II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 6 July 1998

concerning the conclusion of the International Cocoa Agreement, 1993, on behalf of the Community

(98/489/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas the International Cocoa Agreement, 1993, has been signed by the Community and its Member States;

Whereas, by Council Decision 94/109/EC of 7 February 1994 concerning the signing and provisional application of the International Cocoa Agreement, 1993, on behalf of the Community [1], the Community, in its capacity as an importing member, notified the Secretary-General of the United Nations Organisation of its intention to apply the Agreement provisionally pending completion of the internal procedures required for its conclusion;

Whereas most of the Member States of the Community have notified provisional application of the Agreement pending the deposit, jointly with the Community, of the instruments of ratification, acceptance or approval;

Whereas the ratification, acceptance or approval procedures in the Member States have reached a stage that is sufficiently advanced for the instruments of ratification, acceptance or approval to be deposited jointly,

HAS DECIDED AS FOLLOWS:

Article 1

The International Cocoa Agreement, 1993, is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to deposit the instrument of approval on behalf of the Community.

Done at Brussels, 6 July 1998.

For the Council

The President

R. EDLINGER

[1] OJ L 52, 23.2.1994, p. 25.

INTERNATIONAL COCOA AGREEMENT, 1993

PART ONE

OBJECTIVES AND DEFINITIONS

CHAPTER I

OBJECTIVES

Article 1

Objectives

The objectives of the International Cocoa Agreement, 1993 (hereinafter referred to as 'this Agreement'), in the light of resolution 93 (IV), of the New Partnership for Development: the Cartagena Commitment and of the relevant objectives contained in 'The Spirit of Cartagena' adopted by the United Nations Conference on Trade and Development, are:

(a) to promote the development and strengthening of international cooperation in all sectors of the world cocoa economy;

(b) to contribute towards stabilisation of the world cocoa market in the interest of all Members, by seeking, in particular:

  (i) To bring about the balanced development of the world cocoa economy by seeking to facilitate the necessary adjustments in production and to promote consumption so as to secure an equilibrium in the medium and long term between supply and demand;

  (ii) to assure adequate supplies at reasonable prices equitable to producers and consumers;

(c) to facilitate the expansion of international trade in cocoa;

(d) to promote transparency in the workings of the world cocoa economy through the collection, analysis and dissemination of relevant statistics and the undertaking of appropriate studies;

(e) to promote scientific research and development in the field of cocoa;

(f) to provide an appropriate forum for the discussion of all matters relating to the world cocoa economy.

CHAPTER II

DEFINITIONS

Article 2

Definitions

For the purposes of this Agreement:

1. *cocoa* means cocoa beans and cocoa products;

2. *cocoa products* means products made exclusively from cocoa beans, such as cocoa paste/liquor, cocoa butter, unsweetened cocoa powder, cocoa cake and cocoa nibs, as well as any other products containing cocoa as the Council may determine;

3. *cocoa year* means the period of 12 months from 1 October to 30 September inclusive;

4. *Contracting Party* means a Government, or an intergovernmental organisation as provided for in Article 4, which has consented to be bound by this Agreement provisionally or definitively;

5. *Council* means the International Cocoa Council referred to in Article 6;

6. *daily price* is the representative indicator of the international price of cocoa used for the purposes of this Agreement and computed in accordance with the provisions of Article 35;

7. *entry into force* means, except when qualified, the date on which this Agreement first enters into force, whether provisionally or definitively;

8. *exporting country* or *exporting Member* means a country or a Member respectively whose exports of cocoa, expressed in terms of beans exceed its imports. However, a country whose imports of cocoa expressed in terms of beans exceed its exports but whose production exceeds its imports may, if it so chooses, be an exporting Member;

9. *export of cocoa* means any cocoa which leaves the customs territory of any country, and *import of cocoa* means any cocoa which enters the customs territory of any country; provided that, for the purposes of these definitions, customs territory shall, in the case of a Member which comprises more than one customs territory, be deemed to refer to the combined customs territories of that member;

10. *fine or flavour cocoa* means cocoa produced in countries designated as fine or flavour cocoa producers to the extent specified by the Council, in accordance with the provisions of Article 43;

11. *importing country* or *importing member* means a country or a Member respectively whose imports of cocoa expressed in terms of beans exceed its exports;

12. *Member* means a Contracting Party as defined above;

13. *Organisation* means the International Cocoa Organisation referred to in Article 5;

14. *producing country* means a country which grows cocoa in commercially significant quantities;

15. *production-management plan* means the plan provided for in Article 29 as a means of keeping world production in balance with global consumption in the medium to long term;

16. *production-management programme* means all measures and actions undertaken by an exporting Member to achieve the objectives of the production-management plan as referred to in Article 29;

17. *simple distributed majority vote* means a majority of the votes cast by exporting Members and a majority of the votes cast by importing Members, counted separately;

18. *special drawing right (SDR)* means the special drawing right of the International Monetary Fund;

19. *special vote* means two-thirds of the votes cast by exporting Members and two-thirds of the votes cast by importing Members, counted separately, on condition that at least five exporting Members and a majority of importing Members are present;

20. *tonne* means a mass of 1 000 kilograms or 2 204,6 pounds, and pound means 453,597 grams.

PART TWO

CONSTITUTIONAL PROVISIONS

CHAPTER III

MEMBERSHIP

Article 3

Membership in the Organisation

1. Each Contracting Party shall be a Member of the Organisation.

2. There shall be two categories of Members of the Organisation, namely:

(a) exporting Members; and

(b) importing Members.

3. A Member may change its category on such conditions as the Council may establish.

Article 4

Membership by intergovernmental organisations

1. Any reference in this Agreement to 'a government' or 'governments' shall be construed as including the European Economic Community and any intergovernmental organisation having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession shall, in the case of such intergovernmental organisations, be construed as including a reference to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organisations.

2. In the case of voting on matters within their competence, such intergovernmental organisations shall vote with a number of votes equal to the total number of votes attributable to their Member States in accordance with Article 10. In such cases, the Member States of such intergovernmental organisations shall not exercise their individual voting rights.

3. Such organisations may participate in the Executive Committee on matters within their competence.

CHAPTER IV

ORGANISATION AND ADMINISTRATION

Article 5

Establishment, headquarters and structure of the International Cocoa Organisation

1. The International Cocoa Organisation established by the International Cocoa Agreement, 1972, shall continue in being and shall administer the provisions and supervise the operation of this Agreement.

2. The Organisation shall function through:

(a) the International Cocoa Council and the Executive Committee;

(b) the Executive Director and other staff.

3. The headquarters of the Organisation shall be in London unless the Council, by special vote, decides otherwise.

Article 6

Composition of the International Cocoa Council

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

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

Article 7

Powers and functions of the Council

1. The Council shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the express provisions of this Agreement.

2. The Council shall not have power, and shall not be taken to have been authorised by the Members, to incur any obligation outside the scope of this Agreement; in particular it shall not have the capacity to borrow money. In exercising its capacity to contract, the Council shall incorporate in its contracts the terms of this provision and of Article 23 in such a way as to bring them to the notice of the other parties entering into contracts with the Council, but any failure to incorporate such terms shall not invalidate such a contract or render it *ultra vires* the Council.

3. The Council shall, by special vote, adopt such rules and regulations as are necessary to carry out the provisions of this Agreement and are consistent therewith, including its rules of procedure and those of its committees, and the financial and staff regulations of the Organisation. The Council may, in its rules of procedure, provide for a procedure whereby it may, without meeting, decide specific questions.

4. The Council shall keep such records as are required for the performance of its functions pursuant to this Agreement, and such other records as it considers appropriate.

