

Official Journal

of the European Communities

ISSN 0378-6978

L 313

Volume 24

31 October 1981

English edition

Legislation

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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 30 June 1981

on the notification of the provisional application by the European Economic Community
of the International Cocoa Agreement 1980

(81/850/EEC)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the recommendation from the Commission,

Whereas the International Cocoa Agreement 1980 is an instrument for regulating international trade, the main purpose of which is to achieve a balance between supply and demand for cocoa with the aim of stabilizing the price of this product around the long-term market trend;

Whereas on 31 March 1981, in accordance with the Council Decision of 30 March 1981, the Community signed the said Agreement subject to approval at a later date;

Whereas the Community should give notification that it will apply the Agreement provisionally, pending completion of the internal procedures required in order for it to be concluded,

Article 1

In accordance with Article 65 of the International Cocoa Agreement 1980, the Community shall deposit with the Secretary-General of the United Nations Organization, before 31 May 1981, the notification annexed to this Decision according to which it will apply the Agreement provisionally, as an importing member, when the Agreement comes into force in accordance with Article 66.

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 deposit this notification.

Done at Luxembourg, 30 June 1981.

For the Council
The President
G. BRAKS

**Notification of the provisional application by the European Economic Community of the
International Cocoa Agreement 1980**

In accordance with Article 65 of the International Cocoa Agreement 1980, the Council of the European Communities hereby notifies the Secretary-General of the United Nations Organization, the depositary of the Agreement, that it intends to set in motion the institutional procedure necessary for the Agreement to be approved and that the Community will apply the Agreement provisionally, as an importing member, when it comes into force in accordance with Article 66.

INTERNATIONAL COCOA AGREEMENT 1980

CHAPTER I

OBJECTIVES

*Article 1***Objectives**

The objectives of the International Cocoa Agreement 1980, (hereinafter referred to as this Agreement) taking into account resolutions 93 (IV) and 124 (V) on the Integrated Programme for Commodities adopted by the United Nations Conference on Trade and Development, are:

- (a) to alleviate serious economic difficulties which would persist if adjustment between the production and consumption of cocoa cannot be effected by normal market forces alone as rapidly as circumstances require;
- (b) to prevent excessive fluctuations in the price of cocoa which affect adversely the long-term interests of both producers and consumers;
- (c) to make arrangements which will help stabilize and increase the earnings from the exports of cocoa of producing Member Countries, thereby helping to provide the necessary incentive for a dynamic and rising rate of production and to provide such countries with resources for accelerated economic growth and social development, while at the same time taking into account the interests of consumers in importing member countries, in particular the need to increase consumption;
- (d) to assure adequate supplies at reasonable prices, equitable to producers and consumers; and
- (e) to facilitate expansion of consumption and, if necessary, and in so far as possible, an adjustment of production, so as to secure an equilibrium in the long term between supply and demand.

CHAPTER II

DEFINITIONS

*Article 2***Definitions**

For the purpose of this Agreement:

- (a) *Cocoa* means cocoa beans and cocoa products;
- (b) *Cocoa products* means products made exclusively from cocoa beans, such as cocoa paste, cocoa butter, unsweetened cocoa powder, cocoa cake and cocoa nibs as well as such other products containing cocoa as the Council may determine if necessary;
- (c) *Fine or flavour cocoa* means cocoa produced in the countries listed in Annex C to the extent specified therein;
- (d) *Tonne* means the metric ton of 1 000 kilograms or 2 204.6 pounds; and pound means 453.597 grams;
- (e) *Cocoa year* means the period of 12 months from 1 October to 30 September inclusive;
- (f) *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;
- (g) *Organization* means the International Cocoa Organization referred to in Article 5;
- (h) *Council* means the International Cocoa Council referred to in Article 6;
- (i) *Contracting Party* means a government, or an intergovernmental organization as provided for in Article 4, which has consented to be bound by this Agreement provisionally or definitively;

- (j) *Member* means a Contracting Party as defined above;
- (k) *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;
- (l) *Importing country* or *importing member* means a country or a member respectively whose imports of cocoa expressed in terms of beans exceed its exports;
- (m) *Producing country* or *producing member* means a country or a member respectively which grows cocoa in commercially significant quantities;
- (n) *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;
- (o) *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 the number of votes thus expressed represents at least half the present and voting members;
- (p) *Entry into force* means, except when qualified, the date on which this Agreement first enters into force, whether provisionally or definitively.

CHAPTER III

MEMBERSHIP

Article 3

Membership in the Organization

1. Each Contracting Party shall constitute a single member of the Organization.
2. A member may change its category of membership on such conditions as the Council may establish.

Article 4

Membership by intergovernmental organizations

1. Any reference in this Agreement to 'Governments' shall be construed as including the European

Economic Community and any intergovernmental organization 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 or to deposit of instruments of ratification, acceptance or approval or to notification of provisional application or to accession shall, in the case of such intergovernmental organizations, be construed as including a reference to signature, or to deposit of instruments of ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organizations.

2. In the case of voting on matters within their competence, such organizations shall vote with a number of votes equal to the total number of votes attributable to their member States in accordance with Article 10.

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

CHAPTER IV

ORGANIZATION AND ADMINISTRATION

Article 5

Establishment, headquarters and structure of the International Cocoa Organization

1. The International Cocoa Organization 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 Organization shall function through:

- (a) the International Cocoa Council and the Executive Committee;
- (b) the executive director and the staff.

3. The headquarters of the Organization 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 Organization shall be the International Cocoa Council, which shall consist of all the members of the Organization.

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.

alternate may exercise the voting rights of the member which he represents.

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, 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, the financial and staff regulations of the Organization and rules for the administration and operation of the buffer stock. The Council may, in its rules of procedure, provide for a procedure whereby it may, without meeting, decide specific questions.

