International Coffee Organization
Organización Internacional del Café
Organização Internacional do Café
Organisation Internationale du Café

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Draft proposals for the future of the Agreement

Section IV: Structural and administrative matters

Introduction

The present document contains the following draft Articles relating to structure and administration:

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Action

The Working Group is invited to consider this document.

* *Indicates no changes have been proposed to this Article.*

CHAPTER II – DEFINITIONS

ARTICLE 2
Definitions

Comments: *Changes to paragraph (5) have been proposed by the EC which notes that wording for paragraphs (9) and (10) is related to discussions on Article 13. Ecuador has proposed that this Article should include current terms such as sustainability (economic, social and environmental), speciality coffees (organic, fair trade, bird-friendly etc.) inter alia. Kenya also notes the need to define sustainability. The USA has proposed clarifying terms for membership of the EC in Article 4 (Membership of the Organization) and has noted that consequential changes will be required to relevant definitions (e.g. of a Contracting Party). Vietnam has raised the need for a new definition of quality.*

For the purposes of this Agreement:

(1) *Coffee* means the beans and cherries of the coffee tree, whether parchment, green or roasted, and includes ground, decaffeinated, liquid and soluble coffee. The Council shall, as soon as possible after this Agreement enters into force, and again three years after such date, review the conversion factors for the types of coffee listed in sub-paragraphs (d), (e), (f) and (g) below. Following such review the Council shall, by a distributed two-thirds majority vote, determine and publish appropriate conversion factors. Prior to the initial review, and should the Council be unable to reach a decision on this matter, the conversion factors will be those used in the International Coffee Agreement 1994, which are listed in Annex I to this Agreement. Subject to these provisions, the terms listed below shall have the following meaning:

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

(b) *dried coffee cherry* means the dried fruit of the coffee tree; to find the equivalent of dried coffee cherry to green coffee, multiply the net weight of the dried coffee cherry by 0.50;

(c) *parchment coffee* means the green coffee bean contained in the parchment skin; to find the equivalent of parchment coffee to green coffee, multiply the net weight of the parchment coffee by 0.80;

(d) *roasted coffee* means green coffee roasted to any degree and includes ground coffee;

(e) *decaffeinated coffee* means green, roasted or soluble coffee from which caffeine has been extracted;

(f) *liquid coffee* means the water-soluble solids derived from roasted coffee and put into liquid form; and

(g) *soluble coffee* means the dried water-soluble solids derived from roasted coffee.

(2) *Bag* means 60 kilogrammes or 132.276 pounds of green coffee; *tonne* means a mass of 1,000 kilogrammes or 2,204.6 pounds; and *pound* means 453.597 grammes.

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

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

(5) *Contracting Party* means a Government**, the European Community** or **any** intergovernmental organization referred to in paragraph (3) of Article 4 which has deposited an instrument of ratification, acceptance, approval or provisional application of this Agreement in accordance with the provisions of Articles 44 and 45 or has acceded thereto in accordance with the provisions of Article 46. [EC]

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

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

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

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

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

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

Comments by the Executive Director:
Draft proposals for definitions of sustainability are contained in documents ED-1981/06 and PSCB No. 91/06.

CHAPTER III – GENERAL UNDERTAKINGS BY MEMBERS

ARTICLE 3
General undertakings by Members

Comments: *No specific changes proposed to this Article.*

(1) Members undertake to adopt such measures as are necessary to enable them to fulfil their obligations under this Agreement and fully cooperate with one another in securing the attainment of the objectives of this Agreement; in particular, Members undertake to provide all information necessary to facilitate the functioning of this Agreement.

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

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

CHAPTER V – THE INTERNATIONAL COFFEE ORGANIZATION

ARTICLE 7
Seat and structure of the International Coffee Organization

Comments: *The USA has proposed a forum for consultations on financing for the coffee sector (described in a new Article).*

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

(2) The seat of the Organization shall be **decided by the Council.** ~~in London unless the Council by a distributed two-thirds majority vote decides otherwise.~~ [USA]

(3) The Organization shall function through the International Coffee Council**,** ~~and the Executive Board. They shall~~ **which will** be assisted as appropriate by the World Coffee Conference, the Private Sector Consultative Board, **the Consultative Forum on Coffee Sector Finance,** ~~the Promotion Committee,~~ and specialized committees. [USA]

ARTICLE 8
Privileges and immunities

Comments: *No specific changes proposed to this Article.*

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

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

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

- (a) by agreement between the host Government and the Organization;
- (b) in the event of the headquarters of the Organization being moved from the territory of the host Government; or
- (c) in the event of the Organization ceasing to exist.

