

SECOND ACCOUNT OPERATIONS

BASIC INSTRUMENTS



COMMON FUND FOR COMMODITIES
Fifth Edition, January 2008

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Amsterdam, Netherlands

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I

PROVISIONS OF THE AGREEMENT

ESTABLISHING THE

COMMON FUND FOR COMMODITIES

WHICH DEAL DIRECTLY WITH

SECOND ACCOUNT OPERATIONS

PROVISIONS OF THE AGREEMENT ESTABLISHING THE COMMON FUND FOR COMMODITIES WHICH DEAL DIRECTLY WITH SECOND ACCOUNT OPERATIONS

*(The Agreement Establishing the Common Fund for Commodities
entered into force on 19 June 1989)*

Article 3

FUNCTIONS

In fulfilment of its objectives, the Fund shall exercise the following functions:

- (a) ...
- (b) To finance, through its Second Account, measures in the field of commodities other than stocking,....
- (c) To promote co-ordination and consultation, through its Second Account, with regard to measures in the field of commodities other than stocking, and their financing, with a view to providing a commodity focus.

Article 7

RELATIONSHIP OF ICOs AND ICBs WITH THE FUND

- 1. ...
- 2. ...
- 3. ...
- 4. ...
- 5. ...
- 6. ...
- 7. ...
- 8. ...

9. For the purpose of the Second Account, the Executive Board shall from time to time designate appropriate commodity bodies, including ICOs, whether or not they are Associated ICOs, as ICBs, provided that they meet the criteria set out in Schedule C.

Article 10

SUBSCRIPTION OF SHARES

1. ...
2. ...
3. Each Member may allocate to the Second Account a part of its subscription under paragraph 1 (a) of this Article with a view to an aggregate allocation to the Second Account, on a voluntary basis, of not less than 52,965,300 Units of Account.
4. ...

Article 13

VOLUNTARY CONTRIBUTIONS

1. The Fund may accept voluntary contributions from Members and other sources. Such contributions shall be paid in Usable Currencies.
2. The target for the initial voluntary contributions for use in the Second Account shall be 211,861,100 Units of Account, in addition to the allocation made in accordance with Article 10, paragraph 3.
3. (a) The Governing Council shall review the adequacy of the resources of the Second Account not later than the end of the third year after the entry into force of this Agreement. In the light of the activities of the Second Account, the Governing Council may also undertake such a review at such other times as it decides.

(b) In the light of any such reviews, the Governing Council may decide to replenish the resources of the Second Account and make the necessary arrangements. Any such replenishments shall be voluntary for Members and in accordance with this Agreement.
4. Voluntary contributions shall be made without restrictions as to their use by the Fund, except as to their designation by the contributor for use in the First or Second Account.

Article 16

GENERAL PROVISIONS

A. Use of resources

1. ...

B. Two Accounts

2. The Fund shall establish, and maintain its resources in, two separate Accounts: a first Account, with resources as provided for in Article 17, paragraph 1, to contribute to the financing of commodity stocking; and a Second Account, with resources as provided for in Article 18, paragraph 1, to finance measures in the field of commodities other than stocking, without jeopardizing the integral unity of the Fund. Such separation of Accounts shall be reflected in the financial statements of the Fund.

3. The resources of each Account shall be held, used, committed, invested or otherwise disposed of entirely separately from the resources of the other Account. The resources of one Account shall not be charged with losses, or used to discharge liabilities arising out of the operations or other activities of the other Account.

C. The Special Reserve

4. ...

D. General powers

5. ...

E. General operating principles

6. The Fund shall operate according to the provisions of this Agreement and any rules and regulations which the Governing Council may adopt pursuant to Article 20, paragraph 6.

7. The Fund shall make arrangements to ensure that the proceeds of any loan or grant made or participated in by the Fund is used only for the purposes for which the loan or grant was made.

8. ...

9. ...

10. The Governing Council shall adopt suitable rules and regulations for the procurement of goods and services from the resources of the Fund. Such rules and regulations shall conform, as a general rule, to the principles of international competitive bidding among suppliers in the territories of Members, and shall give appropriate preference to experts, technicians and suppliers from developing countries Members of the Fund.

11. The Fund shall establish close working relationships with international and regional financial institutions and may, as is practicable, establish such relationships with national entities of Members, whether public or private, which are concerned with investment of development funds in commodity development measures. The Fund may participate in co-financing with such institutions.

12. In its operations and within its sphere of competence, the Fund shall co-operate with ICBs and Associated ICOs in the protection of the interest of developing importing countries, if such countries are adversely affected by measures under the Integrated Programme for Commodities.

13. ...

Article 18

THE SECOND ACCOUNT

A. Resources

1. The resources of the Second Account shall consist of:
 - (a) The part of Directly Contributed Capital allocated to the Second Account in accordance with Article 10, paragraph 3;
 - (b) Voluntary contributions made to the Second Account;
 - (c) Such net income as may accrue from time to time in the Second Account;
 - (d) Borrowings;
 - (e) Any other resources placed at the disposal of, received or acquired by, the Fund for its Second Account operations pursuant to this Agreement.

B. Financial limits for the Second Account

2. The aggregate amount of loans and grants made, and of participation therein, by the Fund through its Second Account operations shall not exceed the aggregate amount of the resources of the Second Account.

C. Principles of Second Account operations

3. The Fund may make or participate in loans and, except for that portion of the Directly Contributed Capital allocated to the Second Account, grants for the financing of measures in the field of commodities other than stocking from the resources of the Second Account, subject to the provisions of this Agreement and in particular to the following terms and conditions:

- (a) The measures shall be commodity development measures, aimed at improving the structural conditions in markets and at enhancing the long term competitiveness and prospects of particular commodities. Such measures shall include research and development, productivity improvements, marketing and measures designated to assist, as a rule by means of joint financing or through technical assistance, vertical diversification, whether undertaken alone, as in the case of perishable commodities and other commodities whose problems cannot be adequately solved by stocking, or in addition to and in support of stocking activities.
- (b) The measures shall be jointly sponsored and followed up by producers and consumers within the framework of an ICB.
- (c) The operations of the Fund in the Second Account may take the form of loans and grants to an ICB or an agency thereof, or to a Member or Members designated by such ICB on terms and conditions which the Executive Board decides are appropriate, having regard to the economic situation of the ICB or the Member or Members concerned and the nature and requirements of the proposed operation. Such loans may be covered by governmental or other suitable guarantees from the ICB or the Member or Members designated by such ICB.
- (d) The ICB sponsoring a project to be financed by the Fund through its Second Account shall submit to the Fund a detailed written proposal specifying the purpose, duration, location and cost of the project and the agency responsible for its execution.
- (e) Before any loan or grant is made, the Managing Director shall present to the Executive Board a detailed appraisal of the proposal along with his recommendations and the advice of the Consultative Committee, as appropriate, in accordance with Article 25, paragraph 2. Decisions with regard to the selection and approval of proposals shall be made by the Executive Board by a Qualified

Majority in accordance with this Agreement and any rules and regulations for the operations of the Fund adopted pursuant thereto.

- (f) For the appraisal of project proposals presented to it for financing, the Fund shall, as a general rule, use the services of international or regional institutions and may, where appropriate, use the services of other competent agencies and consultants specialized in the field. The Fund may also entrust to such institutions the administration of loans or grants and the supervision of the implementation of projects financed by it. Such institutions, agencies and consultants shall be selected according to rules and regulations adopted by the Governing Council.
- (g) In making or participating in any loan, the Fund shall pay due regard to the prospects that the borrower and any guarantor shall be in a position to meet their obligations to the Fund in respect of such transactions.
- (h) The Fund shall enter into an agreement with the ICB, an agency thereof, the Member or Members concerned, specifying the amount, terms and conditions of the loan or grant and providing, *inter alia*, for any governmental or other appropriate guarantees in accordance with this Agreement and with the project as they are actually incurred.
- (i) Funds to be provided under any financing operation shall be made available to the recipient only to meet expenses in connection with the project as they are actually incurred.
- (j) The Fund shall not refinance projects initially financed from other sources.
- (k) Loans shall be repayable in the currency or currencies loaned.
- (l) The Fund shall as far as possible avoid duplication of its Second Account Activities with existing international and regional financial institutions, but may participate in co-financing with such institutions.
- (m) In determining its priorities for the use of the resources of the Second Account, the Fund shall give due emphasis to commodities of interest to the least developed countries.
- (n) In considering projects for the Second Account due emphasis shall be given to the commodities of interest to developing countries, particularly those of small producers-exporters.
- (o) The Fund shall pay due regard to desirability of not using a disproportionate amount of its Second Account resources for the benefit of any particular commodity.

D. Borrowings for the Second Account

4. The Fund’s borrowing for the Second Account, under Article 16, paragraph 5 (a), shall be in accordance with rules and regulations to be adopted by the Governing Council and shall be subject to the following:

- (a) Such borrowing shall be on concessional terms to be specified in rules and regulations to be adopted by the Fund and its proceeds shall not be re-lent on terms which are more concessional than those on which they are acquired.
- (b) For the purpose of accounting, the proceeds of the borrowing shall be placed in a loan account whose resources shall be held, used, committed, invested or otherwise disposed of, entirely separately from other resources of the Fund, including the other resources of the Second Account.
- (c) The other resources of the Fund, including other resources of the Second Account, shall not be charged with losses, or used to discharge liabilities arising out of operations or other activities of such a loan account.
- (d) The borrowings for the Second Account shall be approved by the Executive Board.

Article 20

GOVERNING COUNCIL

- 1. ...
- 2. ...
- 3. The Governing Council may delegate to the Executive Board the authority to exercise any powers of the Governing Council, except the power:
 - (a) ...
 - (b) ...
 - (c) ...
 -
 -
 - (m) To decide on replenishments of the Second Account in accordance with Article 13.
- 4. ...
- 5. ...
- 6. ...

7. ...
8. ...

Article 22

EXECUTIVE BOARD

1. ...
2. ...
3. ...
4. ...
5. ...
6. ...
7. The Executive Board may invite the executive heads of Associated ICOs and of ICBs to participate, without vote, in the deliberations of the Executive Board.
8. ...
9. ...

Article 25

CONSULTATIVE COMMITTEE

1. (a) The Governing Council shall, taking into account the need to make the Second Account operational as soon as possible, establish as early as possible a Consultative Committee, in accordance with rules and regulations to be adopted by the Governing Council, to facilitate the operations of the Second Account.

(b) In the composition of the Consultative Committee, due regard shall be paid to the need for a broad and equitable geographical distribution, individual expertise in commodity development issues, and the desirability of a broad representation of interests, including of voluntary contributors.
2. The functions of the Consultative Committee shall be:
 - (a) To advise the Executive Board on technical and economic aspects of the programmes of measures proposed by ICBs to the Fund for financing and co-financing through the Second Account and on the priorities to be attached to such proposals;

- (b) To advise, at the request of the Executive Board, on specific aspects connected with the appraisal of particular projects being considered for financing through the Second Account.
- (c) To advise the Executive Board on guidelines and criteria for determining the relative priorities among measures within the scope of the Second Account, for appraisal procedures, for making grants and loan assistance, and for co-financing with other international financial institutions and other entities;
- (d) To comment on reports from the Managing Director on the supervision, implementation and evaluation of projects being financed through the Second Account.