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

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 Organization.

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

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. In addition to meeting in the other circumstances specifically provided for in this Agreement, 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 27, 31, 36 and 37.

3. Notice of sessions shall be given at least 30 days in advance, except in case of emergency or where the provisions of this Agreement require otherwise.

4. Sessions shall be held at the headquarters of the Organization 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 Organization, 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: 100 shall be divided equally among all exporting members to the nearest whole vote for each member; the remaining votes shall be distributed among the exporting members listed in Annex A on the basis of the percentage which the average of each exporting member's annual exports in the preceding four cocoa years for which final figures are available in the Organization

represents in the total of the averages for all the exporting members listed in the said Annex. For this purpose, exports shall be calculated as gross exports of cocoa beans plus gross exports of cocoa products, converted to beans equivalent using the conversion factors as specified in Article 28. The Council shall revise the lists in Annexes A and B, if the development of exports of an exporting member so requires.

3. For each cocoa year, the votes of importing members shall be distributed as follows: 100 shall be divided equally among all importing members to the nearest whole vote for each member; the remaining votes shall be distributed among the importing members 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 Organization 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 28.

4. No member shall have more than 300 votes. Any votes above this figure arising from the calculations in paragraphs 2 and 3 of this Article shall be redistributed among the other members on the basis of those paragraphs.

5. When the membership in the Organization 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.

6. 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 authorized to cast under paragraph 2 of this Article.

2. By written notification to the Chairman of the Council, 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 cast its votes at any

meeting of the Council. In this case the limitation provided for in paragraph 4 of Article 10 shall not apply.

3. A member authorized by another member to cast the votes held by the authorizing member under Article 10 shall cast such votes in accordance with the instructions of the authorizing member.

4. Exporting members producing exclusively fine or flavour cocoa shall not take part in voting on matters relating to the administration and operation of the buffer stock.

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 under 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 under the provisions of this Agreement.

Article 13

Cooperation with other organizations

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 Organization of the United Nations and such other specialized agencies of the United Nations and inter-governmental organizations as 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 organization informed of its activities and programmes of work.

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

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 organizations 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 eight exporting members and eight importing members, provided that if either the number of exporting members or the number of importing members in the Organization is 10 or less 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 delegations of the exporting members or from among the delegations 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 Organization 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 Organization, 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 under Article 10 for a single candidate. A member may cast for another candidate any votes which it is authorized to cast under paragraph 2 of Article 11.

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 under Article 10;
 - (b) approval of the administrative budget and assessment of contributions under Article 23;
 - (c) revision of prices under Articles 27, 36, 37 or 38;
 - (d) revision of Annex C under paragraph 3 of Article 29;
 - (e) action relating to supplementary measures under Article 40;
 - (f) relief from obligations under Article 55;
 - (g) decision of disputes under Article 58;
 - (h) suspension of rights under paragraph 3 of Article 59;
 - (i) establishment of conditions for accession under Article 64;
 - (j) exclusion of a member under Article 69;
 - (k) extension or termination of this Agreement under Article 71;
 - (l) recommendation of amendments to members under Article 72.
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 under 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 under paragraph 2 of Article 16 for any of the members elected may authorize 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 under Article 16, withdraw its votes from that member. The votes thus withdrawn may be reassigned to another member of the Executive Committee but may not be withdrawn from that 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 a majority of 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 and on the following day, the quorum on the third day and throughout the remainder of the session shall be constituted by the presence of a majority of exporting members and a majority of importing members, provided that such members together hold in each category a simple majority of the total votes of the members in that 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. Representation in accordance with paragraph 2 of Article 11 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 Organization

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 organizations.

2. The executive director shall be the chief administrative officer of the Organization and shall be responsible to the Council for the administration and operation of this Agreement in accordance with the decision of the Council.

3. The Council, after consulting the Executive Committee, shall appoint the buffer stock manager by special vote. The terms of appointment of the manager shall be fixed by the Council.

4. The manager shall be responsible to the Council for the functions conferred upon him by this Agreement as well as for such additional functions as the Council may determine. The responsibility for these functions shall be exercised in consultation with the executive director.

5. Without prejudice to the provisions of paragraph 4, the staff of the Organization shall be responsible to the executive director, who in turn shall be responsible to the Council.

6. 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 organizations. Staff appointments shall be made in so far as is practicable from nationals of exporting and importing members.

7. Neither the executive director or the manager, or any other member of the staff, shall have any financial interest in the cocoa industry, the cocoa trade, cocoa transportation or cocoa publicity.

8. In the performance of their duties, the executive director, the manager and the other members of the staff shall not seek or receive instructions from any member of 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, the manager and the staff and not to seek to influence them in the discharge of their responsibilities.

9. No information concerning the operation or administration of this Agreement shall be revealed by the executive director, the manager or the other staff of the Organization, except as may be authorized 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 Organization 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 Organization, 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 Organization in London on 26 March 1975.

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.

CHAPTER VI

FINANCE

Article 22

Finance

1. There shall be kept two accounts — the administrative account and the buffer stock account — for the administration and operation of this Agreement.

2. The expenses necessary for the administration and operation of this Agreement, excluding those attributable to the operation and maintenance of the buffer stock instituted under Article 30 shall be brought into the administrative account and shall be met by annual contributions from members assessed in accordance with Article 23. If, however, a member requests special services, the Council may require that member to pay for them.

3. Any expenditure which is attributable to the operation and maintenance of the buffer stock under Article 33 shall be brought into the buffer stock account. The liability of the buffer stock account for any expenditure other than that specified in Article 33 shall be decided by the Council.

4. The financial year of the Organization shall be the same as the cocoa year.

5. 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.