(4) The Organization may conclude with one or more other Members agreements to be approved by the Council relating to such privileges and immunities as may be necessary for the proper functioning of this Agreement.

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

CHAPTER VIII – THE PRIVATE COFFEE SECTOR

ARTICLE 21
The World Coffee Conference

Comments: *No specific changes proposed to this Article.*

(1) The Council shall make arrangements to hold, at appropriate intervals, a World Coffee Conference (hereinafter referred to as the Conference), which shall be composed of

exporting and importing Members, private sector representatives, and other interested participants, including participants from non-member countries. The Council, in coordination with the Chairman of the Conference, shall ensure that the Conference contributes to furthering the objectives of this Agreement.

(2) The Conference shall have a Chairman who shall not be paid by the Organization. The Chairman shall be appointed by the Council for an appropriate period, and shall be invited to participate in meetings of the Council as an observer.

(3) The Council shall decide on the form, title, subject matter and timing of the Conference, in consultation with the Private Sector Consultative Board. The Conference shall be held normally at the seat of the Organization, during a session of the Council. If the Council decides to accept an invitation by a Member to hold a session in its territory, the Conference may also be held in that territory, in which case the additional costs to the Organization involved above those incurred when the session is held at the seat of the Organization shall be borne by the country hosting the session.

(4) Unless the Council by a distributed two-thirds majority vote decides otherwise, the Conference shall be self-financing.

(5) The Chairman of the Conference shall report the conclusions of each session to the Council.

ARTICLE 22
The Private Sector Consultative Board

Comments: *The USA seeks to strengthen the Private Sector Consultative Board (PSCB) to effectively represent private sector interests in the coffee sector. To achieve this, PSCB membership may need to be expanded. It proposes to provide for more effective dialogue between the PSCB and civil society. Ethiopia has noted the need to clearly articulate the issue of small coffee farmers in the Agreement and considers the area of the private sector appropriate for this. A number of Members have noted the importance of strengthening the activities or representation of the private sector.*

(1) The Private Sector Consultative Board (hereinafter referred to as the PSCB) shall be a consultative body which may make recommendations on any **topics brought before** ~~consultations made by~~ the Council and may invite the Council to give consideration to matters related to this Agreement. [USA]

(2) **The Council shall designate members of the PSCB.** The PSCB shall consist of eight representatives of the private sector in exporting **Members,** ~~countries~~ and eight representatives of the private sector in **coffee** importing countries. **The Council may also designate one or more alternates for each member of the PSCB.** [USA]

(3) Members of the PSCB shall be **individuals,** ~~representatives of~~ associations or bodies designated by the Council every two coffee years, and may be re-appointed. The Council in so doing shall endeavour to designate.

(a) two private sector coffee associations or bodies from exporting **Members** ~~countries~~ or regions representing each of the four groups of coffee, preferably representing both growers and exporters~~, together with one or more alternates for each representative~~; and

(b) eight private sector coffee associations or bodies from **coffee** importing countries, whether Members or non-members, preferably representing both importers and roasters~~, together with one or more alternates for each representative~~. [USA]

(4) Each member of the PSCB may designate one or more advisers.

(5) The PSCB shall have a Chairman and a Vice-Chairman elected from among its members, for a period of one year. These officers may be re-elected. The Chairman and the Vice-Chairman shall not be paid by the Organization. The Chairman shall be invited to participate in meetings of the Council as an observer.

