

Official Journal

of the European Communities

ISSN 0378-6978

L 69

Volume 30

12 March 1987

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

- ★ Council Regulation (EEC) No 678/87 of 26 January 1987 on the application of the system of certificates of origin provided for under the International Coffee Agreement 1983 when quotas are suspended 1
- Rules for the application of a system of certificates of origin when quotas are suspended 4

II *Acts whose publication is not obligatory*

Council

87/166/EEC:

- ★ Council Decision of 16 January 1987 concerning the provisional application of the 1986 International Cocoa Agreement 24
- International Cocoa Agreement 1986 26

- ★ Information on the entry into force of the 1986 International Cocoa Agreement ... 54

87/167/EEC:

- ★ Council Directive of 26 January 1987 on aid to shipbuilding 55

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 678/87

of 26 January 1987

on the application of the system of certificates of origin provided for under the International Coffee Agreement 1983 when quotas are suspended

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports ⁽¹⁾, as last amended by Regulation (EEC) No 899/83 ⁽²⁾, and in particular Article 16 (1) (b) thereof,

Having regard to the proposal from the Commission,

Whereas pursuant to Decision 83/539/EEC ⁽³⁾ the Community has been provisionally applying the International Coffee Agreement 1983 since its provisional entry into force on 1 October 1983;

Whereas Regulation (EEC) No 3761/83 ⁽⁴⁾ introduced the system of certificates of origin provided for by the International Coffee Agreement 1983 when quotas are in effect;

Whereas the Executive Board of the International Coffee Organization has established rules for the application of a system of certificates of origin under the Agreement when quotas are suspended;

Whereas the rules laid down in Regulation (EEC) No 2686/76 ⁽⁵⁾ concerning the system of certificates of origin provided for by the International Coffee Agreement 1976 have been replaced by the abovementioned rules; whereas Regulation (EEC) No 2686/76 should, therefore, be repealed;

Whereas appropriate measures must be taken to implement the new system of certificates within the Community and to provide that it be applied without discrimination between Community importers;

Whereas in order to ensure the efficient administration of the system and to clarify the position regarding the periods during when this Regulation will actually apply and in order to conform to Rule 11 of the Annex to this Regulation and to Rule 17 of the Annex to Regulation (EEC) No 3761/83, provision should be made for the Commission, in accordance with the decisions taken by the competent bodies of the International Coffee Organization and at the time when quotas are suspended or reintroduced, to specify the date on which the measures in question become applicable or cease to be applicable,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of implementing the International Coffee Agreement 1983, the rules for the application of the system of certificates of origin when quotas are suspended, adopted by the Executive Board of the International Coffee Organization and set out in the Annex to this Regulation, shall apply.

Article 2

Imports into the Community of coffee and of extracts, essences or concentrates of coffee falling within subheadings 09.01 A and 21.02 A of the Common Customs Tariff, originating in or coming from either members or non-members of the Agreement, shall not be subject to submission of the certificates provided for in the said Agreement.

Article 3

Exports from the Community of coffee and of extracts, essences or concentrates of coffee falling within

⁽¹⁾ OJ No L 35, 9. 2. 1982, p. 1.

⁽²⁾ OJ No L 103, 21. 4. 1983, p. 1.

⁽³⁾ OJ No L 308, 9. 11. 1983, p. 1.

⁽⁴⁾ OJ No L 379, 31. 12. 1983, p. 1.

⁽⁵⁾ OJ No L 309, 10. 11. 1976, p. 1.

subheadings 09.01 A and 21.02 A of the Common Customs Tariff shall not be subject to submission of the certificates provided for in the Agreement.

Article 4

The Commission shall fix the date from which the measure provided for in this Regulation shall become applicable or cease to be applicable.

Article 5

Regulation (EEC) No 2686/76 is hereby repealed.

Article 6

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 26 January 1987.

For the Council

The President

L. TINDEMANS

CONTENTS

	Page
Rule 1	Definitions 4
Rule 2	Types of certificates and specifications for printing 4
Rule 3	Period of validity of Certificates of Origin 5
Rule 4	Marking of bags and other containers for export 5
Rule 5	Exports of coffee to members 6
Rule 6	Responsibilities of exporters in exporting member countries 7
Rule 7	Exports of coffee to non-members 7
Rule 8	Coffee imported by members or placed under customs control 8
Rule 9	Return of unused coffee export stamps 8
Rule 10	Return of unused coffee transit stamps (T and NT) 9
Rule 11	Application and suspension 9
Rule 12	Transitional arrangements 9
Rule 13	Implementation 9
Rule 14	Amendments 9
Rule 15	Compliance 9
Annex 1	Certificate of Origin in Form O 11
Annex 1 A	Measurements of Certificate of Origin in Form O 13
Annex 1 B	General guidance for completion of Certificate of Origin in Form O. 15
Annex 2	Certificate of Origin in Form X 17
Annex 2 A	Measurements of Certificate of Origin in Form X 19
Annex 2 B	General guidance for completion of Certificate of Origin in Form X 21
Annex 3	List of members and their code numbers 23

ANNEX

RULES FOR THE APPLICATION OF A SYSTEM OF CERTIFICATES OF ORIGIN WHEN
QUOTAS ARE SUSPENDED

Rule 1

DEFINITIONS

For the purposes of these Rules:

Valid Certificate of Origin in Form O for exports to member countries means a Certificate of Origin in Form O prescribed in Annex 1, issued in accordance with these Rules by a certifying agency of the producing member country from which the coffee described therein has been exported provided that:

- (a) the destination shown on the Certificate is a member country;
- (b) the Certificate is marked 'ORIGINAL' and bears the cachet of the customs service of the producing member country from which the coffee described in the Certificate has been exported;
- (c) the Certificate shall be valid to cover only the coffee described therein at the time it was issued; and
- (d) the Certificate has not previously been completed in Part B nor declared invalid by the Organization.

Valid certificate of Origin in Form X for exports to non-member countries means a Certificate of Origin in Form X prescribed in Annex 2, issued in accordance with these Rules by a certifying agency of the producing member from which the coffee described therein has been exported, provided that:

- (a) the Certificate is marked 'ORIGINAL' and bears the cachet of the customs service of the producing member country from which the coffee described in the Certificate has been exported;
- (b) the Certificate shall be valid to cover only the coffee described therein at the time it was issued.

Export of coffee means any coffee which leaves the customs territory of the country in which the coffee is grown.

Import of coffee means any coffee which enters into the customs territory of any country or customs union and is released by the customs and, if necessary, by other

competent authorities so that the coffee has been fully cleared for processing and/or domestic consumption.

Coffee under customs control means coffee which cannot be moved outside the area of jurisdiction of the customs service without its consent.

Customs service means the customs authority of a member or the authority designated by the member for that purpose and accepted by the Executive Director.

The cachet of the customs service means a customs stamp, preferably embossed, which is accompanied by the signature or equivalent of the officer responsible for its use together with the date of its use.

Certifying agency means an agency approved under the provisions of Article 43 (1), (2) and (5) of the International Coffee Agreement 1983 to administer and perform the functions specified in paragraphs 1 and 2 of that Article.

Rule 2

TYPES OF CERTIFICATES AND SPECIFICATIONS FOR
PRINTING

Certificates of Origin

1. Certificates of Origin for exports to Members shall be printed in Form O prescribed in Annex 1 and shall be completed and issued in accordance with these Rules. General guidance on the completion of such Certificates is contained in Annex 1 B.

2. Certificates of Origin for exports to non-members shall be printed in Form X prescribed in Annex 2 and shall be completed and issued in accordance with these Rules. General guidance on the completion of such Certificates is contained in Annex 2 B.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Rule, box 10 of the Certificate of Origin in Form O and box 11 of the Certificate of Origin in Form X may be modified to allow a maximum of five International Coffee Organization identification marks to be entered therein:

EXAMPLE:

Certificate of Origin in Form O

10. Shipping marks a. ICO Identification Mark - - - / - - - - / - - - - b. Other marks	11. Number of bags or other containers 	12. Description of coffee ☐ Green (Crude) ☐ Roasted ☐ Soluble ☐ Other	13. Net weight of shipment 14. Unit of weight ☐ kg ☐ lb
15. Other relevant information			

Specifications for printing Certificates

4. Certificates shall be of ISO size A4 (210 × 297 mm: 8¹/₃ × 11²/₃ in) with a maximum tolerance of ± 2 mm (1¹/₁₆ in).

5. Certificates shall be issued in an original and at least two copies. Certifying agencies may issue as many additional copies for internal use as may be found convenient or necessary.

6. For the originals of Certificates white paper of chemical pulp, weighing not less than 70 g/m² shall be used. Each original shall be clearly marked 'ORIGINAL'.

7. The first copy of Certificates of Origin in Forms O and X shall be clearly marked 'FIRST COPY — for use by ICO London' and shall be printed on green paper.

8. Each additional copy, which shall be of a colour other than green, shall be clearly marked 'COPY — for internal use only' and may contain such additional instructions as considered desirable by the agency issuing the Certificate.

9. Except as otherwise agreed between a member and the Executive Director, each member shall be responsible for printing the Certificates it uses in the manner prescribed in Annexes 1 and 2. To ensure that all Certificates are printed to a uniform standard, the measurements to be used by printers are shown in Annexes 1-A and 2-A.

10. On the first and subsequent copies of Certificates, the space allocated to Part B on the forms of Certificates prescribed in Annexes 1 and 2 may be left blank or may be used by the member concerned for information required by it or by the Organization for statistical or other purposes.

11. Certificates may be printed in two languages, one of which, except as otherwise agreed between a member and the Executive Director, must be English. When more than one language is used, the second language shall be printed if possible in italics.

Rule 3

PERIOD OF VALIDITY OF CERTIFICATES OF ORIGIN

Certificates of Origin in Form O and Form X shall have no specified period of validity.

Rule 4

MARKING OF BAGS AND OTHER CONTAINERS FOR EXPORT

Every export of coffee shall be allocated an International Coffee Organization identification mark which shall be unique to the parcel of coffee concerned. The identification mark shall be printed inside a box on all the bags or other containers or stamped on a metal strip affixed to the bags or other containers, and shall be shown on the relevant Certificate of Origin. It shall be composed of the country code number of the member (up to three digits to be allocated by the Organization ⁽¹⁾), the code number of the grower or exporter (up to four digits to be allocated by the member to each grower or exporter) and the serial number of the parcel of coffee (up to four digits to be supplied by the grower or exporter for each parcel he exports, beginning with the number '1' for the first parcel exported on or after 1 October each year and proceeding in sequence to 30 September the following year).

⁽¹⁾ See Annex 3.

EXAMPLE:

27	1	17
(Country code)	(Exporter's or grower's code)	(Parcel number)

To permit mechanical processing by the Organization it is essential that the identification mark should not in any circumstances be composed of more than eleven digits.

Rule 5

EXPORTS OF COFFEE TO MEMBERS

1. Subject to the exceptions described in paragraph 10 of this Rule, every export of coffee from any member to any other member shall be covered by a valid Certificate of Origin in Form O completed and issued in accordance with these Rules.

2. All bags or other containers shall bear an ICO identification mark in accordance with the provisions of Rule 4.

3. The original and the first copy of each Certificate of Origin in Form O shall bear the cachet of the customs service of the issuing member. This shall be applied by the customs service when it is satisfied that export is about to take place.

4. The original of each Certificate of Origin in Form O shall be given to the exporter or his agent to accompany the shipping documents. The ICO identification mark and the reference number of the Certificate of Origin (composed of the country code, port code and serial number) shall, except as otherwise agreed between a member and the Executive Director, be included on the invoice and/or the bill(s) of lading.

5. The first copy of each Certificate of Origin in Form O together with a copy of the relevant bill of lading shall be forwarded by the safest and quickest possible means to the Organization by the issuing member as soon as possible and in any case within 21 days of the date of shipment. If a parcel of coffee moves overland to its destination, instead of a bill of lading a copy of the relevant way-bill or other equivalent document shall accompany the first copy of the Certificate of Origin in Form O forwarded to the Organization.

