

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 154 final.

Brussels, 7 April 1976

COMMISSION COMMUNICATION TO THE COUNCIL
ON THE FIFTH INTERNATIONAL TIN AGREEMENT.

RECOMMENDATION FOR COUNCIL DECISIONS

ON THE SIGNING OF THE AGREEMENT ON BEHALF OF THE
COMMUNITY AND THE NOTIFICATION CONCERNING PROVISIONAL
APPLICATION OF THE AGREEMENT.

COM(76) 154 final.

I. MAIN RESULTS OF THE NEGOTIATIONS FOR THE RENEWAL OF THE FOURTH INTERNATIONAL TIN AGREEMENT.

1. For the purpose of negotiating the renewal of the Fourth International Tin Agreement, due to expire on 30 June 1976, UNCTAD organized the United Nations Tin Conference, 1975, which took place in Geneva from 20 May to 21 June 1975.

All members of the United Nations were invited to attend. On a proposal by the Chairman, the Community - which is a party to the Fourth Agreement - was admitted and invited to participate in the Conference's work from the outset in respect of matters within its competence, but without voting rights.

2. By decision of 20 May 1975, the Council authorized the Commission to conduct, on behalf of the Community, the negotiation of the Fifth International Tin Agreement in matters within the Community's competence.
3. As a result of close and fruitful collaboration with the presidency of the Council and with the delegations of the Member States and following an intensive round of coordination meetings, the Community was able to present a united front and speak with a single voice on the majority of the topics covered.

The Community was accordingly able to make a number of proposals, not only in respect of matters covered by Article 113 but also concerning matters of particular interest to the common market (Article 116), which served as a basis for the final text of the Agreement.

4. These negotiations culminated in the drafting of the text of the Fifth International Tin Agreement, which was adopted by the Conference at its final plenary meeting on 21 June 1975.

5. Broadly speaking, the Fifth Agreement will have the same structure as the Fourth Agreement and will pursue the same goals.

The main objectives continue to be :

- . to establish a balance between world production and consumption of tin;
- . to prevent excessive fluctuations in the price of tin and in export earnings from tin;
- . to mitigate the serious difficulties which might arise from a surplus or shortage of tin;
- . to ensure conditions which will help to achieve a dynamic and rising rate of production of tin on the basis of a remunerative return to producers.

For the attainment of these objectives, the Agreement provides for the following instruments :

- . a buffer stock;
- . a system of floor and ceiling prices determining the range within which the Manager of the buffer stock can intervene;
- . export control;
- . action in the event of a tin shortage.

6. The main changes compared with the text of the Fourth Agreement can be grouped together in a number of categories :

Questions of principle

The request made by a number of participating countries, in particular producer countries, that the text should contain a reference to the new international economic order forming the subject of Resolution nr. 3201 (SVI) adopted by the United Nations Sixth Special Session on 1 May 1974 resulted after long and difficult discussions in agreement on the following text which forms paragraph

(b) of the Preamble :

"The participating countries, recognizing:

- (b) The community and interrelationship of interests of, and the value of continued cooperation between, producing and consuming countries in order to support the purposes and principles of the United Nations and the United Nations Conference on Trade and Development and to resolve problems relevant to tin by means of an international commodity agreement, taking into account the role which the International Tin Agreement can play in the establishment of a new international economic order, .

have agreed as follows:"

Participation by the Community

The positive results and the progress achieved in this field are undeniable. The new wording of the relevant provisions has removed the lack of legal certainty which existed in the Fourth Agreement in respect of the position of the Community as a member of the International Tin Council.

The provisions in question are contained in the following articles :

- . Article 4 (Participation in the Council) stipulates in paragraph (a) that : "The Council shall be composed of all the participating countries.";
- . Article 2 (Definitions) includes in its definition of the concept of participating country "... or an organization referred to in article 54";
- . Article 54 (Intergovernmental organizations) is worded as follows in the new Agreement.

"Intergovernmental organizations"

- (a) Any reference to a Government in articles 47, 48, 49, 50, 51 and 52 shall be construed as including reference to an intergovernmental organization having responsibilities in respect of the negotiation, conclusion and application of international agreements in particular commodity agreements.
- (b) Such an organization shall not itself hold any votes, but in the case of votes on matters within its competence, it shall be entitled to cast the votes of its member states and shall cast them collectively. In such cases, the member States of the organization in question shall not be entitled to exercise their individual voting rights".

Financing of the buffer stock

The financing of the buffer stock constituted the crucial problem in the negotiations, which centred on the equal participation of the producer and consumer countries.

A compromise solution was reached which provides for :

the maintenance of the system of compulsory contributions from the producer countries amounting to the equivalent of 20.000 tonnes of tin metal (article 21);

the introduction of a system of additional contributions from the consumer countries up to an additional amount equivalent to 20 000 tonnes of tin metal (article 22);

the possibility being open to the Council - in the case of financing by borrowing - to decide "that participating non-contributing countries may contribute towards these charges". (article 24). However, the same article provides that : "No obligation shall be laid upon any participating country under this article without the consent of that country."

