall remain in effect during that year, except as provided for in paragraph 6 of this Article.

6. The Council shall provide for the redistribution of votes in accordance with the provisions of this Article whenever there is a change in the membership of the Organization or if the voting rights of a Member are suspended or regained under the provisions of Article 23 or 37.

7. No Member shall hold more than 400 votes.

8. There shall be no fractional votes.

Article 14

Voting procedure of the Council

1. Each Member shall be entitled to cast the number of votes it holds and shall not be entitled to divide its votes. However, a Member may cast differently any votes which it holds under the provisions of paragraph 2 of this Article.

2. Any exporting Member may authorize any other exporting Member, and any importing Member may authorize any other importing Member, to represent its interests and to exercise its right to vote at any meeting or meetings of the Council. The limitation provided for in paragraph 7 of Article 13 shall not apply in this case.

Article 15

Decisions of the Council

1. All decisions of the Council shall be taken, and all recommendations shall be made, by a distributed simple majority vote unless otherwise provided for in this Agreement.

2. The following procedure shall apply with respect to any decision by the Council which under the provisions of this Agreement requires a distributed two-thirds majority vote:

(a) if a distributed two-thirds majority vote is not obtained because of the negative vote of three or less exporting or three or less importing Members, the proposal shall, if the Council so decides by a majority of the Members present and by a distributed simple majority vote, be put to a vote again within 48 hours;

(b) if a distributed two-thirds majority vote is again not obtained because of the negative vote of two or less exporting or two or less importing Members, the proposal shall, if the Council so decides by a majority of the Members persent and by a distributed simple majority vote, be put to a vote again within 24 hours;

(c) if a distributed two-thirds majority vote is not obtained in the third vote because of the negative vote of one exporting or one importing Member, the proposal shall be considered adopted; and

(d) if the Council fails to put a proposal to a further vote, it shall be considered rejected.

3. Members undertake to accept as binding all decisions of the Council under the provisions of this Agreement.

Article 16

Cooperation with other organizations

1. The Council may make arrangements for consultation and cooperation with the United Nations and its specialized agencies and with other appropriate intergovernmental organizations. It shall take full

advantage of the facilities of the Common Fund for Commodities. Such arrangements may include financial arrangements which the Council considers appropriate for achieving the objectives of this Agreement. However, in respect of the implementation of any project under such arrangements the Organization shall not incur any financial obligations for guarantees given by individual Members or other entities. No Member shall be responsible by reason of its membership of the Organization for any liability arising from borrowing or lending by any other Member or entity in connection with such projects.

2. Where possible, the Organization may also collect from Members, non-members, and from donor and other agencies, information on development projects and programmes focusing on the coffee sector. Where appropriate, and with the agreement of the parties concerned, the Organization may make this information available to such other organizations as well as to Members.

CHAPTER VII

THE EXECUTIVE BOARD

Article 17

Composition and meetings of the Executive Board

1. The Executive Board shall consist of eight exporting Members and eight importing Members elected for each coffee year in accordance with the provisions of Article 18. Members represented in the Executive Board may be re-elected.

2. Each Member represented in the Executive Board shall appoint one representative and, if it so desires, one or more alternates. Each Member represented in the Executive Board may also designate one or more advisers to its representative or alternates.

3. The Executive Board shall have a Chairman and a Vice-Chairman, who shall be elected by the Council for each coffee year and may be re-elected. These officers shall not be paid by the Organization. Neither the Chairman nor the Vice-Chairman acting as Chairman shall have the right to vote in the meetings of the Executive Board. His or her alternate will in such case exercise the voting rights of the Member. As a general rule, the Chairman and the Vice-Chairman for each coffee year shall be elected from among the representatives of the same category of membership.

4. The Executive Board shall normally meet at the seat of the Organization, but may meet elsewhere if the Council so decides by a distributed two-thirds majority vote. In case of acceptance by the Council of an invitation by a Member to host the meeting of the Executive Board, the provisions of paragraph 2 of Article 12 concerning Council sessions shall also apply.