6. First copies of Certificates of Origin in Form O and bills of lading or equivalent documents forwarded to the Organization under the provisions of paragraph 5 of this Rule shall be sent in securely packed batches of not more

than 50 sets ⁽¹⁾. Each batch shall contain only documents issued to cover exports made in the same month.

7. Each batch of Certificates and bills of lading or equivalent documents shall be accompanied by a covering note listing the reference number of each document enclosed therewith and the net quantity of coffee covered by each document. Each batch of documents and the accompanying covering note shall bear a serial number. A copy of the covering note shall be forwarded simultaneously to the Organization under separate cover.

8. Except as otherwise agreed between a member and the Executive Director, the Executive Director shall acknowledge receipt of each batch of documents by stamping and returning the covering note.

9. Notwithstanding the provisions of paragraphs 1 and 3 of this Rule, if the maritime port of shipment is not in the country of origin of the coffee and the member finds that it is impracticable to issue completed Certificates of Origin in Form O prior to export from origin, the member may make arrangements for the necessary Certificates of Origin in Form O to be issued, either partially or wholly, by an agency located in the maritime port of shipment and for completed first copies of Certificates and the relevant bills of lading to be forwarded to the Organization. All such arrangements shall be agreed between the member and the Executive Director.

10. Certificates of Origin in Form O need not be issued to cover:

- (a) small quantities of coffee for direct consumption as stores on ships, aircraft and other international commercial carriers; and
- (b) samples and parcels up to a maximum net weight of 60 kilograms of green coffee or the equivalent thereof namely:
 - (i) 120 kilograms of dried coffee cherry; or
 - (ii) 75 kilograms of parchment coffee; or
 - (iii) 50,4 kilograms of roasted coffee; or
 - (iv) 23 kilograms of soluble or liquid coffee.

11. Certifying agencies shall maintain records of all Certificates of Origin in Form O which they issue for a

⁽¹⁾ A set shall consist of the first copy of a Certificate of Origin in Form O and a copy of the relevant bill of lading or equivalent document or the original and the first copy of a Certificate of Origin in Form X and a copy of the relevant bill of lading or equivalent document.

period of not less than four years. Such records shall be made available to the Executive Director on request.

12. Each exporting member shall furnish to the Executive Director any information he may request in connection with exports of coffee covered by Certificates of Origin in Form O including port records and customs records. The Executive Director may establish a procedure for the inspection of such information.

Rule 6

RESPONSIBILITIES OF EXPORTERS IN EXPORTING MEMBER COUNTRIES

1. The responsibility for ensuring the proper use of Certificates of Origin rests with exporting members.

2. Each exporting member shall be responsible for requiring exporters to seek the cooperation of buyers in ensuring that the original of each Certificate of Origin in Form O covering a parcel of coffee imported into a member country is presented to the customs service of the importing country and that the original of each Certificate of Origin in Form O covering a parcel of coffee the destination of which was changed to a non-member country is forwarded immediately to the Organization by the trader selling the coffee to the non-member country marked 'withdrawn, destination changed to ... (name of non-member country)'.

Rule 7

EXPORTS OF COFFEE TO NON-MEMBERS

1. Subject to the exceptions described in paragraph 10 of this Rule every export of coffee from any member to any non-member shall be covered by a valid Certificate of Origin in Form X completed and issued in accordance with these Rules.

2. All bags or other containers shall bear an ICO identification mark in accordance with the provisions of Rule 4.

3. Producing Members shall ensure that all bags or other containers in shipments destined directly or indirectly to non-members are clearly marked 'NON-MEMBER' in bold red lettering.

4. The original and the first copy of each Certificate of Origin in Form X shall bear the cachet of the customs service of the issuing member. This shall be applied by the customs service when it is satisfied that export is about to

take place. Originals of Certificates of Origin in Form X shall be withdrawn and, together with the first copy of each Certificate and a copy of the relevant bill of lading, shall be sent by the safest and quickest possible means to the Organization by the issuing member as soon as possible and in any case within 21 days of the date of shipment. If a parcel of coffee moves overland to its destination, instead of a bill of lading a copy of the relevant way-bill or other equivalent document shall accompany the original and first copy of the Certificate of Origin in Form X forwarded to the Organization.

5. Originals and first copies of Certificates of Origin in Form X and bills of lading or equivalent documents forwarded to the Organization under the provisions of paragraph 4 of this Rule shall be sent in securely packed batches of not more than 50 sets ⁽¹⁾. Each batch shall contain only documents issued to cover exports made in the same month.

6. Each batch of Certificates and bills of lading or equivalent documents shall be accompanied by a covering note listing the reference number of each document enclosed therewith and the net quantity of coffee covered by each document. Each batch of documents and the accompanying covering note shall bear a serial number. A copy of the covering note shall be forwarded simultaneously to the Organization under separate cover.

7. Except as otherwise agreed between a member and the Executive Director, the Executive Director shall acknowledge receipt of each batch of documents by stamping and returning the covering note.

8. Notwithstanding the provisions of paragraphs 1 and 4 of this Rule, if the maritime port of shipment is not in the country of origin of the coffee and the member finds that it is impracticable to issue completed Certificates of Origin in Form X prior to export from origin, the member may make arrangements for the necessary Certificates of Origin in Form X to be issued, either partially or wholly, by an agency located in the maritime port of shipment and for completed first copies of Certificates and the relevant bills of lading to be forwarded to the Organization. All such arrangements shall be agreed between the member and the Executive Director.

9. The ICO identification mark and the reference number of the Certificate of Origin (composed of the country code,

⁽¹⁾ A set shall consist of the original and the first copy of a Certificate of Origin in Form X and a copy of the relevant bill of lading or equivalent document or the first copy of a Certificate of Origin in Form O and a copy of the relevant bill of lading or equivalent document.

port code and serial number) shall, except as otherwise agreed between a member and the Executive Director, be included on the invoice and/or the bill(s) of lading.

10. Certificates of Origin in Form X need not be issued to cover:

- (a) small quantities of coffee for direct consumption as stores on ships, aircraft and other international commercial carriers; and
- (b) samples and parcels up to a maximum net weight of 60 kilograms of green coffee or the equivalent thereof namely:
 - (i) 120 kilograms of dried coffee cherry; or
 - (ii) 75 kilograms of parchment coffee; or
 - (iii) 50,4 kilograms of roasted coffee; or
 - (iv) 23 kilograms of soluble or liquid coffee.

11. Certifying agencies shall maintain records of all Certificates of Origin in Form X which they issue for a period of not less than four years. Such records shall be made available to the Executive Director on request.

12. Each exporting member shall furnish to the Executive Director any information he may request in connection with exports of coffee covered by Certificates of Origin in Form X including port records and customs records. The Executive Director may establish a procedure for the inspection of such information.

Rule 8

COFFEE IMPORTED BY MEMBERS OR PLACED UNDER CUSTOMS CONTROL

1. As provided for in Article 2 (5) of the International Coffee Agreement 1983, importing members, while under no obligation to demand that Certificates accompany consignments when quotas are not in effect, shall cooperate fully with the Organization in the collection and verification of Certificates relating to shipments received from exporting member countries in order to ensure that the maximum information is available to all members.

2. In accordance with paragraph 1 of this Rule, whenever coffee is imported into a member country or placed under custom control and an original Certificate of Origin in Form O is presented to the customs service, the latter shall verify the quantity of coffee imported and shall complete the left-hand section of Part B of the Certificate in accordance with the instructions contained in paragraph 18 of Annex 1-B. Whenever check-weighing is carried out the customs service shall enter the actual net weight imported under 'Observations' in box 18 in Part B of the Certificate.

3. Originals of Certificates of Origin collected in accordance with paragraphs 1 and 2 of this Rule shall be forwarded to the Organization by the safest and quickest possible means as soon as possible and in any case within 30 days of the close of the month of collection.

4. Originals of Certificates of Origin forwarded to the Organization under the provisions of paragraph 3 of this Rule shall be sent in securely packed batches of not more than 100.

5. Except as otherwise agreed between a member and the Executive Director, each batch of Certificates shall be accompanied by a covering note listing the reference numbers of the Certificates of Origin enclosed therewith. The list shall also show the net quantity of coffee covered by each document. Each batch of documents and the accompanying covering note shall bear a serial number. A copy of the covering note shall be forwarded simultaneously to the Organization under separate cover.

6. Except as otherwise agreed between a member and the Executive Director, the Executive Director shall acknowledge receipt of each batch of documents by stamping and returning the covering note.

7. Notwithstanding the provisions of paragraphs 1 to 6 of this Rule, any member wishing to cooperate further and to provide information in respect of coffee imported without the presentation of a Certificate of Origin in Form O should contact the Executive Director in order to establish appropriate procedures to be followed.

Rule 9

RETURN OF UNUSED COFFEE EXPORT STAMPS

On the day on which quotas are suspended exporting members shall cease to validate Certificates of Origin in Form O with coffee export stamps. Within 30 days of the date of the suspension of quotas certifying agencies shall return unused coffee export stamps to the agent appointed by the Executive Director to hold such stamps and shall advise the Executive Director of the value and denominations of the stamps returned to the agent. If no agent has been appointed the certifying agency shall return unused stamps direct to the Executive Director. Within 45 days of the date of the suspension of quotas the agent shall forward to the Executive Director a final account on the stamps received and issued during the coffee year. The agent shall retain all unused stamps pending the receipt of instructions from the Executive Director on their disposal.

*Rule 10***RETURN OF UNUSED COFFEE TRANSIT STAMPS
(T AND NT)**

Within 30 days of the date of the suspension of quotas certifying agencies shall return all unused transit stamps (T and NT) to the agent appointed to receive such stamps. Within 45 days of the date of the suspension of quotas the agent shall report to the Executive Director on the transit stamps (T and NT) received and issued during the coffee year. The agent shall retain all unused transit stamps (T and NT) pending the receipt of instructions from the Executive Director on their disposal.

*Rule 11***APPLICATION AND SUSPENSION**

Unless elsewhere provided for or otherwise deferred by resolution of the International Coffee Council, these Rules shall be applied on the date on which quotas are suspended and shall cease to be applied on the date on which quotas are reintroduced. Thereafter, unless the Council decides otherwise, they shall be applied again on the date on which quotas are suspended and shall cease to be applied on the date on which quotas are reintroduced.

*Rule 12***TRANSITIONAL ARRANGEMENTS**

1. Whenever quotas are suspended, each importing Member shall continue to collect and verify all Certificates issued in accordance with the Rules for the Application of a

System of Certificates of Origin when quotas are in effect to cover coffee exported prior to the date of suspension.

2. Certificates collected under the provisions of paragraph 1 of this Rule shall be dealt with in the manner described in Rule 8.

*Rule 13***IMPLEMENTATION**

The Executive Director shall have the responsibility for taking such action as he considers necessary to ensure the effective implementation of the measures relating to Certificates of Origin provided for in the Agreement and in these Rules.

*Rule 14***AMENDMENTS**

The Executive Board shall keep these Rules under review and may make such amendments to them as it considers desirable.

*Rule 15***COMPLIANCE**

If after the entry into effect of these Rules an exporting member issues Certificates of Origin in Form O purporting to cover exports to importing member countries and it is established that the Certificates cover coffee not produced by that member, the Council may deduct a corresponding amount from the first annual quota established for that member.

ANNEX 1

CERTIFICATE OF ORIGIN IN FORM O



Form approved by the:

INTERNATIONAL COFFEE ORGANIZATION
22 Berners Street, London W1P 4 DD, England

1. Valid for importation or replacement until

PART A: FOR USE BY ISSUING AUTHORITY

2. Reference No.	Country Code	Port Code	Serial No.
3. Producing country			
4. Country of destination			
5. Name of ship/other carrier	6. Port of loading/intermediate ports	7. Date of shipment	8. Leave blank
9. Port or point of destination			
10. Shipping marks a. ICO identification mark --- / --- / --- b. Other marks	11. Number of bags or other containers 	12. Description of coffee ☐ Green (Crude) ☐ Roasted ☐ Soluble ☐ Other	13. Net weight of shipment 14. Unit of weight ☐ kg. ☐ lb.
15. Other relevant information			
It is hereby certified that the coffee described above was grown in the abovementioned producing country			
16. Customs stamp of issuing country: Date Signature of authorized Customs Officer		17. Stamp of Certifying Agency: Date of issue Signature of authorized Certifying Officer	

PART B: FOR USE WHEN CERTIFICATE IS COLLECTED. COMPLETED CERTIFICATE TO BE FORWARDED TO THE ICO.