(6) The PSCB shall normally meet at the seat of the Organization **at a frequency to be decided by the PSCB, subject to approval by** ~~, during regular sessions of~~ the Council. In case of acceptance by the Council of an invitation by a Member to hold a meeting in its territory, the PSCB shall also meet in that territory, in which case the additional costs to the Organization involved above those incurred when the meeting is held at the seat of the Organization shall be borne by the **Member** ~~country~~ or private sector organization hosting the meeting. [USA]

(7) The PSCB may hold special meetings subject to approval by the Council.

7 a) In its efforts to promote the long-term economic, social and environmental sustainability of the coffee sector, the PSCB may seek, as appropriate, the views of non-governmental organizations with relevant expertise. [USA]

(8) The PSCB shall submit regular reports to the Council.

(9) The PSCB shall establish its own rules of procedure, consistent with the provisions of this Agreement.

PSCB recommendations:
The PSCB recommends a strengthened role for the PSCB, including:

- a greater role in project work decisions (with the opportunity to comment on project proposals after reviewing the VSC comments);
- a formal process to provide PSCB input into the development of the Council Agenda;
- an ICO officer/employee with the primary responsibility of working on PSCB issues.

The PSCB considers small producers are currently fully represented on the PSCB through democratically recognised producer associations from their countries.

CHAPTER IX – FINANCE

ARTICLE 23
Finance

Comments: *No specific changes proposed to this Article.*

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

(2) The other expenses necessary for the administration of this Agreement shall be met by annual contributions from the Members assessed in accordance with the provisions of Article 24, together with revenues from sales of specific services to Members and the sale of information and studies generated under the provisions of Articles 29 and 31.

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

ARTICLE 24
Determination of the Administrative Budget and assessment of contributions

Comments: *No specific changes proposed to this Article.*

(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. A draft Administrative Budget shall be prepared by the Executive Director under the supervision of the Executive Board in accordance with the provisions of paragraph (4) of Article 19.

(2) The contribution of each Member to the Administrative Budget for each financial year shall be in the proportion which the number of its votes at the time the Administrative Budget for that financial year is approved bears to the total votes of all the Members. However, if there is any change in the distribution of votes among Members in accordance with the provisions of paragraph (5) of Article 13 at the beginning of the financial year for which contributions are assessed, such contributions shall be correspondingly adjusted for that year. In determining contributions, the votes of each Member shall be calculated without regard to the suspension of the voting rights of any Member or any redistribution of votes resulting therefrom.

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

ARTICLE 25
Payment of contributions

Comments: *The USA has proposed changes to paragraph (2).*

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

(2) **A Member that is in arrears in the payment of its financial contributions shall have no vote in the Organization if the amount of its arrears equals or exceeds the amount of contributions due from it for the preceding two full years. The voting rights of such a Member shall be suspended until its contribution has been paid in full. The Council may permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.** ~~If any Member fails to pay its full contribution to the Administrative Budget within six months of the date on which the contribution is due, its voting rights, its right to be eligible for election to the Executive Board and its right to have its votes cast in the Executive Board shall be suspended until its contribution has been paid in full. However, unless the Council by a distributed two-thirds majority vote so decides, such Member shall not be deprived of any of its other rights nor relieved of any of its obligations under this Agreement.~~ [USA]

(3) Any Member whose voting rights have been suspended either under the provisions of paragraph (2) of this Article or under the provisions of Article 42 shall nevertheless remain responsible for the payment of its contribution.

Comments by the Executive Director:
The proposal that Members in arrears with contributions will only lose their votes if the amount of arrears equals or exceeds the amount of contributions due for the preceding two years could prove a disincentive to prompt payment.

ARTICLE 26
Liabilities

Comments: *No specific changes proposed to this Article.*

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

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

ARTICLE 27
Audit and publication of accounts

Comments: *No specific changes proposed to this Article.*

As soon as possible and not later than six months after the close of each financial year, an independently audited statement of the Organization's assets, liabilities, income and expenditure during that financial year shall be prepared. This statement shall be presented to the Council for approval at its earliest forthcoming session.

CHAPTER X – THE EXECUTIVE DIRECTOR AND THE STAFF

ARTICLE 28
The Executive Director and the staff

Comments: *No specific changes proposed to this Article.*

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

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

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

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

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

CHAPTER XII – GENERAL PROVISIONS

ARTICLE 32
Preparations for a new Agreement

Comments: *No specific changes proposed to this Article.*

(1) The Council may examine the possibility of negotiating a new International Coffee Agreement.