5. The quorum required for an Executive Board meeting shall be the presence of more than half of the number of exporting Members representing at least two-thirds of the votes of all exporting Members elected to the Executive Board and of more than half of the number of importing Members representing at least two-thirds of the votes of all importing Members elected to the Executive Board. If on the opening of an Executive Board meeting there is no quorum, the Chairman of the Executive Board shall postpone the opening of the meeting for at least three hours. If there is still no quorum at the new time set, the Chairman may again postpone the opening of the meeting for at least a further three hours. If at the end of this new postponement there is still no quorum, the quorum required for opening the meeting shall be the presence of more than half of the number of exporting Members representing at least half of the votes of all exporting Members elected to the Executive Board and of more than half of the number of importing Members representing at least half of the votes of all importing Members elected to the Executive Board.

Article 18

Election of the Executive Board

1. The exporting and the importing Members of the Executive Board shall be elected in the Council by the exporting and the importing Members of the Organization respectively. The election within each category shall be held in accordance with the provisions of the following paragraphs of this Article.

2. Each Member shall cast for a single candidate all the votes to which it is entitled under the provisions of Article 13. A Member may cast for another candidate any votes which it holds under the provisions of paragraph 2 of Article 14.

3. The eight candidates receiving the largest number of votes shall be elected; however, no candidate shall be elected on the first ballot unless it receives at least 75 votes.

4. If, under the provisions of paragraph 3 of this Article, less than eight candidates are elected on the first ballot, further ballots shall be held in which only Members which did not vote for any of the candidates elected shall have the right to vote. In each further ballot the minimum number of votes required for election shall be successively diminished by five until eight candidates are elected.

5. Any Member which did not vote for any of the Members elected shall assign its votes to one of them, subject to the provisions of paragraphs 6 and 7 of this Article.

6. A Member shall be deemed to have received the number of votes cast for it when it was elected and, in addition, the number of votes assigned to it, provided that the total number of votes shall not exceed 499 for any Member elected.

7. If the votes deemed received by an elected Member exceed 499, Members which voted for, or assigned their votes to, such elected Member shall arrange among themselves for one or more of them to withdraw their votes from that Member and assign or re-assign them to another elected Member so that the votes received by each elected Member shall not exceed the limit of 499.

Article 19

Competence of the Executive Board

1. The Executive Board shall be responsible to and work under the general direction of the Council.

2. The Council may, by a distributed two-thirds majority vote, delegate to the Executive Board the exercise of any or all of its powers other than the following:

(a) approval of the Administrative Budget and assessment of contributions under the provisions of Article 22;

(b) suspension of the voting rights of a Member under the provisions of Article 37;

(c) decisions on disputes under the provisions of Article 37;

(d) establishment of conditions for accession under the provisions of Article 41;

(e) a decision to exclude a Member under the provisions of Article 45;

(f) a decision concerning the renegotiation, extension or termination of this Agreement under the provisions of Article 47; and

(g) recommendation of amendments to Members under the provisions of Article 48.

3. The Council may, by a distributed simple majority vote, at any time revoke any powers which have been delegated to the Executive Board.

4. The Executive Board shall set up a Finance Committee which, in accordance with the provisions of Article 22, will be in charge of supervising the preparation of the Administrative Budget to be presented to the Council for approval, and carrying out any other tasks which the Executive Board assigns to it, which shall include the monitoring of income and expenditure. The Finance Committee shall report its proceedings to the Executive Board.

5. The Executive Board may set up any committees or working groups, other than the Finance Committee, as it considers necessary.

Article 20

Voting procedure of the Executive Board

1. Each Member of the Executive Board shall be entitled to cast the number of votes received by it under the provisions of paragraphs 6 and 7 of Article 18. Voting by proxy shall not be allowed. A Member of the Executive Board shall not be entitled to divide its votes.

2. Any decision taken by the Executive Board shall require the same majority as such decision would require if taken by the Council.

CHAPTER VIII

FINANCE

Article 21

Finance

1. The expenses of delegations to the Council, representatives on the Executive Board and representatives of any of the committees of the Council or the Executive Board shall be met by their respective Governments.

2. The other expenses necessary for the administration of this Agreement shall be met by annual contributions from the Members assessed in accordance with the provisions of Article 22, together with revenues from sales of specific services to Members and the sale of information and studies generated under the provisions of Articles 27 and 29.

3. The financial year of the Organization shall be the same as the coffee year.

Article 22

Determination of the Administrative Budget and assessment of contributions

1. During the second half of each financial year, the Council shall approve the Administrative Budget of the Organization for the following financial year and shall assess the contributions of each Member to that Budget. The Administrative Budget shall be prepared by the Executive Director and supervised by the Finance Committee in accordance with the provisions of paragraph 4 of Article 19.