5. The Council may set up any working group(s) as appropriate to assist it in carrying out its task.

Article 8

Chairman and Vice-Chairmen of the Council

1. The Council shall elect a chairman and a first and a second vice-chairman for each cocoa year, who shall not be paid by the Organisation.

2. Both the chairman and the first vice-chairman shall be elected from among the representatives of the exporting Members or from among the representatives of the importing Members and the second vice-chairman from among the representatives of the other category. These offices shall alternate each cocoa year between the two categories.

3. In the temporary absence of both the chairman and the two vice-chairmen or the permanent absence of one or more of them, the Council may elect new officers from among the representatives of the exporting Members or from among the representatives of the importing Members, as appropriate, on a temporary or permanent basis as may be required.

4. Neither the chairman nor any other officer presiding at meetings of the Council shall vote. His alternate may exercise the voting rights of the Member which he represents.

Article 9

Sessions of the Council

1. As a general rule, the Council shall hold one regular session in each half of the cocoa year.

2. The Council shall meet in special session whenever it so decides or at the request of:

(a) any five Members;

(b) a Member or Members having at least 200 votes;

(c) the Executive Committee; or

(d) the Executive Director, for the purposes of Articles 22 and 58.

3. Notice of sessions shall be given at least 30 calendar days in advance, except in case of emergency.

4. Sessions shall be held at the headquarters of the Organisation unless the Council, by special vote, decides otherwise. If, on the invitation of any Member, the Council meets elsewhere than at the headquarters of the Organisation, that Member shall pay the additional costs involved.

Article 10

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 Members — that is, exporting and importing Members, respectively — in accordance with the following paragraphs of this Article.

2. For each cocoa year, the votes of exporting Members shall be distributed as follows: each exporting Member shall have five basic votes. The remaining votes shall be divided among all the exporting Members in proportion to the average volume of their respective exports of cocoa in the preceding three cocoa years for which data have been published by the Organisation in its latest issue of the *Quarterly Bulletin of Cocoa Statistics*. For this purpose, exports shall be calculated as net exports of cocoa beans plus net exports of cocoa products, converted to beans equivalent using the conversion factors as specified in Article 37.

3. For each cocoa year, the votes of importing Members shall be distributed as follows: 100 shall be divided equally to the nearest whole vote for each Member. The remaining votes shall be distributed on the basis of the percentage which the average of each importing Member's annual imports, in the preceding three cocoa years for which final figures are available in the Organisation, represents in the total of the averages for all the importing Members. For this purpose, imports shall be calculated as net imports of cocoa beans plus gross imports of cocoa products, converted to beans equivalent using the conversion factors as specified in Article 37.

4. If for any reason, difficulties should arise in the determination or the up-dating of the statistical basis for the calculation of votes in accordance with the provisions of paragraphs 2 and 3 of this Article, the Council may, by special vote, decide on a different statistical basis for the calculation of votes.

5. No Member shall have more than 400 votes. Any votes above this figure arising from the calculations in paragraphs 2, 3 and 4 of this Article shall be redistributed among the other Members on the basis of those paragraphs.

6. When the membership in the Organisation changes or when the voting rights of a Member are suspended or restored under any provision of this Agreement, the Council shall provide for the redistribution of votes in accordance with this Article.

7. There shall be no fractional votes.

Article 11

Voting procedure of the Council

1. Each Member shall be entitled to cast the number of votes it holds and no Member shall be entitled to divide its votes. A Member may, however, cast differently from such votes any votes which it is authorised to cast pursuant to paragraph 2 of this Article.

2. By written notification to the chairman of the Council, any exporting Member may authorise any other exporting Member, and any importing Member may authorise any other importing Member, to represent its interests and to cast its votes at any meeting of the Council. In this case the limitation provided for in Article 10(5) shall not apply.

3. A Member authorised by another Member to cast the votes held by the authorising Member pursuant to Article 10 shall cast such votes in accordance with the instructions of the authorising Member.

Article 12

Decisions of the Council

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

2. In arriving at the number of votes necessary for any of the decisions or recommendations of the Council, votes of Members abstaining shall not be taken into consideration.

3. The following procedure shall apply with respect to any action by the Council which pursuant to this Agreement requires a special vote:

(a) if the required majority 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 simple distributed majority vote, be put to a vote again within 48 hours;

(b) if the required majority 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 simple distributed majority vote, be put to a vote again within 24 hours;

(c) if the required majority is not obtained in the third vote because of the negative vote cast by one exporting or one importing Member, the proposal shall be considered adopted;

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

4. Members undertake to accept as binding all decisions of the Council pursuant to the provisions of this Agreement.

Article 13

Cooperation with other organisations

1. The Council shall make whatever arrangements are appropriate for consultation or cooperation with the United Nations and its organs, in particular the United Nations Conference on Trade and Development, and with the Food and Agriculture Organisation of the United Nations and such other specialized agencies of the United Nations and intergovernmental organisations as may be appropriate.

2. The Council, bearing in mind the particular role of the United Nations Conference on Trade and Development, in international commodity trade, shall, as appropriate, keep that organisation informed of its activities and programmes of work.

3. The Council may also make whatever arrangements are appropriate for maintaining effective contact with international organisations of cocoa producers, traders and manufacturers.

4. The Council shall seek to involve the international financial agencies and other parties with an interest in the world cocoa economy and its work on cocoa production and consumption policy.

Article 14

Admission of observers

1. The Council may invite any non-member State to attend any of its meetings as an observer.

2. The Council may also invite any of the organisations referred to in Article 13 to attend any of its meetings as an observer.

Article 15

Composition of the Executive Committee

1. The Executive Committee shall consist of 10 exporting Members and 10 importing Members. If, however, either the number of exporting Members or the number of importing Members in the Organisation is less than 10 the Council may, while maintaining parity between the two categories of Members, decide, by special vote, the total number on the Executive Committee. Members of the Executive Committee shall be elected for each cocoa year in accordance with Article 16 and may be re-elected.

2. Each elected Member shall be represented on the Executive Committee by a representative and, if it so desires, by one or more alternates. Each such Member may also appoint one or more advisers to its representative or alternates.

3. The chairman and vice-chairman of the Executive Committee, elected for each cocoa year by the Council, shall both be chosen from among the representatives of the exporting members or from among the representatives of the importing members. These offices shall alternate each cocoa year between the two categories of members. In the temporary or permanent absence of the chairman and the vice-chairman, the Executive Committee may elect new officers from among the representatives of the exporting members or from among the representatives of the importing members, as appropriate, on a temporary or permanent basis as may be required. Neither the chairman nor any other officer presiding at meetings of the Executive Committee may vote. His alternate may exercise the voting rights of the member which he represents.

4. The Executive Committee shall meet at the headquarters of the Organisation unless, by special vote, it decides otherwise. If, on the invitation of any Member, the Executive Committee meets elsewhere than at the headquarters of the Organisation, that Member shall pay the additional costs involved.

Article 16

Election of the Executive Committee

1. The exporting and importing members of the Executive Committee shall be elected in the Council by the exporting and importing Members respectively. The election within each category shall be held in accordance with paragraphs 2 and 3 of this Article.

2. Each Member shall cast all the votes to which it is entitled pursuant to Article 10 for a single candidate. A Member may cast for another candidate any votes which it is authorised to cast pursuant to Article 11(2).

3. The candidates receiving the largest number of votes shall be elected.

Article 17

Competence of the Executive Committee

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

2. The Executive Committee shall keep the market under continuous review and recommend to the Council such measures as it may consider advisable.