Despite the fact that the additional contributions from the consumer countries are voluntary, provision has been made for the possibility of renegotiating the Agreement should it be considered that the additional contributions received are not significant compared with the compulsory contributions. The relevant text (article 22(d)) reads as follows :

"(d) At the expiration of 30 calendar months after the entry into force of this Agreement, the Council shall review the results obtained as regards the additional contributions referred to in paragraphs (a) and (b) of this article and it may decide that a negotiating conference is to be convened within six months of the date of the Council's decision in order wholly or partly to amend this Agreement by a Protocol or other appropriate international instrument. If such a decision is reached, the Council shall request the Secretary-General of the United Nations to convene such a negotiating conference."

It should be noted that after contacts with the International Monetary Fund and the World Bank and following an examination - carried out on a proposal from the Community - of the merits and possibilities of a system of financing by levy a paragraph (e) was added to article 9 (Statistics and studies) which stipulates that the Council : "shall make a study of alternative means to supplement or replace existing methods of financing the buffer stock."

Action in the event of a tin shortage

In order to ensure a better balance within the Agreement between protection of the producer countries' interests and those of the consumer countries, and in particular between the provisions concerning export control and those relating to action in the event of a tin shortage, the latter provisions were made somewhat stronger through the addition of the following two paragraphs to Article 40 :

"(e) The Council may by a two-thirds distributed majority invite the participating countries to enter into such arrangements with it as may assure consuming countries an equitable distribution of the available supplies of tin.

"(f) The Council may make recommendations to producing countries on appropriate measures, not inconsistent with other international agreements on trade, to ensure that, in the event of a shortage, preference as regards the supply of tin available shall be given to consuming countries which participate in this Agreement".

Administrative or procedural questions

In addition to the main changes described above, there are also a large number of changes of lesser importance. These are mainly drafting changes or changes designed to group together more logically articles and paragraphs of an administrative or procedural nature.

These include :

article 8 (Procedures of the Council),
article 9 (Statistics and studies),
article 10 (Executive Chairman and Vice-Chairmen of the Council),
article 12 (The staff of the Council),
article 13 (Percentages and votes), etc.

This category also includes article 19 (The budget) in which the principle whereby the administrative costs were borne by the producer and consumer country groups on a 50-50 basis has been replaced by a system which distinguishes solely between participants with 20 votes or less and those with 21 votes or more. The former contribute 3 % of the budget, the latter 1 %; to make up the portion of the budget not covered by the above payments, each participant pays one two thousandth of the additional amount required for each vote held.

Under this new system, the Community as an intergovernmental organization - treated as a participant country but not holding any voting rights - could be called up on to pay a contribution amounting to 3 % of the administrative budget. For the 1975/76 financial year, this contribution would be approximately £1 000.

The voluntary contribution of £2 000 provided for in the Commission's Budget for the 1976 financial year (Article 444) would therefore cover any such compulsory contribution.

II. PARTICIPATION BY THE COMMUNITY AND THE MEMBER STATES IN THE FIFTH AGREEMENT

The Fifth Agreement is open for signature until 30 April 1976 inclusive, subject to ratification, approval or acceptance by the signatories (article 47 and 48).

The Agreement will enter into force definitively as soon after 30 June 1976 as instruments of ratification, approval or acceptance have been deposited by six producing countries holding together at least 950 votes and nine consuming countries holding together at least 300 votes (article 49).

Article 50 lays down that if the Agreement has not entered into force definitively by 1 July 1976 (or, if the Fourth Agreement is extended, by the day following the termination of that Agreement), the Agreement shall then enter into force provisionally for Governments which have deposited instruments of ratification, approval, acceptance or accession, or notifications of intention to do so, if such instruments or notifications have been deposited by six producing countries holding together at least 950 Votes and nine consuming countries holding together at least 300 votes¹.

As regards the question of participation by the Community and its Member States in the Fifth Agreement, there are a number of reasons which militate in favour of participation.

- The results of the negotiations can be considered satisfactory in that a better balance has been achieved in the Fifth Agreement between the interests of the producer and consumer countries, both as regards the instruments and the operation of the Agreement;
- The Community has stated on many occasions in international forums that it supports the principle of the conclusion of international agreements on certain commodities.

¹It should also be noted that article 50 (b) provides that : "If within six months after the termination of the Fourth Agreement, this Agreement has entered into force provisionally but not definitively as laid down in article 49, the Executive Chairman shall as soon as possible convene a session or sessions of the Council to consider the position. If however, the entry into force remains provisional, this Agreement shall be terminated not later than one year after the provisional entry into force."

