COMMISSION OF THE EUROPEAN COMMUNITIES

COM(75) 458 final

Brussels, 10 September 1975

Recommendation for a Council Decision
concerning negotiation of the second International
Cocoa Agreement

(submitted to the Council by the Commission)

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Introduction

From 22 September to 17 October 1975 a conference will be held in Geneva within the framework of UNCTAD. Its purpose will be to negotiate the renewal of the first International Cocoa Agreement, which entered into force on 1 July 1973 and expires on 30 September 1976. A draft second Agreement has been drawn up by a Preparatory Committee set up by the International Cocoa Council, to be submitted to the Conference as a working paper.

The purpose of this communication is to establish guidelines for Community action during these negotiations on the basis of the approach followed during the 1972 negotiations and since the entry into force of the International Cocoa Agreement.

This communication must be examined and a decision taken on it before the negotiations commence (22 September) by a procedure that reflects the urgency of the matter.

1. Participation by the Community and the Member States in the present Agreement

The Community and the Member States are members of the first International Cocoa Agreement. When the Agreement was negotiated in 1972 the Community caused to be inserted in the text specific provisions regarding the participation, as a member of the Agreement, by any intergovernmental organization having responsibilities in respect of the negotiation, conclusion and application of international agreements. The formula worked out during lengthy negotiations is considered satisfactory since it has served as a model on the occasion of the renewal of other international commodity agreements, such as the 1968 Coffee Agreement, extended in April 1973, and in the Tin Agreement, renewed in June 1975.

On the basis of the text in Article 4 of the 1972 International Cocoa Agreement, entitled "Membership by Intergovernmental Organizations", and on a proposal from the Commission, the Council decided on 4 January 1973 to sign the Agreement subject to final acceptance at a later date.

Pending the completion by all the Member States of their ratification procedures the Council decided on 26 June 1973, on a recommendation from the Commission, to :

i. give notice of the Community's intention to approve the Agreement,
ii. indicate that the Community would apply the Agreement provisionally.

Lastly the Council Regulation of 9 November 1973 (OJ No L 324 of 24 November) made the economic and control rules of the Agreement applicable in the Community.

The Community has therefore been able to participate fully in the operation of this Agreement in respect of questions falling within its jurisdiction, and on all other matters the Community and the Member States have at all times endeavoured to adopt a common attitude in most cases with success, a fact welcomed by the Commission.

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Quite recently in the context of the preparations for the negotiation of the second Agreement, the Community and the Member States :

i. Made a joint declaration at the March 1975 session of the International Cocoa Council in favour of renegotiation of the Agreement ;

ii. submitted joint proposals in June 1975 to the Preparatory Committee on certain aspects of the Agreement relating to the operation of the buffer stock, the conditions of supply, control measures and duration of the Agreement.

Such action is fully in line with the efforts made by the Community at international level to bring about a constructive attitude in the commodities field and stands out particularly in the case of this Agreement since the United States is not a contracting party and the Community carries considerable weight on the side of the importing countries (1).

2. Participation in the negotiation of the second Agreement

Pending a general solution to the question of a formal invitation to the Community to participate in the Negotiating Conferences on commodities, steps will have to be taken as soon as the Conference opens to enable the Community to participate in the work. What was obtained in 1972 right from the start of the Conference should be all the easier to obtain in 1975 since the Community is a member of the present Agreement and has played an active part with the Member States in its implementation.

The Commission considers that the directives it received by decision of the Council of 6 and 7 March 1972 for the negotiation of the first International Cocoa Agreement should be adapted for the negotiation of the second Agreement in accordance with the draft decision set out in Annex I.

With regard to representation of the Community and the Member States the Commission considers that the practice followed in 1975 for the Tin Conference ought to be repeated - that is, there should be ten delegations, with the Commission representative normally acting as joint spokesman for questions falling within the jurisdiction of the Community pursuant to Article 113 or for matters which are the subject of common action under Article 116.

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(1) The United States has been invited to take part in the work of the Preparatory Committee ; it is doing so and will also participate in the Negotiating Conference.

3. Negotiating directives

In the light of the preparatory work for the negotiations the Commission considers that the positive action taken by the Community and the Member States must be actively pursued at the Conference itself.

Some important questions have already been broached in the Preparatory Committee and the proposals formulated by the Community and the Member States within that framework constitute, in the Commission's view, sound negotiating directives. These proposals are set out in Annex II.

Other questions - in respect of which the Community and the Member States have, moreover, reserved the right to make new proposals during the negotiations - are also fundamental to the conclusion of a second International Cocoa Agreement; these are set out in Annex III and should likewise be covered by negotiating directives.

4. Special difficulties of a Member State

The requirements of Italy's constitutional procedure involve delays in the ratification of international agreements which entail budgetary expenditure (payment of contributions to the Organization's budget). The 1972 International Cocoa Agreement has not yet been ratified by the Italian Parliament and Italy has agreed to apply the Agreement provisionally only on condition that it is not deprived of its right to vote as a result of non-payment of its contribution to the Organization's budget (1). Accordingly, in June 1973 the Council decided as an exceptional measure that the EEC could, where appropriate, pay the contributions owed by Member States under the terms of the Agreement, subject to such sums being reimbursed.