3. Without prejudice to the right of the Council to exercise any of its powers, the Council may, by a simple distributed majority vote or a special vote, depending on whether a decision by the Council on the subject requires a simple distributed majority vote or a special vote, delegate to the Executive Committee the exercise of any of its powers, except the following:

(a) redistribution of votes pursuant to Article 10;

(b) approval of the administrative budget and assessment of contributions pursuant to Article 24;

(c) revision of the list of producers of fine or flavour cocoa pursuant to Article 43;

(d) relief from obligations pursuant to Article 44;

(e) decision of disputes pursuant to Article 47;

(f) suspension of rights pursuant to Article 48(3);

(g) establishment of conditions for accession pursuant to Article 54;

(h) exclusion of a Member pursuant to Article 59;

(i) extension or termination of this Agreement pursuant to Article 61;

(j) recommendation of amendments to Members pursuant to Article 62.

4. The Council may at any time, by a simple distributed majority vote, revoke any delegation of powers to the Executive Committee.

Article 18

Voting procedure and decisions of the Executive Committee

1. Each member of the Executive Committee shall be entitled to cast the number of votes received by it pursuant to the provisions of Article 16, and no member of the Executive Committee shall be entitled to divide its votes.

2. Without prejudice to the provisions of paragraph 1 of this Article and by written notification to the chairman, any exporting or importing Member which is not a member of the Executive Committee and which has not cast its votes pursuant to Article 16(2) for any of the Members elected may authorise any exporting or importing member of the Executive Committee, as appropriate, to represent its interests and to cast its votes in the Executive Committee.

3. In the course of any cocoa year a Member may, after consultation with the member of the Executive Committee for which it voted pursuant to Article 16, withdraw its votes from that Member. The votes thus withdrawn may be reassigned to another exporting and importing member of the Executive Committee, as appropriate, but may not be withdrawn from this Member for the remainder of that cocoa year. The member of the Executive Committee from which the votes have been withdrawn shall nevertheless retain its seat on the Executive Committee for the remainder of that cocoa year. Any action taken pursuant to the provisions of this paragraph shall become effective after the chairman has been informed in writing thereof.

4. Any decision taken by the Executive Committee shall require the same majority as that decision would require if taken by the Council.

5. Any Member shall have the right of appeal to the Council against any decision of the Executive Committee. The Council shall prescribe, in its rules of procedure, the conditions under which such appeal may be made.

Article 19

Quorum for the Council and the Executive Committee

1. The quorum for the opening meeting of any session of the Council shall be constituted by the presence of at least five exporting Members and a majority of importing Members, provided that such Members together hold in each category at least two-thirds of the total votes of the Members in that category.

2. If there is no quorum in accordance with paragraph 1 of this Article on the day appointed for the opening meeting of any session, on the second day, and throughout the remainder of the session, the quorum for the opening session shall be constituted by the presence of exporting and importing Members holding a simple majority of the votes in each category.

3. The quorum for meetings subsequent to the opening meeting of any session pursuant to paragraph 1 of this Article shall be that prescribed in paragraph 2 of this Article.

4. The representation in accordance with Article 11(2) shall be considered as presence.

5. The quorum for any meeting of the Executive Committee shall be prescribed by the Council in the rules of procedure of the Executive Committee.

Article 20

The staff of the Organisation

1. The Council, after consulting the Executive Committee, shall appoint the Executive Director by special vote. The terms of the appointment of the Executive Director shall be fixed by the Council in the light of those applying to corresponding officials of similar intergovernmental organisations.

2. The Executive Director shall be the chief administrative officer of the Organisation and shall be responsible to the Council for the administration and operation of this Agreement in accordance with the decisions of the Council.

3. The staff of the Organisation shall be responsible to the Executive Director, who in turn shall be responsible to the Council.

4. The Executive Director shall appoint the staff in accordance with regulations to be established by the Council. In drawing up such regulations, the Council shall have regard to those applying to officials of similar intergovernmental organisations. Staff appointments shall be made in so far as is practicable from nationals of exporting and importing Members.

5. Neither the Executive Director, nor any other member of the staff, shall have any financial interest in the cocoa industry, the cocoa trade, cocoa transportation or cocoa publicity.

6. In the performance of their duties, the Executive Director and the other members of the staff shall not seek or receive instructions from any Member or from any other authority external to the Organisation. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organisation. 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.

7. No information concerning the operation or administration of this Agreement shall be revealed by the Executive Director or the other members of the staff of the Organisation, except as may be authorised by the Council or as is necessary for the proper discharge of their duties under this Agreement.

CHAPTER V

PRIVILEGES AND IMMUNITIES

Article 21

Privileges and immunities

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

2. The status, privileges and immunities of the Organisation, of its Executive Director, its staff and experts and of representatives of Members whilst 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 International Cocoa Organisation in London on 26 March 1975, with such amendments as are necessary for the proper functioning of this Agreement.

3. If the headquarters of the Organisation is moved to another country, the new host government shall, as soon as possible, conclude with the Organisation a headquarters agreement to be approved by the Council.

4. 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 Organisation;

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

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

5. The Organisation 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.

PART THREE

FINANCIAL PROVISIONS

CHAPTER VI

FINANCE

Article 22

Finance

1. There shall be kept an administrative account for the administration of this Agreement. The expenses necessary for the administration of this Agreement shall be brought into the administrative account and shall be met by annual contributions from Members assessed in accordance with Article 24. If, however, a Member requests special services, the Council may decide to accede to the request and shall require that Member to pay for them.

2. The Council may establish a separate account for the purposes of Article 40. This account shall be financed through voluntary contributions from Members or other bodies.

3. The financial year of the Organisation shall be the same as the cocoa year.

4. The expenses of delegations to the Council, to the Executive Committee and to any of the Committees of the Council or of the Executive Committee shall be met by the Members concerned.

5. If the financial position of the Organisation is or appears likely to be insufficient to finance the remainder of the cocoa year, the Executive Director shall call a special session of the Council within 20 working days

unless the Council is otherwise scheduled to meet within 30 calendar days.

Article 23

Liabilities of Members

A Member's liability to the Council and to other Members is limited to the extent of its obligations regarding contributions specifically provided for in this Agreement. Third parties dealing with the Council shall be deemed to have notice of the provisions of this Agreement regarding the powers of the Council and the obligations of the Members, in particular, Article 7(2) and the first sentence of this Article.

Article 24

Approval 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 Organisation for the following financial year, and shall assess the contribution of each Member to that budget.

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. For the purpose of assessing contributions, the votes of each Member shall be calculated without regard to the suspension of any Member's voting rights and any redistribution of votes resulting therefrom.

3. The initial contribution of any Member joining the Organisation 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 that Member and the period remaining in the current financial year, but the assessment made upon other Members for the current financial year shall not be altered.

4. If this Agreement enters into force before the beginning of the first full financial year, the Council shall, at its first session, approve an administrative budget covering the period up to the commencement of the first full financial year.

Article 25

Payment of contributions to the administrative budget

1. Contributions to the administrative budget for each financial year shall be payable in freely convertible currencies, shall be exempt from foreign exchange restrictions and shall become due on the first day of that financial year. Contributions of Members in respect of the financial year in which they join the Organisation shall be due on the date on which they become Members.

2. Contributions to the administrative budget approved pursuant to Article 24(4) shall be payable within three months of the date of assessment.

3. If, at the end of five months after the beginning of the financial year or, in the case of a new Member, three months after the Council has assessed its contribution, a Member has not paid its full contribution to the administratrive budget, the Executive Director shall request that Member to make payment as quickly as possible. If, at the expiration of two months after the request of the Executive Director, that Member has still not paid its contribution, the voting rights of that Member in the Council and the Executive Committee shall be suspended until such time as it has made full payment of the contribution.

4. A Member whose voting rights have been suspended pursuant to paragraph 3 of this Article shall not be deprived of any of its other rights or relieved of any of its obligations pursuant to this Agreement unless the Council, by special vote, decides otherwise. It shall remain liable to pay its contribution and to meet any other financial obligations pursuant to this Agreement.