18. NOTATION BY CUSTOMS SERVICE Certificate collected and coffee imported or placed under Customs control Customs entry number: Observations: Quantity (if different from boxes 11 or 13):	19. NOTATION BY CERTIFYING AGENCY OTHER THAN CUSTOMS Certificate collected and credited to Transit Stamp Account Observations:
Place Date	Place Date
Customs stamp of collecting country Signature or equivalent of authorized Customs Officer	Stamp of Certifying Agency Signature of authorized Certifying Officer

ANNEX 1 A

MEASUREMENTS OF CERTIFICATE OF ORIGIN IN FORM O



Form approved by the:

INTERNATIONAL COFFEE ORGANIZATION
22 Berners Street, London W1P 4 DD, England

52,5 mm

1. Valid for importation or replacement until

PART A: FOR USE BY ISSUING AUTHORITY

210 mm

2. Reference No.	Country Code	Port Code	Serial No.
3. Producing country			
4. Country of destination			
5. Name of ship/other carrier	6. Port of loading/intermediate ports	7. Date of shipment	8. Leave blank
9. Port or point of destination			
10. Shipping marks	11. Number of bags or other containers	12. Description of coffee	13. Net weight of shipment
a. ICO identification mark		☐ Green (Crude)	14. Unit of weight ☐ kg. ☐ lb.
		☐ Roasted	
		☐ Soluble	
		☐ Other	
15. Other relevant information			
It is hereby certified that the coffee described above was grown in the abovementioned producing country			
16. Customs stamp of issuing country:		17. Stamp of Certifying Agency:	
Date		Date of issue	
Signature of authorized Customs Officer		Signature of authorized Certifying Officer	

PART B: FOR USE WHEN CERTIFICATE IS COLLECTED. COMPLETED CERTIFICATE TO BE FORWARDED TO THE ICO.

18. NOTATION BY CUSTOMS SERVICE	19. NOTATION BY CERTIFYING AGENCY OTHER THAN CUSTOMS
Certificate collected and coffee imported or placed under Customs control	Certificate collected and credited to Transit Stamp Account
Customs entry number:	Observations:
Observations:	
Quantity (if different from boxes 11 or 13):	
Place Date	Place Date
Customs stamp of collecting country	Stamp of Certifying Agency
Signature or equivalent of authorized Customs Officer	Signature of authorized Certifying Officer

ANNEX 1 B

General guidance for completion of Certificate of Origin in Form O

CERTIFICATE OF ORIGIN FOR EXPORTS TO MEMBERS

PART A

To be completed by the certifying agency and the customs service of the issuing member

1. Leave blank.

2. The reference number shall include the code number of the member issuing the Certificate (see Annex 3 to these Rules) and the code number of the port or inland point of export (two digits to be supplied by the member). This prefix of up to five digits shall be followed by the serial number of the Certificate (each certifying agency shall ensure that the numbering of the Certificates of Origin in Form O which it issues shall begin at '1' on 1 October each year and shall proceed consecutively until 30 September the following year).

3. Enter the name of the country in which the coffee was produced.

4. Enter the name of the country of destination.

5. Enter the name of the vessel on board which the coffee is to be shipped. If the coffee is not to be forwarded by ship, enter appropriate information concerning form of transport, for example, lorry, lighter, rail.

6. Enter the name of the port or other place at which the coffee is to be loaded and the name of any port or point in transit at which the coffee will be unloaded before reforwarding to the destination shown on the Certificate. If the coffee is proceeding direct to its destination enter the word 'direct'.

7. Enter the date on which the coffee is to be shipped.

8. Leave blank (for use by the International Coffee Organization).

9. Enter the name of the port or other place to which the coffee is destined.

10. The bags or containers in each parcel of coffee covered by a single Certificate of Origin shall bear a unique ICO identification mark, printed inside a box or stamped on a metal strip affixed to the bags or other containers. Enter the ICO identification mark and any additional shipping marks or other identification in the spaces provided.

Note:

If the Member has opted for a Certificate of Origin on which box 10 has been modified to allow more than one ICO identification mark to be entered as provided for in paragraph 3 of Rule 2 of these Rules and there is no space in which to enter additional shipping marks in this box, the additional shipping marks should, to the extent possible, be shown in full in box 15.

11. Enter the number of bags or other containers.

12. Mark 'X' in the appropriate box. If coffee other than green, roasted or soluble is being exported, specify the form of such other coffee in box 15 (see definitions in Article 3 of the International Coffee Agreement 1983). If an export of coffee includes more than one form of coffee, separate Certificates are required for each form of coffee included in the shipment.

13. Enter net weight, rounded to the nearest whole unit of weight (one pound equals 0,4536 kilogram).

14. Specify unit of weight by marking 'X' in the appropriate box.

15. Enter any additional information relevant to the parcel of coffee described in the Certificate.

16. The customs service in the port or other location from which the coffee is exported shall stamp the Certificate as confirmation that export is about to take place. The authorized customs officer applying the stamp shall sign and date the Certificate in the spaces provided.

17. The certifying officer shall stamp the Certificate with the stamp of the certifying agency and shall sign and date the Certificate in the spaces provided.

IMPORTANT

The first copy of each Certificate of Origin in Form O shall be forwarded to the International Coffee Organization together with a copy of the relevant bill of lading or equivalent document within 21 days of the date of shipment.

PART B

To be completed by the customs service withdrawing the Certificate

18. The customs service of the country of importation or in which the coffee is placed under customs control shall:
- (i) withdraw the Certificate;
 - (ii) enter the customs entry number if the coffee has been imported and any relevant observations;
 - (iii) enter the place date of importation or the location of the coffee and the date on which it was placed under its custody; and
 - (iv) affix its cachet as confirmation that the coffee has been imported or placed under its control.

IMPORTANT

Each original Certificate of Origin in Form O withdrawn by a customs service shall be forwarded to the International Coffee Organization within 30 days of the close of the month of collection.

ANNEX 2

CERTIFICATE OF ORIGIN IN FORM X

PART A: FOR USE BY ISSUING AUTHORITY

CERTIFICATE OF ORIGIN FORM **X**
FOR EXPORTS TO NON-MEMBERS

1. Name and address of exporter		Form approved by the:  INTERNATIONAL COFFEE ORGANIZATION 22 Berners Street, London W1P 4 DD, England	
2. Name and address of importer			
		3. Reference No.	
		Country Code	Port Code
4. Producing country			
5. Country of destination			
6. Name of ship/other carrier	7. Port of loading/intermediate ports	8. Date of shipment	9. Leave blank
10. Port or point of destination			
11. Shipping marks a. ICO Identification mark --- / --- / --- b. Other marks	12. Number of bags or other containers 	13. Description of coffee ☐ Green (Crude) ☐ Roasted ☐ Soluble ☐ Other	14. Net weight of shipment 15. Unit of weight ☐ kg. ☐ lb.
16. Other relevant information			
It is hereby certified that the coffee described above was grown in the abovementioned country			
17. Customs stamp of issuing country Date Signature of authorized Customs Officer		18. Stamp of Certifying Agency Date of issue Signature of authorized Certifying Officer	

PART B: FOR USE BY SURVEYING AGENT

19. CERTIFICATION BY SURVEYING AGENT IN THE CASE OF TRANSHIPMENT			
First port of transhipment	Transhipment date	Second port of transhipment	Transhipment date
Destination	Name of ship or other carrier	Destination	Name of ship or other carrier
..... Date Signature of surveying agent		 Date Signature of surveying agent	
20. CERTIFICATION OF IMPORTATION BY SURVEYING AGENT			
Country of import	Place of entry	 Date Signature of surveying agent	
	Date of entry		
Observations			

ANNEX 2 A

MEASUREMENTS OF CERTIFICATE OF ORIGIN IN FORM X

PART A: FOR USE BY ISSUING AUTHORITY

CERTIFICATE OF ORIGIN FORM X
FOR EXPORTS TO NON-MEMBERS

Form approved by the:

INTERNATIONAL COFFEE ORGANIZATION
22 Berners Street, London W1P 4DD, England

1. Name and address of exporter

2. Name and address of importer

3. Reference No

Country Code

Port Code

Serial No

4. Producing country

5. Country of destination

6. Name of ship/other carrier

7. Port of loading/intermediate ports

8. Date of shipment

9. Leave blank

10. Port or point of destination

11. Shipping marks

12. Number of bags or other containers

13. Description of coffee

14. Net weight of shipment

a. ICO Identification mark

b. Other marks

☐ Green (Crude)☐ Roasted☐ Soluble☐ Other15. Unit of weight ☐ kg☐ lb

16. Other relevant information

It is hereby certified that the coffee described above was grown in the abovementioned country

17. Customs stamp of issuing country

18. Stamp of Certifying Agency

Date

Signature of authorized Customs Officer

Date of issue

Signature of authorized Certifying Officer

PART B: FOR USE BY SURVEYING AGENT

19. CERTIFICATION BY SURVEYING AGENT IN THE CASE OF TRANSHIPMENT

First port of transhipment

Transhipment date

Second port of transhipment

Transhipment date

Destination

Name of ship or other carrier

Destination

Name of ship or other carrier

Date

Signature of surveying agent

Date

Signature of surveying agent

20. CERTIFICATION OF IMPORTATION BY SURVEYING AGENT

Country of import

Place of entry

Date of entry

Date

Signature of surveying agent

Observations

ANNEX 2 B

General guidance for completion of Certificate of Origin in Form X

CERTIFICATE OF ORIGIN FOR EXPORTS TO NON-MEMBERS

PART A

To be completed by the certifying agency and the customs service of the issuing member

1. Enter the name and address of the exporter.
 2. Enter the name and address of the importer, or if not available, the name and address of the buyer.
 3. The reference number shall include the code number of the member issuing the Certificate (see Annex 3 to these Rules) and the code number of the port or inland point of export (two digits to be supplied by the member). This prefix of up to five digits shall be followed by the serial number of the Certificate (each certifying agency shall ensure that the numbering of the Certificates of Origin in Form X which it issues shall begin at '1' on 1 October each year and shall proceed consecutively until 30 September the following year).
 4. Enter the name of the country in which the coffee was produced.
 5. Enter the name of the country of destination.
 6. Enter the name of the vessel on board which the coffee is to be shipped. If the coffee is not to be forwarded by ship, enter appropriate information concerning the form of transport, for example, lorry, lighter, rail.
 7. Enter the name of the port or other place at which the coffee is to be loaded and the name of any port or point in transit at which the coffee will be unloaded before reforwarding to the destination shown on the Certificate. If the coffee is proceeding direct to its destination enter the word 'direct'.
 8. Enter the date on which the coffee is to be shipped.
 9. Leave blank (for use by the International Coffee Organization).
 10. Enter the name of the port or other place to which the coffee is destined.
 11. The bags or containers in each parcel of coffee covered by a single Certificate of Origin shall bear a unique ICO identification mark, printed inside a box or stamped on a metal strip affixed to the bags or other containers. Enter the ICO identification mark and any additional shipping marks or other identification in the spaces provided.
- Note:*
- If the Member has opted for a Certificate of Origin on which box 11 has been modified to allow more than one ICO identification mark to be entered as provided for in paragraph 3 of Rule 2 of these Rules and there is no space in which to enter additional shipping marks in this box, the additional shipping marks should, to the extent possible, be shown in full in box 16.
12. Enter the number of bags or other containers.
 13. Mark 'X' in the appropriate box. If coffee other than green, roasted or soluble is being exported, specify the form of such other coffee in box 16 (see definitions in Article 3 of the International Coffee Agreement 1983). If an export of coffee includes more than one form of coffee, separate Certificates are required for each form of coffee included in the shipment.
 14. Enter net weight, rounded to the nearest whole unit of weight (one pound equals 0,4536 kilogram).
 15. Specify unit of weight by marking 'X' in the appropriate box.
 16. Enter any additional information relevant to the parcel of coffee described in the Certificate.
 17. The customs service in the port or other location from which the coffee is exported shall stamp the Certificate as confirmation that export is about to take place. The

authorized customs officer applying the stamp shall sign and date the Certificate in the spaces provided.