2. The contribution of each Member to the Administrative Budget for each financial year shall be in the proportion which the number of its votes at the time the Administrative Budget for that financial year is approved bears to the total votes of all the Members. However, if there is any change in the distribution of votes among Members in accordance with the provisions of paragraph 5 of Article 13 at the beginning of the financial year for which contributions are assessed, such contributions shall be correspondingly adjusted for that year. In determining contributions, the votes of each

Member shall be calculated without regard to the suspension of the voting rights of any Member or any redistribution of votes resulting therefrom.

3. The initial contribution of any Member joining the Organization after the entry into force of this Agreement shall be assessed by the Council on the basis of the number of votes to be held by it and the period remaining in the current financial year, but the assessments made upon other Members for the current financial year shall not be altered.

Article 23

Payment of contributions

1. Contributions to the Administrative Budget for each financial year shall be payable in freely convertible currency and shall become due on the first day of that financial year.

2. If any Member fails to pay its full contribution to the Administrative Budget within six months of the date on which the contribution is due, both its voting rights in the Council and its rights to have its votes cast in the Executive Board shall be suspended until such contribution has been paid. However, unless the Council by a distributed two-thirds majority vote so decides, such Member shall not be deprived of any of its other rights nor relieved of any of its obligations under this Agreement.

3. Any Member whose voting rights have been suspended either under the provisions of paragraph 2 of this Article or under the provisions of Article 37 shall nevertheless remain responsible for the payment of its contribution.

Article 24

Liabilities

1. The Organization, functioning as specified in paragraph 3 of Article 7, shall not have power to incur any obligation outside the scope of this Agreement, and shall not be taken to have been authorized by the Members to do so; in particular, it shall not have the capacity to borrow money. In exercising its capacity to contract, the Organization shall incorporate in its contracts the terms of this Article in such a way as to bring them to the notice of the other parties entering into contracts with the Organization, but any failure to incorporate such terms shall not invalidate such a contract or render it *ultra vires*.

2. A Member's liability is limited to the extent of its obligations regarding contributions specifically provided for in this Agreement. Third parties dealing with the Organization shall be deemed to have notice of the provisions of this Agreement regarding the liabilities of Members.

Article 25

Audit and publication of accounts

As soon as possible and not later than six months after the close of each financial year, an independently audited statement of the Organization's receipts and expenditures during that financial year shall be presented to the Council for approval and publication.

CHAPTER IX

THE EXECUTIVE DIRECTOR AND THE STAFF

Article 26

The Executive Director and the staff

1. The Council shall appoint the Executive Director on the recommendation of the Executive Board. The terms of appointment of the Executive Director shall be established by the Council and shall be comparable to those applying to corresponding officials of similar intergovernmental organizations.

2. The Executive Director shall be the chief administrative officer of the Organization and shall be responsible for the performance of any duties devolving upon him in the administration of this Agreement.

3. The Executive Director shall appoint the staff in accordance with regulations established by the Council.

4. Neither the Executive Director nor any member of the staff shall have any financial interest in the coffee industry, the coffee trade or the transportation of coffee.

5. In the performance of their duties, the Executive Director and the staff shall not seek or receive instructions from any Member or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization. Each Member undertakes to respect the exclusively international character of the responsibilities of the Executive Director and the staff and not to seek to influence them in the discharge of their responsibilities.

CHAPTER X

INFORMATION, STUDIES AND SURVEYS

Article 27

Information

1. The Organization shall act as a centre for the collection, exchange and publication of:

(a) statistical information on world production, prices, exports and imports, distribution and consumption of coffee; and

(b) in so far as is considered appropriate, technical information on the cultivation, processing and utilization of coffee.

2. The Council may require Members to furnish such information as it considers necessary for its operations, including regular statistical reports on coffee production, production trends, exports and imports, distribution, consumption, stocks, prices and taxation, but no information shall be published which might serve to identify the operations of persons or companies producing, processing or marketing coffee. Members shall furnish information requested in as detailed and accurate a manner as is practicable.

3. The Council shall establish a system of indicator prices which shall provide for the publication of a daily composite indicator price.

4. If a Member fails to supply or finds difficulty in supplying within a reasonable time statistical and other information required by the Council for the proper functioning of the Organization, the Council may require the Member concerned to explain the reasons for non-compliance. If it is found that technical assistance is needed in the matter, the Council may take any necessary measures.

Article 28

Certificates of Origin

1. In order to facilitate the collection of statistics on the international coffee trade and to ascertain the quantities of coffee which have been exported by each exporting Member, the Organization shall establish a system of Certificates of Origin, governed by rules approved by the Council.

2. Every export of coffee by an exporting Member shall be covered by a valid Certificate of Origin. Certificates of Origin shall be issued, in accordance with the rules established by the Council, by a qualified agency chosen by the Member and approved by the Organization.

3. Each exporting Member shall notify the Organization of the government or non-governmental agency which is to perform the functions specified in paragraph 2 of this Article. The Organization shall approve a non-governmental agency in accordance with the rules approved by the Council.

Article 29

Studies and surveys

1. The Organization shall promote the preparation of studies and surveys concerning the economics of coffee production and distribution, the impact of governmental measures in producing and consuming countries on the production and consumption of coffee, and the opportunities for expansion of coffee consumption for traditional and possible new uses.

2. In order to carry out the provisions of paragraph 1 of this Article, the Council shall adopt, at its second regular session of each coffee year, a draft annual work programme of studies and surveys, with estimated resource requirements, prepared by the Executive Director.

3. The Council may approve the undertaking by the Organization of studies and surveys to be conducted jointly or in cooperation with other organizations and institutions. In such cases, the Executive Director shall present to the Council a detailed account of the resource requirements from the Organization and from the partner or partners involved with the project.

4. The studies and surveys to be promoted by the Organization pursuant to the provisions of this Article shall be financed by resources included in the Administrative Budget, prepared in accordance with the provisions of paragraph 1 of Article 22, and shall be undertaken by members of the staff of the Organization and consultants as required.

CHAPTER XI

GENERAL PROVISIONS

Article 30

Preparations for a new Agreement

The Council may examine the possibility of negotiating a new International Coffee Agreement, including an Agreement which could contain measures designed to balance the supply and demand for coffee, and take such actions as it deems appropriate.

Article 31

Removal of obstacles to consumption

1. Members recognize the utmost importance of achieving the greatest possible increase of coffee consumption as rapidly as possible, in particular through the progressive removal of any obstacles which may hinder such increase.

2. Members recognize that there are at present in effect measures which may to a greater or lesser extent hinder the increase in consumption of coffee, in particular:

(a) import arrangements applicable to coffee, including preferential and other tariffs, quotas, operations of government monopolies and official purchasing agencies, and other administrative rules and commercial practices;

(b) export arrangements as regards direct or indirect subsidies and other administrative rules and commercial practices; and

(c) internal trade conditions and domestic legal and administrative provisions which may affect consumption.

3. Having regard to the objectives stated above and to the provisions of paragraph 4 of this Article, Members shall endeavour to pursue tariff reductions on coffee or to take other action to remove obstacles to increased consumption.

4. Taking into account their mutual interest, Members undertake to seek ways and means by which the obstacles to increased trade and consumption referred to in paragraph 2 of this Article may be progressively reduced and eventually, wherever possible, eliminated, or by which the effects of such obstacles may be substantially diminished.

5. Taking into account any commitments undertaken under the provisions of paragraph 4 of this Article, Members shall inform the Council annually of all measures adopted with a view to implementing the provisions of this Article.

6. The Executive Director shall prepare periodically a survey of the obstacles to consumption to be reviewed by the Council.

7. The Council may, in order to further the purposes of this Article, make recommendations to Members which shall report as soon as possible to the Council on the measures adopted with a view to implementing such recommendations.

Article 32

Measures related to processed coffee

1. Members recognize the need of developing countries to broaden the base of their economies through, *inter alia,* industrialization and the export of manufactured products, including the processing of coffee and the export of processed coffee.

2. In this connection, Members shall avoid the adoption of governmental measures which could cause disruption to the coffee sector of other Members.

3. Should a Member consider that the provisions of paragraph 2 of this Article are not being complied with, it should consult with the other Members concerned, having due regard to the provisions of Article 36. The Members concerned shall make every effort to reach amicable settlement on a bilateral basis. If these consultations do not lead to a mutually satisfactory solution, either party may bring the matter before the Council for consideration under the provisions of Article 37.