5. The Council may consider the question of membership of any Member with two years contributions unpaid, and by special vote may decide that this Member shall cease to enjoy the rights of membership and/or cease to be assessed for budgetary purposes. It shall remain liable to meet any other of its financial obligations pursuant to this Agreement. By payment of the arrears the Member will regain the rights of membership. Any payments made by Members in arrears will be credited first to those arrears, rather than to current contributions.

Article 26

Audit and publication of accounts

1. As soon as possible, but not later than six months after the close of each financial year, the statement of the Organisation's accounts for that financial year and the balance sheet at the close of that financial year under the accounts referred to in Article 22 shall be audited. The audit shall be carried out by an independent auditor of recognised standing in cooperation with two qualified auditors from Member governments, one from exporting Members and one from importing Members, to be elected by the Council for each financial year. The auditors from Member governments shall not be paid by the Organisation for their professional services. However, travel and subsistence costs may be reimbursed by the Organisation under terms and conditions to be determined by the Council.

2. The terms of appointment of the independent auditor of recognized standing, as well as the intentions and objectives of the audit, shall be laid down in the financial regulations of the Organisation. The audited statement of the Organisation's accounts and the audited balance sheet shall be presented to the Council at its next regular session for approval.

3. A summary of the audited accounts and balance sheet shall be published.

Article 27

Relationship with the Common Fund For Commodities

1. The Organisation shall take full advantage of the facilities of the Common Fund for Commodities.

2. In respect of the implementation of any project funded under the Second Account of the Common Fund for Commodities, the Organisation, as a designated International Commodity Body, shall not incur any financial obligation including for guarantees given by individual Members or other entities. Neither the Organisation, nor any Member by reason of its membership in the Organisation shall be responsible for any liability arising from borrowing or lending by any other Member or entity in connection with such projects.

PART FOUR

ECONOMIC PROVISIONS

CHAPTER VII

SUPPLY AND DEMAND

Article 28

Cooperation among Members

1. Members recognise the importance of ensuring the greatest possible growth of the cocoa economy and therefore of coordinating their efforts to encourage the balanced development of production and consumption so as to secure the best equilibrium between supply and demand. They shall cooperate fully with the Council in the attainment of this objective.

2. The Council shall identify the obstacles to the harmonious development and the dynamic expansion of the cocoa economy and shall seek mutually acceptable practical measures designed to overcome these obstacles. Members shall endeavour to apply the measures elaborated and recommended by the Council.

3. The Organisation shall collect and keep up to date the available information needed to establish, in the most reliable way, the world's current and potential consumption and production capacity. In this respect, Members shall cooperate fully with the Organisation.

Article 29

Production

1. In order to deal with the problem of market imbalances in the medium and long term, and in particular the problem of structural over-production, the exporting Members undertake to abide by a production-management plan designed to achieve a lasting equilibrium between world production and consumption. The plan shall be drawn up by the producing countries in a Production Committee set up for this purpose by the Council.

2. The Committee shall be composed of all exporting and importing Member countries. However, all decisions of the Production Committee related to the production-management plan and programmes shall be taken by the exporting Members participating in the Committee subject to the provisions of Article 43.

3. The Committee's terms of reference shall be, in particular:

(a) to coordinate the policies and programmes decided on by each producing country, taking into account the production-management plan drawn up by the Committee;

(b) to identify and recommend the application of any measures and activities, including where appropriate diversification, likely to help reestablish a lasting equilibrium between world cocoa supply and demand as soon as possible.

4. The Council shall adopt at its first session following the entry into force of this Agreement annual forecasts of world production and consumption for a period corresponding at least to the lifetime of this Agreement. The Executive Director shall provide the data necessary for the preparation of these forecasts. The forecasts thus adopted by the Council shall be reviewed and revised if necessary every year. The Committee shall fix indicative figures for annual levels of global production necessary to achieve and maintain equilibrium between supply and demand in accordance with the aims of this Agreement. The factors to be taken into consideration shall include the expected variations in production and consumption in accordance with movements in real prices and the estimated variations in stock levels.

5. In the light of the indicative figures fixed by the committee pursuant to paragraph 4 of this Article, the exporting Members shall as a group implement the production-management plan in order to achieve global equilibrium between supply and demand in the medium and long term. Each exporting Member shall draw up a programme for the adjustment of its production enabling the objectives set in this Article to be achieved. Each exporting Member shall be responsible for the policies, methods and controls it applies to implement its production programme and shall inform the Committee regularly of any policies and programmes recently introduced or abandoned and of their results.

6. The Production Committee shall follow and monitor the implementation of the production-management plan and programmes.

7. The committee shall submit detailed reports to each regular session of the Council, on the basis of which the Council shall review the general situation, in particular assessing the movement of global supply and demand in the light of the provisions of this Article. The Council may make recommendations to Members on the basis of this assessment.

8. The financing of the production-management plan and programmes shall be borne by the exporting Members, with the exception of the costs related to the normal administrative services required by the functions of the Production Committee.

9. Each exporting Member shall be responsible for the financing of the implementation of its production-management programme.

10. Any exporting Member or institution may contribute to the joint financing of activities formulated by the Production Committee.

11. The committee shall draw up its own rules and regulations.

12. The Executive Director shall assist the committee as required.

Article 30

Stocks

1. To facilitate the evaluation of world cocoa stocks and to ensure greater transparency of the market, Members shall provide the Executive Director, by not later than the end of May of each year, with information to which they have access on stocks of cocoa as at the end of the previous cocoa year held in their respective countries.

2. On the basis of this information, the Executive Director shall submit to the Council for consideration at least once a year a detailed report on world cocoa stocks. The Council may thereafter make appropriate recommendations to Members.

3. The Council shall establish a working group to assist it in respect of the implementation of the provisions of this article.

Article 31

Assurance of supplies and access to markets

Members shall conduct their trade policies having regard to the objectives of this Agreement, so that those objectives may be attained. In particular, they recognize that regular supplies of cocoa and regular access to their markets are essential for both importing and exporting Members.

Article 32

Consumption

1. All Members shall endeavour to take all practicable measures which may be necessary to encourage the expansion of cocoa consumption in their own countries. Each Member shall be responsible for the means and methods it employs for that purpose. In particular, however, Members, especially importing Members, shall endeavour to remove or reduce substantially domestic obstacles to the expansion of cocoa consumption and to encourage efforts designed to identify and develop new uses for cocoa. In this regard, Members shall inform the Executive Director, at least once every cocoa year, of pertinent domestic regulations and measures and other information concerning cocoa consumption, including domestic taxes and customs tariffs.

2. The Council shall establish a Consumption Committee whose aim shall be to review trends and prospects of cocoa consumption and to identify the obstacles to the expansion of cocoa consumption in both exporting and importing countries.

3. The terms of reference of the committee shall be in particular the following:

(a) to monitor and evaluate trends in cocoa consumption and programmes instituted in individual countries or groups of countries and which may affect global consumption of cocoa;

(b) to identify obstacles affecting the expansion of cocoa consumption;

(c) to investigate and encourage the development of the potential for cocoa consumption, particularly in non-traditional markets;

(d) to promote, where appropriate, research into new uses for cocoa in cooperation with appropriate competent organisations and institutions.

4. Membership of the Consumption Committee shall be open to all Members of the Council.

5. The committee shall draw up its own rules and regulations.

6. The Executive Director shall assist the committee as required.

7. On the basis of a detailed report presented by the committee, the Council shall review at each ordinary session the general situation regarding cocoa consumption, evaluating particularly the development of global demand. The Council may make recommendations to Members based on this evaluation.