18. The certifying officer shall stamp the Certificate with the stamp of the certifying agency and shall sign and date the Certificate in the spaces provided.

IMPORTANT

The original and the first copy of each Certificate of Origin in Form X shall be forwarded to the International Coffee Organization together with a copy of the relevant bill of lading or equivalent document within 21 days of the date of shipment.

PART B

(For use by the agent of the Executive Director if measures for the verification of exports to non-members are reintroduced)

ANNEX 3

LIST OF MEMBERS AND THEIR CODE NUMBERS

Exporting members		Importing members	
Angola	158	Australia	51
<i>Benin</i>	22	Austria	52
Bolivia	1	Belgium/Luxembourg	53
Brazil	2	Canada	54
Burundi	27	Cyprus	86
<i>Cameroon</i>	19	Denmark	56
<i>Central African Republic</i>	20	Fiji	236
Colombia	3	Finland	71
<i>Congo</i>	21	France	58
Costa Rica	5	Germany, Federal Republic of	57
<i>Cote d'Ivoire</i>	24	Greece	91
Cuba	6	Ireland	98
Dominican Republic	7	Italy	59
Ecuador	8	Japan	60
El Salvador	9	Netherlands	61
Equatorial Guinea	167	New Zealand	70
Ethiopia	10	Norway	62
<i>Gabon</i>	23	Portugal	31
Ghana	38	Singapore	132
Guatemala	11	Spain	63
Guinea	92	Sweden	64
Haiti	12	Switzerland	65
Honduras	13	United Kingdom	68
India	14	United States of America	69
Indonesia	15	Yugoslavia	148
Jamaica	100		
Kenya	37		
Liberia	107		
<i>Madagascar</i>	25		
Malawi	109		
Mexico	16		
Nicaragua	17		
Nigeria	18		
Panama	29		
Papua New Guinea	166		
Paraguay	122		
Peru	30		
Philippines	123		
Rwanda	28		
Sierra Leone	32		
Sri Lanka	83		
Tanzania	33		
Thailand	140		
<i>Togo</i>	26		
Trinidad and Tobago	34		
Uganda	35		
Venezuela	36		
Zaire	4		
Zambia	149		
Zimbabwe	39		

Note: Members of OAMCAF are in italics.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 16 January 1987

concerning the provisional application of the 1986 International Cocoa Agreement

(87/166/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 113 and 116 thereof,

Whereas the 1980 International Cocoa Agreement expired on 30 September 1986 and measures have been taken to ensure that the buffer stock and its resources are maintained until 31 January 1987;

Whereas, pursuant to the Council Decision of 30 September 1986, the 1986 International Cocoa Agreement was signed by the Community and its Member States on 30 September 1986;

Whereas it is desirable to ensure that the 1986 Agreement enters into force on a provisional basis not later than 1 February 1987; whereas, to this end, it is necessary for the Community and its Member States, in accordance with their requisite internal procedures and once these have been completed, to notify the Secretary-General of the United Nations Organization of their intention to apply the new Agreement on a provisional basis,

Article 1

Once they have completed the requisite internal procedures, the Community and its Member States shall notify the Secretary-General of the United Nations Organization of their intention to apply the 1986 International Cocoa Agreement on a provisional basis, in accordance with Article 70 thereof.

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 the notification of provisional application on behalf of the Community.

Done at Brussels, 16 January 1987.

For the Council

The President

G. VERHOFSTADT

CONTENTS

	Page
Chapter I	Objectives 27
Chapter II	Definitions 27
Chapter III	Membership 28
Chapter IV	Organization and administration 28
Chapter V	Privileges and immunities 33
Chapter VI	Finance 33
Chapter VII	Prices, buffer stock and supplementary measures 35
Chapter VIII	Reporting of exports and imports, and control measures 42
Chapter IX	Supply and demand 42
Chapter X	Processed cocoa 44
Chapter XI	Relations between members and non-members 44
Chapter XII	Information and studies 44
Chapter XIII	Relief from obligations, and differential and remedial measures 45
Chapter XIV	Consultations, disputes and complaints 45
Chapter XV	Fair labour standards 46
Chapter XVI	Final provisions 46
Annex A	Producing countries exporting, on average, 10 000 tonnes or more of bulk cocoa annually 50
Annex B	Producing countries exporting less than 10 000 tonnes of bulk cocoa annually . 50
Annex C	Fine or flavour cocoa producers 50
Annex D	Exports of cocoa calculated for the purposes of Article 70 51
Annex E	Imports of cocoa calculated for the purposes of Article 70 52

INTERNATIONAL COCOA AGREEMENT 1986

CHAPTER I

OBJECTIVES

Article 1

Objectives

The objectives of the International Cocoa Agreement 1986 (hereinafter referred to as this Agreement), taking into account relevant provisions of 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 promote the development and strengthening of international cooperation in all sectors of the world cocoa economy;
- (b) to contribute towards stabilization of the world cocoa market in the interest of all members, by seeking, in particular:
 - (i) to prevent excessive fluctuations in the price of cocoa which adversely affect the prospects for accelerated economic growth and social development in producing member countries and the long-term interest of both producers and consumers;
 - (ii) 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;
 - (iii) to assure adequate supplies at reasonable prices, equitable to producers and consumers;
 - (iv) 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;
- (c) to facilitate the expansion of international trade in cocoa;
- (d) 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 such other products containing cocoa as the Council may determine if necessary;
- (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 organization 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* means the price as defined in Article 26 (2);
- (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 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 the 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 the countries listed in Annex C to the extent specified therein;
- (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) *Indicator price* means the price as defined in Article 26 (3);
- (13) *Member* means a contracting party as defined above;
- (14) *Organization* means the International Cocoa Organization referred to in Article 5;

- (15) *Producing country* or *producing member* means a country or a member respectively which grows cocoa in commercially significant quantities;
- (16) *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;
- (17) *Special drawing right (SDR)* means the special drawing right of the International Monetary Fund;
- (18) *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;
- (19) *Tonne* means the metric ton of 1 000 kilograms or 2 204,6 pounds, and pound means 453,597 grams.

CHAPTER III

MEMBERSHIP

Article 3

Membership in the Organization

1. Each contracting party shall be a member of the Organization.
2. There shall be two categories of members of the Organization, 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 organizations

1. Any reference in this Agreement to 'a government' or '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, 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, 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 intergovernmental 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. In such cases, the member States of such intergovernmental organizations shall not exercise their individual voting rights.

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, Buffer Stock Manager and other 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.

*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 authorized by the members, to incur any obligation outside the scope of this Agreement: in particular it shall not have the capacity to borrow money, without however limiting the application of Article 33, nor shall it enter into any trading contract for cocoa except as provided for specifically in this Agreement. In exercising its capacity to contract, the Council shall incorporate in its contracts the terms of this provision and Article 22 (5) 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, 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.
4. 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 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. 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, 39 and 40.
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: 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 Organization 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 28.

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 400 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 Article 10 (4) 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 intergovernmental organizations 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 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 10 exporting members and 10 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 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 under Article 10;
- (b) approval of the administrative budget and assessment of contributions under Article 23;
- (c) revision of prices under article 27;
- (d) revision of Annex C under Article 29 (3);
- (e) action relating to supplementary measures under Article 39;
- (f) relief from obligations under Article 59;

- (g) decision of disputes under Article 62;
- (h) suspension of rights under Article 63 (3);
- (i) establishment of conditions for accession under Article 68;
- (j) exclusion of a member under Article 73;
- (k) extension or termination of this Agreement under Article 75;
- (l) recommendation of amendments to members under Article 76.

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 Article 16 (2) 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 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 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 inter-governmental 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 decisions 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. The

Manager shall keep the Executive Director informed of the general operations of the buffer stock, so that the Executive Director may ascertain its effectiveness in meeting the objectives of this Agreement.

5. Without prejudice to the provisions of paragraph 4 of this Article, 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 nor the Manager, nor 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 or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization. Each member undertakes to respect the exclusively international character of the responsibilities of the Executive Director, 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 members of the 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, with such amendments as are necessary for the proper functioning of this Agreement.

3. If the headquarters of the Organization is moved to another country, the new host Government shall, as soon as possible, conclude with the Organization 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 Organization;
- (b) in the event of the headquarters of the Organization being moved from the territory to the host Government; or
- (c) in the event of the Organization ceasing to exist.

5. 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 and liabilities of members

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 decide to accede to the request and subsequently 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 34 shall be brought into the buffer stock account. The liability of the buffer stock account for any expenditure other than that specified in Article 34 shall be decided by the Council.

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

5. A member's liability to the Council and to other members is limited to the extent of its obligations regarding contributions to the administrative budget and to the financing of the buffer stock as specifically provided 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 paragraph.

6. 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 Article 23 (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, 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 obligation 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 Article 22 (1) 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 for their professional services. However, travel and subsistence costs may be reimbursed by the Organization 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 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, both expressed in special drawing rights (SDR) per tonne.

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 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 US \$ per tonne by using the current six months forward rate of exchange in London at closing time. The US \$-denominated average of the London and New York prices shall be converted into its SDR equivalent at the appropriate daily official US \$/SDR exchange rate established 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 indicator price shall be the average of the daily prices over a period of 10 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 10 consecutive market days was at, below or above that figure.

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 prescribed in this Article.

Article 27

Prices

A. Price structure

1. There shall be established, for the operation of this Agreement, the following prices:

- (a) an upper intervention price of 2 270 SDR per tonne;
- (b) a may-sell price of 2 215 SDR per tonne;
- (c) a median price of 1 935 SDR per tonne;

(d) a may-buy price of 1 655 SDR per tonne;

(e) a lower intervention price of 1 600 SDR per tonne.

B. Annual review and fall back formula

2. Each cocoa year, the Council, as close to the end of the cocoa year as possible, shall review the prices established in paragraph 1 of this Article. In conducting this review, the Council shall take into consideration, as appropriate, the trend of cocoa prices, consumption, production and stocks, the influence on cocoa prices of changes in the world economic or monetary situation, the financial position of the buffer stock, the volume of net buffer stock operations and relevant provisions of UNCTAD resolution 93 (IV) concerning the Integrated Programme for Commodities, as well as any other factors which might affect the achievement of the objectives of this Agreement. The Executive Director shall supply data to assist the Council in its consideration of the foregoing elements.

3. The Council may, by special vote, revise the prices established in paragraph 1 of this Article.

4. If, after 10 calendar days from the commencement of the session, the Council is unable to agree on the need for and/or the extent of the revision of the prices and if, at the time of the review, the average of indicator prices over the last two months has been above the upper intervention price or below the lower intervention price, while:

- (a) the average of indicator prices of the preceding 12 months has been above the upper intervention price, or below the lower intervention price; and
- (b) the buffer stock transactions and/or the supplementary measures referred to in Articles 39 and 40, as appropriate, have not been suspended during the preceding 12 months, except if such a suspension has taken place in application of paragraph 7 or paragraph 8 of this Article,

the prices established in paragraph 1 of this Article shall be revised upwards or downwards, as appropriate, in order to bring the average of indicator prices over the preceding 12 months at a distance of 55 SDR per tonne inside the revised upper intervention price/lower intervention price range, unless this would imply a revision of more than 115 SDR per tonne, in which case the revision shall be 115 SDR per tonne. If such a revision is to enter into force, it shall do so immediately.

5. In case the average of indicator prices over the two-month period referred to in paragraph 4 of this Article has been below the upper intervention price or above the lower intervention price, the prices established in paragraph 1 of this Article shall not be revised.

6. The provisions of Article 76 shall not be applicable to the revision prices under this Article.

C. Special review and revision of prices

7. Each time net buffer stock purchases of 75 000 tonnes have taken place within any period not exceeding six consecutive months since the date of entry into force of this Agreement or, if prices have been revised, the date of the last revision, buffer stock purchase shall be suspended and the Council shall meet in a special session within 20 working days. Unless the Council, by special vote, decides otherwise, or if after five working days a decision has not been taken and the indicator price is below the lower intervention price, the prices established in paragraph 1 of this Article shall be reduced by 115 SDR per tonne and buffer stock purchases may be resumed.