Article 23

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 Organization 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 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 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 24

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 Organization shall be due on the date on which they become members.

2. Contributions to the administrative budget approved under paragraph 4 of Article 23 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, five months after the Council has assessed its contribution, a member has not paid its full contribution to the administrative 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 under paragraph 3 of this Article shall not be deprived of any of its other rights or relieved of any of its obligations under 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 under this Agreement.

Article 25

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 Organization's accounts for that financial year and the balance sheet at the close of that financial year under each of the accounts referred to in paragraph 1 of Article 22 shall be audited. The audit shall be carried out by an independent auditor of recognized 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 Organization.

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 Organization. The audited statement of the Organization'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.

CHAPTER VII

PRICES, BUFFER STOCK AND SUPPLEMENTARY MEASURES

Article 26

Daily price and indicator price

1. For the purposes of this Agreement, the price of cocoa beans shall be determined by reference to a daily price and an indicator price.

2. The daily price shall, subject to paragraph 4 of this Article, be the average taken daily of the quotations for cocoa beans of the nearest three active future trading months on the New York cocoa exchange at noon and on the London cocoa terminal market at closing time. The London prices shall be converted to United States cents per pound by using the current six months forward rate of exchange published in London at closing time. 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 exchange market is closed. The time for shift to the next three-month period shall be the fifteenth of the month immediately preceding the nearest active maturing month.

3. The indicator price shall be the average of the daily prices over a period of five consecutive market days. Any reference in this Agreement to the indicator price being at, below or above any figure means that the average of the daily prices of the previous five consecutive market days was at, below or above that figure. The Council shall adopt rules to implement the provisions of this paragraph.

4. The Council may, by special vote, decide on any other methods of determining the daily price and the indicator price if it considers such methods to be more satisfactory than those set out in paragraphs 2 and 3 of this Article.

Article 27

Prices

1. For the purposes of this Agreement, there shall be established: a minimum price of 110 United States cents per pound, a maximum price of 160 United States cents per pound, a lower intervention price of 100 United States cents per pound and an upper

intervention price of 150 United States cents per pound.

2. (a) Each cocoa year, at its second regular session, the Council shall review and may, by special vote, revise the prices established under paragraph 1 of this Article.

- (b) In conducting this review, the Council shall take into consideration the trend of cocoa prices, consumption, production, stocks, the influence on cocoa prices of changes in the world economic situation or monetary system and any other factors which might affect the achievement of the objectives set out in this Agreement. The executive director shall supply the data necessary for the appropriate consideration of the foregoing elements.

3. (a) If net buffer stock purchases exceeding 100 000 tonnes have taken place within any period not exceeding 12 consecutive months since the date of entry into force of this Agreement or, if prices have been revised, the date of the last revision, the Council shall meet in special session within 10 working days. Unless the Council, by special vote, decides otherwise, the intervention prices shall be reduced by four United States cents per pound.

- (b) If, subsequently, additional net buffer stock purchases exceeding 75 000 tonnes have taken place within any period not exceeding 12 consecutive months, the Council shall meet in special session within 10 working days. Unless the Council, by special vote, decides otherwise, the intervention prices shall be reduced by four United States cents per pound.

4. (a) If net buffer stock sales exceeding 100 000 tonnes have taken place within any period not exceeding 12 consecutive months since the date of entry into force of this Agreement or, if prices have been revised, the date of the last revision, the Council shall meet in special session within 10 working days. Unless the Council, by special vote, decides otherwise, the intervention prices shall be raised by four United States cents per pound.

- (b) If, subsequently, additional net buffer stock sales exceeding 75 000 tonnes have taken

place within any period not exceeding 12 consecutive months, the Council shall meet in special session within 10 working days. Unless the Council, by special vote, decides otherwise, the intervention prices shall be raised by four United States cents per pound.

- (c) If the quantity of cocoa in the buffer stock is such as to render inoperative the provisions of subparagraphs (a) and (b) above, the following provision shall apply: if, on the day of the commencement of any regular session of the Council, the indicator price is at or above the upper intervention price and has on average been so for 60 consecutive market days, the intervention prices shall be raised by four United States cents per pound, unless the Council, by special vote, decides otherwise.

5. There shall be no more than two consecutive price revisions in the same direction under paragraph 3 or paragraph 4 of this Article during the first three years of this Agreement.

6. In exceptional circumstances, such as those referred to in Article 38, the Council shall review and may, by special vote, revise the prices stated in paragraph 1 of this Article. In conducting this review, the Council shall also take into consideration the elements mentioned in paragraph 2 (b) of this Article.

7. The provisions of Article 72 shall not be applicable to the revision of prices under this Article.

Article 28

Conversion factors

1. For the purpose of determining the beans equivalent of cocoa products, the following shall be the conversion factor: cocoa butter 1.33; cocoa cake and powder 1.18; cocoa paste 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.

*Article 29***Fine or flavour cocoa**

1. Notwithstanding Article 35, the provisions of this Agreement concerning contributions for financing the buffer stock shall not apply to fine or flavour cocoa from any exporting member listed in paragraph 1 of Annex C whose production is exclusively of fine or flavour cocoa.

2. Paragraph 1 of this Article shall also apply in the case of any exporting member listed in paragraph 2 of Annex C, part of whose production consists of fine or flavour cocoa, to the extent of the proportion of their production stated in paragraph 2 of Annex C. With regard to the remaining proportion, the provisions of this Agreement concerning contributions for financing the buffer stock and other limitations of this Agreement shall apply.

3. The Council may, by special vote, revise Annex C.

4. If the Council finds that the production of, or export from, countries listed in Annex C has risen sharply, it shall take appropriate steps to ensure that no abuse or evasion of this Agreement is taking place.