8. The Council may establish sub-committees to promote specific cocoa-consumption programmes. Participation in the sub-committees shall be voluntary and shall be limited to those countries which contribute to the cost of these programmes. Any country or institution may contribute to the promotion programmes in accordance with modalities to be established by the Council. The sub-committees shall seek the approval of a country before conducting a promotion campaign in the territory of that country.

Article 33

Cocoa substitutes

1. Members recognise that the use of substitutes may prejudice the expansion of cocoa consumption. In this regard, they agree to establish regulations on cocoa products and chocolate or to adapt existing regulations, if necessary, so that the said regulations shall prohibit materials of non-cocoa origin from being used in place of cocoa to mislead the consumer.

2. In preparing or reviewing regulations based on the principles in paragraph 1 of this Article, Members shall take fully into account the recommendations and decisions of competent international bodies such as the Council and the Codex Committee on Cocoa Products and Chocolate.

3. The Council may recommend to a Member that it take any measures which the Council considers advisable for assuring the observance of the provisions of this Article.

4. The Executive Director shall present an annual report to the Council on the development of the situation in this area and on the manner in which the provisions of this Article are being observed.

Article 34

Commercial transactions with non-members

1. Exporting Members undertake not to sell cocoa to non-members on terms commercially more favourable than those which they are prepared to offer at the same time to importing Members, taking into account normal trade practices.

2. Importing Members undertake not to buy cocoa from non-members on terms commercially more favourable than those which they are prepared to accept at the same time from exporting Members, taking into account normal trade practices.

3. The Council shall periodically review the operation of paragraphs 1 and 2 of this Article and may require members to supply appropriate information in accordance with Article 38.

4. Any Member which has reason to believe that another Member has not fulfilled the obligation pursuant to paragraph 1 or 2 of this Article may so inform the Executive Director and call for consultations pursuant to Article 46, or refer the matter to the Council pursuant to Article 48.

PART FIVE

MARKET-MONITORING AND RELATED PROVISIONS

CHAPTER VIII

MARKET-MONITORING PROVISIONS

Article 35

Daily price

1. For the purposes of this Agreement and, in particular, for monitoring the evolution of the cocoa market, the Executive Director shall compute and publish a daily price of cocoa beans. This price shall be expressed in special drawing rights (SDRs) per tonne.

2. The daily price shall be the average taken daily of the quotations for cocoa beans of the nearest three active future trading months of the London Cocoa Terminal Market and on the New York Coffee, Sugar and Cocoa Exchange at the time of the London close. The London prices shall be converted into the United States dollars per tonne by using the current six months forward rate of exchange in London at closing time. The United States

dollar-denominated average of the London and New York prices shall be converted into its SDR equivalent at the appropriate daily official United States dollar/SDR exchange rate published by the International Monetary Fund. The Council shall decide the method of calculation to be used when the quotations on only one of these two cocoa markets are available or when the London Foreign Exchange Market is closed. The time for shift to the next three-month period shall be the 15th of the month immediately preceding the nearest active maturing month.

3. The Council may, by special vote, decide on any other method of computing the daily price if it considers such other method to be more satisfactory than that prescribed in this Article.

Article 36

Reporting of exports and imports

1. The Executive Director shall, in accordance with rules established by the Council, maintain a record of Members' exports and imports of cocoa.

2. For this purpose, each Member shall report to the Executive Director the quantities of its exports of cocoa by country of destination and the quantities of its imports of cocoa by country of origin, at such intervals as the Council may determine, together with such other data as the Council may prescribe.

3. The Council shall establish such rules as it deems necessary to deal with non-compliance with the provisions of this Article.

Article 37

Conversion factors

1. For the purpose of determining the beans equivalent of cocoa products, the following shall be the conversion factors: cocoa butter 1,33; cocoa cake and powder 1,18; cocoa paste/liquor and nibs 1,25. The Council may determine, if necessary, that other products containing cocoa are cocoa products. The conversion factors for cocoa products other than those for which conversion factors are set out in this paragraph shall be fixed by the Council.

2. The Council may, by special vote, revise the conversion factors in paragraph 1 of this Article.

CHAPTER IX

INFORMATION, STUDIES AND RESEARCH

Article 38

Information

1. The Organisation shall act as a centre for the efficient collection, exchange and dissemination of:

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

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

2. In addition to information which Members are required to provide pursuant to other Articles of this Agreement, the Council may request Members to provide such information as it considers necessary for its operations, including regular reports on policies for production and consumption, prices, exports and imports, stocks and taxation.

3. 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 Organisation, the Council may require the Member concerned to explain the reasons therefor. If it is found that technical assistance is needed in the matter, the Council may take any necessary measures in that regard.

4. The Council shall at appropriate times, but not less than twice in any cocoa year, publish estimates of production of cocoa beans and grindings for that cocoa year.

Article 39

Studies

The Council shall, to the extent it considers necessary, promote studies of the economics of cocoa production and distribution, including trends and projections, the impact of governmental measures in exporting and importing countries on the production and consumption of cocoa, the opportunities for expansion of cocoa consumption for traditional and possible new uses, and the effects of the operation of this Agreement on exporters and importers of cocoa, including their terms of trade, and may submit recommendations to Members on the subject of these studies. In the promotion of these studies, the Council may cooperate with international organisations and other appropriate institutions.

Article 40

Scientific research and development

The Council may encourage and promote scientific research and development in areas of cocoa production, processing and consumption as well as the dissemination and practical application of the results obtained in this field. To this end, the Council may cooperate with international organisations and research institutions.

Article 41

Annual review and report

1. The Council shall, as soon as practicable after the end of each cocoa year, review the operation of this Agreement and the performance of Members in conforming to the principles and promoting the objectives thereof. It may then make recommendations to Members regarding ways and means of improving the functioning of this Agreement.

2. The Council shall publish an annual report. This report shall include a section on the annual review for which provision is made in paragraph 1 of this Article, and any other information as the Council considers appropriate.

CHAPTER X

COOPERATION WITHIN THE COCOA ECONOMY

Article 42

Cooperation within the cocoa economy

1. The Council shall encourage Members to seek the views of experts in cocoa matters.

2. In fulfilling their obligations pursuant to this Agreement, Members shall conduct their activities in a manner consonant with the established channels of trade and shall take due account of the legitimate interests of all sectors of the cocoa economy.

3. Members shall not interfere with the arbitration of commercial disputes between cocoa buyers and sellers if contracts cannot be fulfilled because of regulations established in order to implement this Agreement, nor place impediments in the way of the conclusion of arbitration proceedings. The requirement that Members comply with the provisions of this Agreement shall not be accepted as grounds for non-fulfilment of contract or as a defence in such cases.

PART SIX

OTHER PROVISIONS

CHAPTER XI

FINE OR FLAVOUR COCOA

Article 43

Fine or flavour cocoa

1. The Council shall, at its first session following the entry into force of this Agreement, review Annex C and, by special vote, revise it, determining the proportions in which the countries listed therein produce and export exclusively or partially fine or flavour cocoa. Thereafter, the Council may at any time during the lifetime of this Agreement review Annex C and, if necessary, revise it by special vote. The Council shall seek expert advice on this matter, as appropriate.

2. The provisions of this Agreement concerning the implementation of the production-management plan and financing of its operations shall not apply to the fine or flavour cocoa of any exporting Member whose production is exclusively of fine or flavour cocoa.

3. Paragraph 2 of this Article shall also apply in the case of any exporting Member part of whose production consists of fine or flavour cocoa, to the extent of the proportion of its production comprising fine or flavour cocoa. With regard to the remaining portion, the provisions of this Agreement concerning the production-management plan shall apply.

4. If the Council finds that the production of, or export from these countries has risen sharply, it shall take appropriate steps to ensure that the provisions of this Article are being properly applied. If it is found that these provisions are not being properly applied, the country concerned shall, by special vote of the Council, be deleted from Annex C and shall be subject to all restrictions and obligations prescribed in this Agreement.