8. Each time net buffer stock sales of 75 000 tonnes have taken place within any period not exceeding six consecutive months since the date of entry into force of this Agreement or, if prices have been revised, the date of the last revision, buffer stock sales shall be suspended and the Council shall meet in a special session within 20 working days. Unless the Council, by special vote, decides otherwise, or if after five working days a decision has not been taken and the indicator price is above the upper intervention price, the prices established in paragraph 1 of this Article shall be raised by 115 SDR per tonne and buffer stock sales may be resumed.

9. If a revision or revisions are decided according to the provision of paragraph 7 or paragraph 8 of this Article, the revision referred to in paragraph 4 of this Article shall not be applicable, but a special session of the Council shall be convened to meet 12 months after the date of the latest revision and shall review the prices established in paragraph 1 of this Article. In conducting such a review, paragraphs 2, 3, 4 and 5 of this Article shall be applicable:

10. The provisions of Article 76 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 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.

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

1. Notwithstanding Article 32, the provisions of this Agreement concerning levy payments 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 its production stated in paragraph 2 of Annex C. With regard to the remaining proportion, the provisions of this Agreement concerning levy payments 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***Establishment, capacity and location of the buffer stock**

1. As a means of achieving the objectives of this Agreement, an international buffer stock is hereby established. The total capacity of the buffer stock shall be 250 000 tonnes, including stocks carried over from the International Cocoa Agreement, 1980, which are deemed to be 100 000 tonnes for the purposes of Article 27. If, under the provisions of Article 75, the Council decides to extend this Agreement for a period of more than one year, the Council may, by special vote, increase the capacity of the buffer stock by not more than 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/liquor. If problems of trading or storage of this cocoa paste/liquor 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 the buffer stock 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.

4. The Manager shall not operate on terminal markets.

5. Cocoa held in the buffer stock shall be stored in such locations in member countries as will facilitate immediate ex store delivery to buyers in member countries, but mainly in importing member countries, engaged in the trade in or processing of cocoa.

Article 31

Financing of the buffer stock

1. In order to finance the operations of the buffer stock, the buffer stock account shall receive regular income in the form of a levy imposed on the exports and imports of cocoa in accordance with the provisions of Article 32.

2. If the financial position of the buffer stock is, or appears likely to be, insufficient to finance its operations, the Buffer Stock Manager shall so inform the Executive Director. The Executive Director may, after taking into account the circumstances relating to the institution of supplementary measures provided for in Article 39, call a special session of the Council to meet within 20 working days unless the Council is otherwise scheduled to meet within 30 calendar days. The Council may, by special vote, make any arrangements, other than borrowing, that it considers appropriate in order to supplement the buffer stock resources, except that there shall be no obligatory government contributions or guarantees other than those that might arise out of association with the Common Fund for Commodities.

3. All charges connected with these arrangements shall be assigned to the buffer stock account.

4. The Manager shall keep the Executive Director and the Council informed of the financial position of the buffer stock.

Article 32

Levy for financing the buffer stock

1. The levy imposed on cocoa either on first export by a member or on first import by a member shall be US \$ 45

per tonne of cocoa beans and proportionately on cocoa products in accordance with the conversion factors set out in Article 28 or as subsequently fixed by the Council by special vote. In any case, the levy 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.

2. The Council shall review annually the buffer stock levy and, in the light of the financial resources and obligations of the Organization in relation to the buffer stock, may, by special vote, determine a different rate of levy or decide to suspend the levy.

3. Certificates of levy payment shall be issued in accordance with rules established by the Council. 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 the levy within a given time limit.

4. Levy payments under this Article shall be made in freely convertible currencies and shall be exempt from foreign exchange restrictions.

5. Nothing contained in this Article shall affect the rights of buyers and sellers to regulate the terms of payment for supplies of cocoa by agreement between them.

Article 33

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 in the Agreement establishing the Common Fund for Commodities, with a view to making full use of the financial possibilities offered by the Fund.

Article 34

Costs to be charged to the buffer stock account

1. 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, and the cost to the Organization of administering and controlling the collection of levy payments;

- (b) other costs related to the buffer stock scheme, 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 provided for in Article 31 or the proceeds of the resale of cocoa.

2. Costs related to the withholding scheme provided for in Article 40 shall be charged to the buffer stock account.
3. The Council may, by special vote, decide to charge to the buffer stock account costs related to supplementary measures other than the withholding scheme, which may be instituted under Article 39.

Article 35

Investment of surplus buffer stock funds

1. Funds of the buffer stock which are temporarily surplus to those required to finance its operations may be suitably deposited in importing and exporting member countries in accordance with rules established by the Council.
2. The 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 36

Buffer stock purchases

1. When the indicator price is above the may-buy price, the Buffer Stock manager shall purchase cocoa only in so far as it is necessary to rotate cocoa already held in the buffer stock in order to preserve quality, unless the Council decides otherwise by special vote. The rotation programme shall be submitted by the Manager for approval by the Council.
2. When the indicator price is at or below the may-buy price but above the lower intervention price, the Manager may purchase cocoa in defence of the lower intervention price, unless purchases have been suspended in accordance with the provisions of Article 27 (7).
3. When the indicator price is at or below the lower intervention price the Manager shall purchase such

quantities of cocoa as are necessary so that the indicator price rises above the lower intervention price, unless purchases have been suspended in accordance with the provisions of Article 27 (7).

4. The Manager may purchase in origin and second-hand markets. The Manager shall give first refusal to sellers in exporting member countries, in accordance with rules to be established by the Council with a view to ensuring effective first refusal.

5. 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.

6. The Manager shall purchase cocoa at prevailing market prices in accordance with rules to be established by the Council. The rules shall take account of the practice of the trade.

7. The Manager shall maintain appropriate records to enable him to fulfil his functions under this Agreement.

Article 37

Buffer stock sales

1. When the indicator price is below the may-sell price, the Buffer Stock Manager shall sell cocoa only in so far as it is necessary to rotate cocoa already held in the buffer stock in order to preserve quality, unless the Council decides otherwise by special vote. The rotation programme shall be submitted by the Manager for approval by the Council.
2. When the indicator price is at or above the may-sell price but below the upper intervention price, the Manager may sell cocoa in defence of the upper intervention price, unless sales have been suspended in accordance with the provisions of Article 27 (8).
3. When the indicator price is at or above the upper intervention price, the Manager shall, subject to the provisions of Article 41 (4), sell such quantities of cocoa as are necessary so that the indicator price falls below the upper intervention price, unless sales have been suspended in accordance with the provisions of Article 27 (8).
4. The Manager shall sell cocoa at prevailing market prices in accordance with rules to be established by the Council. The rules shall take account of the practice of the trade.
5. In making sales, the Manager shall 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

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 debt, plus interest 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 divided into shares attributable to the 1972 and 1975 Agreements, to the 1980 Agreement and to this Agreement *pro rata* to the contributions or levy payments collected under the Agreement concerned:

(i) the funds collectively attributable to the 1972 and 1975 Agreements shall be paid to the exporting members concerned *pro rata* to the contributions collected on their exports;

(ii) the funds attributable to the 1980 Agreement and to this Agreement shall be divided into funds collected on exports and funds collected on imports. The funds collected on exports shall be distributed among the exporting member countries concerned *pro rata* to the contributions or levy payments collected on their exports. The funds collected on imports shall be distributed among the importing member countries concerned according to their contribution-paid or levy-paid imports. The distribution of the so-calculated collective share of

the Member States of the European Community shall be decided upon by them according to criteria to be defined by these countries.

3. (a) Cocoa remaining in the buffer stock at the time of liquidation shall be sold in accordance with rules to be established by the Council before the termination of this Agreement. The rules must ensure that the liquidation takes place in an orderly manner over a sufficient period of time. The rules shall provide for adequate and regular supervision during the liquidation period of the buffer stock sales by the Council or any *ad hoc* group established by the Council for this purpose.

(b) If, at the termination of this Agreement, the Council has not been able to reach a decision on the rules referred to in subparagraph (a) above and/or the extent of the period of liquidation, the buffer stock cocoa shall be sold at the best possible price in the light of the current market conditions, taking into account the normal practice of the cocoa trade, without disturbing the normal flow of the cocoa market but nevertheless aiming at a liquidation in a period not exceeding three years, unless more than 150 000 tonnes are to be liquidated, in which case the period shall be extended to four-and-a-half years, unless during the liquidation period the Council decides otherwise.

Article 39

Institution of supplementary measures

1. When the indicator price is at or below the lower intervention price and has been so for five consecutive market days, and:

(a) 80 % of the maximum capacity of the buffer stock has been filled; or

(b) the net financial resources of the buffer stock are only sufficient to purchase 30 000 tonnes of cocoa.

the Council shall meet in a special session within 20 working days.

2. The Council may, by special vote, decide on such supplementary measures as it may deem necessary in order to further the price stabilization objectives of this Agreement.

3. If the Council decides on a measure or measures other than the withholding scheme under Article 40, the Council shall at the same session decide whether or not the withholding scheme shall enter into force in the event that such other measure or measures decided upon should prove inadequate to defend the lower intervention price. If the Council decides that the withholding scheme shall enter into force, it shall also determine the conditions under which the scheme shall enter into force.

4. If, five market days after the commencement of the special session, the Council has not taken a decision under paragraph 2 of this Article and the indicator price has been at or below the lower intervention price throughout the preceding 15 market days, the withholding scheme provided for under Article 40 shall be applicable.

5. The withholding scheme shall enter into force if at that time or subsequently the indicator price has been at or below the lower intervention price throughout the preceding period of 15 consecutive market days, so long as the buffer stock is not at that time buying on the market. The buffer stock purchases shall be suspended only when the maximum capacity of the buffer stock has been filled or the net financial resources of the buffer stock have been exhausted.

6. If the conditions in paragraph 5 above have not been met by the time of the next regular session of the Council, the decision to apply the withholding scheme shall be reviewed. Unless the Council decides otherwise, the withholding scheme shall continue to be applicable.

Article 40

Withholding scheme

1. The total volume of cocoa withheld at any one time under the withholding scheme shall not exceed 120 000 tonnes.

2. When the conditions provided for in Article 39 have been met, exporting members listed in Annex A shall undertake to withhold collectively from the market a first tranche of 30 000 tonnes of cocoa beans, unless the Council decides otherwise by special vote.

3. Unless the Council decides otherwise by special vote and subject to paragraphs 1 and 4 of this Article, further successive tranches of 30 000 tonnes of cocoa beans at a time shall be withheld by the exporting member countries concerned whenever the indicator price is at or below the lower intervention price and has been so for a period of 20 consecutive market days.

4. Unless the Council decides otherwise by special vote and after the withholding of every other tranche has been triggered, and provided the conditions of Article 39 (1) are met, the Council shall meet in special session within 20 working days. If no decision is taken, further tranches shall be withheld successively as described in paragraph 2 of this Article.

5. Each tranche of cocoa to be withheld shall be distributed among the exporting members concerned *pro rata* to the average of their annual exports in the latest

three cocoa years for which figures have been published by the Organization in the *Quarterly Bulletin of Cocoa Statistics*.

6. The Council may at any time review the distribution among exporting members and, at the request of the exporting members concerned, revise the distribution among them.

7. The cocoa withheld under this scheme shall be deposited in buffer stock approved warehouses as defined in the buffer stock rules, within a period which shall be stipulated by the Council in the rules governing the withholding scheme and which shall not exceed six calendar months.

8. The quality of cocoa withheld under this scheme, as well as its storage and rotation, shall conform to the quality requirements under the buffer stock rules.

9. The withheld cocoa shall remain the property of the exporting members concerned.

10. The Buffer Stock Manager shall be responsible for the surveillance of the withholding, storage and rotation of cocoa under the scheme. The cocoa shall be under the control of the Manager.