The Commission considers that a solution to this problem - which would seem to concern Italy alone - should be found within the framework of the international commodity agreements themselves so that Italy can provisionally apply the agreements in question pending completion of its constitutional ratification procedure ; only when this is done can it

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(1) To ensure that members fulfil their financial obligations, this provision relating to suspension of the right to vote in the event of non-payment of the annual contribution within a reasonable period of time appears in all international commodity agreements and cannot be the subject of a waiver.

undertake to make its contribution to the budget of the Agreement. This problem is raised in Annex III referred to above. If no solution can be worked out at international level one should be found at Community level based on a formula similar to that decided upon by the Council in June 1973, so as to ensure that Italy can participate along with the other Member States and the Community.

Recommendation for a Council Decision concerning negotiation of the second International Cocoa Agreement

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 the recommendation from the Commission ;

Whereas the Community signed the 1972 International Cocoa Agreement on 15 January 1973 and has participated in that Agreement since its entry into force on 1 July 1973, subject to final acceptance at a later date ;

Whereas that Agreement will expire on 30 September 1976;

Whereas an International Conference will be held in Geneva from 22 September to 17 October 1975 within the framework of UNCTAD for the negotiation of a second International Cocoa Agreement ; whereas the Community should take part in these negotiations which involve common commercial policy matters;

HAS DECIDED AS FOLLOWS :

The Commission is hereby authorized to conduct, on behalf of the Community, the negotiation of the second International Cocoa Agreement, in respect of matters falling within Community jurisdiction.

The Commission shall conduct the negotiations within the framework of the annexed directives and in consultation with the Special Committee provided for in Article 113.

Done at Brussels,
For the Council

The President

Proposals by the European Economic Community and its Member States to the preparatory Committee for the second international cocoa agreement(9-13 June 75)

These first proposals concern provisions relating to certain aspects only of the 1972 International Cocoa Agreement. They clearly do not prejudge the positions which may be adopted either during the preparatory work or during the negotiations on the fundamental questions raised by the other Members in their proposals. They are not exhaustive and are to be studied in conjunction with other proposals. In the light of the progress achieved in the Preparatory Committee and during the negotiations, we may wish to submit other proposals.

1. Legal aspects

Article 74 (Duration of the Agreement)

In view of the constitutional obligations of some members, it is suggested that provision be made for an agreement of three years'duration which can be extended for a further two years, without negotiations or amendments, by special vote of the Council. The relevant provisions concerning renegotiation and the amendment procedure would of course be retained, as would those concerning the early termination of the Agreement.

2. Economic aspects

a) Article 2 (Definitions)

Should the problem which has arisen for the United Kingdom concerning exports of cocoa powder sold in individual packages for direct consumption not be settled at the next session of the Council by amending the Control Rules, it is proposed that a solution be found by modifying Article 2 (b) to include the following phrase "... cocoa cake and cocoa nibs, excluding products packaged for direct consumption, as well as..."

b) Buffer Stock

Article 37

The present provisions concerning the volume and composition of the buffer stock(maximum capacity of 250.000 tons of beans) would be retained. While a legal analysis of the relevant texts leaves no doubt regarding the matter, it would perhaps be appropriate to specify that the cocoa purchased and held by the buffer stock is the property of that body and remains under its control.

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Article 39 (Purchases by the Buffer Stock)

In view of the foreseeable financial situation of the buffer stock upon expiry of this Agreement, the new Agreement should provide for the following :

(i) an improvement in the terms of purchase and payments to producing members (paragraph 5) ;

(ii) from the first quota year and, subsequently, each year the Council should be able to decide, as from the beginning of a quota year, to maintain or reduce the rate of contribution in force or to suspend the levying of such contribution (see Article 38 (1)).

Article 40(Buffer stock sales)

The wording of paragraphs 2 and 3 of this Article ought to be clarified, since what is involved is ensuring both that the maximum price is upheld and that importing countries'supplies are secured; sales from the buffer stock should be reserved for approved purchasers from importing member countries (it is to be hoped that this problem can be settled when the Council adopts the Buffer Stock Rules).

Similarly, it should perhaps be specified that the rate of sales, grades offered and speed of deliveries are the responsibility of the Buffer Stock Manager irrespective of where stocks are held.

Article 41 (Withdrawal of Cocoa Beans from the Buffer Stock)

Again for the sake of greater clarity, it should be specified that the implementation of the provisions of Article 41 presupposes the prior application of Article 36 (Redistribution of Shortfalls).

(c) other provisions relating to supplies

Article 34 (Adjustment of Quotas)

In exceptional situations where the indicator price remains substantially above the maximum price other arrangements should be made to defend the maximum price. As the quotas are suspended as soon as the indicator price is above the minimum price + /6/ cents (Article 34 (4)), and the indicator price is above the maximum price + X cents in this particular case, the restoration of quotas before the end of the quota year could not be envisaged.

It is proposed to insert a new paragraph between paragraphs (8) and (9) of Article 34, which would read as follows :

"When the indicator price is X cents above the maximum price, the provisions of Article 35 (2) and of Article 41 shall be suspended".

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Article 44 (Assurance of Supplies)

Without prejudging at this stage the means which might be employed, efforts should be made to strengthen the provisions of this Article, in particular as regards the duty of exporting members duty to make their offers to importing members without restrictions when the indicator price is above the maximum price.

Article 49 (Production and Stocks)

In the exceptional situations defined in the new paragraph proposed above for insertion in Article 34, producing members should endeavour to implement measures having short-term effects on improving cocoa availabilities.

Among the questions to be dealt with in negotiations for the conclusion of a second International Cocoa Agreement there are, in addition to those mentioned in Annex II, important points which have moreover been highlighted during the work of the Preparatory Committee. These questions would be the subject of the following directives.

1. Annual Export Quotas (Articles 31 and 34)

Automatic revision of the quotas in the course of a year, in particular as a result of the updating of the figures for the grindings planned, might interfere with implementation of other provisions of the Agreement, such as quota adjustments by reference to price trends, the rules governing any surpluses, the redistribution of shortfalls, deliveries to the buffer stock and withdrawals from the buffer stock. Besides, Article 34 (1) and (2) enables the Council to review the quotas whenever circumstances so require. Automatic revision should therefore not be introduced in the new Agreement. However, the present provision concerning non-reduction of quotas or maintenance of the suspension of quotas during the last 45 days of the quota year should be retained (Article 34(9)).

2. Role of the Buffer Stock (Article 37)

The proposal by the member countries of the Cocoa Producers'Alliance regarding the possibility of funds being allocated from the buffer stock for investments in their countries deserves particular attention. This would represent a radical change in the role of that body,the funds of which are earmarked solely for the purchase of cocoa beans and for covering expenditure relating to the operation and maintenance of the buffer stock. The traditional concept of buffer stocks is moreover, confirmed by the UNCTAD Secretariat in its proposals for a overall integrated programme for commodities; one of the key features of this is one or more buffer stocks of products intended solely for stabilizing markets. Reference is made however, to the risk of overproduction, in which case it is proposed that the stimuli provided through the operations of an international stock be used to encourage the conversion of resources and policies for mobilizing resources to step up the diversification of production and exports (see Document TD/B/C.1/166). There is therefore no question of providing direct financing for these operations through the buffer stocks.

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Without prejudging at this stage the many questions arising in connection with the conditions governing the buffer stock and the detailed rules for applying it, if a new concept were accepted during the negotiations it would be necessary to ensure that the Council was alone responsible for implement it, and that it did so in such a way that the prime objective of the buffer stock was not compromised.

The proposals of the Community and the Member States (see Annex II) on modifying the present terms for financing the buffer stock are directly related to this question, for there would no longer be any limits to the foreseeable requirements of the buffer stock if the funds could be allocated to "investments" in the producing countries.

3. Payment of Contributions to the Buffer Stock (Article 38 : 5 new)

The proposal to grant importing developing countries exemption from payment of contributions (in the case of cocoa coming from non-member countries) ought to be considered, subject to the practical implementing procedures being determined in such a way as not to compromise the effectiveness of the control measures.

4. Prices (Article 29)

a) Minimum price level : The initial price in the 1972 Agreement (23 US cents per pound), revised and increased to 29.5 cents in 1974, will have to be revised again in the new Agreement. The extent of the revision cannot be fixed in advance and it will be related both to market conditions and to other price factors to be negotiated, namely.

b) The gap between the minimum and maximum prices : (at present 9 cents). A widening of this gap and/or, in any event, the possibility for the Council to revise this gap must be envisaged, if only to avoid over frequent adjustment of the quotas by reference to prices within the range. It will be noted here that the four quota adjustments provided for in Article 34 are made within a price scale of only 5 cents unless otherwise decided by the Council by special vote.

c) The conditions governing revision of the minimum price : frequency - criteria - automatic mechanism or decision of the Council.

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A balanced solution should be sought giving :

(i) exporting countries the assurance that prices will be reviewed and possibly revised at regular intervals in the light of international economic and monetary events to be specified, if necessary, in the Agreement itself ;

(ii) importing countries the assurance that action taken by the Council (decision by special vote) will not be of an automatic nature amounting to the indexing of the price of cocoa in accordance with given criteria.

5. Italy's special difficulties

On behalf of the Community and the Member States a solution should be sought to the problem of Italy's provisional participation, and it must be one which does not prejudge the decision of the Parliament of that Member State regarding final acceptance of the Agreement.

If this problem, which is related to that of the payment of the contribution to the Organization's budget, cannot be solved in the Agreement itself(in the form either of a special provision or of a derogation from the provisions of the Agreement), a solution should be worked out at Community level so that the Community and all the Member States can apply the new Agreement provisionally or definitively, their participation being necessary to permit the entry into force and the implementation of the said Agreement.