5. Exporting Members which produce exclusively fine or flavour cocoa shall not vote on issues relating to the implementation of the production-management plan, except in the case of the sanction referred to in paragraph 4 regarding the revision of Annex C.

CHAPTER XII

RELIEF FROM OBLIGATIONS, AND DIFFERENTIAL AND REMEDIAL MEASURES

Article 44

Relief from obligations and exceptional circumstances

1. The Council may, by special vote, relieve a Member of an obligation on account of exceptional or emergency circumstances, *force majeure,* or international obligations under the Charter of the United Nations for territories administered under the trusteeship system.

2. The Council, in granting relief to a Member pursuant to paragraph 1 of this Article, shall state explicitly the terms and conditions on which and the period for which the Member is relieved of the obligation and the reasons for which the relief is granted.

3. Nothwithstanding the foregoing provisions of this Article, the Council shall not grant relief to a Member in respect of the obligation under Article 25 to pay contributions, or the consequences of a failure to pay them.

Article 45

Differential and remedial measures

Developing importing Members, and least-developed countries which are Members, whose interests are adversely affected by measures taken under this Agreement may apply to the Council for appropriate differential and remedial measures. The Council shall consider taking such appropriate measures in the light of the provisions of resolution 93 (IV) adopted by the United Nations Conference on Trade and Development.

CHAPTER XIII

CONSULTATIONS, DISPUTES AND COMPLAINTS

Article 46

Consultations

Each Member shall accord full and due consideration to any representations made to it by another Member concerning the interpretation or application of this Agreement and shall afford adequate opportunity for consultations. In the course of such consultations, on the request of either party and with the consent of the other, the Executive Director shall establish an appropriate conciliation procedure. The costs of such procedure shall not be chargeable to the Organisation. If such procedure leads to a solution, this shall be reported to the Executive Director. If no solution is reached, the matter may, at the request of either party, be referred to the Council in accordance with Article 47.

Article 47

Disputes

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

2. When a dispute has been referred to the Council pursuant to paragraph 1 of this Article and has been discussed, Members holding not less than one-third of the total votes, or any five Members, may require the Council, before giving its decision, to seek the opinion on the issues in dispute of an *ad hoc* advisory panel to be constituted as described in paragraph 3 of this Article.

3. (a) Unless the Council by special vote decides otherwise, the *ad hoc* 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 persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the importing Members;

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

(b) Nationals of Members shall not be ineligible to serve on the *ad hoc* advisory panel.

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

(d) The costs of the *ad hoc* advisory panel shall be paid by the Organisation.

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

Article 48

Complaints and action by the Council

1. Any complaint that any Member has failed to fulfil its obligations pursuant to this Agreement shall, at the request of the Member making the complaint, be referred to the Council, which shall consider it and take a decision on the matter.

2. Any finding by the Council that a Member is in breach of its obligations pursuant to this Agreement shall be made by a simple distributed majority vote and shall specify the nature of the breach.

3. Whenever the Council, whether as a result of a complaint or otherwise, finds that a Member is in breach of its obligations pursuant to this Agreement, it may, without prejudice to such other measures as are specifically provided for in other Articles of this Agreement, including Article 59, by special vote:

(a) suspend that Member's voting rights in the Council and in the Executive Committee; and

(b) if it considers it necessary, suspend additional rights of such Member, including that of being eligible for, or of holding, office in the Council or in any of its committees, until it has fulfilled its obligations.

4. A Member whose voting rights are suspended pursuant to paragraph 3 of this Article shall remain liable for its financial and other obligations under this Agreement.

CHAPTER XIV

FAIR LABOUR STANDARDS

Article 49

Fair labour standards

Members declare that, in order to raise the levels of living of populations and provide full employment, they will endeavour to maintain fair labour standards and working conditions in the various branches of cocoa production in the countries concerned, consistent with their stage of development, as regards both agricultural and industrial workers employed therein.

CHAPTER XV

ENVIRONMENTAL ASPECTS

Article 50

Environmental aspects

Members shall give due consideration to the sustainable management of cocoa resources and processing, bearing in mind the principles 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 XVI

FINAL PROVISIONS

Article 51

Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Agreement.

Article 52

Signature

This Agreement shall be open for signature at United Nations headquarters from 16 August 1993 until and including 30 September 1993 by parties to the International Cocoa Agreement, 1986, and governments invited to the United Nations Cocoa Conference, 1992. The Council pursuant to the International Cocoa Agreement, 1986, or the Council pursuant to this Agreement may, however, extend the period of signature of this Agreement. The Council shall immediately notify the depositary of any such extension.

Article 53

Ratification, acceptance, approval

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

2. Instruments of ratification, acceptance or approval shall be deposited with the depositary not later than 30 September 1993. The Council pursuant to the International Cocoa Agreement, 1986, or the Council pursuant to this Agreement may, however, grant extensions of time to signatory Governments which are unable to deposit their instruments by that date.

3. Each Government depositing an instrument of ratification, acceptance or approval shall, at the time of such deposit, indicate whether it is an exporting Member or an importing Member.

Article 54

Accession

1. This Agreement shall be open to accession by the government of any State upon conditions to be established by the Council.

2. The Council of the International Cocoa Agreement, 1986, may, pending the entry into force of this Agreement, establish the conditions referred to in paragraph 1 of this Article, subject to confirmation by the Council of this Agreement.

3. In establishing the conditions referred to in paragraph 1 of this Article, the Council shall determine under which of the Annexes to this Agreement the acceding State is to be deemed to be listed, if such State is not listed in any of these Annexes.

4. Accession shall be effected by deposit of an instrument of accession with the depositary.

Article 55

Notification of provisional application

1. A signatory government which intends to ratify, accept or approve this Agreement or a government for which the Council has established conditions for accession, but which has not yet been able to deposit its instrument, may at any time notify the depositary that, in accordance with its constitutional procedures and/or its domestic laws and regulations, it will apply this Agreement provisionally either when it enters into force in accordance with Article 56 or, if it is already in force, at a specified date. Each Government giving such notification shall at that time state whether it will be an exporting Member or an importing Member.

2. A government which has notified pursuant to paragraph 1 of this Article that it will apply this Agreement either when it enters into force or at a specified date shall, from that time, be a provisional Member. It shall remain a provisional Member until the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 56

Entry into force

1. This Agreement shall enter into force definitively on 1 October 1993 or any time thereafter if by such date governments representing at least five exporting countries accounting for at least 80 % of the total exports of countries listed in Annex A and governments representing importing countries having at least 60 % of total imports as set out in Annex B have deposited their instruments of ratification, acceptance, approval or accession with the depositary. It shall also enter into force definitively once it has entered into force provisionally and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance, approval or accession.

2. If this Agreement has not entered into force definitively in accordance with paragraph 1 of this Article, it shall enter into force provisionally on 1 October 1993 if by such date governments representing at least five exporting countries accounting for at least 80% of the total exports of countries listed in Annex A and governments representing importing countries having at least 60 % of total imports as set out in Annex B have deposited their instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally when it enters into force. Such Governments shall be provisional Members.

3. If the requirements for entry into force pursuant to paragraph 1 or 2 of this Article have not been met by 1 October 1993, the Secretary-General of the United Nations shall, at the earliest time practicable, convene a meeting of those governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally. These governments may decide whether to put this Agreement into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine or to adopt any other arrangement as they may deem necessary. However, the economic provisions of this Agreement relating to the production-management plan shall not be put into force unless Governments representing at least five exporting countries accounting for at least 80 % of the total exports of countries listed in Annex A have deposited their instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally when it enters into force.