11. The administrative costs of surveillance of the withholdings and control of rotation and storage shall be charged to the buffer stock account.

12. The cost of transport, storage and rotation for withheld cocoa stored in buffer stock approved warehouses will be charged to the buffer stock account under the following conditions:

(a) The cost of freight and insurance shall be advanced from the buffer stock account and shall be reimbursed by the producing member country concerned when its withheld cocoa is released according to the provisions of Article 41:

(b) A contribution to the storage and rotation costs, for the period between the moment the withheld cocoa is stored and the moment it is released, shall be made by the buffer stock account. This payment per tonne shall not exceed the average cost of storage and rotation of cocoa currently held by the buffer stock and its amount shall be fixed annually by the Council at its second regular session.

13. Whilst the withholding scheme is in force, importing members shall endeavour to limit their imports of bulk cocoa from non-members to the average annual quantity imported from non-members during the three years preceding the entry into force of the withholding scheme.

Article 41**Release of cocoa withheld**

1. If, at any time after the withholding scheme has entered into force, the indicator price is at or above the median price, for 10 consecutive market days, 15 000 tonnes of cocoa withheld shall be released to the exporting members concerned and their obligation to withhold this cocoa shall cease.

2. If, after a release, the indicator price is at or above the median price for 10 consecutive market days, a further release of the same tonnage shall take place. Such releases shall continue until:

(a) the indicator price has fallen below the median price;
or

(b) all withheld cocoa has been released.

3. If the indicator price is at or above the may-sell price, the tonnage to be released under paragraph 2 of this Article shall be doubled.

4. All withheld cocoa shall be released before normal sales of buffer stock cocoa are made.

5. The Council may, by special vote, change the tonnages and the frequency of releases provided for in this Article.

Article 42**Compliance with the withholding scheme**

1. Members shall adopt all necessary measures required to ensure full compliance with obligations undertaken by them under this Agreement in respect of the withholding scheme. The Council may, if necessary, call upon members to adopt additional measures for the fulfilment of their obligations.

2. Exporting members listed in Annex A undertake to regulate their sales in such a manner as to make for orderly marketing and to be in a position to comply at all times with the withholding scheme if and when it comes into effect. To this end the Council shall, before the beginning of each cocoa year, assess and indicate the maximum tonnage that, within the limits referred to in Article 40 (1), may be required to be withheld during the following year on the basis of the foreseeable statistical balance of supply and demand, taking into account the remaining capacity of the buffer stock and its available resources. On the basis of this maximum tonnage, the Council shall establish indicative withholding tonnages for each exporting member concerned. The Council shall establish rules for the

calculation of the indicative withholding tonnages and for the modalities of their application in order to assist the exporting members concerned to fulfil their obligations to withhold cocoa.

3. The Council shall, by special vote, as soon as possible and in any case before the end of the first year after the entry into force of this Agreement, establish rules for the operation, compliance and control in order to ensure the effectiveness of the withholding scheme in meeting the objectives of this Agreement, while not interfering in the execution of *bona fide* contracts concluded before the entry into force of the withholding scheme.

Article 43**Reintroduction of normal buffer stock purchases**

1. If, at any time the withholding scheme is in force, the buffer stock finances improve to an extent which will enable the Buffer Stock Manager to purchase at least 30 000 tonnes of cocoa, no further withholdings shall be made. The Manager shall resume normal buffer stock purchases until either the buffer stock capacity is full or the financial resources of the buffer stock have been exhausted.

2. Exporting members concerned shall still be committed to complying with all their obligations entered into under previous withholding tranches.

3. Unless the Council decides otherwise, the withholding scheme shall be automatically reactivated when the indicator price has been at or below the lower intervention price over a period of five consecutive market days, if:

(a) the maximum capacity of the buffer stock has been filled; or

(b) the financial resources of the buffer stock have been exhausted, and provided that the total tonnage permissible for withholdings has not been reached.

Article 44**Review**

1. While this Agreement is in force, the Council may at any time review, and by special vote revise, any provision relating to the withholding scheme, except that referred to in Article 40 (1).

2. In the event that the indicator price continues to fall after the total volume of the withholding as provided for in Article 40 (1) has been exhausted, the Council shall meet in special session to review the situation and consider any other measures.

*Article 45***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 46***Reporting of exports and imports**

1. The Executive Director shall, in accordance with rules established by the Council, maintain a record of member's 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 Executive Director shall maintain a record of cocoa withheld by and released to each exporting member under the provision of Articles 40 and 41 respectively.
4. Each exporting member concerned shall report to the Executive Director monthly, or at such other intervals as the Council may determine, the total quantity of cocoa withheld, together with such other data as the Council may prescribe.
5. The Council shall establish such rules as it deems necessary to deal with non-compliance with the provisions of this Article.

*Article 47***Control measures**

1. Each member exporting cocoa shall require the presentation of an authorized Council control document and, if applicable, a valid certificate of levy payment, 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 levy payment, before permitting the import of any cocoa into its customs territory whether from a member or a non-member.
2. Certificates of levy payment 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 levy payment 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 48***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 49

Production and stocks

1. Each exporting member may develop a programme to adjust its production, in order that the objective set forth in Article 48 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 held throughout the world and make any necessary recommendations based on this review. To this end members shall provide such information as the Council may require for this purpose.

Article 50

Assurance of supplies and access to markets

1. 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 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 51

Consumption and promotion

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 52

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 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 respect and on the manner in which the provisions of this Article are being observed.

Article 53

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 54

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 55

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 56.

4. Any member which has reason to believe that another member has not fulfilled the obligation under paragraph 1 or paragraph 2 of this Article may so inform the Executive Director and call for consultations under Article 61, or refer the matter to the Council under Article 63.

CHAPTER XII

INFORMATION AND STUDIES

Article 56

Information

1. The Organization 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 utilization of cocoa.

2. In addition to information which members are required to provide under other Articles of this Agreement, the Council may require 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.

4. If a member fails to supply, or finds difficulty in supplying, within a reasonable time, statistical and other information required by the Council for the proper functioning of the Organization, the Council may require the member concerned to explain the reasons 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 57

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 organizations and other appropriate institutions.

Article 58

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 59

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 levy charged under Article 32.

Article 60

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 61

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 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 62.

Article 62

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, 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 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 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 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 63

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 73, by special vote:

(a) suspend that members'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 64

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 65

Signature

This Agreement shall be open for signature at United Nations Headquarters from 1 September 1986 until and including 30 September 1986 by parties to the International Cocoa Agreement 1980, and governments invited to the United Nations Cocoa Conference 1984.

*Article 66***Depositary**

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

*Article 67***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 December 1986. The Council under the International Cocoa Agreement, 1980, 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 68***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, 1980, 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 69***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, it will apply this Agreement provisionally either when it enters into force in accordance with Article 70 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 70***Entry into force**

1. This Agreement shall enter into force definitively on 1 October 1986 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 D and governments representing importing countries having at least 65 % 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 October 1986 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 60 % 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 paragraph 2 of this Article have not been met by 1 October 1986, 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 provisions of this Agreement relating to market intervention measures 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 D 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, paragraph 2 or paragraph 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 Article 69 (1).

Article 71

Reservations

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

Article 72

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 Article 70 (1) for its entry into force, the Council shall meet in special session to review the situation and to take appropriate decisions which, by special vote, may include the suspension of the provisions related to market intervention measures.

Article 73

Exclusion

If the Council finds, under Article 63 (3) 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. 90 days after the date of the Council's decision, that member shall cease to be a member of the Organization.

Article 74

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 Article 76 (2), 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 38 or the other assets of the Organization, except in the case of a member whose exports or imports from non-members are subject to the provisions of Article 32 (1). In such a case, the member shall be entitled to its share of the funds of the buffer stock when it is liquidated under the provisions of Article 38, provided that at least 12 months notice of withdrawal is given to the depositary by such member, not earlier than one year after the entry into force of this Agreement.

Article 75

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 two cocoa years. Before the end of this two-year period the Council may, by special vote, extend this Agreement in whole or in part for one more cocoa year. 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 31 (1) and under Article 32 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 by any means whatsoever, 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 Article 72 (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 76

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 77

Supplementary and transitional provisions

1. This Agreement shall be considered as a replacement of the International Cocoa Agreement 1980.

2. All acts by or on behalf of the Organization or any of its organs under the International Cocoa Agreement 1980, 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, the International Cocoa Agreement 1975 and the International Cocoa Agreement 1980, 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, this first day of August, one thousand nine hundred and eighty-six, the texts of this Agreement in the Arabic, English, French, Russian and Spanish languages being equally authentic. The authentic Chinese text of this Agreement shall be established by the depositary and submitted for adoption to all signatories and governments which have acceded to this Agreement.

ANNEX A

Producing countries exporting, on average, 10 000 tonnes or more of bulk cocoa annually

Brazil	Malaysia
Cameroon	Mexico
Cote d'Ivoire	Nigeria
Dominican Republic	Togo
Ghana	

ANNEX B

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

Angola	India
Benin	Liberia
Bolivia	Nicaragua
Colombia	Papua New Guinea
Congo	Peru
Costa Rica	Philippines
Cuba	Sao Tome and Principe
Equatorial Guinea	Sierra Leone
Fiji	Solomon Islands
Gabon	Uganda
Guatemala	United Republic of Tanzania
Haiti	Vanuatu
Honduras	Zaire

ANNEX C

Fine or flavour cocoa producers

1. *Producing countries exporting exclusively fine or flavour cocoa*

Dominica, Commonwealth of	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 %)
Sao Tome and Principe	(50 %)
Papua New Guinea	(75 %)

ANNEX D

Exports of cocoa calculated for the purposes of Article 70 (a)

(in thousands of tonnes)

Country (b)	1982/83	1983/84	1984/85	Average	Percentage
Brazil	272,7	302,5	336,6	303,93	22,76
Cote d'Ivoire	363,6	414,2	559,7	445,84	33,38
Dominican Republic	35,7	37,1	35,2	36,00	2,69
Ghana	177,5	153,4	181,6	170,83	12,79
Cameroon	104,2	111,1	114,7	110,00	8,24
Malaysia	65,8	97,3	92,1	85,07	6,37
Mexico	19,4	9,1	6,6	11,70	0,88
Nigeria	235,5	117,8	127,4	160,23	12,00
Togo	9,4	16,5	9,9	11,93	0,89
Total	1 283,8	1 259,0	1 463,8	1 335,53	100,0

Source: ICCO Secretariat. Based mainly on data contained in *Quarterly Bulletin of Cocoa Statistics* (London), various issues.

(a) Three-year average, 1982/83 to 1984/85, of net exports of cocoa beans plus net exports of cocoa products, converted to beans equivalent using the conversion factors as specified in Article 28.