5. Each member undertakes to require the presentation of an authorized Council control document before permitting the export of fine or flavour cocoa from its territory. Each member undertakes to require the presentation of an authorized Council control document before permitting the import of fine or flavour cocoa into its territory. The Council may, by special vote, suspend all or part of the provisions of this paragraph.

*Article 30***Institution of the buffer stock**

1. A buffer stock arrangement is hereby instituted. The capacity of the buffer stock shall be 250 000 tonnes of cocoa beans equivalent. If, under the provisions of Article 71, the Council decides to extend this Agreement for two years, the capacity of the buffer stock may be increased by special vote of the Council, provided that such an increase shall not exceed a total of 100 000 tonnes of cocoa beans equivalent.

2. The buffer stock manager shall purchase and hold cocoa beans but, under conditions to be determined by the Council, may also purchase and hold

up to 10 000 tonnes of cocoa paste. If problems of trading or storage of this cocoa paste should arise in this experiment, the provisions of this paragraph shall be suspended by the Council for further examination at its next regular session.

3. The manager shall, in accordance with rules established by the Council, be responsible for the operation of the buffer stock and for buying cocoa, selling and maintaining in good condition stocks of cocoa and without incurring market risks, replacing lots of cocoa in accordance with the relevant provisions of this Agreement.

*Article 31***Financing of the buffer stock**

1. In order to finance its operations, the buffer stock account shall receive regular income in the form of contributions charged on cocoa in accordance with the provisions of Article 35.

2. The buffer stock manager shall keep the executive director and the Council informed of the financial position of the buffer stock:

(a) if the financial position of the buffer stock is, or appears likely to be, insufficient to finance its operations, the manager shall so inform the executive director. The executive director shall call a special session of the Council within 14 days unless the Council is otherwise scheduled to meet within 30 days. The Council may authorize the manager to borrow funds commercially in freely convertible currency from appropriate sources. The manager may secure such loans through warehouse warrants issued on cocoa held by the buffer stock. Any such loans shall be repaid out of the proceeds of contributions and of the sale of cocoa by the buffer stock, and out of miscellaneous income of the buffer stock, if any. Individual members shall not be responsible for the repayment of such loans;

(b) within approximately twelve months after entry into force of this Agreement, the Council shall, by special vote, decide on recommendations to members for possible arrangements for any additional financing required, other than that provided for under subparagraph (a) above. Any such recommendations by the Council shall take into account the limitations of the

constitutional and/or legislative procedures of members.

2. These rules shall take into account, *inter alia*, the liquidity necessary for the full operation of the buffer stock and the desirability of maintaining the real value of the funds.

Article 32

Relationship with the Common Fund for Commodities

When the common fund for commodities becomes operational, the Council shall have the authority to negotiate the modalities and, upon decision taken by special vote, implement the required measures for association with the Fund according to the principles set out therein, with a view to making full use of the financial possibilities offered by the Fund.

Article 33

Cost of operating and maintaining the buffer stock

The cost of operating and maintaining the buffer stock, including:

- (a) the remuneration of the buffer stock manager and members of the staff who operate and maintain the buffer stock, the cost to the Organization of administering and controlling the collection of contributions and interest or capital charges due on sums borrowed by the Council; and
- (b) other costs such as the cost of transportation and insurance from the fob point into the buffer stock storage point, storage including fumigation, handling charges, insurance, management and inspection and any expenditure incurred in replacing lots of cocoa to maintain their condition and value;

shall be met out of the regular source of income from contributions as provided for in Article 35 or loans or the proceeds of resale.

Article 34

Investment of surplus buffer stock funds

1. Part of the funds of the buffer stock as are temporarily surplus to that required to finance its operations may be suitably deposited in importing and exporting Member Countries in accordance with rules established by the Council.

Article 35

Contributions for financing the buffer stock

1. The contribution charged on cocoa either on first export by a member or on first import by a member shall be one United States cent per pound of cocoa beans and proportionately on cocoa products in accordance with Article 28. In any case the contribution shall be charged only once. For this purpose, imports of cocoa by a member from a non-member country shall be deemed to have originated from that non-member unless satisfactory evidence is given that such cocoa originated from a member. The Council shall review annually the buffer stock contribution and, notwithstanding the provisions of the first sentence of this paragraph may, by special vote, determine a different rate of contribution or decide to suspend the contribution in the light of the financial resources and obligations of the Organization in relation to the buffer stock.
2. Certificates of contribution shall be issued by the Council in accordance with the rules which it shall establish. Such rules shall take into account the interests of the cocoa trade and shall cover, *inter alia*, the possible use of agents and the payment of contributions within a given time limit.
3. Contributions under this Article shall be payable in freely convertible currencies and shall be exempt from foreign exchange restrictions.
4. Nothing contained in this Article shall affect the right of any buyer or seller to regulate the terms of payment for supplies of cocoa by agreement between them.

Article 36

Buffer stock purchases

1. When the indicator price is above the lower intervention price, the buffer stock manager shall only purchase cocoa in so far as it is necessary to rotate cocoa, already held in the buffer stock, in order to preserve quality. The rotation programme shall be submitted by the manager for approval by the Council.