Article 38

SETTLEMENT OF OBLIGATIONS: SECOND ACCOUNT

1. Liabilities incurred by the Fund in respect of Second Account operations shall be discharged through the use of the resources of the Second Account, pursuant to Article 18, paragraph 4.
2. Distribution of any remaining assets of the Second Account shall be made first to Members up to the value of their subscriptions of Shares of Directly Contributed Capital allocated to the Account pursuant to Article 10, paragraph 3, and then to contributors to the Account pro rata to their share in the total amount contributed pursuant to Article 13.

SCHEDULE C

Eligibility criteria for ICBs

1. An ICB shall be established on an intergovernmental basis, with membership open to all States Members of the United Nations or of any of its specialized agencies or of the International Atomic Energy Agency.
2. It shall be concerned on a continuing basis with the trade, production and consumption aspects of the commodity in question.
3. Its membership shall comprise producers and consumers which shall represent an adequate share of exports and of imports of the commodity concerned.

4. It shall have an effective decision-making process that reflects the interests of its participants.

5. It shall be in a position to adopt a suitable method for ensuring the proper discharge of any technical or other responsibilities arising from its association with the activities of the Second Account.

II

REGULATIONS AND RULES

REGULATIONS AND RULES

FOR

SECOND ACCOUNT OPERATIONS

REGULATIONS AND RULES FOR SECOND ACCOUNT OPERATIONS

(Adopted by the Governing Council on 26 July 1991 at its Second Annual Meeting, and amended by the Governing Council on 5 December 2000 at its Twelfth Annual Meeting¹, on 10 December 2002 at its Fourteenth Annual Meeting², on 7 December 2004 at its Sixteenth Annual Meeting³, on 28 November 2006 at its Eighteenth Annual Meeting⁴, and on 28 November 2007 at its Nineteenth Annual Meeting⁵)

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¹ Regulation VI (Decisions GC/XII/2 and GC/XII/16) and former Regulation VII (deleted 2007) (Decision GC/XII/16).

² Regulation IV (Decision GC/XIV/7).

³ Regulations former VII (deleted 2007), and VIII (Decision GC/XVI/6).

⁴ Regulation IV (Decision GC/XVIII/1).

⁵ Regulation V, former VII (deleted), IX, XXI, XXIII (Decision GC/XIX/4)

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REGULATIONS AND RULES FOR SECOND ACCOUNT OPERATIONS

Whereas the Second Account of the Common Fund has been established with the objectives, functions and resources provided in the Agreement Establishing the Common Fund for Commodities, the present Regulations and Rules contain the provisions under which the resources and facilities of the Second Account may be utilized. They are adopted under the authority of and intended to be complementary to the Agreement, and they shall be construed accordingly. The provisions of the Agreement shall have primacy over these Regulations and Rules. These Regulations and Rules are to be supplemented with Operational Policy Papers.

REGULATION I. DEFINITIONS

1. For the purpose of these Regulations and Rules:
 - (a) “Agreement” means the Agreement of 27 June 1980 Establishing the Common Fund for Commodities;
 - (b) “Commodity development measure” means a measure falling within the description made in Article 18, section 3 of the Agreement;
 - (c) “Project” means the realization of one or more commodity development measures within a given time frame and for an established purpose;
 - (d) “Project preparation” means the completion of activities required to formulate the general concept of the project and its economic, technical and developmental aspects, to be justified by feasibility studies and complemented with the conditions or plan of operations necessary to ensure that the project is designed and implemented in the most efficient and effective manner;
 - (e) “Project Agreement” means a mutually agreed document setting out the project's objectives, terms and conditions of the funding arrangements, plan of operations, and administration of the signing parties; including the roles and responsibilities of the Guarantors, executing agency and supervisory body, as necessary;
 - (f) “Project budget” means that part of a project agreement that provides information on all financial resources of the project and the authorization by which expenditures may be incurred to carry out the project;
 - (g) “Project executing agency” means the person or legal entity responsible for executing the project in accordance with the project agreement;

- (h) “Project result” means any material or other outcome of a fully or partly realized project;
- (i) “Supervisory Body” means a body responsible for supervising and monitoring the execution and implementation of a project and for making such decisions with regard to the project as are specifically entrusted to it in the project agreement;
- (j) “Project output” means the concrete quantitative and qualitative results of the assistance, produced through the sound management of inputs (i.e. goods, services, studies, technologies, and know-how, etc.) required to achieve the project's objectives.

2. The definitions set out in Article 1 of the Agreement shall be applicable to these regulations.

REGULATION II. OPERATIONAL POLICIES

1. The resources of the Second Account shall be used exclusively for the purpose of making or participating in loans and grants for the financing of commodity development measures sponsored by an ICB and aimed at improving the structural conditions of commodity markets and at enhancing the long term competitiveness and prospects of particular commodities.

2. In providing such finance, the Fund shall observe the relevant provisions of the Agreement and, in particular, Article 18.3 (j) and Article 18.3 (l) to (o).

3. The Executive Board shall, with the aim of maximizing the benefit of the Second Account Operations, determine priorities among project proposals submitted to the Fund for financing in accordance with paragraphs 1 and 2. of this Regulation. To this end, it shall, based on advice of the Consultative Committee, develop appropriate guidelines and criteria. Such guidelines and criteria shall be reviewed annually by the Executive Board with the advice of the Consultative Committee taking into account, inter alia, the aims of the Second Account, developments in commodity markets and activities pursued by other organizations in related fields.

4. The Executive Board shall further, based on advice from the Consultative Committee, adopt guidelines and criteria for the provision of loans and/or grants to projects approved for financing through the Second Account in accordance with Article 18.3 (c) of the Agreement. Such guidelines and criteria, which will facilitate the Board's decisions on the size and form of financial assistance to be provided by the Fund to individual projects, shall be reviewed and adjusted periodically by the Executive Board, with the advice of the Consultative Committee, with a view to maximising the benefits derived from Second Account resources and taking into account the prospects of co-financing with other institutions in accordance with Article 16.11 of the Agreement.

5. The Executive Board shall on a regular basis monitor and measure the impact of projects financed from the Second Account and their effectiveness in furthering the overall aims of the Second Account. To this end, it shall develop, on the advice of the Consultative Committee, appropriate performance indicators.

6. Based upon the current three-year projections of Second Account activities, to be provided by the Managing Director, and taking into account, inter alia, the principles embodied in Article 18.3 (m), (n) and (o) of the Agreement, the Executive Board shall annually decide upon the operational programme for the following financial year. The operational programme shall provide:

- (a) A list of planned projects and activities for the new financial year; specifying:
 - (i) project description and sponsoring ICB;
 - (ii) total cost (grant or loan);
 - (iii) share of financing by CFC (grant and loan);
 - (iv) co-financing;
- (b) Cash flow projections for approved/on going projects and proposed projects, as necessary;
- (c) Schedule of disbursement and corresponding financial requirements (including calls on promissory notes already issued and cash payments);
- (d) Projected income from Second Account Operations including repayments from outstanding loans and service charges.

REGULATION III. DESIGNATION OF ICBs

1. An international commodity body that wishes to become designated as an ICB under Article 7.9 of the Agreement shall submit a written request to the Fund for consideration by the Executive Board. The request shall contain a declaration on the compatibility of the requesting institution with the requirements laid down in Schedule C of the Agreement. The request may be accompanied by documentation in support of this declaration such as a list of its members, its organizational structure and decision making procedures, the frequency of meetings of its committees and governing bodies and its methods of financing.

2. The Executive Board shall designate appropriate commodity bodies as International Commodity Bodies (ICBs) provided they meet the criteria set out in Schedule C of the Agreement.

3. The Executive Board shall annually review the list of designated ICBs. The Board may withdraw a designation if the Commodity Body in question no longer fulfils the requirements of Schedule C of the Agreement. It may also take appropriate action, including withdrawal of designation, if the commodity body in question fails to comply with the requirements of the Project Agreement concluded with the Fund.

REGULATION IV. SUBMISSION AND APPRAISAL OF PROJECT PROPOSALS

1. Project identification and formulation and the submission of proposals to the Fund shall be the responsibility of ICBs. The Common Fund will inform ICBs of the criteria and of the appraisal system which it will apply to the projects presented. It will also inform them of the format in which submission should be made at each stage of the selection process in accordance with Regulation V, 5 (f) to (i).

2. When submitting a project proposal in accordance with Article 18.3 (d) of the Agreement, the ICB shall submit information on the developmental and environmental aspects of the proposal.

3. The Managing Director shall appraise project proposals submitted for financing from the Second Account, and ensure that the proposals are in accordance with the operational policies of the Fund and the priorities adopted by the Executive Board in accordance with Regulation II.3. In all cases where the total financial contribution sought from the Fund does not exceed USD 120,000, the Managing Director can approve the project for financing by the Fund, taking into account the advice of the Consultative Committee. Whenever the Managing Director approves a project, the Managing Director will take the necessary steps towards its implementation and finalization in accordance with the Regulations and Rules for the Implementation of Fast Track Projects.

4. In all cases where the total financial contribution sought from the Fund exceeds USD 120,000, a written appraisal by the Managing Director, including the recommendation of the Consultative Committee as appropriate, shall be submitted to the Executive Board. The Board shall undertake an assessment of the proposal and its eligibility for financing through the Second Account, based on which it may:

- (a) Approve the project;
- (b) Decide to defer its consideration of the proposal for a definite period or pending further information being provided by the ICB concerned; or
- (c) Decide not to proceed with the proposal.

A decision to approve the project shall be taken by the Executive Board with a Qualified Majority.

5. If the Executive Board approves the project, the Managing Director will take the necessary steps towards its implementation and finalization in accordance with Regulations V through XXII.

REGULATION V. THE PROJECT AGREEMENT

1. The Project Agreement shall be concluded between the Fund, the ICB, and the Project Executing Agency, and, in the case that the Supervisory Body shall not be the ICB sponsoring the Project, such other Supervisory Body designated in accordance with the provisions of Regulation IX, paragraph 1. If the nature of the project makes it desirable, the government of a country in which the project takes place may be invited to become a party to the Project Agreement.

2. When the Executive Board decides to finance a project fully or partly through grant(s) from the Second Account, the terms and conditions of such grant(s) shall be covered by the Project Agreement. The recipient of a grant shall normally be the ICB sponsoring the project but the Executive Board may decide that any other of the entities specified in Article 18.3 (h) of the Agreement shall act as recipient.

3. The proceeds of the grant shall be made directly available for the purpose of the project in accordance with the provisions of the Project Agreement and with the provisions of Regulation X.

4. In case the project is cancelled or suspended, the Fund shall not make any additional transfers from the grant. If however the Fund has a right to reclaim certain assets from the project it may undertake such reasonable expenditure from the grant as is required to preserve the value of those assets. With respect to the amount referred to in paragraph 5 (c) of this Regulation the Fund may continue to make transfers required to meet the project's contractual obligations in so far as such obligations have been incurred prior to the cancellation or suspension of the project.

5. The Project Agreement shall contain a detailed description of the project and of the rights and obligations of its parties, and, in accordance with Article 18.3 (h) of the Agreement, a specification of the amount, terms and conditions of the grant. As a minimum, the following subjects shall be included in sufficient detail to enable adequate supervision, monitoring and evaluation of the project:

- (a) The total amount of the grant which shall be denominated in any Usable Currency and shall be disbursed in one or more Usable Currencies;
- (b) The schedule according to which the Fund shall disburse the proceeds from the grant;
- (c) Any amount of the grant which the Fund is not entitled to withhold in case the project is cancelled or suspended;

- (d) In accordance with Article 16.7 of the Agreement an understanding that the proceeds of the grant may only be used for the specific purpose for which the grant was made. Any part of the grant not spent for this purpose shall remain the property of the Fund and shall not give rise to rights or expectations on the part of the recipient;
- (e) In accordance with Article 18.3 (i) of the Agreement an understanding that proceeds from the grant will be made available only to meet documented expenses in connection with the project as they are actually incurred.
- (f) A description of the objectives and expected results of the project;
- (g) A listing of the individual measures and activities contained in the project and expected outputs;
- (h) A time schedule for the implementation of the project. If the project is to be carried out in stages a description of what constitutes the completion of each stage;
- (i) An identification of the Project Executing Agency and a description of the Project Executing Agency's responsibilities;
- (j) An identification of the Supervisory Body and a description of the Supervisory Body's functions and responsibilities and of any special powers entrusted to it;
- (k) The project budget containing a listing of sources of finance for the project and their origin including as appropriate a time schedule for when they are to be made available as well as an itemised estimate, by activity, of the expenditure involved. Any contributions in kind towards the project as well as any services provided free of charge shall be listed separately. Copies of documentation relating to the financing of the project such as loan agreements, guarantee agreements, pledges of cash contributions as well as other donations may to the extent practicable, be annexed to the Project Agreement;
- (l) Provisions on reporting, accounting and auditing including deadlines by which reporting and financial statements are to be made;
- (m) Provisions on procurement, if applicable;
- (n) Provisions regarding distribution and dissemination of project results including, where applicable, provisions regarding distribution after the termination of the project of capital goods and other investments acquired for the purpose of the project;

- (o) Provisions describing the circumstances and the procedures under which a decision may be made to temporarily suspend the project;
- (p) Provisions describing the circumstances and the procedures under which a decision may be made to cancel a project prior to completion or alternatively allow a participant to withdraw from it;
- (q) Provisions under which a decision may be made to modify or alter the Project Agreement;
- (r) The proposed method of evaluation and follow-up;
- (s) Where appropriate, the expected rate of return of the project or of the parts of the project for which financing by the Fund is proposed.

REGULATION VI. LOAN AND GUARANTEE AGREEMENTS

1. When the Executive Board decides to finance a project fully or partly through loan(s) from the Second Account such loan(s) shall be covered by a Loan Agreement between the Fund and the borrower(s). Loan Agreements concluded by the Fund in the course of operations under the Second Account shall, in cases where the borrower is not a National Government or Ministry, a National Bank, the Government of an administrative region within a country, an International Financial Institution or a State owned bank involved in development, normally require an appropriate guarantee, or appropriate guarantees, from a guarantor, or guarantors, deemed acceptable by the Fund.
2. The Loan Agreement shall as a minimum specify the following:
 - (a) The total amount of the loan which shall be denominated in any Usable Currency and shall be disbursed in one or more Usable Currencies;
 - (b) The schedule according to which the Fund shall disburse the loan available for use by the project;
 - (c) Any amount of the loan which the Fund is not entitled to withhold in case the project is cancelled or suspended;
 - (d) The bank accounts established in the name of the project to which the Fund may transfer proceeds of the loan for the account of the borrower and the name of the persons authorized to draw on such bank accounts;
 - (e) The rate of interest payable on the loan and the terms of payment of such interest;

- (f) The rate of commitment charge payable in case a scheduled transfer of proceeds of the loan to the bank accounts mentioned under (d) above is delayed without any fault of the Fund;
- (g) The terms and the schedule of repayment of the principal amount of the loan including, as appropriate, provisions on repayment in advance of maturity;
- (h) The settlement of any disputes arising from the Loan Agreement through arbitration;
- (i) In accordance with Article 16.7 of the Agreement, an understanding that the proceeds of the loan may only be used for the specific purpose for which the loan was made;
- (j) In accordance with Article 18.3 (i) of the Agreement, an understanding that funds provided under any financing operation shall be made available to the recipient only to meet expenses in connection with the project as they are actually incurred;
- (k) A breakdown allocating the funds from the loan to estimated costs in the project;
- (l) The guarantor, if any, of the loan.

3. A loan from the Fund shall be denominated in any Usable Currency. All payments of interest and commitment charges as well as the repayment of the principal of the loan shall be made in the currency or the currencies in which the loan is disbursed.

4. The proceeds of the loan shall be made directly available for the purpose of the project in accordance with the provisions of the Project Agreement and with the provisions of Regulation XI without the borrower having any right to interfere with the transfer except as mentioned in paragraph 6 of this Regulation. In making the transfer, however, the Fund shall take into account the legitimate interests of the borrower.

5. In case the project has been cancelled or suspended, the Fund shall not make any further transfers from the loan without the written permission of the borrower. Such permission, however, shall not be required with respect to the parts of the loan referred to in paragraph 3 (c) of this Regulation.

6. If a delay occurs in the realization of a project which makes it unnecessary to transfer the resources from the loan on the dates envisaged in the Project Agreement, the Fund may temporarily withhold such transfers. In this case, no interest shall be charged on the untransferred part of the loan but the Fund may, instead, charge a commitment fee on the untransferred amount in accordance with the provisions of the Loan Agreement. The same rule shall apply in case a project is suspended. No commitment fee shall be charged on any unspent part of a loan after the project for which the loan was made has been cancelled.

7. Interest shall be charged in accordance with the provisions of the Loan Agreement on any amount of a loan which has been transferred to the bank accounts of a project as from the day of the transfer until repayment is made. Interest shall become due on 1 June and 1 December each year.

8. The obligations of the Guarantor under the Guarantee Agreement shall not be discharged except by performance and then only to the extent of such performance, such obligation does not require any prior notice or action against the borrower or demand upon the Guarantor with regard to any default by the Borrower, and shall not be impaired by any of the following:

- (a) Any extension of time, forbearance or concession given to the Borrower;
- (b) Any assertion of, or delay or failure to assert any right, power or remedy against the Borrower in respect of any security for the loan;
- (c) Any modification or amplification of the provisions of the Loan Agreement contemplated by the terms thereof; or
- (d) Any failure of the Borrower to comply with any requirements of any law of the Guarantor.

9. No delay in exercising, or omission to exercise, any right, power or remedy accruing to any party under the Loan Agreement or Guarantee Agreement, upon any default, shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default. No action of such party in respect of any default, or any acquiescence by it in any default, shall affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

REGULATION VII. BORROWING FOR THE SECOND ACCOUNT

1. The Fund may borrow additional resources to further its objectives in its Second Account operations from Members and from international institutions as provided for in Article 16.5 (a) of the Agreement subject to approval by the Executive Board and the following conditions:

- (a) Such borrowing shall be on concessional terms. The rate of interest payable for such borrowing shall be at least 2% below the average rate of interest that the Second Account obtains on its investment. This rate shall in no event exceed a maximum rate which the Executive Board shall determine from time to time;
- (b) The proceeds from borrowing shall be placed in a separate loan account whose resources shall be held, used, committed, invested, or otherwise disposed of, entirely separately from the other resources of the Fund including the other resources of the Second Account. The funds borrowed shall be held in the same

usable currency(ies) in which they have been received which shall also be the currency(ies) of re-lending;

- (c) The proceeds from borrowing shall not be re-lent on terms which are more concessional than those on which they are acquired. The Fund shall charge at least 1% over the rate of interest which it has itself borrowed;
- (d) The Fund shall repay the loan, and pay the interest due in respect thereof, in the currency or currencies borrowed;
- (e) Any losses or liabilities arising out of operations or other activities related to such borrowed resources shall not be discharged from the other resources of the Fund, including other resources of the Second Account. Accrued earnings from operations and investments of the loan account shall remain assets of that account and may be used to meet losses and liabilities arising from its operations.

2. The terms and conditions of such borrowing and lending from such resources shall be reviewed by the Executive Board periodically as necessary.

REGULATION VIII. THE PROJECT EXECUTING AGENCY

Appointment of the Project Executing Agency

- 1. The Fund shall assure itself that the Project Executing Agency:
 - (a) Has the experience and the capacity to carry out the functions ascribed to it in the Project Agreement;
 - (b) Is not subject to conflicting interest in terms of carrying out the project in the most efficient and purposeful manner.

Responsibilities of the Project Executing Agency

2. The Project Executing Agency shall be responsible for carrying out the project in accordance with the Project Agreement and shall in so doing adhere to instructions given to it by the Supervisory Body in accordance with the Project Agreement. The Project Executing Agency shall on request make available to the Fund, or the Supervisory Body, or to the auditors appointed by the Fund, any information relevant to the implementation, financing, or follow-up of the project.

3. The Project Executing Agency may, in accordance with the Project Agreement and the Regulations and Rules of the Fund governing procurement of goods and services delegate specific tasks and functions in connection with the project to other legal entities or institutions

which are not under its daily supervision and control. No delegation of tasks or functions shall free the Project Executing Agency from the responsibility of carrying out the implementation of the project.

4. In accordance with the provisions of Article 18.3 (i) of the Agreement, the Project Executing Agency shall keep a strict budgetary control over the funds entrusted to it for the purpose of the project. Unless specifically authorized to do so it shall not commit any funds which have not yet been made available for use by the project. Except as otherwise provided in this Regulation VIII.4, funds made available shall until the time of their actual use, be kept in separate bank accounts with banks of commonly recognized high reputation. In cases where the Project Executing Agency is a Body, Entity or Specialized Agency of the United Nations, or is an institution forming part of the Consultative Group on International Agricultural Research (CGIAR), a Ministry, a Department of a Government or a Specialized Agency created by an Act of Parliament or Congress or by a Public Decree such funds may be kept in the main account of the Project Executing Agency in accordance with its governing regulations and rules, always provided that such Project Executing Agency shall establish under its main account an exclusive ledger account to document all transfers of funds from the Fund to the PEA. The Project Executing Agency shall take every precaution against any unauthorized use of the funds.

5. The Project Executing Agency shall at all times keep an up to date and full accounting of the expenditures incurred by the project. Except as otherwise provided in this Regulation VIII.5, the accounts shall be audited at such times as the Project Agreement may stipulate or at the latest after the completion or termination of the project, by auditors appointed by the Fund in consultation with the Supervisory Body. In cases where the Project Executing Agency is a Body, Entity or Specialized Agency of the United Nations, audits may be undertaken in accordance with the provisions governing audits of funds entrusted to such Body, Entity or Specialized Agency pursuant to its own governing regulations and rules or, as the case may be, the regulations and rules of the United Nations. The Supervisory Body or the Fund may at any time request a financial statement from the Project Executing Agency accompanied by certified balances of the project's bank account(s).

REGULATION IX. THE SUPERVISORY BODY AND RELATED PROVISIONS

Designation of the Supervisory Body

1. The Supervisory Body may be the ICB sponsoring the project, another existing international institution active in the field of commodities, development or financing, or such an institution modified for the purpose of acting as Supervisory Body. It may also be an international body established on an ad-hoc basis for the sole purpose of acting as Supervisory Body for the project concerned.

2. The Fund may or may not be a member of the Supervisory Body but it shall in any case have the right to send an observer to meetings of the Supervisory Body and shall automatically receive a copy of all information concerning the project which is sent to the Supervisory Body.

Rules of procedure of the Supervisory Body

3. The rules of procedure of the Supervisory Body shall allow the body to perform any function ascribed to it in the Project Agreement and in particular to take any decisions required. Preferably it shall also have the power to make decisions without holding a meeting.

Functions and responsibilities of the Supervisory Body

4. The Supervisory Body shall supervise and monitor the implementation of the project by the Project Executing Agency based on reports submitted to it by the Agency. The Supervisory Body shall have authority to request additional information from the Project Executing Agency or from any other party involved with the implementation of the project.

5. In addition, the Supervisory Body shall act as the focal point for discussions relating to the future development of the project including possible modifications to be made therein.

6. Upon completion of the project the Supervisory Body shall approve the final report by the Project Executing Agency. In doing so, it may attach its own comments to the report.

Other provisions

7. Notwithstanding the monitoring and supervision by the Supervisory Body, the Managing Director shall at all times satisfy the Board that:

- (a) All projects are adequately supervised and monitored;
- (b) The proceeds of loans and grants are used only for the purposes of and in accordance with the conditions specified in the Project Agreement;
- (c) Appropriate evaluation for particular projects is carried out.

8. The Managing Director shall report to the Executive Board on the implementation of all projects and on evaluations undertaken, in accordance with Regulations XV and XVI. The Consultative Committee may comment on such reports.

REGULATION X. THE PROJECT BUDGET

The Managing Director, when submitting a project for final approval by the Executive Board in accordance with paragraph 4 of Regulation IV, shall ensure that the Project Budget meets the following requirements:

- (a) Adequate finance is being provided to meet the expenditures of the projects. In this regard only firm commitments from co-financiers and/or donors shall be taken into account in determining the project budget;
- (b) Estimates of the project expenditures and cash flows shall be based on realistic assumptions and cost-efficient management principles but reasonable contingency provisions may be made to cover unforeseen price increases. No provisions shall be made to cover activities including the purchase of goods and services which have not been foreseen in the Project Agreement;
- (c) The project budget shall be expressed in units of account, and may be paid in such currencies as are specified in the Project Agreement. It shall also contain an estimate of expenditures which may be paid in non-convertible currencies;
- (d) The project budget shall include, as appropriate, appropriations for salary and labour costs, procurement of goods and services, travel and any administrative costs;
- (e) If the project budget contains provisions on official travel, such travel expenditure may only be authorized up to the class authorized by the rules for official travel applying to the staff members of the Common Fund;
- (f) The project budget shall specify to what extent the Project Executing Agency may transfer unspent funds from one heading in the budget to another.

REGULATION XI. TRANSFER OF FUNDS FROM THE FUND TO THE BANK ACCOUNTS OF THE PROJECT

1. In keeping with the provisions of Article 18.3 (i) of the Agreement, any transfer of funds to the bank accounts of the project from either a loan or a grant provided by the Fund shall only take place when the Project Executing Agency has certified that such transfer is required to meet the project's expenses for the period prior to the next transfer scheduled in the Project Agreement.
2. No transfer of funds shall take place ahead of the schedule established by the Project Agreement except where the Executive Board, upon the recommendation of the Supervisory Body, approves an advancement of the schedule.
3. If the Project Agreement stipulates that a project shall be completed in stages, no transfer of funds for the financing of a new stage shall be undertaken until the Supervisory Body so authorizes.

REGULATION XII. IMMUNITIES FROM TAXATION

1. Any Loan Agreement of the Fund shall be free from taxes levied in the territory of the Borrower in connection with the execution, delivery or registration thereof.
2. The principal of and other charges on loans of the Fund shall be paid without deduction or free from any taxes levied in the territory of the Borrower.

REGULATION XIII. PROCUREMENT

Procurement of goods and services for projects financed by the Fund under the provisions of Article 16 (10) of the Agreement shall follow the Regulations and Rules for procurement of goods and services from the resources of the Second Account.

REGULATION XIV. PROJECT ACCOUNTS AND RECORDS

1. The Project Executing Agency shall maintain records and procedures adequate to record and monitor the progress of the project, including costs and benefits, to identify the goods and services financed out of the proceeds of the loan.
2. Representatives of the Fund and/or the Supervisory Body shall be entitled to visit any facilities and sites included in the project to examine the accounts and records of and the goods financed out of the proceeds of the project.

REGULATION XV. REPORTS

Interim Reports

1. Interim reports on the implementation of a project shall be made by the Project Executing Agency, for information of the Supervisory Body and the Fund, at intervals specified in the Project Agreement and/or after completion of each stage of the project.
2. Interim reports received by the Fund shall be submitted by the Managing Director to members of the Executive Board and of the Consultative Committee for information. The Managing Director may, however, instead submit a summarized version of the information received.

Final Reports

3. The Consultative Committee shall comment on final reports on the implementation of projects together with any remarks made by the Supervisory Body and/or the ICB sponsoring the project. Any recommendations of the Consultative Committee shall be forwarded to the Executive Board.

REGULATION XVI. ACTIONS BY THE FUND WITH RESPECT TO PROJECTS UNDER IMPLEMENTATION

If the Managing Director deems that action by the Fund is required with respect to a project under implementation, he shall so recommend to the Executive Board including, whenever possible, the advice of the Consultative Committee. In exceptional cases, when the Managing Director feels that urgent action by the Fund is required in order to secure the viability of a project, to protect the Fund's resources or otherwise to safeguard the Fund's interests, he may take such steps in accordance with the Project Agreement as he deems necessary, except that he may not request the cancellation of or withdrawal from a project without prior approval by the Executive Board. Whenever applying this provision, the Managing Director shall inform the Consultative Committee and the Executive Board on an urgent basis of the actions undertaken.

REGULATION XVII. PROJECT RESULTS

1. Technology and know-how acquired during, or as a result of the project shall normally, and unless the Project Agreement stipulates otherwise, be made freely available to all Members of the Fund.
2. No formal distribution of assets acquired for the purpose of a project shall take place until the audited final accounts of the project have been approved by the Supervisory Body.
3. Any unused cash contributions or proceeds from loans shall be returned to their source of origin. If the source of origin cannot be determined, a pro-rata distribution shall take place.

REGULATION XVIII. SUSPENSION OF A PROJECT

The Fund shall have the right to demand a temporary suspension of a project if:

- (a) Any Borrower or Guarantor associated with a loan to finance the project defaults on his obligations with respect to that loan or if a borrower or guarantor associated with a loan from the Fund is found to be in a position where it is doubtful if he will be able and willing to meet his obligations towards the Fund;

- (b) The proceeds of a loan, grant or contribution in kind to be provided by another party to the Project Agreement is not made available on a timely basis or if circumstances occur which make it unlikely that future engagements will be met;
- (c) Any unauthorized use of funds provided for the project is evident or seriously suspected;
- (d) The Project Executing Agency fails to submit in due time any report or financial statement required by the Project Agreement or if it fails to respond within a reasonable time limit to a request from the Supervisory Body in this regard.

**REGULATION XIX. CANCELLATION OF OR WITHDRAWAL
FROM A PROJECT**

The Fund shall have the right to demand the cancellation of a project, or alternatively to withdraw from it, if:

- (a) A project has been suspended for a period of at least 90 days without the circumstances which gave rise to the suspension having been rectified;
- (b) The ICB sponsoring the project declares that the purpose for which the project was established can no longer be met within the framework of the present project or that this purpose is no longer valid in the context of the situation characterizing the commodity in question.

**REGULATION XX. CHANGES TO PROJECTS AFTER APPROVAL BY THE
EXECUTIVE BOARD**

1. Any change to a project which has been approved by the Executive Board for financing by the Fund, shall require the consent of the Fund.
2. Changes in the nature and substance of the Fund's financial exposure in a project shall always require approval with qualified majority by the Executive Board.
3. Changes in the purpose, scope or size of a project shall be approved by the Executive Board.
4. The Managing Director shall be authorized to implement any changes other than those referred to in paragraph 2 and 3.

REGULATION XXI. ENFORCEABILITY

The rights and obligations of the Fund, the Borrower and the Guarantor under the Loan Agreement and the Guarantee Agreement shall be valid and enforceable in accordance with their terms, notwithstanding the law of any state or political sub-division thereof to the contrary. No party is entitled to assert any claim that any provision of the Loan Agreement or the Guarantee Agreement is invalid or unenforceable because of any provision of the Agreement Establishing the Common Fund for Commodities.

REGULATION XXII. ARBITRATION

Project, Loan and Guarantee Agreements entered into by the Fund shall contain an arbitration clause stating that any dispute between the parties which has not been settled by agreement of the parties, shall be submitted to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, with such modifications as may be set out in the agreement concerned.

REGULATIONS AND RULES
FOR THE
PROCUREMENT OF
GOODS AND SERVICES
OF THE SECOND ACCOUNT

REGULATIONS AND RULES FOR THE PROCUREMENT OF GOODS AND SERVICES OF THE SECOND ACCOUNT

*(Adopted by the Executive Board at its Fourth Meeting in October 1990,
pursuant to Governing Council decision 4 (II) of 26 July 1990 and amended by the Governing Council
on 6 December 2004 at its Sixteenth Annual Meeting¹)*

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REGULATIONS AND RULES FOR THE PROCUREMENT OF GOODS AND SERVICES OF THE SECOND ACCOUNT

PART I

GENERAL

1.01 Regulation I through XXII of the present Regulations and Rules for the Procurement of Goods and Services of the Second Account of the Common Fund prescribe the conditions under which goods and services of projects financed by the Fund through the Second Account are, except as provided in paragraph 1.02 hereinbelow, procured. The present Regulations and Rules are adopted pursuant to Article 16.10 and under the authority of the Agreement Establishing the Common Fund. The provisions of the Agreement shall have primacy over these Regulations and Rules.

1.02 Bodies, Entities and Specialized Agencies of the United Nations may, when undertaking procurement of goods and services in the capacity of Project Executing Agencies for projects financed by the Fund through the Second Account, apply, as the case may be, either their own procurement regulations or those of the United Nations in the place of Regulation I through XXII.

REGULATION I. DEFINITIONS

1.03 For the purpose of the present Regulations and Rules:

- (a) “Award” means the decision to grant a contract to the winning bidder after a competitive bidding.
- (b) “Bid Evaluation” means the determination of the lowest evaluated cost based on price offers, standards of capability and financial resources and other factors.
- (c) “Bid Price” means the sum of all payments in various currencies required to be made to the bidder.
- (d) “Bid validity” means the period in which bids submitted remain valid for comparison, evaluation, approval and subsequently for contract award.
- (e) “Contract Price” means the sum payable to the contractor in a currency or currencies in which the bid price of the successful bidder is stated.
- (f) “Prequalification” means a process of selecting bidders in advance of bids for particular contracts requiring specially designed equipment or specialized services.

- (g) “Procurement” means the acquisition of both goods and services for the purpose of implementing projects.

1.04 The definitions contained in the Agreement Establishing the Common Fund and in the Rules and Regulations of the Second Account Operations shall also be applicable to these Rules and Regulations.

REGULATION II. THE PURPOSE

1.05 The purpose of the present Regulations and Rules is to provide equal opportunity to prospective bidders from all Member States of the Fund, subject to appropriate preferences for goods and services from developing Member countries as provided for in Article 16.10 of the Agreement, and to ensure economy and efficiency and to encourage the development of local manufacturers and contractors in the developing countries in the execution of projects financed by the Fund.

REGULATION III. APPLICABILITY

1.06 The Rules and Regulations prescribed hereinafter apply to all procurement of goods and services financed wholly or in part by the Fund through its Second Account operations. If the Fund finances only part of the project, the procurement of those goods and services not financed by the Fund may be acquired under procedures specified in the Project Agreement. In such cases the Fund should be satisfied that the goods and services:

- (a) Are of satisfactory quality and are compatible with the standards required by the Project Agreement;
- (b) Will be delivered or completed in timely fashion; and
- (c) Are priced so as not to affect adversely the overall economic and financial viability of the project.

REGULATION IV. METHODS OF PROCUREMENT

1.07 Depending upon the size, nature and circumstances under which a project is implemented, methods of procurement shall be one of the following:

- (a) International Competitive Bidding (ICB)
- (b) Other methods of Procurement, including:
 - (i) Limited International Bidding (LIB);
 - (ii) Local Competitive Bidding (LCB);

- (iii) International and Local Shopping (ILS);
- (iv) Direct Contracting or Direct Selection of Supplier (DSS);
- (v) Force Account;
- (vi) Use of Procurement Agents.

1.08 The particular methods to be followed for the procurement of goods and services for a project shall be specified in the Loan/Grant and/or Project Agreement.

PART II

REGULATION V. INTERNATIONAL COMPETITIVE BIDDING (ICB)

2.01 International Competitive Bidding should be the normal method of procurement and should always be used for procurement of goods and services exceeding the value of USD 100,000. International Competitive Bidding should provide prospective bidders adequate notification of a project's requirements and providing all such bidders an equal opportunity to bid on the necessary goods and services. The bidding document should clearly state the type of contract to be entered into and contain provisions including the basis of payment, either lump sum, unit prices, cost plus fees or combinations thereof.

REGULATION VI. NOTIFICATION AND ADVERTISING FOR ICB

2.02 Timely notification of bidding is essential in competitive bidding. In this regard:

- (a) The Project Executing Agency shall prepare and forward to the Fund and/or to the Supervisory Body a General Procurement Notice as soon as possible, and in any event not later than 60 days prior to the date of availability to the public of the tender documents. The Notice shall contain information concerning, among others, the amount and purpose of the loan/grant, the goods and services to be procured, the schedule date for availability of the bidding or pre-qualification documents and the agency, if any, responsible for procurement of the goods and services for the Project Executing Agency. The Notice shall also state the preference to be given to goods and services from developing countries in accordance with Regulation XX of the present Rules and Regulations. The Fund shall arrange for the publication of such Notice in the United Nations Development Forum Business Edition.
- (b) The international Community shall also be notified of the opportunities to bid for specific contracts through invitations to prequalify or to bid in at least one newspaper of general circulation in the country where the goods and services shall be utilized for the project and in the official gazette, if any. Copies of such invitations may also be sent to local representatives of potential supplies of the goods and services and to those who have expressed interest in response to the

General Notice. For large and specialized contracts, the Fund may require that the Project Executing Agency advertise the invitations to prequalify or to bid in well-known technical magazines, newspapers and trade publications of wide international circulation.

REGULATION VII. PREQUALIFICATION OF BIDDERS

2.03 In the case of large and/or complex services requiring custom-designed equipment and specialized services where it is essential to ensure in advance of bidding that invitations to bid are extended only to those who are capable, prequalification may be required for particular contracts. Prequalification shall be based upon the capability of the prospective bidders to perform the particular contract satisfactorily, taking into account, inter alia,

- (a) experience and past performance on similar contracts;
- (b) capabilities with respect to personnel, equipment and plant; and
- (c) financial position.

2.04 On the completion of the prequalification selection, the bidding documents shall be issued to the qualified bidders.

REGULATION VIII. BIDDING DOCUMENTS

2.05 Prospective bidders shall be furnished with a bidding document providing all necessary documents and information, including invitation to bid, instructions to bidders, form of bid, form of contract, conditions of contract, technical specifications, list of goods or bill of quantities and drawings, as well as necessary appendices, such as formats for various securities. Such documents shall be available at reasonable charges, if any, reflecting the cost of their production and shall not be so high as to discourage qualified bidders. The Project Agreement shall specify whether the bidding documents shall be submitted to the Fund for review before they are issued to prospective bidders.

2.06 Bidding documents should set clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule of delivery or completion, and the warranty and maintenance requirements as well as any other pertinent terms and conditions. Where appropriate, bidding documents should define the tests, standards and methods that will be employed to judge the conformity of equipment as delivered, or services as performed, with the specifications. If bids based on alternative designs, materials, completions schedules, payment terms etc. are permitted, conditions for their acceptability and the methods of their evaluation should be expressly stated. Any additional information, clarification or correction of errors should be sent to each recipient of the original bidding documents in sufficient time.

2.07 If particular national or other standards are cited, bidding documents shall state that equipment, materials or workmanship meeting other standards which ensure equivalent or higher quality than the standard specified will also be accepted.

2.08 Specifications shall be based on relevant characteristics and/or performance requirements and references to brand names, catalogue numbers or similar classifications shall be avoided. When it is unavoidable to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” should be added after such a reference.

2.09 If reference has to be made to the Fund in the bidding document, the following language shall be used:

“...(name of the Project Executing Agency) has received loan/grant from the Common Fund for Commodities incurrency(ies) equivalent to (Units of Account) towards the cost of(name of project), and intends to apply the proceeds of this loan/grant to eligible payments under the contract (contracts) for which this invitation to bid is issued. Payment by the Fund will be made only at the request of ...(Project Executing Agency) and upon approval by the Fund in accordance with the terms and the conditions of the Project Agreement, and will be subject in all respects, to the terms and conditions of the Agreement. Except as the Fund may specifically otherwise agree, no party other than the Project Executing Agency shall derive any rights from the Loan/Grant Agreement or have any claim to loan/grant proceeds.

REGULATION IX. VALIDITY OF BIDS AND BID SECURITY

2.10 Bidders shall submit bids valid for the period specified in the invitation to bid and sufficient for the Project Executing Agency to complete the comparison and evaluation of bids, to review the recommendation of award with the Fund and obtain all the necessary approvals, when required by the Project Agreement so that the award shall be notified in time.

2.11 Bid Bonds or guarantees may be required to provide reasonable security for the Project Executing Agency and may be specified in the contract. Special conditions, if any, shall also be included. Bid bonds shall be released to unsuccessful bidders immediately after bid award.

REGULATION X. CURRENCY PROVISIONS

2.12 Bidding documents shall state the currency or currencies in which bidders are to state their prices, the procedure for conversion of prices expressed in different currencies into a single currency for the purpose of comparing bids, and the currencies in which the contract prices will be paid.

2.13 Bidders shall express their bid prices in a usable currency or in a currency widely used in international trade. Such currency shall be specified in the bidding documents. Bidders who

expect to incur expenditures in more than one currency may state the respective portions of their prices in each such currency. Alternatively, the bidder may express the entire bid price in one currency and indicate the percentages of the bid price required to be paid in other currencies and the exchange rates used in the calculations. Bidders may be required to state the local cost portion of the bid price in the currency of the country in which the project is implemented.

2.14 In bids concerning works, bidders may be required to state all their bid prices in the currency of the country in which the project will be implemented, along with the requirements for foreign currency payments expressed as a percentage of the bid price and specifying the exchange rate used in such calculations.

2.15 All bid prices shall be converted to a single currency selected by the Project Executing Agency and stated in the bidding documents. The conversion shall be done by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank) for similar transactions either:

- (a) On a date selected in advance and specified in the bidding documents, provided that such date should not be earlier than thirty days prior to the date specified for the opening of bids nor later than the original date prescribed in the bidding documents for the expiry of the period of bid validity; or
- (b) On the date of decision to award the contract or on the original date prescribed in the bidding documents for the expiry of the period of bid validity, whichever is earlier.

2.16 Contract price shall be paid in the currency or currencies in which the bid price of the successful bidder is stated when a bidder expressed his payment requirements in other currencies as a percentage of the bid price, and if requests payment in other currencies the exchange rates to be used for the purpose of payment shall be those used by the bidder in his bid.

REGULATION XI. TERMS AND METHODS OF PAYMENT

2.17 Bidding documents shall specify payment terms and methods. Payment terms shall be in accordance with international commercial practices applicable to the goods and works and the market in question.

2.18 For work contracts extending over several years, bidding documents should state whether upward or downward adjustments of bid prices will be made in the event changes occur in major cost components. Such adjustments may be affected either by the use of a prescribed formula (or formulae) which breaks down the total contract cost into components that are adjusted by price indices specified for each component or use documentary evidence presented by the supplier or contractor, as may be agreed in advance.

2.19 If there shall be any advance payments for mobilization or any other expenses, the amounts and timing of such advance payment(s) shall be stated in the bidding documents and the purposes for which they are intended shall be described.

REGULATION XII. PERFORMANCE SECURITY

2.20 Bidders shall be required to provide security against breach of contract with a performance bond or a bank guarantee, at the contractor's option, in an appropriate form and amount as shall be specified in the bidding documents. Work contracts may provide for a percentage of the total payment to be held as retention money to secure full performance by the contractor. Security shall extend beyond the estimated date for completion of the works to cover the warranty or maintenance period which may be specified in the contract. Suppliers or manufacturers of goods may be required to provide a bank guarantee to protect against non-performance of the contract. A percentage of the payments may be held as retention money to cover warranty obligations.

REGULATION XIII. TRANSPORTATION AND INSURANCE

2.21 Bids shall be invited on cost, insurance and freight (c.i.f.) port of entry border point terms and the evaluation and selection of the lowest evaluated bid shall be on the basis of these c.i.f. prices. The Project Executing Agency may sign the contract on f.o.b. terms and make its own arrangements for transportation and insurance, but payments under the Fund loan/grant shall be limited to the c.i.f. price quoted by the bidder. Indemnity under insurance must be readily available in convertible currencies to enable prompt replacements of lost or damaged goods. In the case of large projects with several contractors on a site, a "wrap-up" or total project insurance arrangement may be provided and the Project Executing Agency shall seek competition for such insurance.

REGULATION XIV. FORCE MAJEURE

2.22 The conditions of contract shall contain clauses, if necessary, when failure to perform the obligations of the parties under the contract shall not be considered a default but a result of an event of force majeure.

REGULATION XV. LANGUAGE

2.23 Bidding documents shall be prepared in one of the languages customarily used in international commercial transactions and should specify that the text of the documents in that language shall be the authentic one.

REGULATION XVI. SETTLEMENT OF DISPUTES

2.24 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration shall normally have preference over other methods for the settlement of disputes.

REGULATION XVII. PREPARATION AND SUBMISSION OF BIDS

2.25 The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than 45 days from the date of the invitation to bid or the date of availability of bidding documents, whichever is later shall be allowed for international bidding. Where large works or complex items of equipment are involved, this period shall generally be not less than 90 days to enable prospective bidders to conduct investigations before submitting their bids. The date, hour and place for latest delivery of bids should be specified in the invitation to bid.

REGULATION XVIII. BID OPENING PROCEDURES

2.26 The time of bid opening shall be the same as for the latest delivery of bids or soon thereafter, and should be announced, together with the place for bid opening, in the invitation to bid. the opening of bid shall be as follows:

- (a) The Project Executing Agent shall open in public all bids at the stipulated time. Bidders or their representatives shall be allowed to be present.
- (b) The name of the bidder and total amount of each bid, and of any alternative bids if they have been requested or permitted, should be read out aloud and recorded.

2.27 A copy of the record shall be sent to the Fund if requested by the Fund and/or by Supervisory Body.

2.28 Bidders shall not be requested or permitted to alter their bids after the first bid has been opened. Clarifications could be asked if needed to evaluate bids, but no change of the substance or price of bids are permitted after the bid opening.

REGULATION XIX. EXAMINATION, EVALUATION AND COMPARISON OF BIDS

2.29 The Project Executing Agency shall ascertain whether the bids are generally in order and conform to the requirements of the bidding documents. If a bid is not substantially responsive and contains material deviations from or reservations to the terms, conditions and specifications in the bidding documents, it shall not be considered further.

2.30 The bid with the most favourable offer should be selected for award, exemption being made to bidders from developing countries, a margin of preference of 10% given to them on the bid price. Additional factors to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the most favourable evaluated bid shall be specified in the bidding documents. The factors may include, the cost of inland transport to the project site, the payment schedule, the time of completion of construction or delivery, the

operating costs, the efficiency and compatibility of the equipment, the availability and guarantee of services and spare parts, the reliability of proposed methods, and minor deviations, if any.

2.31 The evaluation and comparison of bids shall be on the basis that goods or services acquired under financing from the Fund are free from taxes and levies in the territory in which the project concerned is implemented in connection with the execution, delivery or registration thereof.

2.32 The Project Executing Agency shall prepare a detailed report on the evaluation and comparison of bids indicating the rationale on which the recommendation is based for the award of the contract. This report shall be made available to the Fund. It shall be stated in the Project Agreement if the report will be reviewed by the Fund before the award. This shall always be the case when procurements exceed the equivalent of USD 200,000.

2.33 The Project Executing Agency shall award the contract within the period of the validity of a bid to the bidder whose bid has been evaluated as the most favourable exception being made from developing countries in accordance with Regulation XIX, paragraph 2.30 above, and which meets the appropriate standards of capability and financial resources. In exceptional circumstances, whereby the Project Executing Agency is unable to evaluate and award bids within the initial period of bid validity, extension of bid validity shall be requested in writing from all bidders before the expiry date. Bidders shall have the right to refuse extension of bid validity. The Fund shall be informed of such extension of bid validity.

2.34 If bidders have not been prequalified, and if the bidder whose bid has been evaluated as the most favourable has been found by the Project Executing Agency to lack the capability and resources to carry out the contract concerned, his bid shall be rejected and the offer of the next most favourable bidder shall be considered, exception being made to bidders from developing countries in accordance with Regulation XIX, paragraph 2.30.

REGULATION XX. PREFERENCES

2.35 The Project Agreement shall state the extent to which International Competitive Bidding shall state the appropriate preference to be given to experts, technicians, suppliers and contractors from developing countries Members of the Fund as provided for in Article 16 (10) of the Agreement. In this regard, appropriate preference should be the equivalent of 10% of bidding price.

REGULATION XXI. REJECTION OF ALL BIDS

2.36 All request to bid from the Executing Agency should make the following provisions: Only bids conforming to all terms and conditions will be considered. Bids may be rejected in whole or in part. Bids may be accepted without negotiation. All bids may be rejected in cases where the bidder with the most favourable bid exceeds the cost estimates by a substantial amount or when bids are not responsive or there is lack of effective competition. If all bids are rejected,

the Supervisory Body shall review the causes justifying the rejection and consider making either revisions in the specifications or modifications in the project or both before inviting new bids. If any modifications or revisions have been made as an alternative to rebidding, the Project Executing Agency shall negotiate with the bidder offering the most favourable bid to try to obtain a satisfactory contact. The Fund shall be consulted in the process.

PART III

REGULATION XXII. OTHER METHODS OF PROCUREMENT

3.01 Where international competitive bidding would not be the most economical and efficient method of procurement, one of the commonly used procurement methods set forth below may be employed for the procurement of goods and services exceeding the value of USD 10,000. The particular methods and the categories of goods and services to which they apply shall be specified in the Project Agreement.

3.02 Limited International Bidding (LIB) is essentially international competitive bidding by direct invitation without open advertisement used in cases where:

- (a) the amounts are small;
- (b) there are a limited number of suppliers;
- (c) other exceptional reasons justifying departure from full ICB procedure.

3.03 In all respects, ICB procedures other than advertisement shall apply.

3.04 Local Competitive Bidding (LCB) is a competitive bidding advertised locally and in accordance with local procedures when goods or services are unlikely to attract foreign bidders. Bidding documents may be issued in a local language and local currency are generally used for the purpose of bids and payment. Advertisement may be limited to the local press or official gazette. Local methods and procedures to be employed shall provide for adequate competition and must be acceptable to the Fund.

3.05 International and Local Shopping is a method based on price quotations obtained from, at least three, foreign or local suppliers. It is an appropriate method used for procuring readily available and standard off-the-shelf goods that are small in value. No formal bidding documents are required.

3.06 Direct Contracting or Direct Selection of Suppliers (DSS) is direct contracting without competition under the following circumstances:

- (a) An existing contract for services or goods may be extended for the construction or provision of additional services or goods of a similar nature and when no advantage could be obtained by further competition.

- (b) Standardization and compatibility of equipment, quality and price may justify additional purchases from original supplier.
- (c) When equipment is obtainable from only one source.
- (d) When the contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of his guarantee of performance.
- (e) When the need for early delivery justify direct contracting to avoid costly delays.
- (f) A directly negotiated contract may be acceptable when competitive bidding including rebidding fails to produce a contractor capable of carrying out the required services at a reasonable price.

3.07 Force Account is construction by the use of the Project Executing Agency's own personnel and equipment. Such procurement may be justified where:

- (a) Quantities of work cannot be defined in advance.
- (b) Small and scattered services or remoteness of location would make mobilization costs high.
- (c) Work must be carried out to avoid disruption of ongoing operations when the contractor is unable to complete the work due to reasons beyond his control.
- (d) No contractor is interested in carrying out the work.

3.08 Where procurement is particularly complex, or the Project executing Agency lacks the necessary organization and experience, the services of firms which specialize in handling international procurement may be employed. Procurements of goods and equipment may be made through the United Nations Specialized Agencies whenever such opportunities are available.

3.09 In situations where other methods of procurement are used, the Executing Agency shall record on file the justification for adopting the alternative method and secure the agreement of the Supervisory Body.

REGULATIONS AND RULES
FOR THE
CONSULTATIVE COMMITTEE

REGULATIONS AND RULES FOR THE CONSULTATIVE COMMITTEE

*(Adopted by the Executive Board at its Fourth Meeting in October 1990,
pursuant to Governing Council decision 4 (II) of 26 July 1990, and amended
by the Executive Board on 9 April 2003 at its Thirty-Fifth Meeting¹)*

CONTENTS

<u>Regulation</u>	<u>Title</u>
I	Definitions
II	Terms of Reference
III	Nature, Size and Composition
IV	Mode of Operation
V	Recommendations of the Committee
VI	Travel and Subsistence Allowance

¹ Regulation III, paragraph 3 (Decision EB/XXXV/28).

REGULATIONS AND RULES FOR THE CONSULTATIVE COMMITTEE

Preamble

The Consultative Committee is established by the Governing Council to carry out the functions ascribed to it in Article 25 of the Agreement and in the present Regulations and Rules.

REGULATION I. DEFINITIONS

1. For the purpose of these Regulations and Rules, “Agreement” means the Agreement of 27 June 1980 Establishing the Common Fund for Commodities.
2. The definitions set out in Article 1 of the Agreement shall be applicable to these Regulations and Rules.

REGULATION II. TERMS OF REFERENCE

The functions of the Consultative Committee are as defined in Article 25 paragraph 2 (a) to (d) of the Agreement. The Governing Council and the Executive Board may request the advice of the Consultative Committee on any matter arising from the operations of the Second Account.

REGULATION III. NATURE, SIZE AND COMPOSITION

1. The Consultative Committee shall function as an advisory body to facilitate the operations of the Second Account.
2. The Consultative Committee shall have thirteen (13) members. The members shall be appointed and vacancies filled by the Executive Board on the recommendation of the Managing Director in accordance with Article 25.1 (b). The Managing Director shall make his selection from among candidates nominated by Member countries.
3. Each Member State may nominate one candidate for membership to the Consultative Committee. More than one Member State may nominate the same candidate. Candidates must have particular experience and competence in commodity issues, international finance and/or development. Governors and their alternates as well as Executive Directors and their alternates shall not serve on the Consultative Committee. Members of the Consultative Committee shall not accept any consultancy work related to the activities of the Consultative Committee or otherwise to the Common Fund for Commodities or to projects under consideration for financing or being financed by the Common Fund for Commodities.

4. In making his recommendation to the Executive Board, the Managing Director shall be satisfied that the candidates have the expertise and competence required to enable the Committee to perform its functions effectively and shall pay due regard to the following considerations:

- (a) The need for a broad and equitable geographical distribution;
- (b) Individual expertise in commodity development issues;
- (c) The desirability of a broad representation of interest, including voluntary contributors.

5. Members of the Consultative Committee shall be appointed for a period of two years. A member may be reappointed if nominated by a Member State of the Fund, but may not serve for more than two consecutive terms.²

6. Members of the Consultative Committee are appointed in their personal capacities and their appointment shall not constitute a right of any Member State to any given term of office.

7. If more than four (4) positions fall vacant during a term of office of a Consultative Committee, the Managing Director shall inform the Executive Board which then may decide to reconstitute the Consultative Committee entirely before the expiry of the term of office of the incumbent Committee in accordance with the Regulations and Rules.

8. A Roster of specialists will be established and Member States may, at any time, provide names with appropriate educational and professional background information for inclusion in the Roster. The Chairman of the Consultative Committee, in consultation with the Managing Director, will determine the specialists who, as advisors, will be invited to submit written reports to the Committee and/or participate in particular meetings of the Committee. As a rule, no more than three (3) advisors shall be invited to each meeting.