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

ANNEX E

Imports of cocoa calculated for the purposes of Article 70 (a)

(in thousands of tonnes)

Country (b)	1982/83	1983/84	1984/85	Average	Percentage
United States of America	436,9	405,7	478,3	440,3	22,50
Germany, Federal Republic of	236,8	253,1	294,5	261,5	13,36
Netherlands	201,4	216,9	234,1	217,5	11,11
Union of Soviet Socialist Republics	169,4	188,9	215,4	191,2	9,77
United Kingdom of Great Britain and Northern Ireland	118,6	130,9	148,0	132,5	6,77
France	112,4	118,8	118,1	116,4	5,95
Japan	55,5	62,3	57,6	58,5	2,99
Italy	54,8	49,1	68,7	57,5	2,94
Belgium/Luxembourg	49,1	57,2	64,1	56,8	2,90
Spain	40,4	38,9	38,6	39,3	2,01
Canada	32,5	38,0	42,2	37,6	1,92
Switzerland	32,3	32,8	32,7	32,6	1,67
Singapore	41,6	22,3	24,5	29,5	1,51
Australia	23,3	23,6	25,5	24,1	1,23
German Democratic Republic	19,9	22,6	27,9	23,5	1,20
Poland	18,4	16,5	24,1	19,7	1,01
Austria	18,9	18,8	19,6	19,1	0,98
Czechoslovakia	17,1	18,3	18,7	18,0	0,92
Sweden	15,0	15,7	17,2	16,0	0,82
Hungary	13,2	15,4	16,1	14,9	0,76
China	14,0	13,3	15,0	14,1	0,72
Argentina	11,0	16,8	14,3	14,0	0,72
Yugoslavia	8,9	9,2	18,2	12,1	0,62
Ireland	8,0	10,3	12,5	10,3	0,53
Greece	9,3	9,1	9,3	9,2	0,47
South Africa	8,6	10,5	7,9	9,0	0,46
Norway	7,8	8,7	8,1	8,2	0,42
Finland	7,2	8,4	7,1	7,6	0,39
Bulgaria	5,7	7,0	9,0	7,2	0,37
Denmark	6,6	7,2	7,3	7,0	0,36
New Zealand	6,8	7,9	4,1	6,3	0,32
Israel	5,5	5,4	6,3	5,7	0,29
Romania	6,7	5,0	4,0	5,2	0,27
Philippines (c)	11,6	2,6	0,7	5,0	0,25
Republic of Korea	4,7	4,7	4,6	4,7	0,24
Turkey	4,1	3,6	5,9	4,5	0,23
Portugal	3,5	3,9	3,9	3,8	0,19

(in thousands of tonnes)

Country (b)	1982/83	1983/84	1984/85	Average	Percentage
Egypt	2,1	3,0	4,3	3,1	0,16
Chile	1,1	1,4	2,3	1,6	0,08
Syrian Arab Republic	1,8	0,9	1,7	1,5	0,07
Algeria	1,2	1,3	1,8	1,4	0,07
Tunisia	1,0	1,7	1,1	1,3	0,06
Iraq	1,4	1,1	0,9	1,1	0,06
Uruguay	0,8	0,9	1,0	0,9	0,05
Thailand	0,6	0,9	1,1	0,9	0,04
El Salvador	0,6	0,7	0,6	0,6	0,03
Kenya	0,3	0,5	0,9	0,6	0,03
Lebanon	0,6	0,6	0,7	0,6	0,03
Iran	0,4	0,6	0,6	0,5	0,03
Iceland	0,5	0,4	0,4	0,4	0,02
Morocco	0,4	0,4	0,3	0,4	0,02
Libyan Arab Jamahiriya	0,3	0,3	0,2	0,3	0,01
Cyprus	0,1	0,2	0,2	0,2	0,01
Hong Kong	0,2	0,2	0,3	0,2	0,01
Jordan	0,3	0,2	0,2	0,2	0,01
Malta	0,2	0,2	0,2	0,2	0,01
Zimbabwe	0,2	0,2	0,1	0,2	0,01
Kuwait	0,1	0,1	0,2	0,1	0,01
Saudi Arabia	0,1	0,1	0,2	0,1	0,01
Total (d)	1 851,8	1 894,9	2 123,8	1 956,8	100,00

Source: ICCO Secretariat. Based mainly on data contained in *Quarterly Bulletin of Cocoa Statistics* (London), various issues.

(a) Three-year average, 1982/83 to 1984/85, 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.

(b) List restricted to countries importing over 100 tonnes per annum.

(c) Philippines may also qualify as an exporting country.

(d) Totals may differ from the sum of the constituent items because of rounding.

Information on the entry into force of the 1986 International Cocoa Agreement

The 1986 International Cocoa Agreement entered into force on a provisional basis on 20 January 1986 further to a decision by the United Nations Conference held in London on 19 January 1987 pursuant to Article 70 (3) of the Agreement.

COUNCIL DIRECTIVE

of 26 January 1987

on aid to shipbuilding

(87/167/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 92 (3) (d) and 113 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Council Directive 81/363/EEC of 28 April 1981 on aid to shipbuilding ⁽⁴⁾, as last amended by Directive 85/2/EEC ⁽⁵⁾, will expire on 31 December 1986;

Whereas, although progress had been made in the structural adaptation of the Community's shipbuilding industry since the adoption of Directive 81/363/EEC (the Fifth Directive), the world crisis in shipbuilding continues to deepen together with the imbalance between shipbuilding capacity and demand, causing prices to fall to a level which is often below the fixed cost of European shipyards; whereas the price problem has been aggravated by the development of very cost-competitive capacity in third countries particularly in the production of standardized vessels in series;

Whereas the recovery in demand envisaged in the Fifth Directive has not taken place, given that the demand outlook for shipbuilding is not encouraging and in view of the fact that any resumption in demand is likely to lead immediately to an expansion of production facilities in certain third countries;

Whereas a competitive shipbuilding industry is of vital interest to the Community and contributes to its economic and social development by providing a substantial market for a range of industries, including those using advanced technology; whereas it contributes also to the maintenance of employment in a number of regions, including some which are already suffering a high rate of unemployment; whereas this is also true of ship conversion and ship repair;

Whereas it is now clear that the sector is suffering from a fundamental structural crisis, rather than a cyclical problem of demand, in which it would be short-sighted to continue to respond to the aggravation of the crisis by multiplying the volume of operating aids which tend to increase the segregation of the internal market and constitute a continuing drain on the scarce budgetary resources of the Member States without inducing any lasting improvement in the competitiveness of the Community's shipbuilding industry;

Whereas, in view in particular of the cost differences which exist for most categories of ship in comparison to shipyards in some third countries, the immediate abolition of aid to the sector may not be possible in view of the need to encourage restructuring in many yards; whereas a tighter and more selective aid policy is nevertheless necessary in order to support the present trend in production towards more technologically advanced ships and in order to ensure fair and uniform conditions for intra-Community competition; whereas such a policy constitutes the most appropriate approach in terms of ensuring the maintenance of a sufficient level of activity in European shipyards and thereby the survival of an efficient and competitive European shipbuilding industry;

Whereas these considerations call for a differentiated approach with regard to the various types of aid at present granted by Member States; whereas a level of production aid which is geared towards supporting production where the Community's cost disadvantage is lowest and where there is a real possibility of restoring long-term competitiveness seems to offer the most appropriate approach in response to the abovementioned objectives of improving competitiveness and reducing intra-Community distortions in trade; whereas this level of aid should be attained by means of a common maximum ceiling to be revised periodically after consultation with the Member States and on the basis of an independent expert study

⁽¹⁾ OJ No C 281, 7. 11. 1986, p. 4.

⁽²⁾ OJ No C 7, 12. 1. 1987.

⁽³⁾ Opinion delivered on 16 December 1986 (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 137, 23. 5. 1981, p. 39.

⁽⁵⁾ OJ No L 2, 3. 1. 1985, p. 13.

which takes due account of the expected long-term development of the shipbuilding industry so as to ensure both the optimal activity levels justifiable on economic grounds and the continuation of structural adjustment; whereas, since increased efficiency is a principal objective pursued by the premises of this Directive, the yearly review of the production aid ceiling should always aim at its progressive reduction; whereas it is necessary, in order to avoid discrimination, to make all forms of operating aid subject to the common maximum ceiling, including loss compensation and such aid as is granted indirectly through third persons; whereas, in order to permit all Member States to compete equally and in view of the persistent structural disparities of yards in the different Member States, it may be necessary to authorize restructuring aid to enable desirable structural changes to be carried out provided that they do not lead to increases in capacity; whereas, although it is proposed to treat ship conversion in the same way as shipbuilding, it is not appropriate to permit aid to the ship-repair sector in view of the continuing overcapacity in this sector, except for closure and research and development aid;

Whereas the restructuring process in Spain and Portugal is less advanced than in the other Member States and the immediate application of the common maximum ceiling for production aid may cause some difficulties in these two Member States, particular arrangements should be allowed to enable them gradually, after a further period of restructuring, to comply with the aid regime applicable to the Community as a whole;

Whereas, in order to ensure full transparency, which is a vital element in assuring the proper functioning of a Community aid system both in respect of operational aids and burden-sharing with regard to restructuring efforts, it will be necessary to strengthen the notification rules, including notification of aid to shipowners for the building or conversion of ships, together with the *a posteriori* reporting obligations of Member States as regards actual aid payments and the achievement of restructuring objectives;

Whereas the reductions in world shipping capacities should be made in such a way as to cause the least possible damage and to be as fair as possible;

Whereas additional measures should be adopted in order to alleviate the social and regional consequences of the restructuring of the shipbuilding sector;

Whereas Community measures should also be adopted in order to improve demand for new ships from Community shipyards,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL

Article 1

For the purpose of this Directive the following definitions shall apply:

(a) '*shipbuilding*':

means the building in the Community of the following metal-hulled sea-going vessels:

- merchant ships for the carriage of passengers and/or cargo, of not less than 100 grt,
- fishing vessels of not less than 100 grt,
- dredgers or ships for other work at sea of not less than 100 grt excluding drilling platforms,
- tugs of not less than 365 kW;

(b) '*ship conversion*':

means the conversion in the Community of metal-hulled sea-going vessels, as defined in (a), of not less than 1 000 grt, on condition that conversion operations entail radical alterations to the cargo plan, the hull or the propulsion system or the passenger accommodation;

(c) '*ship repair*':

means the repair of the vessels referred to in (a);

(d) '*aid*':

means State aid within the meaning of Articles 92 and 93 of the Treaty, including not only aid granted by the State itself but also that granted by regional or local authorities and any aid elements contained in the financing measures taken by Member States in respect of the shipbuilding or ship repair undertakings which they directly or indirectly control and which do not count as the provision of risk capital according to standard company practice in a market economy.

Such aid may be considered compatible with the common market provided that it complies with the criteria for derogation contained in this Directive;

(e) '*contract value before aid*':

means the price laid down in the contract plus any aid granted directly to the shipyard.

Article 2

No aid granted pursuant to this Directive may be conditional upon discriminatory practices as to products originating in other Member States.

Article 3

Aid to shipowners

1. All forms of aid to shipowners or to third parties which are available as aid for the building or conversion of ships shall be subject to the notification rules in Article 10.

These aids shall include credit facilities, guarantees and tax concessions granted to shipowners or third parties for the purposes referred to in the first subparagraph.

2. The grant equivalent of these aids shall be subject in full to the rules set forth in Article 4 and the monitoring procedures laid down in Article 11, where these aids are actually used for the building or conversion of ships in Community shipyards.

3. Aid granted by a Member State to its shipowners or to third parties in that State for the building or conversion of ships may not lead to distortions of competition between national shipyards and shipyards in other Member States in the placing of orders.

4. These provisions shall be entirely without prejudice to any future Community rules on aid to shipowners.

CHAPTER II

OPERATING AID

Article 4

Contract-related production aid

1. Production aid in favour of shipbuilding and ship conversion may be considered compatible with the common market provided that the total amount of aid granted in support of any individual contract does not exceed, in grant equivalent, a common maximum ceiling expressed as a percentage of the contract value before aid, hereinafter referred to as the ceiling.

2. The ceiling shall be fixed by the Commission with reference to the prevailing difference between the cost structures of the most competitive Community yards and the prices charged by their main international competitors with particular regard to the market segments in which the Community yards remain relatively most competitive.

However, the Commission shall pay particular regard to ensure that the aid for the building of small specialized vessels, a market segment normally served by small yards, in particular small ships costing less than 6 million ECU, and for which the competition is mainly inter-European, is kept at the lowest possible level, nevertheless allowing for the particular situation in Greece.

3. The ceiling shall be reviewed every 12 months, or sooner if warranted by exceptional circumstances, with the aim of progressively reducing the ceiling. In its review of the ceiling, the Commission shall also ensure that there are no undue concentrations of shipbuilding activities in specific market segments to an extent contrary to Community interests.

4. The ceiling shall apply not only to all forms of production aid — whether under sectoral, general or regional aid schemes — granted directly to the yards but also to the aid covered by Article 3 (2).

5. The combined effect of aid under the various aid schemes applied must in no case exceed the ceiling fixed according to paragraph 2; the granting of aid in individual cases shall not necessitate prior notification to, or authorization from, the Commission.

However, where there is competition between yards in different Member States for a particular contract, the Commission shall require prior notification of the relevant aid proposals at the request of any Member State. In such cases, the Commission shall adopt a position within 30 days of notification; such proposals may not be implemented before the Commission has given its authorization. By its decision in such cases the Commission shall ensure that the planned aid does not affect trading conditions to an extent contrary to the common interest.

