UNITED
NATIONS

TD

United Nations Conference on Trade and Development

Distr.
LIMITED

TD/RUBBER.3/L.1/Rev.1
3 October 1994

Original: ENGLISH

UNITED NATIONS CONFERENCE ON NATURAL RUBBER, 1994
Geneva, 3 October 1994
Second part
Agenda item 8

RENEGOTIATION OF THE INTERNATIONAL NATURAL RUBBER AGREEMENT, 1987

Note by the UNCTAD secretariat

The President of the United Nations Conference on Natural Rubber, 1994, in his letter dated 18 July 1994, requested the Officer-in-Charge of UNCTAD to circulate the text of five draft articles - articles 12, 20, 28, 29 and 31 -as proposals submitted by the President, following his consultations pursuant to paragraph 2 of the resolution adopted by the Conference on 15 April 1994.

GE.94-54050

Article 12
Executive Director, Deputy Executive Director, Buffer Stock Manager and other staff

1. The Council shall, by special vote, appoint an Executive Director, Deputy Executive Director and a Buffer Stock Manager.

2. The terms and conditions of appointment of the Executive Director, Deputy Executive Director and the Buffer Stock Manager shall be determined by the Council.

3. The Executive Director shall be the chief administrative officer of the Organization and shall be responsible to the Council for the administration and operation of this Agreement in accordance with the provisions of this Agreement and decisions of the Council.

3a. The Deputy Executive Director shall at all times be responsible to the Executive Director. The Deputy Executive Director shall act as the Executive Director when the latter is for any reason unable to perform his duties or when the office of the Executive Director is temporarily vacant, in which event, he shall be directly responsible to the Council for the administration and operation of the Agreement. It is expected that the Deputy Executive Director should be involved in all matters pertaining to the Agreement.

4. The Buffer Stock Manager shall be responsible to the Executive Director and the Council for the functions conferred upon him by this Agreement, as well as for such additional functions as the Council may determine. The Buffer Stock Manager shall be responsible for the day-to-day operation of the Buffer Stock, and shall keep the Executive Director informed of the general operations of the Buffer Stock so that the Executive Director may ensure its effectiveness in meeting the objectives of this Agreement.

5. The Executive Director shall appoint the staff in accordance with regulations established by the Council. The staff shall be responsible to the Executive Director.

6. Neither the Executive Director nor any member of the staff, including the Deputy Executive Director and the Buffer Stock Manager, shall have any financial interest in the rubber industry or trade, or associated commercial activities.

7. In the performance of their duties, the Executive Director, the Deputy Executive Director, the Buffer Stock Manager and other staff shall not seek or receive instructions from any member of from any other authority external to the Council or to any committee established under article 18. They shall refrain from any action which might reflect on their positions as international officials responsible only to the Council. Each member shall respect the exclusively international character of the responsibilities of the Executive Director, the Deputy Executive Direction, the Buffer Stock Manager and other staff and shall not seek to influence them in the discharge of their responsibilities.

Article 20
Privileges and immunities

1. The Organization shall have legal personality. In particular, but without prejudice to the provisions of paragraph 4 of article 48, the Organization shall have the capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings.

2. The Organization shall, as soon as possible, seek to conclude with the Government of the country in which the headquarters of the Organization is situated (hereinafter referred to as the host Government) an agreement (hereinafter referred to as the Headquarters Agreement) relating to such status, privileges and immunities of the Organization, of its Executive Director, Deputy Executive Director, Buffer Stock Manager as well as other staff and experts, and of members' delegations, as are reasonably necessary for the purpose of discharging their functions.

3. Pending the conclusion of the Headquarters Agreement, the Organization shall request the host Government to grant, to the extent consistent with its laws, exemption from taxation on remuneration paid by the Organization to its employees, and on the assets, income and other property of the Organization.

4. The Organization may also conclude, with one or more Governments, 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. If the headquarters of the Organization is moved to another country, the Government of that country shall, as soon as possible, conclude with the Organization a Headquarters Agreement to be approved by the Council.

6. The Headquarters Agreement shall be independent of this Agreement. It shall, however, terminate:

(a) By agreement between the host Government and the Organization;

(b) In the event that the headquarters of the Organization is moved from the country of the host Government; or

(c) In the event that the Organization ceases to exist.

Article 28
Payment of contributions to the Buffer Stock Account

1. There shall be an initial contribution in cash to the Buffer Stock Account equivalent to 70 million Malaysian ringgit. This amount, which represents a working capital reserve for buffer stock operations, shall be apportioned among all members according to their percentage shares of votes, taking into consideration paragraph 3 of article 27, and shall be due within 60 days after the first Council session after the entry into force of this Agreement. The initial contribution of a member due in accordance with this paragraph shall, with the consent of that member, be made wholly or in part by transfer of that member’s share in the cash held in the Buffer Stock Account under the International Natural Rubber Agreement, 1987.

2. The Executive Director may at any time, and independently of the arrangements in paragraph 1 of this article, call for contributions provided that the Buffer Stock Manager has certified that the Buffer Stock Account may require such funds in the next four months.

3. When a contribution is called, it shall be due from members within 60 days of the date of notification. If requested by any member or members accounting for 200 votes in the Council, the Council shall meet in special session and may modify or disapprove the call-up based on an assessment of the need for funds to support buffer stock operations in the next four months. If the Council cannot reach a decision, contributions shall be due from members in accordance with the Executive Director’s notification.

4. Contributions called up for the normal and the contingency Buffer Stock shall be valued at the lower trigger action price in effect at the time such contributions are called.

5. The call-up of contributions to the contingency Buffer Stock shall be handled as follows:

(a) At the 300,000-tonne review provided for in article 31, the Council shall make all financial and other arrangements which may be necessary for the prompt implementation of the contingency Buffer Stock including call-up of funds if necessary;

(b) If the Council by special vote under article 30, paragraph 2 decides to bring the contingency Buffer Stock into operation, then the Council shall ensure that:

(i) All members have made all necessary arrangements for financing their respective shares of the contingency Buffer Stock; and

(ii) The contingency Buffer Stock has been invoked and is fully primed for action in accordance with the terms of article 30.

Article 29
Price range

1. There shall be established, for the operations of the Buffer Stock:

(a) A reference price;

(b) A lower intervention price;

(c) An upper intervention price;

(d) A lower trigger action price;

(e) An upper trigger action price;

(f) A lower indicative price; and

(g) An upper indicative price.

2. On the entry into force of this Agreement, the reference price shall be initially fixed at x* Malaysian/Singapore cents per kilogramme.

3. There shall be an upper intervention price and a lower intervention price calculated respectively at plus and minus 18 per cent of the reference price, unless the Council, by special vote, decides otherwise.

4. There shall be an upper trigger action price and a lower trigger action price calculated respectively at plus and minus 24 per cent of the reference price, unless the Council, by special vote, decides otherwise.

5. The prices calculated in accordance with paragraphs 3 and 4 of this article shall be rounded to the nearest cent.

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* The new reference price will be set at a level such that the lower trigger action price which will be that applicable at the time of expiry of INRA 1987, will be 24 per cent below that level.

If, for example, the reference price at the end of INRA 1987, is 196.84 Malaysian/Singapore cents per kilogramme (and the lower trigger action price is 157 Malaysian/Singapore cents per kilogramme), then the new reference price will be 206.58 Malaysian/Singapore cents per kilogramme.

Article 31

Review and revision of the price range

A. Reference price

1. Any review or revision of the reference price, including those following net changes in the Buffer Stock under paragraph 2 of this article, shall be based on market trends. Immediately before the first meeting of the Council after the Agreement enters into force and every [6] [12] [18] months thereafter, the Buffer Stock Manager shall calculate the average daily market indicator prices for the previous six months and compare this value with the two intervention prices. The date of this calculation shall be fixed at least three months in advance except for the first review and immediately precede a Council session.

(a) If the average of the six-month daily market indicator price is at the upper intervention price, at the lower intervention price, or between these two prices, no revision of the reference price shall take place.

(b) If the average of the six-month daily market indicator price is below the lower intervention price, the reference price shall be automatically revised downward by [3] [5] per cent of its level and become effective the following day. Normally the Council would meet on that day and take note of the revision. The Council may review the reference price and may, by special vote, decide on a higher percentage adjustment downwards of the reference price.

(c) If the average of the six-month daily market indicator price is above the upper intervention price, the reference price shall be automatically revised upwards by [3] [5] per cent of its level and become effective the following day. Normally the Council would meet on that day and take note of the revision. The Council may review the reference price and may, by special vote, decide on a higher percentage adjustment upwards of the reference price.

For the purposes of the comparison, the reference price and the six-month daily market indicator price will be calculated to two decimal places.

2. Following a net change to the Buffer Stock of 100,000 tonnes since the last regular session of the Council, the Executive Director shall convene a special session of the Council to assess the situation. The Council may, by special vote, decide to take appropriate measures which may include:

(a) Suspension of buffer stock operations;

(b) Change in the rate of buffer stock purchases or sales; and

(c) Revision of the reference price.

3. If net buffer stock purchases or sales amounting to 300,000 tonnes have taken place since (a) the last revision under paragraph 3 of article 31 of the International Natural Rubber Agreement, 1987, (b) the last revision under this paragraph, or (c) the last revision under paragraph 2 of this article, whichever is most recent, the reference price shall be lowered or raised, respectively, by 3 per cent of its current level unless the Council, by special vote, decides to lower or raise it, respectively, by a higher percentage amount.

4. Any adjustments of the reference price for any reason shall not be such as to allow the trigger action prices to breach the lower or upper indicative prices.

B. Indicative prices

5. The Council may, by special vote, revise the lower and upper indicative prices at reviews provided for in this section of this article.

6. The Council shall ensure that any revision of indicative prices is consistent with evolving market trends and conditions. In this connection, the Council shall take into consideration the trend of natural rubber prices, consumption, supply, production costs and stocks, as well as the quantity of natural rubber held in the Buffer Stock and the financial position of the Buffer Stock Account.

7. The lower and upper indicative prices shall be reviewed:

(a) 30* months after the last review pursuant to paragraph 7 (a) of article 31 of the International Natural Rubber Agreement, 1987, or in the event that this Agreement enters into force after [...], at the first session of the Council under this Agreement, and every 30* months thereafter;

(b) In exceptional circumstances, at the request of a member or members accounting for 200 or more votes in the Council; and

(c) When the reference price has been revised (i) downwards since the last revision of the lower indicative price or the entry into force of the International Natural Rubber Agreement, 1987, or (ii) upwards since the last revision of the upper indicative price or the entry into force of the International Natural Rubber Agreement, 1987, by at least 3 per cent under paragraph 3 of this article and at least [3][5] per cent under paragraph 1 of this article, or by at least this amount under paragraphs 1, 2 and/or 3 of this article, provided that the average of the daily market indicator price for the 60 days subsequent to the last revision of the reference price is either below the lower intervention price or above the upper intervention price, respectively.

8. Notwithstanding paragraphs 5, 6 and 7 of this article, there shall be no upward revision in the lower or upper indicative price if the average of the daily market indicator prices over the six-month period prior to a review of the price range under this article is below the reference price. Similarly, there shall be no downward revision in the lower or upper indicative price if the average of the daily market indicator prices over the six-month period prior to a review of the price range under this article is above the reference price.

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* Depending on the duration of the Agreement.