2. When the indicator price is at or below the lower intervention price, the manager shall purchase, in accordance with rules established by the Council, such quantities of cocoa as are necessary so that the indicator price rises above the lower intervention price.
 3. If, 20 market days after the commencement of purchases under paragraph 2 of this Article, the indicator price is not above the lower intervention price, the Council shall meet in special session to review the operations of the buffer stock and to give further instructions to the manager as to the necessary action to be taken to ensure that the indicator price does rise above the lower intervention price.
 4. When the manager has made net purchases of cocoa up to 80 % of the full capacity of the buffer stock, the Council shall meet in special session within 10 working days to review the market situation and to decide, by special vote, on appropriate corrective measures; these may include a possible downward revision of prices which shall come into effect when purchases into the buffer stock reach 250 000 tonnes.
 5. The manager may purchase in origin and second-hand markets. The manager shall give first refusal to sellers in exporting member countries.
 6. The manager shall purchase only cocoa of recognized standard marketable grades and in quantities of not less than 100 tonnes. Such cocoa shall be the property of the Organization and under its control.
 7. The manager shall purchase cocoa at prevailing market prices in accordance with rules established by the Council.
 8. The manager shall maintain appropriate records to enable him to fulfil his functions under this Agreement.
 9. The buffer stock shall be stored in such locations as will facilitate immediate ex-store delivery to buyers referred to in paragraph 6 of Article 37.
- Article 37*
- Buffer stock sales**
1. When the indicator price is below the upper intervention price, the buffer stock manager shall only sell cocoa in so far as it is necessary to rotate cocoa, already held in the buffer stock, in order to preserve quality. The rotation programme shall be submitted by the manager for approval by the Council.
 2. When the indicator price is at or above the upper intervention price, the manager shall sell, in accordance with rules established by the Council, such quantities of cocoa as are necessary so that the indicator price falls below the upper intervention price.
 3. If, 20 market days after the commencement of sales under paragraph 2 of this Article, the indicator price is not below the upper intervention price, the Council shall meet in special session to review the operations of the buffer stock and to give further instructions to the manager as to the necessary action to be taken to ensure that the indicator price does fall below the upper intervention price.
 4. When the manager has sold all the supplies of cocoa at his disposal, the Council shall meet in special session within 10 working days to review the market situation and to decide, by special vote, on appropriate corrective measures; these may include a possible upward revision of prices.
 5. The manager shall sell cocoa at prevailing market prices.
 6. In making sales in accordance with paragraphs 2 and 3 of this Article, the manager shall, in accordance with rules established by the Council, sell through normal trade channels to firms and organizations in Member Countries, but mainly in importing Member Countries, engaged in the trade in or processing of cocoa.

Article 38

Changes in the exchange rates of currencies

1. A special session of the Council shall be called by the executive director either on his own initiative or at the request of members in accordance with paragraph 2 of Article 9, if conditions on the foreign exchange markets are such as to have important implications for the price provisions of this Agreement. Special sessions of the Council under this paragraph shall be convened within four working days.
2. After calling such a special session and pending its outcome, the executive director and the buffer stock manager may take such minimum interim

measures as they consider necessary to avoid serious disruption of the effective functioning of this Agreement on account of conditions on the foreign exchange markets. In particular the may, after consultation with the chairman of the Council, temporarily restrict or suspend operations of the buffer stock.

3. After consideration of the circumstances, including a review of the interim measures that may have been taken by the executive director and the manager and of the potential effect that conditions on the foreign exchange markets mentioned above may have on the effective operation of this Agreement, the Council may, by special vote, take any necessary corrective measures.

Article 39

Liquidation of the buffer stock

1. If this Agreement is to be replaced by a new agreement which includes provisions relating to the buffer stock, the Council shall make such arrangements as it considers appropriate regarding the continued functioning of the buffer stock.

2. If this Agreement terminates without being replaced by a new agreement which includes provisions relating to the buffer stock, the following provisions shall apply:

- (a) no further contracts shall be made for the purchase of cocoa for the buffer stock. The buffer stock manager shall, in the light of current market conditions, dispose of the buffer stock in accordance with the rules laid down by the Council by special vote on the entry into force of this Agreement, unless, prior to the termination of this Agreement, the Council revises these rules by special vote. The manager shall retain the right to sell cocoa at any time during liquidation to meet the costs thereof.
- (b) the proceeds of sales and monies standing to the account of the buffer stock shall be used to pay, in the following order:
 - (i) the costs of liquidation;
 - (ii) any outstanding balance of, plus interest on, any loan incurred by or on behalf of the Organization in respect of the buffer stock;
- (c) any monies remaining after payments have been made under subparagraph (b) above shall be

paid to the exporting members concerned in proportion to the contribution-paid exports of each such exporting member; except that the proportion of monies attributable to contributions paid on imports under this Agreement in relation to other funds shall be identified and distributed under rules established by the Council.

Article 40

Supplementary measures to defend the minimum and maximum prices

1. In the event that the buffer stock arrangement established under this Agreement, after the full utilization of its initial capacity of 250 000 tonnes proves to be inadequate to maintain the price of cocoa beans between the minimum and maximum prices of this Agreement, the Council may, by special vote, institute supplementary measures.

2. The Council shall establish rules for the implementation of the supplementary measures referred to in paragraph 1 of this Article.

Article 41

Consultation and 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 under 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.

CHAPTER VIII

**REPORTING OF EXPORTS AND IMPORTS, AND
CONTROL MEASURES***Article 42***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.

*Article 43***Control measures**

1. Each member exporting cocoa shall require the presentation of an authorized Council control document and, if applicable, a valid certificate of contribution, before permitting the shipment of cocoa from its customs territory. Each member importing cocoa shall require the presentation of an authorized Council control document and, if applicable, a valid certificate of contribution, before permitting the import of any cocoa into its customs territory whether from a member or a non-member.

2. Certificates of contribution shall not be required for exports by exporting members for humanitarian or other non-commercial purposes in so far as the Council is satisfied that the cocoa has been exported for those purposes. The Council shall arrange to issue appropriate control documents to cover such shipments.

3. The Council shall, by special vote, establish such rules as it considers necessary in respect of certificates of contribution and other authorized Council control documents.

4. For fine or flavour cocoa, the Council shall establish such rules as it considers necessary in respect of the simplification of the procedure for authorized Council control documents, taking into account all relevant factors.