4. For a government on whose behalf an instrument of ratification, acceptance, approval or accession or a notification of provisional application is deposited after the entry into force of this Agreement in accordance with paragraph 1, 2 or 3 of this Article, the instrument or notification shall take effect on the date of such deposit and, with regard to notification of provisional application, in accordance with the provisions of paragraph 1 of Article 55.

Article 57

Reservations

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

Article 58

Withdrawal

1. At any time after the entry into force of this Agreement, any Member may withdraw from this Agreement by giving written notice of withdrawal to the depositary. The Member shall immediately inform the Council of the action it has taken.

2. Withdrawal shall become effective 90 days after the notice is received by the depositary. If, as a consequence

of withdrawal, membership in this Agreement falls below the requirements provided for in paragraph 1 of Article 56 for its entry into force, the Council shall meet in special session to review the situation and to take appropriate decisions.

Article 59

Exclusion

If the Council finds, pursuant to Article 48(3) that any Member is in breach of its obligations pursuant to this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by special vote, exclude such Member from the Organisation. The Council shall immediately notify the depositary of any such exclusion. Ninety days after the date of the Council's decision, that Member shall cease to be a Member of the Organisation.

Article 60

Settlement of accounts with withdrawing or excluded Members

The Council shall determine any settlement of accounts with a withdrawing or excluded Member. The Organisation 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 Organisation at the time the withdrawal or the exclusion becomes effective, except that, in the case of a Contracting Party which is unable to accept an amendment and consequently ceases to participate in this Agreement pursuant to the provisions of Article 62(2), the Council may determine any settlement of accounts which it finds equitable.

Article 61

Duration, extension and termination

1. This Agreement shall remain in force until the end of the fifth full cocoa year after its entry into force, unless extended pursuant to paragraph 3 of this Article, or terminated earlier pursuant to paragraph 4 of this Article.

2. While this Agreement is in force, the Council may, by special vote, decide to renegotiate it with a view to having the renegotiated agreement enter into force at the end of the fifth cocoa year referred to in paragraph 1 of this Article, or at the end of any period of extension decided upon by the Council pursuant to paragraph 3 of this Article.

3. The Council may, by special vote, extend this Agreement in whole or in part for two periods not extending two cocoa years each. The Council shall notify the depositary of any such extension.

4. The Council may at any time, by special vote, decide to terminate this Agreement. Such termination shall take effect on such date as the Council shall decide, provided that the obligations of Members pursuant to Article 25 shall continue until the financial liabilities relating to the operation of this Agreement have been discharged. The Council shall notify the depositary of any such decision.

5. Nothwithstanding the termination of this Agreement by any means whatsoever, the Council shall remain in being for as long as necessary to carry out the liquidation of the Organisation, settlement of its accounts and disposal of its assets, and shall have during that period such powers and functions as may be necessary for these purposes.

6. Nothwithstanding the provisions of Article 58(2), a Member which does not wish to participate in this Agreement as extended under this article shall so inform the Council. Such Member shall cease to be a party to this Agreement from the beginning of the period of extension.

Article 62

Amendments

1. The Council may, by special vote, recommend an amendment of this Agreement to the Contracting Parties. The amendment shall become effective 100 days after the depositary has received notifications of acceptance from Contracting Parties representing at least 75 % of the exporting Members holding at least 85 % of the votes of the exporting Members, and from Contracting Parties representing at least 75 % of the importing Members holding at least 85 % of the votes of the importing Members, or on such later date as the Council may, by special vote, have determined. The Council may fix a time within which Contracting Parties shall notify the depositary of their acceptance of the amendment, and, if the amendment has not become effective by such time, it shall be considered withdrawn.

2. Any Member on behalf of which notification of acceptance of an amendment has not been made by the date on which such amendment becomes effective shall as of that date cease to participate in this Agreement, unless the Council decides to extend the period fixed for acceptance for such Member to enable it to complete its internal procedures. Such Member shall not be bound by the amendment before it has notified its acceptance thereof.

3. Immediately upon adoption of a recommendation for an amendment the Council shall communicate to the depositary copies of the text of the amendment. The Council shall provide the depositary with the information necessary to determine whether the notifications of acceptance received are sufficient to make the amendment effective.

Article 63

Supplementary and transitional provisions

1. This Agreement shall be considered as a replacement of the International Cocoa Agreement, 1986.

2. All acts by or on behalf of the Organisation or any of its organs pursuant to the International Cocoa Agreement, 1986, which are in effect on the date of entry into force of this Agreement and the terms of which do not provide for expiry on that date shall remain in effect unless changed pursuant to the provisions of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have affixed their signatures under this Agreement on the dates indicated.

DONE at Geneva, this sixteenth day of July, one thousand nine hundred and ninety-three. The texts of this Agreement in the Arabic, Chinese, English, French, Russian and Spanish languages shall be equally authentic.

ANNEXES

ANNEX A

Exports of cocoa (a) **calculated for the purposes of Article 56 (Entry into force)**

Country (b)		1989/90	1990/91	1991/92	Average three-year period 1989/90 to 1991/92	
		(1 000 tonnes)				Share
Côte d'Ivoire	m	736,4	803,9	729,5	756,60	35,37 %
Ghana	m	254,5	265,1	284,8	268,13	12,54 %
Brazil	m	270,0	277,9	220,2	256,03	11,97 %
Malaysia		226,0	211,2	211,2	216,13	10,10 %
Nigeria	m	142,8	147,2	105,5	131,83	6,16 %
Indonesia		100,0	130,3	164,8	131,70	6,16 %
Cameroon	m	123,1	109,1	106,8	113,00	5,28 %
Ecuador	m	105,1	102,1	80,9	96,03	4,49 %
Dominican Republic		53,3	37,1	43,4	44,60	2,09 %
Papua New Guinea	m	40,8	33,4	40,9	38,37	1,79 %
Colombia		9,4	10,1	8,6	9,37	0,44 %
Venezuela	m	8,4	10,0	7,7	8,70	0,41 %
Sierra Leone	m	5,3	13,4	7,3	8,67	0,41 %
Togo	m	6,1	9,3	8,0	7,80	0,36 %
Mexico	m	8,0	1,6	11,9	7,17	0,34 %
Peru		4,8	5,2	6,4	5,47	0,26 %
Equatorial Guinea		7,6	5,2	3,5	5,43	0,25 %
Solomon Islands		3,6	4,1	3,5	3,73	0,17 %
Zaire		3,6	3,4	3,2	3,40	0,16 %
São Tomé and Príncipe		2,8	2,6	2,6	2,67	0,12 %
Madagascar		2,5	2,5	2,9	2,63	0,12 %
Haiti	m	2,8	1,9	2,6	2,43	0,11 %
Honduras		2,0	3,0	2,3	2,43	0,11 %
Liberia		4,5	2,0	0,5	2,33	0,11 %
Vanuatu		2,2	2,2	2,3	2,23	0,10 %
United Republic of Tanzania		2,0	2,5	2,0	2,17	0,10 %
Costa Rica		2,9	1,2	1,2	1,77	0,08 %
Jamaica	m	1,3	1,3	1,8	1,47	0,07 %
Gabon	m	1,6	1,4	1,4	1,47	0,07 %
Trinidad and Tobago	m	1,4	1,2	0,9	1,17	0,05 %
Grenada	m	1,1	1,1	0,7	0,97	0,05 %
Bolivia		1,4	1,3	0,1	0,93	0,04 %
Congo		0,9	0,3	0,7	0,63	0,03 %
Uganda		0,2	0,6	0,6	0,47	0,02 %
Fiji		0,3	0,2	0,3	0,27	0,01 %

Country (b)		1989/90	1990/91	1991/92	Average three-year period 1989/90 to 1991/92	
		(1 000 tonnes)				Share
Samoa	m	0,5	—	—	0,17	0,01 %
Panama		0,3	0,1	0,1	0,17	0,01 %
Sri Lanka		0,1	0,2	—	0,10	—
Guatemala	m	0,1	–0,1	0,3	0,10	—
Nicaragua		0,1	0,1	—	0,07	—
Dominica		—	—	0,1	0,03	—
Suriname		0,1	—	—	0,03	—
TOTAL (c)		2 139,90	2 205,20	2 071,50	2 138,87	100,00 %

Source: International Cocoa Organisation, *Quarterly Bulletin of Cocoa Statistics,* Vol. XIX, No 2 (March 1993).