4. Nothing in this Agreement shall prejudice the right of any Member to take measures to prevent or remedy disruption to its coffee sector by imports of processed coffee.

Article 33

Mixtures and substitutes

1. Members shall not maintain any regulations requiring the mixing, processing or using of other products with coffee for commercial resale as coffee. Members shall endeavour to prohibit the sale and advertisement of products under the name of coffee if such products contain less than the equivalent of 90 % green coffee as the basic raw material.

2. The Council may request any Member to take the steps necessary to ensure observance of the provisions of this Article.

3. The Executive Director shall submit to the Council a periodic report on compliance with the provisions of this Article.

Article 34

Consultation and cooperation with the private sector

1. The Organization shall maintain close links with appropriate non-governmental organizations concerned with international commerce in coffee, and with experts in coffee matters.

2. Members shall conduct their activities within the framework of this Agreement in a manner consonant with established trade channels and shall refrain from discriminatory sales practices. In carrying out these activities they shall endeavour to take due account of the legitimate interests of the coffee trade and industry.

Article 35

Environmental aspects

Members shall give due consideration to the sustainable management of coffee resources and processing, bearing in mind the principles and objectives on sustainable development agreed at the Eighth Session of the United Nations Conference on trade and Development and the United Nations Conference on Environment and Development.

CHAPTER XII

CONSULTATIONS, DISPUTES AND COMPLAINTS

Article 36

Consultations

Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by another Member with respect to any matter relating to this Agreement. In the course of such consultation, on request by either party and with the consent of the other, the Executive Director shall establish an independent panel which shall use its good offices with a view to conciliating the parties. The costs of the panel shall not be chargeable to the Organization. If a party does not agree to the establishment of a panel by the Executive Director, or if the consultation does not lead to a solution, the matter may be referred to the Council in accordance with the provisions of Article 37. If the consultation does lead to a solution, it shall be reported to the Executive Director who shall distribute the report to all Members.

Article 37

Disputes and complaints

1. Any dispute concerning the interpretation or application of this Agreement which is not settled by negotiation shall, at the request of any Member party to the dispute, be referred to the Council for decision.

2. In any case where a dispute has been referred to the Council under the provisions of paragraph 1 of this Article, a majority of Members, or Members holding not less than one third of the total votes, may require the Council, after discussion, to seek the opinion of the advisory panel referred to in paragraph 3 of this Article on the issues on dispute before giving its decision.

3. (a) Unless the Council unanimously agrees otherwise, the advisory panel shall consist of:

(i) two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting Members;

(ii) two such persons nominated by the importing Members; and

(iii) a chairman selected unanimously by the four persons nominated under the provisions of sub-paragraphs (i) and (ii) or, if they fail to agree, by the Chairman of the Council.

(b) Persons from countries whose Governments are Contracting Parties to this Agreement shall be eligible to serve on the advisory panel.

(c) Persons appointed to the advisory panel shall act in their personal capacities and without instructions from any Government.

(d) The expenses of the advisory panel shall be paid by the Organization.

4. The opinion of the advisory panel and the reasons therefor shall be submitted to the Council which, after considering all the relevant information, shall decide the dispute.

5. The Council shall rule on any dispute brought before it within six months of submission of such dispute for its consideration.

6. Any complaint that any Member has failed to fulfil its obligations under this Agreement shall, at the request of the Member making the complaint, be referred to the Council which shall make a decision on the matter.

7. No Member shall be found to have been in breach of its obligations under this Agreement except by a distributed simple majority vote. Any finding that a Member is in breach of its obligations under this Agreement shall specify the nature of the breach.

8. If the Council finds that a Member is in breach of its obligations under this Agreement, it may, without prejudice to other enforcement measures provided for in other Articles of this Agreement, by a distributed two-thirds majority vote, suspend such Member's voting rights in the Council and its right to have its votes cast in the Executive Board until it fulfils its obligations, or the Council may decide to exclude such Member from the Organization under the provisions of Article 45.

9. A Member may seek the prior opinion of the Executive Board in a matter of dispute or complaint before the matter is discussed by the Council.

CHAPTER XIII

FINAL PROVISIONS

Article 38

Signature

This Agreement shall be open for signature at the United Nations headquarters from 18 April 1994 until and including 26 September 1994 by Contracting Parties to the International Coffee Agreement 1983 or the

International Coffee Agreement 1983, as extended, and Governments invited to the sessions of the International Coffee Council at which this Agreement was negotiated.