(2) In order to carry out this provision, the Council shall examine the progress made by the Organization in achieving the objectives of this Agreement as specified in Article 1.

ARTICLE 33

Removal of obstacles to consumption

Comments: *The USA proposes changes to paragraph (1). Brazil has highlighted the need for increased coordination on rules and activities relating to sanitary and non-sanitary barriers and tariff barriers, and this is supported by the Central American Group. Tanzania notes that the objective of meeting consumer satisfaction through quality, sanitary, phyto-sanitary measures and other concerns should in no way constitute barriers to trade.*

(1) Members recognise the ~~utmost~~ importance of **the sustainable expansion of the coffee sector and of the removal of obstacles which may hinder trade and consumption, while recognizing at the same time the right of Members to regulate, and to introduce new regulations, in order to meet national health, environment and other policy objectives.** ~~achieving the greatest possible increase of coffee consumption as rapidly as possible, in particular through the progressive removal of any obstacles which may hinder such increase~~. [USA]

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

(a) import arrangements applicable to coffee, including preferential and other tariffs, quotas, operations of government monopolies and official purchasing agencies, and other administrative rules and commercial practices;
(b) export arrangements as regards direct or indirect subsidies and other administrative rules and commercial practices; and
(c) internal trade conditions and domestic and regional legal and administrative provisions which may affect consumption.

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

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

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

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

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

PSCB recommendations:
The ICO must strengthen its commitment to the removal of both tariff and non-tariff trade barriers and other forms of protectionism and encourage Members to take the importance of the removal of trade barriers for the coffee economy and for commodity dependent developing countries into full account in the wider discussions in WTO and bilateral trade agreements. In achieving this purpose, the ICO should recognise that non-coffee agriculture subsidies impact the coffee industry negatively, for instance if diversification is hindered by lack of market access for alternative products.

ARTICLE 35
Measures related to processed coffee

Comments: *The USA proposes changes to this Article.*

Members recognise the need of developing countries to broaden the base of their economies through, *inter alia*, industrialization and the export of manufactured products, including the processing of coffee and the export of processed coffee, as referred to in sub-paragraphs (d), (e), (f) and (g) of paragraph (1) of Article 2. In this connection, Members shall **endeavour to** avoid the adoption of governmental measures which could cause disruption to the coffee sector of other Members. Members are encouraged to consult on the introduction of any such measures which might be considered to pose a risk of disruption. If these consultations do not lead to a mutually satisfactory solution, parties may invoke the procedures provided for in Articles 41 and 42. [USA]

ARTICLE 36
Mixtures and substitutes

Comments: *No specific changes proposed to this Article.*

(1) Members shall not maintain any regulations requiring the mixing, processing or using of other products with coffee for commercial resale as coffee. Members shall endeavour to prohibit the sale and advertisement of products under the name of coffee if such products contain less than the equivalent of 95% green coffee as the basic raw material.

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

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

ARTICLE 37

Consultation and cooperation with non-governmental organizations

Comments: *The USA has proposed updating this Article.*

In pursuing the objectives of this Agreement, the Organization may, without prejudice to the provisions of Articles 16, 21 and 22, **establish, maintain and strengthen** ~~the Organization shall maintain~~ links **and cooperative activities** with appropriate non-governmental organizations **having expertise in relevant aspects of the coffee sector** ~~concerned with international commerce in coffee~~ and with **other** experts in coffee matters. [USA]

ARTICLE 38

Established coffee trade channels

Comments: *No specific changes proposed to this Article.*

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

~~ARTICLE 39~~

~~Sustainable coffee economy~~ [USA]

Comments: *The USA proposes deleting this Article (sustainability is addressed in the revised objectives). Cameroon suggests amending this Article to make the concept of sustainable management of coffee resources more appealing. The proposal of the National Coffee Association of the USA (NCA) could be adopted in part but should be completed by taking account of the needs of present generations*. *The Central American Group notes the need to include clarification that economic sustainability is a condition for social and environmental sustainability. This is also raised by Kenya. Norway suggests enhancing references to the environment and sustainability and International Labour Organization (ILO) Conventions (only if renegotiation is agreed).*