5. The Council may, by special vote, suspend all or part of the provisions of this Article.

CHAPTER IX

SUPPLY AND DEMAND*Article 44***Cooperation among members**

1. Members recognize the importance of ensuring the greatest possible growth of the cocoa economy and therefore of coordinating their efforts to encourage the dynamic expansion 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 Organization 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. Members shall cooperate fully with the Organization in the preparation of these studies.

*Article 45***Production and stocks**

1. Each exporting member may develop a programme to adjust its production, in order that the objective set forth in Article 44 may be attained. Each exporting member concerned shall be responsible for the policies and procedures it applies to attain this objective and shall endeavour to inform the Council of such measures on as regular a basis as possible.

2. On the basis of a detailed report presented by the executive director at least once a year, the Council shall review the general situation regarding cocoa production, evaluating particularly the development of global supply in the light of the provisions of this Article. The Council may make recommendations to members based on this evaluation. The Council may establish a committee to assist it in respect of this Article.

3. The Council shall review annually the level of

stocks hold throughout the world and make any necessary recommendations based on this review.

Article 46

Assurance of supplies and access to markets

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

2. Exporting members shall endeavour, within the limits of the constraints of their development, to pursue sales and export policies, in accordance with the provisions of this Agreement, which will not artificially restrict offer for sale of available cocoa and which will ensure the regular supply of cocoa to importers in importing member countries.

3. Importing members shall make every effort, within the limits of their international commitments, to pursue policies, in accordance with the provisions of this Agreement, which will not artificially restrict demand for cocoa and which will ensure to exporters the regular access to their markets for cocoa.

4. Members shall inform the Council of all measures adopted with a view to implementing the provisions of this Article.

5. The Council may, in order to further the purposes of this Article, make any recommendations to members and shall examine periodically the results achieved.

Article 47

Consumption

1. All members shall endeavour to promote the expansion of cocoa consumption in accordance with their own means and methods.

2. All members shall endeavour to inform the Council on as regular a basis as possible of pertinent domestic regulations and information concerning cocoa consumption.

3. On the basis of a detailed report presented by the executive director, the Council shall review the general situation regarding cocoa consumption, evaluating particularly the development of global

demand in the light of the provisions of this Article. The Council may make recommendations to members based on this evaluation.

4. The Council may establish a committee whose aim shall be to stimulate the expansion of consumption of cocoa in both exporting and importing Member Countries. Membership of the committee shall be limited to members contributing to the promotion programme. Costs of such promotion programmes shall be met by contributions from exporting members. Importing members may also contribute financially. The committee shall seek the approval of a member before conducting a campaign in the territory of that member.

Article 48

Cocoa substitutes

1. Members recognize 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 Cedex 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 respect and on the manner in which the provisions of this Article are being observed.

Article 49

Scientific research and development

The Council may encourage and promote scientific research and development in areas of cocoa production, manufacture 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 organizations and research institutions.

CHAPTER X

PROCESSED COCOA

Article 50

Processed cocoa

1. The needs of developing countries to broaden the base of their economies through, *inter alia*, industrialization and the export of manufactured products — including cocoa processing and the export of cocoa products and chocolate — are recognized. In this connection, the need to avoid serious injury to the cocoa economy of importing and exporting members is also recognized.

2. If any member considers that there is a danger of injury to its interest in any of the above respects, that member may consult with the other member concerned with a view to reaching an understanding satisfactory to the parties concerned, failing which the member may report to the Council, which shall use its good offices in the matter to reach such understanding.

CHAPTER XI

RELATIONS BETWEEN MEMBERS AND NON-MEMBERS

Article 51

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 52.

4. Any member which has reason to believe that another member has not fulfilled the obligation under paragraph 1 or 2 of this Article may so inform the executive director and call for consultations

under Article 57, or refer the matter to the Council under Article 59.

CHAPTER XII

INFORMATION AND STUDIES

Article 52

Information

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

- (a) statistical information on world production, sales, 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 utilization of cocoa.

2. In addition to information which members are required to furnish under other articles of this Agreement, the Council may require members to furnish such information as it considers necessary for its operations, including regular reports on policies for production and consumption, sales, 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 Organization, 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.

4. The Council shall at appropriate times but not less than twice a year publish estimates of production of cocoa beans and grindings for the current cocoa year.

Article 53

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 opera-

tion 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 organizations and other appropriate institutions.

Article 54

Annual review and annual 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.
3. The Council may also publish such other information as it considers appropriate.

CHAPTER XIII

RELIEF FROM OBLIGATIONS, AND DIFFERENTIAL AND REMEDIAL MEASURES

Article 55

Relief from obligations in 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 under 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. Notwithstanding the foregoing provisions of this Article, the Council shall not grant relief to a member in respect of:
 - (a) the obligation under Article 24 to pay contributions, or the consequences of a failure to pay them;

- (b) the obligation to require payment of any contribution charged under Article 35.

Article 56

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 accordance with paragraph 3 of section III of resolution 93 (IV) adopted by the United Nations Conference on Trade and Development.

CHAPTER XIV

CONSULTATIONS, DISPUTES AND COMPLAINTS

Article 57

Consultations

Each member shall accord sympathetic 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 Organization. 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 58.

Article 58

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 under paragraph 1 of this Article, and has been discussed, a majority of members, or members holding

not less than one-third of the total votes, 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 unanimously 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 such persons 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 Organization.

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 59

Complaints and action by the Council

1. 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 consider it and take a decision on the matter.

2. Any finding by the Council that a member is in breach of its obligations under 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 under this Agreement, it may, without prejudice to such other measures as are specifically provided for in other Articles of this Agreement, including Article 69, by special vote:

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

(b) if it considers 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 under paragraph 3 of this Article shall remain liable for its financial and other obligations under this Agreement.