² Note by the Secretariat:

At its Seventh Meeting the Executive Board adopted the following Decision (amended at the Thirty-Ninth Meeting of the Executive Board (Section (c))):

“The Executive Board, having considered a study prepared by the Managing Director (document CFC/EB/7/14), decided that, as a token of appreciation of the work they were doing, payment should be made to the members of the Consultative Committee as follows:

- (a) *To pay the Chairman of the Committee a sum of USD 250 (US Dollars two hundred and fifty) per meeting day of the Consultative Committee (when in attendance) and of the Executive Board when he/she is making his/her report to the Board, as well as any other day spent working for the Fund in Amsterdam;*
- (b) *To pay the other members of the Committee a sum of USD 200 (US Dollar two hundred) per meeting day of the Consultative Committee (when in attendance);*
- (c) *Such payments should be made only to members of the Consultative Committee who are not civil servants and to civil servants who take leave of absence to attend the meeting.”*

REGULATION IV. MODE OF OPERATION

1. Bureau of the Committee

The Consultative Committee shall appoint by consensus a Chairman and a Vice-Chairman for the duration of its tenure of office from among its members.

2. Schedule of meetings

The Consultative Committee shall decide on its own meeting schedule subject, however, to alteration in the event of request by the Executive Board.

3. Notice of meetings

The Managing Director, shall notify each member of the Committee of the planned meeting stating the purpose, the venue, the opening date and the expected duration of the meeting, at least, thirty days in advance of the opening day of the meeting. The provisional agenda referred to in paragraph 5 below shall be transmitted together with the notice of the meeting. Notice of the meeting shall also be sent to advisors invited to the meeting in accordance with Regulation III.8 and representatives from international organizations invited pursuant to paragraph 7 below. Notice shall be sent in writing and dispatched by any appropriate means of communication.

4. Place of meetings

All meetings of the Consultative Committee shall normally be held at the Headquarters of the Fund. The Committee decides to hold a meeting elsewhere when invited by a Member of the Fund and/or an institution, in which case the host government and/or institution shall provide appropriate meeting facilities and cover additional expenses incurred as a result of holding such a meeting outside the Headquarters of the Fund.

5. Agenda of meetings

(a) Provisional agendas of meetings of the Consultative Committee shall be prepared by the Chairman of the Committee in consultation with the Managing Director of the Fund. The Consultative Committee shall adopt an agenda for each of its meetings on the basis of the provisional agendas submitted by the Chairman. The provisional agenda may be revised, as necessary, by deferring, deleting or amending of items appearing in the provisional agenda;

(b) The Executive Board may inscribe in the agenda of the Consultative Committee any item related to Second Account Operations which it wishes to be discussed by the Committee;

(c) Members of the Consultative Committee wishing to inscribe an item on the agenda of any particular meeting of the Committee shall send to the Chairman of the Committee, through the Managing Director, the request for inscription of the item, at least, forty days in advance of the meeting.

6. Conduct of Business

In the conduct of business of the meetings of the Consultative Committee, the Rules of Procedure for the Conduct of Business of the Executive Board except the provisions concerning voting shall apply *mutatis mutandis*.

7. Representation from International Organizations

(a) Representatives of ICB's and other international organizations may be invited by the Chairman in consultation with the Managing Director to attend meetings or parts thereof when their presence is deemed necessary for the work of the Committee.

(b) Participation of representatives of ICBs and international organizations shall be without cost to the Fund.

8. The Secretariat

The Managing Director shall be responsible for providing secretariat support staff and for making all arrangements necessary for meetings of the Consultative Committee.

REGULATION V. RECOMMENDATIONS OF THE COMMITTEE

The Chairman shall report the advice and comments of the Committee to the Executive Board including any dissenting statements.

REGULATION VI. TRAVEL AND SUBSISTENCE ALLOWANCE

The Fund shall reimburse the travel expenses and subsistence allowances for members and advisors of the Consultative Committee on the same basis as for the members of the Executive Board.

REGULATIONS AND RULES

FOR THE

IMPLEMENTATION OF

FAST TRACK PROJECTS

REGULATIONS AND RULES FOR THE IMPLEMENTATION OF FAST TRACK PROJECTS

(Adopted by the Governing Council on 28 November 2006 at its Eighteenth Annual Meeting)

CONTENTS

<u>Regulation</u>	<u>Title</u>
I	The Fast Track Implementation Agreement
II	Disbursement Conditions
III	Project Supervision
IV	Suspension of a Fast Track Project
V	Cancellation of a Fast Track Project
VI	Procurement of Goods and Services
VII	Financial Reporting and Auditing

REGULATIONS AND RULES FOR THE IMPLEMENTATION OF FAST TRACK PROJECTS

The present Regulations and Rules prescribe the conditions which shall govern the implementation of all projects (referred to herein as “Fast Track Projects”) where the total financial contribution (referred to herein as the “Grant”) to be provided by the Fund does not exceed USD 120,000. These Regulations and Rules shall apply equally to projects financed from the Second Account and projects financed from the net earnings of the First Account, respectively.

REGULATION I. THE FAST TRACK IMPLEMENTATION AGREEMENT

1. When the Managing Director approves a Fast Track Project for financing by the Fund, the modalities for implementation of the project shall be set out in an agreement (referred to herein as the “**Fast Track Implementation Agreement**”) to be concluded between the Fund and the entity (referred to herein as the “**Implementing Agency**”) which shall be responsible for the implementation of the project. The Implementing Agency shall have a legal personality.
2. The Fast Track Implementation Agreement shall as a minimum comprise the following elements:
 - (a) The address of the Implementing Agency;
 - (b) The full title of the project;
 - (c) The objective of the project;
 - (d) The purpose for which the Grant is provided;
 - (e) A detailed programme for implementation of the project and the related budget allocation;
 - (f) A financing plan, including contributions, in cash and/or in kind, to be made to the project by parties other than the Fund;
 - (g) A disbursement schedule for the Grant;
 - (h) The expected duration of the project;
 - (i) The expected output of the project.

REGULATION II. DISBURSEMENT CONDITIONS

Before the Fund makes any disbursement from a Grant, the following conditions shall have been fulfilled:

- (a) The Implementing Agency shall have opened a bank account or a ledger account which shall be separate from other accounts of the Agency, for receipt and administration of the proceeds of the Grant;
- (b) Contributions to be made by parties other than the Fund shall have been firmly committed and confirmed;
- (c) All prerequisites for the implementation of the project shall be in place, including, but not limited to, the identification of necessary infrastructure and resource persons, and selection of participants.

REGULATION III. PROJECT SUPERVISION

Fast Track Projects will normally be supervised directly by the Fund. However, the ICB supporting the project shall be involved when the project comprises technical aspects which require direct supervision by the ICB. For Fast Track Projects with a duration of one year or more, six monthly progress reports shall be submitted to the Fund and, as appropriate, to the ICB.

REGULATION IV. SUSPENSION OF A FAST TRACK PROJECT

A Fast Track Project approved for implementation may be suspended if circumstances indicate the successful implementation of the project unlikely. Such circumstances shall include, but not be limited to:

- (a) Unauthorised use of proceeds of the Grant for purposes other than for which these were provided;
- (b) Contributions to be made by parties other than the Fund not being made available on a timely basis;
- (c) The arrangements made for the implementation of the project being inadequate to achieve the envisaged objectives.

REGULATION V. CANCELLATION OF A FAST TRACK PROJECT

A Fast Track Project suspended for more than 90 days without the circumstances which gave rise for the suspension having been rectified, may be cancelled. A Fast Track Project may

also be cancelled if the objective towards which achievement the Grant was provided can no longer be met within the framework of the design of the project, or if the context in which the project had been conceived is no longer valid.

REGULATION VI. PROCUREMENT OF GOODS AND SERVICES

All procurement of goods and services to be financed from the Grant shall be subject to the CFC Regulations and Rules for Procurement of Goods and Services from the Second Account, and shall be conducted in consultation with and with the concurrence of the Fund.

REGULATION VII. FINANCIAL REPORTING AND AUDITING

Upon completion of the implementation of a Fast Track Project or, as the case may be, termination of a Fast Track Project prior to completion, the Implementing Agency shall submit a statement of incomes and expenditures to the Fund. Such a statement of incomes and expenditures may be required to be externally audited or certified by the financial management of the Implementing Agency as the Managing Director may determine on a case by case basis.

III

LOANS POLICY OF THE

COMMON FUND FOR

COMMODITIES

CONSIDERATIONS FOR LOAN-FINANCED PROJECTS¹

1.1 Introduction

1.1.1 Article 18.C 3(c) of the Agreement Establishing the Common Fund for Commodities provides the legal authority for the Fund to give loans for commodity development measures to be financed from the resources of the Second Account. More specifically, the capital of the Second Account can be used for loans only (Article 18.3 of the Agreement), whereas voluntary contributions can be used for either grants or loans. The Governing Council confirmed at its Ninth Annual Meeting in December 1997 that the Net Earnings from the First Account can be applied for either grants or loans to finance projects under the First Account Net Earnings Programme.

1.1.2 Taking into account the Fund's limited resources, loans are one of the means to pursue the Fund's catalytic role in using its own resources as seed money in the mobilisation of additional finance for commodity development from other institutions. The fact that loan repayments recycle the Fund's resources provides for more beneficiaries and commodities to be reached. Grants and loans could often be mutually supportive, strengthening the impact of the Fund's measures. Loans may also provide a particular motivation for the borrower to achieve successful project completion and reach the project objectives.

1.1.3 The Five-Year Action Plan 1998 to 2002 clarifies in its paragraph 9 that "Grants will mainly be given to projects for commodities which are of importance to LDCs, to poorer groups within other Developing Countries and/or to support loan-financed projects". Common Fund lending should not substitute local sources of finance or stifle the private financial sector.

1.1.4 In the strict sense of the Agreement, eligible borrowers are ICBs, agencies of ICBs and Member Countries, and loans may be covered by governmental or other suitable guarantees.²

1.1.5 In a first step, both loan- and grant-financed projects are assessed on the same criteria and in particular, their impact on commodity development in the beneficiary countries. In the case of loan-financed projects, however, projects normally must generate a financial rate of return sufficient to pay back capital and interest. A project will be considered as having sufficient financial returns if its projected cash flow indicates capacity to service all liabilities.

1.1.6 There may also be loan-financed projects without a sufficient financial rate of return, but because of the overall benefits (economic, social, environmental) of the project the borrower, e.g., a Member Government, is willing to take and repay the loan.

¹ Based on the text in the 3rd Edition of the Manual for the Preparation and Management of Projects to be Financed by the Common Fund for Commodities.

² The Governing Council did at its Twelfth Annual Meeting, through Decision GC/XII/2, further clarify this provision and establish provisional guidelines on eligibility of borrowers and guarantors and other forms of security. These guidelines are rendered in Section IV.3 of the present publication.

1.2 Lending Terms and Conditions³

General

1.2.1 The loan conditions as reflected in the overall financial package will mainly take into account:

- the financial rate of return of the project and its prospects;
- the economic situation and prospects of the borrower and any guarantor;
- the beneficiaries to be reached;
- the impact of the project;
- any associated grant-financing; and,
- loan co-financing from other sources.

1.2.2 The Common Fund applies shorter maturity periods than those normally used by other international development institutions. The Fund will not fund long-term investment projects which require an extended repayment period. A typical project financed by the Fund, for instance, concerns the introduction of new technology with a fairly high rate of financial return, or measures which can subsequently be taken up by the private sector. The loan period will normally be linked to both the project period and the capacity of the borrower to repay.