~~Members shall give due consideration to the sustainable management of coffee resources and processing, bearing in mind the principles and objectives on sustainable development contained in Agenda 21 agreed at the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992.~~ [USA]

PSCB recommendations:
The PSCB recognises sustainability is paramount to the future success of the sector. The ICO's role should be to translate the general principles for application in a coffee environment and to provide feedback on practical experiences in coffee to enrich the general debate. It can deliver value by focussing its sustainability work in two areas:

1. Establishment of a clearing-house on global sustainability programs. Considerable efficiencies would be created through the development of a web-based clearing house for global sustainability programmes. Such a database should include information such as volumes available, countries of operation and administrative data.
2. Development of traceability and trackability programmes (the ICO would add value by providing information on entities possessing traceability and trackability processes and/or systems).

It could also play a role in the global discussion of sustainability by hosting sustainability workshops designed to disseminate information, with participation by NGOs encouraged.

Comments by the Executive Director:
The elimination of Article 39 also entails the elimination of references within the Agreement to the Rio principles agreed at the UN Conference on Environment and Development in 1992. However, such a reference could be included in Article 1 if so desired.

ARTICLE 40
Standard of living and working conditions

Comments: *Cameroon has noted the need to give more detailed consideration to improving the standard of living of populations engaged in the coffee sector and proposed new wording.*

Members ~~shall give consideration to improving~~ **recognize that the improvement of** the standard of living and working conditions of **coffee producers is a legitimate aspiration, which should be translated into better remuneration for their work**. ~~populations engaged in the coffee sector, consistent with their stage of development, bearing in mind internationally recognized principles on these matters.~~ Furthermore, Members agree that labour standards shall not be used for protectionist trade purposes. [CAMEROON]

CHAPTER XIII – CONSULTATIONS, DISPUTES AND COMPLAINTS

ARTICLE 41
Consultations

Comments: *No specific changes proposed to this Article.*

Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by another Member with respect to any matter relating to this Agreement. In the course of such consultation, on request by either party and with the consent of the other, the Executive Director shall establish an independent panel which shall use its good offices with a view to conciliating the parties. The costs of the panel shall not be chargeable to the Organization. If a party does not agree to the establishment of a panel by the Executive Director, or if the consultation does not lead to a solution, the matter may be referred to the Council in accordance with the provisions of Article 42. If the consultation does lead to a solution, it shall be reported to the Executive Director who shall distribute the report to all Members.

ARTICLE 42
Disputes and complaints

Comments: *No specific changes proposed to this Article.*

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

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

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

- (i) two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting Members;
- (ii) two such persons nominated by the importing Members; and
- (iii) a chairman selected unanimously by the four persons nominated under the provisions of sub-paragraphs (i) and (ii) or, if they fail to agree, by the Chairman of the Council.

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

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

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

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

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

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

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

(8) If the Council finds that a Member is in breach of its obligations under this Agreement, it may, without prejudice to other enforcement measures provided for in other Articles of this Agreement, by a distributed two-thirds majority vote, suspend such Member's voting rights in the Council and its right to have its votes cast in the Executive Board until it fulfils its obligations, or the Council may decide to exclude such Member from the Organization under the provisions of Article 50.

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

CHAPTER XIV – FINAL PROVISIONS

ARTICLE 43
Signature

Comments: *No specific changes proposed to this Article.*

This Agreement shall be open for signature at the United Nations headquarters from 1 November 2000 until and including 25 September 2001 by Contracting Parties to the

International Coffee Agreement 1994 or the International Coffee Agreement 1994 as extended, and Governments invited to the session of the International Coffee Council at which this Agreement was negotiated.

ARTICLE 44
Ratification, acceptance or approval

Comments: *No specific changes proposed to this Article.*

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

(2) Except as provided for in Article 45, instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations not later than 25 September 2001. However, the Council may decide to grant extensions of time to signatory Governments which are unable to deposit their instruments by that date. Such decisions shall be transmitted by the Council to the Secretary-General of the United Nations.

ARTICLE 45
Entry into force

Comments: *No specific changes proposed to this Article.*

(1) This Agreement shall enter into force definitively on 1 October 2001 if by that date Governments representing at least 15 exporting Members holding at least 70% of the votes of the exporting Members and at least 10 importing Members holding at least 70% of the votes of the importing Members, calculated as at 25 September 2001, without reference to possible suspension under the terms of Articles 25 and 42, have deposited instruments of ratification, acceptance or approval. Alternatively, it shall enter into force definitively at any time after 1 October 2001 if it is provisionally in force in accordance with the provisions of paragraph (2) of this Article and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance or approval.

(2) This Agreement may enter into force provisionally on 1 October 2001. For this purpose, a notification by a signatory Government or by any other Contracting Party to the International Coffee Agreement 1994 as extended, containing an undertaking to apply this new Agreement provisionally, in accordance with its laws and regulations, and to seek ratification, acceptance or approval in accordance with its constitutional procedures as rapidly as possible, which is received by the Secretary-General of the United Nations not later than 25 September 2001, shall be regarded as equal in effect to an instrument of ratification, acceptance or approval. A Government which undertakes to apply this Agreement provisionally, in accordance with its laws and regulations, pending the deposit of an

instrument of ratification, acceptance or approval shall be regarded as a provisional Party thereto until it deposits its instrument of ratification, acceptance or approval, or until and including 30 June 2002 whichever is the earlier. The Council may grant an extension of the time within which any Government which is applying this Agreement provisionally may deposit its instrument of ratification, acceptance or approval.

(3) If this Agreement has not entered into force definitively or provisionally on 1 October 2001 under the provisions of paragraph (1) or (2) of this Article, those Governments which have deposited instruments of ratification, acceptance, approval or accession or made notifications containing an undertaking to apply this Agreement provisionally, in accordance with their laws and regulations, and to seek ratification, acceptance or approval may, by mutual consent, decide that it shall enter into force among themselves. Similarly, if this Agreement has entered into force provisionally but has not entered into force definitively on 31 March 2002, those Governments which have deposited instruments of ratification, acceptance, approval or accession or made the notifications referred to in paragraph (2) of this Article, may, by mutual consent, decide that it shall continue in force provisionally or enter into force definitively among themselves.

ARTICLE 46
Accession

Comments: *No specific changes proposed to this Article.*

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

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

ARTICLE 47
Reservations

Comments: *No specific changes proposed to this Article.*

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

ARTICLE 48
Extension to designated territories

Comments: *No specific changes proposed to this Article.*

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

(2) Any Contracting Party which desires to exercise its rights under the provisions of Article 5 in respect of any of the territories for whose international relations it is responsible or which desires to authorise any such territory to become part of a Member group formed under the provisions of Article 6, may do so by making a notification to that effect to the Secretary-General of the United Nations, either at the time of the deposit of its instrument of ratification, acceptance, approval, provisional application or accession, or at any later time.

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

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

ARTICLE 49
Voluntary withdrawal

Comments: *No specific changes proposed to this Article.*

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

ARTICLE 50
Exclusion

Comments: *No specific changes proposed to this Article.*

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

ARTICLE 51
Settlement of accounts with withdrawing or excluded Members

Comments: *No specific changes proposed to this Article.*

(1) The Council shall determine any settlement of accounts with a withdrawing or excluded Member. The Organization shall retain any amounts already paid by a withdrawing or excluded Member and such Member shall remain bound to pay any amounts due from it to the Organization at the time the withdrawal or the exclusion becomes effective; provided, however, that in the case of a Contracting Party which is unable to accept an amendment and consequently ceases to participate in this Agreement under the provisions of paragraph (2) of Article 53, the Council may determine any settlement of accounts which it finds equitable.

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

ARTICLE 52
Duration and termination

Comments: *The Executive Director has suggested that consideration could be given to excluding references to the duration of the Agreement and making provision for a review of the Agreement by the Council every few years. The USA has proposed changes to paragraphs (1) and (2). Tanzania has proposed establishing a mechanism to ensure a smooth transition to a new Agreement on the expiry of the old one.*

(1) This Agreement shall remain in force for a period of ~~six~~ **ten** years ~~until 30 September 2007~~ unless extended under the provisions of paragraph (2) of this Article or terminated under the provisions of paragraph (3) of this Article. [USA]

(2) The Council may, by a vote of a majority of the Members having not less than a distributed two-thirds majority of the total votes, decide to extend this Agreement ~~beyond 30 September 2007~~ for one or more successive periods not to exceed ~~six~~ **eight** years in total. Any Member which does not accept any such extension of this Agreement shall so inform the Council and the Secretary-General of the United Nations in writing before the commencement of the period of extension and shall cease to be a Party to this Agreement from the beginning of the period of extension. [USA]

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

(4) Notwithstanding the termination of this Agreement, the Council shall remain in being for as long as necessary to take such decisions as are needed during the period of time required for the liquidation of the Organization, settlement of its accounts and disposal of its assets.

(5) Any decision taken with respect to the duration and/or termination of this Agreement and any notification received by the Council pursuant to this Article shall be duly transmitted by the Council to the Secretary-General of the United Nations.

ARTICLE 53
Amendment

Comments: *The EC has noted that paragraph (1) would need to be revised in the light of the status of the EC.*

(1) The Council may, by a distributed two-thirds majority vote, recommend an amendment of this Agreement to the Contracting Parties. The amendment shall become effective 100 days after the Secretary-General of the United Nations has received notifications of acceptance from Contracting Parties representing at least 70% of the exporting countries holding at least 75% of the votes of the exporting Members, and from Contracting Parties representing at least 70% of the importing countries holding at least 75% of the votes of the importing Members. The Council shall fix a time within which Contracting Parties shall notify the Secretary-General of the United Nations of their acceptance of the amendment. If, on expiry of such time limit, the percentage requirements for the entry into effect of the amendment have not been met, the amendment shall be considered withdrawn.

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

(3) The Council shall notify the Secretary-General of the United Nations of any amendments distributed to the Contracting Parties under this Article.

Comments by the Executive Director:
It might be considered desirable to simplify or reduce the requirements of the process of amendments to the Agreement detailed in Article 53.

ARTICLE 54
Supplementary and transitional provisions

Comments: *No specific changes proposed to this Article.*

The following shall apply in relation to the International Coffee Agreement 1994, as extended:

(a) all acts by or on behalf of the Organization or any of its organs under the International Coffee Agreement 1994 as extended, in effect on 30 September 2001, the terms of which do not provide for expiry on that date, shall remain in effect unless changed under the provisions of this Agreement; and

(b) all decisions required to be taken by the Council during coffee year 2000/01 for application in coffee year 2001/02 shall be taken by the Council in coffee year 2000/01 and applied on a provisional basis as if this Agreement had already entered into force.

ARTICLE 55
Authentic texts of the Agreement

Comments: *Indonesia has raised the need to review the need to operate in four languages, as a cost-saving measure.*

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

IN WITNESS WHEREOF the undersigned, having been duly authorised to this effect by their respective Governments, have signed this Agreement on the dates appearing opposite their signatures.

ANNEX I

CONVERSION FACTORS FOR ROASTED, DECAFFEINATED, LIQUID AND SOLUBLE COFFEE AS DEFINED IN THE INTERNATIONAL COFFEE AGREEMENT 1994

Comments: *No specific changes proposed to this Annex.*

Roasted coffee
To find the equivalent of roasted coffee to green coffee, multiply the net weight of roasted coffee by 1.19.

Decaffeinated coffee
To find the equivalent of decaffeinated coffee to green coffee, multiply the net weight of the decaffeinated coffee in green, roasted or soluble form by 1.00, 1.19 or 2.6 respectively.

Liquid coffee
To find the equivalent of liquid coffee to green coffee, multiply the net weight of the dried coffee solids contained in the liquid coffee by 2.6.

Soluble coffee
To find the equivalent of soluble coffee to green coffee, multiply the net weight of the soluble coffee by 2.6.