(a) Three-year average, 1989/90 to 1991/92 of *net* exports of cocoa beans plus *net* exports of cocoa products converted to beans equivalent using the following conversion factors: cocoa butter 1,33; cocoa powder and cake 1,18; cocoa paste/liquor 1,25.

(b) List restricted to countries which individually exported, on average, 10 tonnes or more in the three-year period 1989/90 to 1991/92, based on information available to the ICCO Secretariat.

(c) Totals may differ from the sum of constituents due to rounding.

m Member of the International Cocoa Agreement, 1986 (as extended), as at 22 June 1993.

— Nil, negligible or less than the unit employed.

ANNEX B

Imports of cocoa (a) calculated for the purposes of Article 56 (Entry into force)

Country or territory (b)		1989/90	1990/91	1991/92	Average three-year period 1989/90 to 1991/92	
		(1 000 tonnes)				Share
United States of America		612,2	602,0	679,1	631,10	23,74 %
Germany (c)	m	376,7	409,2	402,3	396,07	14,90 %
Netherlands	m	313,5	327,9	268,0	303,13	11,40 %
United Kingdom	m	189,9	214,7	228,0	210,87	7,93 %
France	m	165,0	187,0	183,7	178,57	6,72 %
Belgium/Luxembourg	m	92,7	98,3	108,4	99,80	3,75 %
Italy	m	79,6	86,0	97,4	87,67	3,30 %
Japan	m	79,9	84,7	79,0	81,20	3,05 %
Spain	m	60,6	66,3	72,6	66,50	2,50 %
Singapore		77,3	46,5	59,6	61,13	2,30 %
Russian Federation (d)	m	86,2	70,2	14,6	57,00	2,14 %
Canada		52,1	51,2	58,7	54,00	2,03 %
Switzerland	m	44,1	43,9	45,8	44,60	1,68 %
Australia		33,3	33,3	35,1	33,90	1,28 %
Poland		23,3	31,0	28,6	27,63	1,04 %
Austria		25,5	27,3	25,6	26,13	0,98 %
China		19,2	28,6	30,4	26,07	0,98 %
Argentina		9,0	26,3	27,5	20,93	0,79 %
Ireland	m	18,7	17,0	20,3	18,67	0,70 %
Sweden	m	18,0	19,2	17,1	18,10	0,68 %
Hungary	m	14,5	16,1	11,5	14,03	0,53 %
Yugoslavia	m	11,3	15,3	15,4	14,00	0,53 %
Republic of Korea		11,2	13,1	12,6	12,30	0,46 %
South Africa		11,9	12,5	10,8	11,73	0,44 %
Turkey		9,6	12,1	13,1	11,60	0,44 %
Greece	m	13,3	11,8	9,0	11,37	0,43 %
Czech Republic (e)		8,2	10,9	13,1	10,73	0,40 %
Norway	m	9,4	9,3	9,7	9,47	0,36 %
Philippines (f)		10,2	10,7	6,9	9,27	0,35 %
Finland	m	8,7	8,1	8,9	8,57	0,32 %
Denmark	m	7,3	9,0	8,3	8,20	0,31 %
Romania		7,7	7,0	6,9	7,20	0,27 %
New Zealand		6,4	8,2	5,6	6,73	0,25 %
Israel		5,0	6,8	6,0	5,93	0,22 %
Thailand		4,6	6,3	6,4	5,77	0,22 %

Country or territory (b)		1989/90	1990/91	1991/92	Average three-year period 1989/90 to 1991/92	
	(1 000 tonnes)					Share
Chile		4,0	6,4	6,5	5,63	0,21 %
Slovak Republic (e)		4,1	5,4	6,6	5,37	0,20 %
Portugal	m	4,0	5,8	5,6	5,13	0,19 %
Bulgaria	m	5,2	4,8	4,1	4,70	0,18 %
Egypt		0,5	4,8	4,4	3,23	0,12 %
Uruguay		1,9	3,2	2,7	2,60	0,10 %
Syrian Arab Republic		1,6	2,3	3,1	2,33	0,09 %
Kenya		1,3	1,2	1,0	1,17	0,04 %
Algeria		1,1	1,5	0,8	1,13	0,04 %
Tunisia		0,8	1,1	1,4	1,10	0,04 %
Morocco		0,8	0,8	1,4	1,00	0,04 %
Islamic Republic of Iran		0,9	0,4	1,3	0,87	0,03 %
Hong Kong		0,6	0,4	1,4	0,80	0,03 %
Saudi Arabia		0,4	0,7	1,2	0,77	0,03 %
Iceland		0,7	0,6	0,7	0,67	0,03 %
Lebanon		0,4	1,0	0,6	0,67	0,03 %
El Salvador		0,8	0,8	0,3	0,63	0,02 %
Jordan		0,5	0,7	0,3	0,50	0,02 %
Cyprus		0,3	0,4	0,4	0,37	0,01 %
Zimbabwe		0,1	0,2	0,6	0,30	0,01 %
Iraq		0,6	—	0,2	0,27	0,01 %
India		–0,1	–0,1	0,9	0,23	0,01 %
Libyan Arab Jamahiriya		0,2	0,3	0,1	0,20	0,01 %
Malta		0,1	0,1	0,1	0,10	—
Other former USSR (d)		47,6	22,4	16,8	28,93	1,09 %
TOTAL (g)		2 594,5	2 693,0	2 688,5	2 658,67	100,00 %

Source: International Cocoa Organisation, *Quarterly Bulletin of Cocoa Statistics,* Vol. XIX, No 2 (March 1993) and ICCO Secretariat estimates.

(a) Three-year average, 1989/90 to 1991/92 of *net* imports of cocoa beans plus *gross* imports of cocoa products converted to beans equivalent using the following conversion factors: cocoa butter 1,33; cocoa powder and cake 1,18; cocoa paste/liquor 1,25.
(b) List restricted to countries which individually imported, on average, 10 tonnes or more in the three-year period 1989/90 to 1991/92, based on information available to the ICCO Secretariat.
(c) Statistics relate to the aggregate imports of the Federal Republic of Germany and the former German Democratic Republic, appropriately adjusted for estimated intra-German trade.
(d) Provisional estimates for the Russian Federation based on data supplied by the delegation. Data for 'Other former USSR' are computed by subtracting the data for the Russian Federation from the totals for the former USSR.
(e) Provisional estimates based on statistics for the former Czechoslovakia. These were divided between the Czech Republic and Slovak Republic in the ratio 2 to 1 in favour of the former.
(f) Philippines may also qualify as an exporting country.
(g) Totals may differ from the sum of constituents due to rounding.
m Member of the International Cocoa Agreement, 1986 (as extended), as at 22 June 1993.
— Nil, negligible or less than the unit employed.

ANNEX C

Producing countries exporting either exclusively or partially fine or flavour cocoa

Costa Rica
Dominica
Ecuador
Grenada
Indonesia
Jamaica
Madagascar
Panama
Papua New Guinea
Saint Lucia
Saint Vincent and the Grenadines
Samoa
São Tomé and Príncipe
Sri Lanka
Suriname
Trinidad and Tobago
Venezuela