CHAPTER XV

FAIR LABOUR STANDARDS

Article 60

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 XVI

FINAL PROVISIONS

Article 61

Signature

This Agreement shall be open for signature at United Nations headquarters from 5 January 1981 until and including 31 March 1981 by parties to the International Cocoa Agreement 1975 and governments invited to the United Nations Cocoa Conference 1980.

*Article 62***Depositary**

The Secretary-General of the United Nations shall be the depositary of this Agreement.

*Article 63***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 31 May 1981. The Council under the International Cocoa Agreement 1975 or the Council under 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 64***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 1975 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 65***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 it will apply this Agreement provisionally either when it enters into force in accordance with Article 66 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 under 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 66***Entry into force**

1. This Agreement shall enter into force definitively on 1 April 1981, or on any date within two months 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 D and governments representing importing countries having at least 70 % of total imports as set out in Annex E 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 April 1981, or on any date within two months 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 D and governments representing importing countries having at least 70 % of total imports as set out in Annex E 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 under paragraph 1 or 2 of this Article have not been met by 31 May 1981, 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 to put this Agreement into force provisionally or definitively among themselves in whole or in part. While this Agreement is in force provisionally under this paragraph, those governments which have decided to put this Agreement into force provisionally among themselves in whole or in part shall be provisional members. Such governments may meet to review the situation and decide whether this Agreement shall enter into force definitively among themselves, or continue, in force provisionally, or terminate.

Article 67

Reservations

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

Article 68

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.

Article 69

Exclusion

If the Council finds, under paragraph 3 of Article 59, 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 special vote, exclude such member from the Organization. The Council shall immediately notify the depositary of any such exclusion. Ninety days after the date of the Coun-

cil's decision, that member shall cease to be a member of the Organization.

Article 70

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, except 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 72, the Council may determine any settlement of accounts which it finds equitable.

2. Subject to paragraph 1 of this Article, a member which withdraws or is excluded from, or otherwise ceases to participate in, this Agreement shall not be entitled to any share of the proceeds of liquidation of the buffer stock under the provisions of Article 39 or the other assets of the Organization; nor shall it be burdened with any part of the deficit, if any, of the buffer stock or of the Organization upon termination of this Agreement, except in the case of an exporting member whose exports are subject to the provisions of paragraph 1 of Article 35. In such a case, the exporting member shall be entitled to its share of the funds of the buffer stock when it is liquidated under the provisions of Article 39 or when this Agreement expires, whichever is earlier, provided that at least 12 months notice of withdrawal is given to the depositary by such exporting member, not earlier than one year after the entry into force of this Agreement.

Article 71

Duration, extension and termination

1. This Agreement shall remain in force until the end of the third full cocoa year after its entry into force, unless extended under paragraph 3 of this Article, or terminated earlier under 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 third cocoa year referred to in paragraph 1 of this Article, or at the end of any period of extension decided upon by the Council under paragraph 3 of this Article.

3. Before the end of the third cocoa year referred to in paragraph 1 of this Article, the Council may, by special vote, extend this Agreement in whole or in part for a period or periods not exceeding two cocoa years in all. The Council shall notify the depositary of any such extension or extensions.

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 under Article 35 shall continue until the financial liabilities relating to the buffer stock have been discharged. The Council shall notify the depositary of any such decision.

5. 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 its assets, and shall have during that period such powers and functions as may be necessary for these purposes.

6. Notwithstanding the provisions of paragraph 2 of Article 68, 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 member at the end of the third full cocoa year.

Article 72

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 each Contracting Party shall notify the depositary of its 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 any such member satisfies the Council at its first meeting following the effective date of the amendment that acceptance could not be secured in time owing to difficulties in completing its constitutional procedures, and the Council decides to extend for such member the period fixed for acceptance until these difficulties have been overcome. 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 amendments. 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 73

Supplementary and transitional provisions

1. This Agreement shall be considered as a replacement of the International Cocoa Agreement 1975.

2. All acts by or on behalf of the Organization or any of its organs under the International Cocoa Agreement 1975 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 under the provisions of this Agreement.

3. Buffer stock funds accumulated under the International Cocoa Agreement 1972 and the International Cocoa Agreement 1975 shall be transferred to the buffer stock account under this Agreement.

In witness whereof the undersigned, being duly authorized thereto, have affixed their signatures under this Agreement on the dates indicated.

Done at Geneva on this nineteenth day of November, one thousand nine hundred and eighty, in one original in the English, French, Russian and Spanish languages, all texts being equally authentic.

*ANNEX A***Producing countries exporting 10 000 tonnes or more of bulk cocoa annually**

Brazil	Mexico
Dominican Republic	Nigeria
Ghana	Togo
Ivory Coast	United Republic of Cameroon
Malaysia	

*ANNEX B***Producing countries exporting less than 10 000 tonnes of bulk cocoa annually**

Angola	Liberia
Benin	New Hebrides
Bolivia	Nicaragua
Colombia	Papua New Guinea
Congo	Peru
Costa Rica	Philippines
Cuba	São Tomé and Príncipe
Equatorial Guinea	Sierra Leone
Fiji	Solomon Islands
Gabon	Uganda
Guatemala	United Republic of Tanzania
Haiti	Zaire
Honduras	

*ANNEX C***Fine or flavour cocoa producers****1. *Producing countries exporting exclusively fine or flavour cocoa***

Dominica	Saint Lucia
Ecuador	Saint Vincent and the Grenadines
Grenada	Samoa
Indonesia	Sri Lanka
Jamaica	Suriname
Madagascar	Trinidad and Tobago
Panama	Venezuela