Article 39

Ratification, acceptance or approval

1. This Agreement shall be subject to ratification, acceptance or approval by the signatory Governments in accordance with their respective constitutional procedures.

2. Except as provided for in Article 40, instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations not later than 26 September 1994. However, the Council may grant extensions of time to signatory Governments which are unable to deposit their instruments by that date.

Article 40

Entry into force

1. This Agreement shall enter into force definitively on 1 October 1994 if by that date Governments representing at least 20 exporting Members holding at least 80 % of the votes of the exporting Members and at least 10 importing Members holding at least 80 % of the votes of the importing Members, calculated as at 26 September 1994, have deposited instruments of ratification, acceptance or approval. Alternatively, it shall enter into force definitively at any time after 1 October 1994 if it is provisionally in force in accordance with the provisions of paragraph 2 of this Article and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance or approval.

2. This Agreement may enter into force provisionally on 1 October 1994. For this purpose, a notification by a signatory Government or by any other Contracting Party to the International Coffee Agreement 1983, as extended, containing an undertaking to apply this Agreement provisionally, in accordance with its laws and regulations, and to seek ratification, acceptance or approval in accordance with its constitutional procedures as rapidly as possible, which is received by the Secretary-General of the United Nations not later than 26 September 1994, shall be regarded as equal in effect to an instrument of ratification, acceptance or approval. A Government which undertakes to apply this Agreement provisionally, in accordance with its laws and regulations, pending the deposit of an instrument of ratification, acceptance or approval shall be regarded as a provisional Party thereto until it deposits its instrument of ratification, acceptance or approval, or until and including 31 December 1994 whichever is the earlier. The Council may grant an extension of the time within which any Government which is applying this Agreement provisionally may deposit its instrument of ratification, acceptance or approval.

3. If this Agreement has not entered into force definitively or provisionally on 1 October 1994 under the provisions of paragraph 1 or 2 of this Article, those Governments which have deposited instruments of ratification, acceptance, approval or accession or made notifications containing an undertaking to apply this Agreement provisionally, in accordance with their laws and regulations, and to seek ratification, acceptance or approval may, by mutual consent, decide that it shall enter into force among themselves. Similarly, if this Agreement has entered into force provisionally but has not entered into force definitively on 31 December 1994, those Governments which have deposited instruments of ratification, acceptance, approval or accession or made the notifications referred to in paragraph 2 of this Article, may, by mutual consent, decide that it shall continue in force provisionally or enter into force definitively among themselves.

Article 41

Accession

1. The Government of any State member of the United Nations or of any of its specialized agencies may accede to this Agreement upon conditions which shall be established by the Council.

2. Instruments of accession shall be deposited with the Secretary-General of the United Nations. The accession shall take effect upon deposit of the instrument.

Article 42

Reservations

Reservations may not be made with respect to any of the provisions of this Agreement.

Article 43

Extension to designated territories

1. Any Government may, at the time of signature or deposit of an instrument of ratification, acceptance, approval, provisional application or accession, or at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Agreement shall extend to any of the territories for whose international relations it is responsible; this Agreement shall extend to the territories named therein from the date of such notification.

2. Any Contracting Party which desires to exercise its rights under the provisions of Article 5 in respect of any

of the territories for whose international relations it is responsible or which desires to authorize any such territory to become part of a Member group formed under the provisions of Article 6, may do so by making a notification to that effect to the Secretary-General of the United Nations, either at the time of the deposit of its instrument of ratification, acceptance, approval, provisional application or accession, or at any later time.

3. Any Contracting Party which has made a declaration under the provisions of paragraph 1 of this Article may at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Agreement shall cease to extend to the territory named in the notification. The Agreement shall cease to extend to such territory from the date of such notification.

4. When a territory to which this Agreement has been extended under the provisions of paragraph 1 of this Article subsequently attains its independence, the Government of the new State may, within 90 days after the attainment of independence, declare by notification to the Secretary-General of the United Nations that it has assumed the rights and obligations of a Contracting Party to this Agreement. It shall, as from the date of such notification, become a Contracting Party to this Agreement. The Council may grant an extension of the time within which such notification may be made.