In this spirit, the Community is already a party to the Fourth Agreement. This is particularly important at the present time, since 1976 will be marked by the fourth session of UNCTAD and by the work of the Conference on International Economic Cooperation;

The fact that the Agreement contains a number of provisions falling within the scope of the common commercial policy (article 113 of the EEC Treaty) is a further reason why the Community should participate alongside its Member States, which, since they are already parties to the Fourth Agreement, should also participate in the Fifth Agreement.

On the basis of these considerations, the Commission considers that provision should be made for participation by all the Member States and the Community as such in the Fifth International Tin Agreement. As regards the arrangements for bringing this about, the Commission proposes that :

- (a) the Community, and those Member States which have not already done so, sign the Agreement before 30 April 1976;
- (b) the Member States deposit before 1 July 1976 either their instruments of ratification, approval or acceptance, or notifications of their intention to ratify, approve or accept the Agreement;
- (c) the Community, on the assumption that the Agreement will not enter into force definitively on 1 July 1976, deposit before that date the notification of its intention to approve the Agreement, so that the Agreement can be provisionally applied by the Community in accordance with Article 50.

The Commission therefore recommends that the Council :

decide that the Fifth International Tin Agreement will be signed as soon as possible before 30 April 1976 on behalf of the European Economic Community, subject to conclusion of the Agreement;

decide, on the basis of the text annexed hereto, that the Community will deposit with the Secretary-General of the United Nations before 1 July 1976 the notification of its intention to approve the Agreement, so as to be able to apply it provisionally when it enters into force in accordance with Article 50.

The text of the Agreement will be annexed to the Decision, which will be published in the Official Journal of the European Communities.

RECOMMENDATION FOR A COUNCIL DECISION

on the notification of the intention of the European Economic Community to accept the Fifth International Tin 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 is a party to the Fourth International Tin Agreement;

Whereas the Council has decided to sign the Fifth International Tin Agreement on behalf of the Community before 30 April 1976, subject to the conclusion of the Agreement;

Whereas the Community should give notification of its intention to approve the Agreement so as to be able to apply it provisionally pending the completion of the internal procedures necessary for the conclusion thereof,

HAS ADOPTED THIS DECISION :

Sole Article

1. In accordance with Article 48 of the Fifth International Tin Agreement, the European Economic Community shall deposit with the Secretary-General of the United Nations Organisation before 1 July 1976 the notification annexed to this Decision stating that the Community intends to approve **the Agreement and that the Community will consider itself provisionally a party to the Agreement when it enters into force provisionally in accordance with Article 50.**
The text of the Agreement is annexed to this Decision.
2. The President of the Council shall be authorized to designate the person empowered to deposit this notification with the Secretary-General of the United Nations Organisation.

¹ The date on which the Agreement shall enter into force provisionally will be published in the Official Journal of the European Communities.

NOTIFICATION

of intention to approve the Fifth International Tin Agreement.

It will not be possible for the European Economic Community to complete the institutional procedures referred to in Article 48 of the Agreement before 1 July 1976.

The Community is therefore depositing this notification of its intention to approve the Agreement in accordance with the said article.

In depositing this notification, the Community will consider itself provisionally a party to the Agreement, with all the rights and obligations arising therefrom, when it enters into force provisionally in accordance with Article 50 and until such time as the Council of the European Communities shall adopt a definitive decision in the matter.

Note explicative sur les incidences financières
de la proposition sur le budget des Communautés
Européennes

Sur base du nouveau système, réglant les contributions au budget administratif, adopté pour le Vème Accord, la Communauté en tant qu'Organisation intergouvernementale - assimilée à un pays participant mais ne détenant pas elle-même de voix, pourrait être appelée à verser une contribution égale à 3% du budget administratif: à titre indicatif cette contribution pour l'exercice 1975/76 s'élèverait à un montant d'environ £ 1.000,-.

La cotisation volontaire de £ 2.000,- prévue au budget de la Commission pour l'exercice 1976 (poste 444) couvrirait par conséquent une telle cotisation obligatoire.

FICHE FINANCIERE SUCCINCTE

concernant

le "projet de communication de la Commission au Conseil relative au Vème Accord International sur l'Etain"

1. Ligne budgétaire concernée	Art. 444
2. Intitulé de l'action	Application de l'accord International sur l'Etain
3. Base juridique	Art. 113 Traité CEE
4. Objectif(s) de l'action	Assurer la participation de la Communauté au budget administratif du Cinquième Accord International sur l'Etain
5. Incidence financière de l'action	<p>5.1 La Communauté est susceptible d'être appelée à contribuer obligatoirement 0,3 % au budget administratif. Cette contribution pourrait être estimée à environ £ 1000 à £ 1.500 (2.400 à 3.600 U.C.) pour l'exercice 76/77</p> <p>5.2 Une dépense obligatoire analogue est prévisible pour les 4 exercices suivants</p>
6. Financement	Crédit de 4.800 U.C. est prévu à l'art.444 du budgét 1976.