2. *Producing countries exporting fine or flavour cocoa, but not exclusively*

Costa Rica (25 %)
São Tomé and Príncipe (50 %)
Papua New Guinea (75 %)

ANNEX D

Exports of cocoa calculated for the purposes of Article 66 ⁽¹⁾

Country ⁽²⁾						(000's tonnes)
	1975/76	1976/77	1977/78	1978/79	Average	%
Brazil	221.5	201.2	220.5	277.8	230.25	19.93
Dominican Republic	22.5	29.6	25.9	30.6	27.15	2.35
Ghana	404.3	320.7	252.5	240.4	304.48	26.35
Ivory Coast	213.6	236.0	266.3	325.1	260.25	22.52
Malaysia	13.9	15.9	22.2	27.2	19.80	1.71
Mexico	13.1	8.9	10.1	9.1	10.30	0.89
Nigeria	243.0	185.4	212.2	139.1	194.93	16.87
Togo	17.7	15.4	15.9	13.9	15.73	1.36
United Republic of Cameroon	99.4	80.5	96.8	93.9	92.65	8.02
Total	1 249.0	1 093.6	1 122.4	1 157.1	1 155.54	100.00

Source: Derived from data in ICCO Quarterly Bulletin of Cocoa Statistics (London), Vol. VI, No 4 (September 1980).

(1) Four-year average, 1975/76 — 1978/79, of gross exports of cocoa beans plus gross exports of cocoa products, converted to beans equivalent using the conversion factors as stipulated in Article 28.

(2) List restricted to those producing countries exporting 10 000 tonnes or more of bulk cocoa annually.

ANNEX E

Imports of cocoa calculated for the purposes of Article 66 (1)

(000's tonnes)

Country	1976/77	1977/78	1978/79	Average	%
United States of America	328.0	344.1	353.5	341.9	22.54
Federal Republic of Germany	191.7	198.7	200.0	196.8	12.97
Netherlands	154.7	157.6	159.5	157.3	10.37
United Kingdom of Great Britain and Northern Ireland	125.6	134.1	122.3	127.3	8.39
Union of Soviet Socialist Republics	118.4	88.8	147.4	118.2	7.79
France	98.4	100.5	107.0	102.0	6.72
Italy	38.1	40.4	44.4	41.0	2.70
Japan	50.1	36.0	34.3	40.1	2.64
Belgium/Luxembourg	37.9	37.2	36.1	37.1	2.45
Poland	35.2	35.5	36.6	35.8	2.36
Canada	33.2	27.5	28.0	29.6	1.95
Switzerland	27.3	31.0	27.8	28.7	1.89
Spain	28.3	23.6	20.5	24.1	1.59
German Democratic Republic	25.8	21.2	21.7	22.9	1.51
Australia	19.5	18.8	19.8	19.4	1.28
Yugoslavia	21.9	12.5	20.9	18.4	1.21
Czechoslovakia	18.8	18.4	13.3	16.8	1.11
Austria	16.0	16.2	17.4	16.5	1.09
Hungary	13.8	17.5	15.4	15.6	1.03
Sweden	14.8	13.6	14.1	14.2	0.93
Bulgaria	14.3	11.2	9.3	11.6	0.76
China	6.0	10.0	15.0	10.3	0.68
Romania	10.1	10.0	8.7	9.6	0.63
Ireland	8.3	8.5	8.4	8.4	0.55
Norway	7.8	8.2	8.5	8.2	0.54
Greece	6.6	6.7	8.5	7.3	0.48
Denmark	7.3	6.8	7.2	7.1	0.47
Argentina	7.7	5.6	7.2	6.8	0.45
South Africa	7.7	5.1	6.9	6.6	0.43
Finland	5.6	5.4	6.1	5.7	0.38
New Zealand	6.0	2.6	6.4	5.0	0.33
Israel	6.0	4.4	4.3	4.9	0.32
Singapore	2.7	3.4	6.5	4.2	0.28
Philippines	3.0	2.8	4.0	3.3	0.22
Portugal	3.8	2.6	2.6	3.0	0.20
Chile	1.9	1.8	1.7	1.8	0.12
Turkey	2.1	1.6	1.5	1.7	0.11
Egypt	1.0	1.7	1.7	1.5	0.10
Republic of Korea	0.7	1.1	2.0	1.2	0.08
Uruguay	0.9	0.9	0.9	0.9	0.06
El Salvador	0.9	0.6	0.6	0.7	0.05
Tunisia	0.7	0.7	0.7	0.7	0.05
Algeria	0.9	0.8	0.8	0.8	0.05
Iran	0.8	0.6	0.5	0.6	0.04
Iceland	0.4	0.4	0.4	0.4	0.03
Syrian Arab Republic	0.5	0.2	0.2	0.3	0.02
Iraq	0.3	0.3	0.3	0.3	0.02
Morocco	0.3	0.2	0.2	0.2	0.01
Lebanon	0.2	0.2	0.1	0.2	0.01
India	0.2	0.1	0.1	0.1	0.01
Total	1 512.2	1 477.7	1 561.3	1 517.1	100.00

Source: ICCO Secretariat. Based mainly on data contained in Quarterly Bulletin of Cocoa Statistics (London), Vol. VI, No 4 (September 1980).

(1) Three-year average, 1976/77 — 1978/79, of net imports of cocoa beans plus gross imports of cocoa products, converted to beans equivalent using the conversion factors as specified in Article 28.

Information on the International Cocoa Agreement 1980

The International Cocoa Agreement 1980, which was the subject of a declaration of provisional application by the European Economic Communities ⁽¹⁾, entered into force provisionally on 1 August 1981 under the terms of the decisions taken pursuant to Article 66 (3).

⁽¹⁾ Council Decision of 30 June 1981 (see page 1 of this Official Journal).