Article 44

Voluntary withdrawal

Any Contracting Party may withdraw from this Agreement at any time by giving a written notice of withdrawal to the Secretary-General of the United Nations. Withdrawal shall become effective 90 days after the notice is received.

Article 45

Exclusion

If the Council decides that any Member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by a distributed two-thirds majority vote, exclude such Member from the Organization. The Council shall immediately notify the Secretary-General of the United Nations of any such decision. Ninety days after the date of the Council's decision, such Member shall cease to be a Member of the Organization and, if such Member is a Contracting Party, a Party to this Agreement.

Article 46

Settlement of accounts with withdrawing or excluded Members

1. The Council shall determine any settlement of accounts with a withdrawing or excluded Member. The Organization shall retain any amounts already paid by a withdrawing or excluded Member and such Member shall remain bound to pay any amounts due from it to the Organization at the time the withdrawal or the exclusion becomes effective; provided, however, that in the case of a Contracting Party which is unable to accept an amendment and consequently ceases to participate in this Agreement under the provisions of paragraph 2 of Article 48, the Council may determine any settlement of accounts which it finds equitable.

2. A Member which has ceased to participate in this Agreement shall not be entitled to any share of the proceeds of liquidation or the other assets of the Organization; nor shall it be liable for payment of any part of the deficit, if any, of the Organization upon termination of this Agreement.

Article 47

Duration and termination

1. This Agreement shall remain in force for a period of five years until 30 September 1999 unless extended under the provisions of paragraph 2 of this Article or terminated under the provisions of paragraph 3 of this Article.

2. The Council may, by a vote of 58 % of the Members having not less than a distributed majority of 70 % of the total votes, decide either that this Agreement be renegotiated or that it be extended, with or without modification, for such period as the Council shall determine. Any Contracting Party which by the date on which such renegotiated or extended Agreement enters into force has not made a notification of acceptance of such renegotiated or extended Agreement to the Secretary-General of the United Nations, or any territory which is either a Member or a party to a Member group on behalf of which such notification has not been made by that date, shall as of that date cease to participate in such Agreement.

3. The Council may at any time, by a vote of a majority of the Members having not less than a distributed two-thirds majority of the total votes, decide to terminate this Agreement. Termination shall take effect on such date as the Council shall decide.

4. Notwithstanding the termination of this Agreement, the Council shall remain in being for as long as necessary to carry out the liquidation of the Organization, settlement of its accounts and disposal of it assets and shall have during that period such powers and functions as may be necessary for those purposes.

Article 48

Amendment

1. The Council may, by a distributed two-thirds majority vote, recommend an amendment of this Agreement to the Contracting Parties. The amendment shall become effective 100 days after the Secretary-

General of the United Nations has received notifications of acceptance from Contracting Parties representing at least 75 % of the exporting countries holding at least 85 % of the votes of the exporting Members, and from Contracting Parties representing at least 75 percent of the importing countries holding at least 80 percent of the votes of the importing Members. The Council shall fix a time within which Contracting Parties shall notify the Secretary-General of the United Nations of their acceptance of the amendment. If, on expiry of such time limit, the percentage requirements for the entry into effect of the amendment have not been met, the amendment shall be considered withdrawn.

2. Any Contracting Party which has not notified acceptance of an amendment within the period fixed by the Council, or any territory which is either a Member or a party to a Member group on behalf of which such notification has not been made by that date, shall cease to participate in this Agreement from the date on which such amendment becomes effective.

Article 49

Supplementary and transitional provisions

1. This Agreement shall be considered as a continuation of the International Coffee Agreement 1983, as extended.

2. In order to facilitate the uninterrupted continuation of the International Coffee Agreement 1983, as extended:

(a) all acts by or on behalf of the Organization or any of its organs under the International Coffee Agreement 1983, as extended, in effect on 30 September 1994, the terms of which do not provide for expiry on that date, shall remain in effect unless changed under the provisions of this Agreement; and

(b) all decisions required to be taken by the Council during coffee year 1993/94 for application in coffee year 1994/95 shall be taken by the Council in coffee year 1993/94 and applied on a provisional basis as if this Agreement had already entered into force.

Article 50

Authentic texts of the Agreement

The texts of this Agreement in the English, French, Portuguese and Spanish languages shall all be equally authentic. The originals shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned, having been duly authorized to this effect by their respective Governments, have signed this Agreement on the dates appearing opposite their signatures.