6. Aid in the form of credit facilities for the building or conversion of vessels complying with the OECD Council resolution of 3 August 1981 (Understanding on Export Credits for Ships) or with any agreement replacing the Resolution shall not be counted within the ceiling. Such aid may be considered compatible with the common market provided that it complies with the abovementioned Resolution or any agreements which replace it.

7. Aid related to shipbuilding and ship conversion granted as development assistance to a developing country shall not be subject to the ceiling. It may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party No 6 in its agreement concerning the interpretation of Articles 6 to 8 of the Understanding referred to in paragraph 6 of this Article or with any later addendum or corrigendum to the said Agreement.

Prior notification of any such individual aid proposal must be given to the Commission. The Commission shall verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the agreement referred to in the preceding subparagraph.

Article 5

Other operating aid

1. Aids to facilitate the continued operation of shipbuilding and ship conversion companies, including loss compensation, rescue aid and all other type of operating aid not directly supporting particular restructuring measures covered in Chapter III, may be deemed compatible with the common market provided that such aid together with production aid allocated directly to individual shipbuilding and ship conversion contracts in accordance with Article 4 (4) does not exceed the ceiling expressed as a percentage of the aid recipient's annual turnover in shipbuilding and ship conversion.

2. It shall be incumbent on the Member States to furnish evidence of the extent to which the turnover and losses of the recipient of the aid result, on the one hand, from shipbuilding and ship conversion and, on the other, from its other activities, if any, and, if some of the aid is intended to offset losses or expenditure arising from the restructuring measures referred to in Chapter III, to identify and specify those measures.

CHAPTER III

RESTRUCTURING AID

Article 6

Investment aid

1. Investment aid, whether specific or non-specific, may not be granted for the creation of new shipyards or for investment in existing yards if such aid would be likely to increase the Member States' shipbuilding capacity.

Such aid may not be granted for ship repair unless linked to a restructuring plan which results in an overall reduction in the ship repair capacity of the Member State concerned. In this context the Commission may take into account capacity reductions carried out in the immediately preceding years.

2. Paragraph 1 shall not apply to the opening of a new shipyard in a Member State which otherwise would have

no shipbuilding facilities or to investments in a Member State's only existing yard, provided that the effect of the yard in question on the Community market is minimal.

3. In accordance with paragraph 1, investment aid may be deemed compatible with the common market provided that:

- the amount and intensity of such aid are justified by the extent of the restructuring involved,
- it is limited to supporting expenditure directly related to the investment.

4. In examining the aid referred to in paragraphs 1 and 3, the Commission shall take account of the extent of the contribution of the investment programme concerned to such Community objectives for the sector as innovation, specialization, working conditions, health, safety and environment.

Article 7

Aid for closures

1. Aid to defray the normal costs resulting from the partial or total closure of shipbuilding or ship repair yards may be considered compatible with the common market provided that the capacity reduction resulting from such aid is of a genuine and irreversible nature.

2. The costs eligible for such aid are, in particular:

- payments to workers made redundant or retired before legal retirement age,
- counselling services to workers made or to be made redundant or retired before legal retirement age including payments made by yards to facilitate the creation of small undertakings,
- payments to workers for vocational retraining,
- expenditure incurred for the redevelopment of the yard, its buildings, installations and infrastructure for use other than that specified in Article 1 (a), (b), and (c),
- in the event of total closure of a yard, the residual book value of its installations (ignoring that portion of any revaluation since 1 January 1982 which exceeds the national inflation rate).

3. The amount and intensity of aid must be justified by the extent of the restructuring involved, account being taken of the structural problems of the region concerned

and, in the case of conversion to other industrial activities, of the Community legislation and rules applicable to the new sector concerned.

Article 8

Aid for research and development

1. Aid to defray expenditure by shipbuilding and ship repair undertakings for research and development projects may be considered compatible with the common market.

2. For the purposes of this Directive, the eligible costs shall be only those relating to fundamental research, basic industrial research and applied research and development, all as defined by the Commission in Annex I to the Community framework for State aids for research and development ⁽¹⁾, excluding those related to industrial application and commercial exploitation of the results.

CHAPTER IV

SPAIN AND PORTUGAL

Article 9

1. Chapter II of this Directive shall be applicable neither in Spain nor, subject to paragraph 3 of this Article, in Portugal.

2. Operating aid for shipbuilding and ship conversion in Spain may be considered compatible with the common market provided that:

— Spain's shipbuilding industry has undertaken a systematic and specific restructuring programme, including capacity reductions, which can be considered capable of allowing it, within four years, to operate competitively,

— the aid is being progressively reduced.

3. The Portuguese Republic will be subject to all the provisions of this Directive. However, Portugal may, at any time before 31 December 1987 with immediate effect, or at the latest by 29 February 1988, with effect from 1 January 1988, opt for being exempted from the rules laid down in Chapter II either generally or as regards certain yards. Should Portugal choose this option, operating aid for shipbuilding and ship conversion may be considered compatible with the common market provided that:

— the shipbuilding industry or — should only certain yards be involved, those yards — has undertaken a systematic and specific restructuring programme, aiming at capacity reductions, which can be considered capable of allowing it, within four years, to operate competitively,

— the aid is progressively reduced.

CHAPTER V

MONITORING PROCEDURE

Article 10

1. In addition to the provisions of Articles 92 and 93 of the Treaty, aid to shipbuilding, ship conversion and ship repair undertakings covered by this Directive shall be subject to the special notification rules provided for in paragraph 2.

2. The following shall be notified to the Commission in advance by the Member States and authorized by the Commission before they are put into effect:

- (a) any aid scheme — new or existing — or any amendment of an existing scheme covered by this Directive;
- (b) any decision to apply any general or regional aid scheme to the undertakings covered by this Directive;
- (c) any individual application of aid schemes in the cases referred to in the second subparagraph of Article 4 (5) and in Article 4 (7) or when specifically provided for by the Commission in its approval of the aid scheme concerned.

Article 11

1. For the Commission's monitoring of the implementation of the aid rules contained in Chapters II and III, Member States shall supply the Commission for its exclusive use with:

- current reports on each shipbuilding and ship conversion contract at the time of ordering and completion containing details of the financial contract support, in accordance with the form set out in the annexed schedule 1,
- six-monthly reports — to be provided by 1 October and 1 April in respect of the preceding half calendar years — on aid granted to shipowners, in accordance with the form set out in the annexed schedule 2,
- yearly reports giving details of the annual results of, and total financial support granted to, each individual national shipyard which has received aid, in accordance with the form set out in the attached schedule 3,

⁽¹⁾ OJ No C 83, 11. 4. 1986, p. 2.

— yearly reports on the attainment of the restructuring objectives as regards the undertakings which have received aid according to Articles 6, 7 and 9, in accordance with the form set out in the annexed schedule 4.

2. On the basis of the information communicated to it in accordance with Article 10 and paragraph 1 of this Article, the Commission shall draw up an annual overall report to serve as a basis for discussion with national experts. This report shall state *inter alia* the level of contract-related aid and other operating aid granted in each Member State during the period in question, and both the total volume of restructuring aid awarded and the progress made towards the attainment of the restructuring objectives in each Member State during the same period.

CHAPTER VI

FINAL PROVISIONS

Article 12

1. This Directive shall replace Council Directive 81/363/EEC.

The provisions of the aforementioned Directive shall, however, remain applicable to aid projects notified before

1 January 1987 which relate to activities initiated before that date and on which, by the date on which this Directive enters into force, no Commission decision has been taken.

2. Two years after notification of this Directive ⁽¹⁾ the Commission shall report to the European Parliament and the Council on its application and propose any necessary adjustments.

Article 13

This Directive shall apply from 1 January 1987 to 31 December 1990.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 26 January 1987.

For the Council

The President

L. TINDEMANS

⁽¹⁾ This Directive was notified to the Member States on 5 February 1987.

ANNEX

Schedule 1

EUROPEAN ECONOMIC COMMUNITY

REPORT OF MERCHANT SHIP ORDERS AND COMPLETIONS

Section 1: Contract details

1. New building/conversion			
2. Company	3. Yard	4. Yard No	
5. Registered owner			
6. Holding owner			
7. Vessel's country of registration			
8. Date contract signed		9. Completion/delivery date	

Section 2: Ship details

10. Type of vessel	
11. Deadweight	13. Compensated gross tonnage (CGT)
12. Gross tonnage (GT)	

Section 3: Financial arrangements

	Currency	ECU (Prevailing rate)	% of contract price
14. Contract price			
15. Estimated contract loss (if any)			
16. Contract support			
A. Granted to yard:			
(a) grants			
(b) credit facilities			
(c) specific fiscal concession			
(d) other support			
B. Granted to customer or ultimate owners:			
(a) grants			
(b) credit facilities			
(c) fiscal concession			
(d) other support			

Contact for inquiries Date:

.....

Position: Signature:

Schedule 2

EUROPEAN ECONOMIC COMMUNITY

REPORT ON AID TO SHIPOWNERS FOR ACQUISITION OR CONVERSION OF SHIPS

1	2	3			4	5		
Case	Identification	Aid granted			Month of aid granting	Acquisition or conversion contract concerned		
		Form	Volume	Details		Ship type	Tonnage (CGT)	Performing yard
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Contact for inquiries: Date:

Position: Signature:

Schedule 3

EUROPEAN ECONOMIC COMMUNITY

REPORT OF COMPANY FINANCIAL SUPPORT

Name of company

Section 1: Public aid

Section 2: Turnover and profit/(loss) (to be filled in for all companies having received direct production aid)

Operating aid	Contract value ⁽¹⁾ Costs/loss ⁽²⁾	Direct aid received	Indirect aid support (of sched. 1)
1. Contract Support (a) related to contracts concluded before 1. 1. 1987 (b) related to contracts concluded after 1. 1. 1987 (c) hereof related to development assistance to developing countries			
2. Payment of other operation costs, inclusive loss compensation and rescue aid (cf. Article 5)			
Restructuring aid	Costs	Aid received	
3. Investments			
4. Redundancy payments			
5. Other cash closure costs			
6. Asset disposal costs/receipts			
7. Conversion costs			
8. Research and development costs			
9. Other restructuring costs			

	Most recent year	Previous
10. Turnover		
11. Hereof related to merchant shipbuilding and ship conversion (a) related to contracts concluded before 1 January 1987 (b) related to contracts concluded after 1 January 1987 (c) hereof related to development assistance to developing countries		
12. Losses (if any)		
13. Hereof related to merchant shipbuilding and ship conversion (a) related to profit/(loss) on contracts (b) related to movement in provisions (c) related to restructuring expenditures		

Section 3: Cash flow (to be filled in for all companies which have registered losses under 12 and have received funding from any public sources)

	Most recent year	Previous
<i>Expenditures</i>		
14. Trading losses before depreciation		
15. Capital expenditure		
16. Other expenditures		
17. Other change in working capital		
<i>Source of Funds</i>		
18. Equity receipts (a) from public shareholders (b) from private shareholders		
19. Loans and overdrafts (a) from public sources (a') hereof contract support (b) from private sources (b') hereof with state guarantee		
20. Government grants (a) hereof contract support		

Contact for inquiries: Date:

Position: Signature:

Schedule 4

EUROPEAN ECONOMIC COMMUNITY

REPORT OF MERCHANT SHIPYARD FACILITIES AND EMPLOYMENT

Section 1: Facilities

Date: Company:

1. Berth/dock/pad	2. Current use	3. Size	4. Capacity

Section 2: Merchant orderbook

Date:

5. Berth No	6. Ship No	7. Ship type	8. CGT	9. Completion date
10. Total new orders		19	Number	CGT
11. Total completions		19	Number	CGT

Section 3: Shipbuilding employment

Date:

12. By activity	19. By occupation
13. Merchant	20. Manual
14. Offshore	21. Staff
15. Naval	22. Total merchant
16. Repair	23. Subcontractors
17. Other	24. Net change in employment
18. Total	
25. Total man-hours for the shipyard	
26. Hereof for merchant shipbuilding and conversion	

Contact for enquiries: Date:

Position: Signature: