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PREPARATION OF A SUCCESSOR AGREEMENT TO THE
INTERNATIONAL COCOA AGREEMENT, 1993

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PART TWO: CONSTITUTIONAL PROVISIONS

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 Union 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 its subsidiary bodies; and
 - (b) The Executive Director 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 8

Chairperson and Vice-Chairperson of the Council

1. The Council shall elect a Chairperson and a first and second Vice-Chairperson for each cocoa year, who shall not be paid by the Organization.
2. Both the Chairperson and the first Vice-Chairperson shall be elected from among the representatives of the exporting Members or from among the representatives of the importing Members and the second Vice-Chairperson 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 Chairperson and the two Vice-Chairpersons 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 Chairperson nor any other officer presiding at meetings of the Council shall vote. His or her alternate may exercise the voting rights of the Member which he or she represents.

Article 9

Sessions of the Council

1. As a general rule, the Council shall hold one regular session in each half of the cocoa year.
2. The Council shall meet in special session whenever it so decides or at the request of:
 - (a) Any five Members;

- (b) A Member or Members having at least 200 votes;
 - (c) The Executive Committee; or
 - (d) The Executive Director, for the purposes of articles 23 and 64.
3. Notice of sessions shall be given at least 30 calendar days in advance, except in case of emergency.
4. Sessions shall be held at the headquarters of the 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 44.
3. For each cocoa year, the votes of importing Members shall be distributed as follows: 100 shall be divided equally to the nearest whole vote for each Member. The remaining votes shall be distributed on the basis of the percentage which the average of each importing Member's annual imports, in the preceding three cocoa years for which final figures are available in the 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 44.
4. If, for any reason, difficulties should arise in the determination or the updating of the statistical basis for the calculation of votes in accordance with the provisions of paragraphs 2 and 3 of this article, the Council may, by special vote, decide on a different statistical basis for the calculation of votes.

5. No Member shall have more than 400 votes. Any votes above this figure arising from the calculations in paragraphs 2, 3 and 4 of this article shall be redistributed among the other Members on the basis of those paragraphs.
6. When the membership in the 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.
7. There shall be no fractional votes.

Article 11

Voting procedure of the Council

1. Each Member shall be entitled to cast the number of votes it holds and no Member shall be entitled to divide its votes. A Member may, however, cast differently from such votes any votes which it is authorized to cast under paragraph 2 of this article.
2. By written notification to the Chairperson of the Council, any exporting Member may authorize any other exporting Member, and any importing Member may authorize any other importing Member, to represent its interests and to cast its votes at any meeting of the Council. In this case the limitation provided for in paragraph 5 of article 10 shall not apply.
3. A Member authorized by another Member to cast the votes held by the authorizing Member under article 10 shall cast such votes in accordance with the instructions of the authorizing Member.

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

Article 14

Admission of observers

1. The Council may invite any non-member State to attend any of its meetings as an observer.
2. The Council may also invite any of the 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 ten exporting Members and ten importing Members. If, however, either the number of exporting Members or the number of importing Members in the Organization is less than ten, 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 Chairperson and Vice-Chairperson of the Executive Committee, elected for each cocoa year by the Council, shall both be chosen from among the representatives of the exporting Members or from among the representatives of the importing Members. These offices shall alternate each cocoa year between the two categories of Members. In the temporary or permanent absence of the Chairperson and the Vice-Chairperson, 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 Chairperson nor any other officer presiding at meetings of the Executive Committee may vote. His or her alternate may exercise the voting rights of the Member which he or she represents.
4. The Executive Committee shall meet at the headquarters of the Organization unless, by special vote, it decides otherwise. If, on the invitation of any Member, the Executive Committee meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved.

Article 16

Election of the Executive Committee

1. The exporting and importing Members of the Executive Committee shall be elected in the Council by the exporting and importing Members respectively. The election within each category shall be held in accordance with paragraphs 2 and 3 of this article.
2. Each Member shall cast all the votes to which it is entitled under article 10 for a single candidate. A Member may cast for another candidate any votes which it is authorized to cast under paragraph 2 of article 11.
3. The candidates receiving the largest number of votes shall be elected.

Article 17

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 Chairperson, any exporting or importing Member which is not a Member of the Executive Committee and which has not cast its votes under paragraph 2 of article 16 for any of the members elected may authorize any exporting or importing Member of the Executive Committee, as appropriate, to represent its interests and to cast its votes in the Executive Committee.
3. In the course of any cocoa year a Member may, after consultation with the Member of the Executive Committee for which it voted under article 16, withdraw its votes from that member. The votes thus withdrawn may be reassigned to another exporting or importing Member of the Executive Committee, as appropriate, but may not be withdrawn from this Member for the remainder of that cocoa year. The Member of the Executive Committee from which the votes have been withdrawn shall nevertheless retain its seat on the Executive Committee for the remainder of that cocoa year. Any action taken pursuant to the provisions of this paragraph shall become effective after the Chairperson has been informed in writing thereof.
4. Any decisions taken by the Executive Committee shall require the same majority as that decision would require if taken by the Council.

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

Article 19

Quorum for the Council and the Executive Committee

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

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

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

4. Representation in accordance with paragraph 2 of article 11 shall be considered as presence.

5. The quorum for the opening meeting of any session of the Executive Committee shall be constituted by the presence of at least four exporting Members and four importing Members, provided that such Members together hold in each category at least the simple majority of the votes of the Members in that category.

CHAPTER V. PRIVILEGES AND IMMUNITIES

Article 22

Privileges and immunities

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

2. The status, privileges and immunities of the Organization, 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 of 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.

PART THREE: FINANCIAL PROVISIONS

CHAPTER VI. FINANCE

Article 23

Finance

1. There shall be kept an administrative account for the administration of this Agreement. The expenses necessary for the administration of this Agreement shall be brought into the administrative account and shall be met by annual contributions from Members assessed in accordance with article 25. If, however, a Member requests special services, the Council may decide to accede to the request and shall require that Member to pay for them.

2. The Council may establish separate accounts for specific purposes that it may establish in accordance with the objectives of the present Agreement. These accounts shall be financed through voluntary contributions from Members or other bodies.

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

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

5. If the financial position of the Organization is or appears likely to be, insufficient to finance the remainder of the cocoa year, the Executive Director shall call a special session of the Council within 20 working days unless the Council is otherwise scheduled to meet within 30 calendar days.

Article 24

Liabilities of Members

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

Article 25

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 26

Payment of contributions to the administrative budget

1. Contributions to the administrative budget for each financial year shall be payable in freely convertible currencies, shall be exempt from foreign exchange restrictions and shall become due on the first day of that financial year. Contributions of Members in respect of the financial year in which they join the Organization shall be due on the date on which they become Members.
2. Contributions to the administrative budget approved under paragraph 4 of article 25 shall be payable within three months of the date of assessment.
3. If, at the end of five months after the beginning of the financial year or, in the case of a new Member, three months after the Council has assessed its contribution, a Member has not paid its full contribution to the administrative budget, the Executive Director shall request that Member to make payment as quickly as possible. If, at the expiration of two months after the request of the Executive Director, that Member has still not paid its contribution, the voting rights of that Member in the Council and the Executive Committee shall be suspended until such time as it has made full payment of the contribution.
4. A Member whose voting rights have been suspended under paragraph 3 of this article shall not be deprived of any of its other rights or relieved of any of its obligations under this Agreement unless the Council, by special vote, decides otherwise. It shall remain liable to pay its contribution and to meet any other financial obligations under this Agreement.
5. The Council shall consider the question of membership of any Member with two years' contributions unpaid, and by special vote may decide that this Member shall cease to enjoy the rights of membership and/or cease to be assessed for budgetary purposes. It shall remain liable to meet any other of its financial obligations under this Agreement. By payment of the arrears the Member will regain the rights of membership. Any payments made by Members in arrears will be credited first to those arrears, rather than to current contributions.

Article 27

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 the accounts referred to in article 23 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.

PART FIVE: MARKET-MONITORING AND RELATED PROVISIONS

CHAPTER X. MARKET-MONITORING PROVISIONS

Article 42

Daily price

1. For the purposes of this Agreement and, in particular, for monitoring the evolution of the cocoa market, the Executive Director shall compute and publish a daily price of cocoa beans. This price shall be expressed in Special Drawing Rights (SDRs) per tonne.
2. The daily price shall be the average taken daily of the quotations for cocoa beans of the nearest three active future trading months on the London International Financial Futures and Options Exchange (LIFFE) and on the Board of Trade of the City of New York at the time of the London close. The London prices shall be converted into United States dollars per tonne by using the current six months forward rate of exchange in London at closing time. The United States dollar-denominated average of the London and New York prices shall be converted into its SDR equivalent at the appropriate daily official United States dollar/SDR exchange rate published by the International Monetary Fund. The Council shall decide the method of calculation to be used when the quotations on only one of these two cocoa markets are available or when the London Foreign Exchange market is closed. The time for shift to the next three-month period shall be the fifteenth of the month immediately preceding the nearest active maturing month.
3. The Council may, by special vote, decide on any other method of computing the daily price if it considers such other method to be more satisfactory than that prescribed in this article.

Article 44

Conversion factors

1. For the purpose of determining the beans equivalent of cocoa products, the following shall be the conversion factors: cocoa butter 1.33; cocoa cake and powder 1.18; cocoa paste/liquor and nibs 1.25. The Council may determine, if necessary, that other products containing cocoa are cocoa products. The conversion factors for cocoa products other than those for which conversion factors are set out in this paragraph shall be fixed by the Council.
2. The Council may, by special vote, revise the conversion factors in paragraph 1 of this article.

CHAPTER XI. INFORMATION, STUDIES AND RESEARCH

Article 46

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. It 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 and the private sector. The Council may also promote studies likely to contribute to greater market transparency.

Article 48

Annual report

The Council shall publish an Annual Report.

PART SIX: OTHER PROVISIONS

**CHAPTER XIII: RELIEF FROM OBLIGATIONS AND DIFFERENTIAL
AND REMEDIAL MEASURES**

Article 52

Differential and remedial measures

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

CHAPTER XIV. CONSULTATIONS, DISPUTES AND COMPLAINTS

Article 53

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 a procedure shall not be chargeable to the Organization. If such a 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 54.

Article 54

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 by special vote decides otherwise, the *ad hoc* advisory panel shall consist of:
 - (i) Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting Members;
 - (ii) Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the importing Members; and
 - (iii) A chairperson selected unanimously by the four persons nominated under (i) and (ii) above or, if they fail to agree, by the Chairperson 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 55

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 65, by special vote:

- (a) Suspend that Member's voting rights in the Council and in the Executive Committee; and
- (b) If it considers it necessary, suspend additional rights of such Member, including that of being eligible for, or of holding, office in the Council or in any of its committees, until it has fulfilled its obligations.

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

CHAPTER XVI. FINAL PROVISIONS

Article 57

Depositary

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