Loan Types

1.2.3 The choice of loan terms would largely depend on the financial rate of return which the borrower would be able to earn from the project. The Common Fund applies three main loan types reflecting different levels of concessionality in line with policies generally followed by other development institutions. This is specified as follows:

1.2.4 Ordinary loans are used to finance projects near but not at full market conditions if the financial rate of return is sufficiently high. Certain pilot projects may be suitable candidates for such loans.

1.2.5 Intermediate loans are used to finance projects when one of the following conditions apply:

- the expected rate of financial return is low but the project is justified in other terms, for example on socio-economic or environmental grounds;
- the facilities operated by the project will run below full capacity at the introductory stage; or,
- there will be disproportionate costs for an intermediary in collecting repayments from the direct beneficiaries of the project, for example, because they are too numerous or too widely dispersed.

1.2.6 Highly concessional loans are mainly used to finance projects which are of particular

³ The text of sections 1.2 to 1.10 is a slightly shortened and edited version of the Loans Policy approved by the Governing Council (document CFC/EB/26/16).

benefit to commodity producers in Least Developed Countries and which would not need to be grant-financed because they generate a financial rate of return.

Interest Rates and Charges

1.2.7 Interest rates could be either fixed or variable, at the choice of the borrower. A fixed interest rate would be set for the full duration of the loan. Variable interest rates would be determined every six months (January and July) on the basis of the prevailing London Inter-Bank Offering Rate (LIBOR) for the currency and term concerned. The Executive Board would annually review the rates applied to different loan types.

1.2.8 Service charges will be calculated *pro rata temporis* on the outstanding balance of the loans and will be payable together with each interest payment. Commitment fees will accrue *pro rata temporis* on contracted but undrawn balances of loans and will be invoiced semi-annually.

1.2.9 Interest rates, charges, grace periods and maturities for the different loan types are indicated in Table 2.

Table 2
Loan Terms

LOAN TYPE	INTEREST RATES ¹	OTHER CHARGES TO THE BORROWER	GRACE PERIODS ³	FINAL MATURITIES ⁴
ORDINARY	Below commercial rate ² but above LIBOR	1% p.a. service charge 1 % p.a. commitment fee	up to 2 years	up to 6 years
INTERMEDIATE CONCESSIONALITY	50% of that for "ordinary" loan	1% p.a. service charge 0.5% p.a. commitment fee	up to 3 years	up to 8 years
HIGHLY CONCESSIONAL	interest free	1% p.a. service charge	up to 4 years	up to 10 years

1 In case the Common Fund for Commodities borrows money for its Second Account operations, as foreseen in Articles 18.1 (d) and 16.5 (a) of the Agreement, interest rates will be based on the cost of borrowing to the CFC.
2 Commercial rate as applicable to the particular borrower in the Developing Country.
3 The grace period will take account of the time which elapses from the date of the first disbursement to the date at which the project is expected to generate income.
4 These periods include both the grace and the repayment period.

1.3 Grant/Loan Mix

1.3.1 The level of concessionality will be substantially increased if the project has a grant component. There are established formulae, for instance by the OECD, to calculate the level of concessionality. The grant will normally cover those project components which are not expected to generate a financial rate of return, such as technical assistance, etc. This is also relevant where a loan-financed project was preceded by a grant-financed project which prepared the ground for the follow-up measures.

1.4 Loan Co-financing

1.4.1 The Agreement and the Five-Year Action Plan point to the need to co-operate with other multilateral or bilateral institutions. This can include loan co-financing from such organisations, either in the form of a jointly given loan or as separate but co-ordinated loans for a particular project or components thereof. Common Fund lending should serve as a catalyst for follow-up lending from other sources, thereby having a spin-off effect.

1.5 Specific Forms of Loans

1.5.1 Credit can be given in different ways. The most common form of credit is the straight loan to a borrower at the conditions outlined above. Additional credit forms, for example lines of credit, can also be considered.⁴

1.5.2 Line of Credit. A line of credit is a loan given to a borrower for on-lending to approved sub-borrowers, for example, in the form of micro-loans for small producers or exporters. The Fund would agree on the overall criteria and monitor the subsequent lending processes without approving each micro-loan. The borrower takes care of the loan supervision and administration at the micro level. The credit risk of the sub-loans is held by the borrower. The use of local infrastructure would enable the CFC to reach its target beneficiaries, namely small producers and exporters. Lines of credit should be well guaranteed: they could also be supported by technical assistance and accompanied by an impact assessment on the local financial sector.

1.5.3 Performance Related Loans. The terms of the loan might take into consideration a project's risks and benefits. Specific targets for a project would be negotiated and, using a formula, returns would be calculated. Depending on the level of risk/benefit shared between the project beneficiary and lender, contributions would be (a) partially repaid (project performance below expectation), (b) entirely repaid (project meets expectations), or (c) repaid with additional dividends (project exceeds expectations).

1.6 Multi-Country Loans

1.6.1 Common Fund projects are normally executed in several countries, taking account of the general commodity focus of the Fund. In this case, the total loan would be divided into separate sub-loans in accordance with the number of borrowers. This would be based on the activities to be performed in each country, as detailed in the Appraisal Report.

1.7 Size of Loans

1.7.1 The Common Fund concentrates on small to medium sized projects with an indicative range of costs from USD 2 to 6 million (see Five-Year Action Plan, paragraph 5) of which the Fund normally finances around half of this amount in view of the Fund's catalytic role in attracting resources from other donors for its projects. The average amount of the Fund's

⁴ While the loans policy initially also referred to venture capital, the Executive Board at subsequent meetings took the view that venture capital was unsuitable for the Common Fund in consideration of the associated obligations and the administrative time required.

contribution per project over the years 1991 to 1997 was USD 1.2 million. The highest loan was USD 5.7 million: the lowest USD 0.25 million. Loans are expected to stay near the average within this range.

1.8 Disbursements and Repayments

1.8.1 Disbursements of loans will relate to the projected cash flow of the project, as laid out in the disbursement schedule contained in the Loan Agreement. Loans will normally be denominated in USD.

Loans shall be repayable in the currency of disbursement.

1.9 Risk Assessment and Loan Guarantees

1.9.1 In appraising each loan, the risks involved must be thoroughly assessed, taking mainly into account:

- the prospects of the project;
- the credit-worthiness of the borrower;
- the credit-worthiness of any guarantor;
- laws and regulations, particularly within the financial sector, in the jurisdiction of the borrower as well as of any guarantor; and,
- the repatriation risk.

1.9.2 Loans should be guaranteed.

1.9.3 Whenever the suitability of a formally eligible guarantor for a loan is evaluated, attention should be paid not only to its financial state, but also to whether local laws or regulations (such as currency restrictions or financial or corporate law) could possibly jeopardise or hamper the fulfilment of such guarantor's obligations under the guarantee or the Fund's access to enforcement thereof, if necessary.

1.10 Procedure and Documentation

1.10.1 Loan-financed projects or those with a loan/grant mix will be submitted to the Common Fund in the same way as grant-financed projects by, or through, an ICB.

1.10.2 After a project has been approved by the Executive Board, and prior to any disbursement from a loan, the following documents have to be signed:

- Project Agreement between the Fund, the ICB and the Project Executing Agency (PEA);
- Loan Agreement between the Fund and the borrower;
- Guarantee Agreement(s) between the Fund and the Guarantor, if any;
- Sub-loan Agreement(s) between the borrower and any sub-borrower(s) acceptable to the Fund;
- any Guarantee Agreements for such sub-loans with guarantors approved by the Fund; and,

- any Memoranda of Understanding, Project Implementation Agreements, Letters of Understanding or other agreements between the PEA, the borrower and/or any other entities involved in the project or the loan, which may be required pursuant to the Project Agreement or the Loan Agreement.

1.10.3 Loan administration, monitoring including technical evaluation, financial management, loan/grant administration and disbursement, is normally the responsibility of the Fund, except where such roles have been delegated by the Fund to other international or regional institutions, as foreseen in Article 18.3 (f) of the Agreement.

IV

GUIDELINES

**GUIDELINES AND CRITERIA
FOR THE DETERMINATION OF
PRIORITIES OF PROJECTS
FOR FINANCING THROUGH
THE SECOND ACCOUNT**

GUIDELINES AND CRITERIA FOR THE DETERMINATION OF PRIORITIES OF PROJECTS FOR FINANCING THROUGH THE SECOND ACCOUNT

(Adopted by the Executive Board at its Eleventh Meeting in March 1993)

The Guidelines and Criteria for the Determination of Priorities of Projects for Financing Through the Second Account are adopted in conformity with regulation II.3 of the Regulations and Rules for Second Account Operations, taking into account the advice of the Consultative Committee. These Guidelines and Criteria must be read in conjunction with the Agreement Establishing the Common Fund for Commodities and they will be reviewed annually by the Executive Board.

ELIGIBILITY

Only measures which are eligible for financing through the Second Account under the terms of the Agreement and which are presented to the Fund in accordance with the provisions of the Regulations and Rules for Second Account Operations shall be considered for financing through the Second Account.

PRIORITIES

- 1.1 Proposed measures shall be prioritized in the light of particular circumstances characterizing each commodity, and the economic and financial situation in developing producing countries including their debt problems.
- 1.2 Bearing in mind the principles laid down in Article 18.3 (m) and (n), due emphasis shall in this regard be given to commodities of interest to the least developed countries. Due emphasis shall also be given to commodities of interest to developing countries, particularly those of small producers-exporters.
- 1.3 Due emphasis shall further be given to the expected impact of proposed measures on the development of those countries.

- 2.1 Due emphasis shall be given to measures which are likely to improve the socio-economic conditions and/or protect the environment in developing producing countries.
- 2.2 In the context of improving the socio-economic conditions in developing producing countries, the Fund may give special attention to projects which may lead to an improvement of the quality of life of workers and smallholders engaged in production, transport and processing of commodities as well as to the development of their skills and abilities.
- 2.3 In this regard, the Fund shall, wherever possible, seek to contribute to the enhancement of commonly agreed policies of the United Nations and its specialized agencies in fields such as health, education, food security and environment. Regional or national programmes with similar or identical objectives shall likewise be taken into account.
- 3.1 In selecting projects for financing through the Second Account, the Fund shall encourage consistency regarding efforts undertaken at the international level in the field of commodities. It shall take into account the work of UNCTAD and, in particular, the efforts pursued by bodies such as GATT and other international or bilateral agencies to liberalize trade in commodities and commodity related products.
- 3.2 The Fund may give special attention to project proposals developed by an ICB as an important part of an overall strategy for the commodity in question.
- 3.3 Due account shall be taken of the resources of the associated industries, traders and importers of the commodity, and of the support which they offer to industries in the developing countries and in the co-financing of projects.
- 3.4 Due priority will be given to projects either seeking loans or which have secured co-financing commitments. However, in conformity with the priority listed in 1.2 above, financing of projects pertaining to least developed countries shall be on grant or soft loan terms.
- 4.1 The Fund will give special attention to measures including technical assistance projects aimed at improved management and better utilization of commodity resources, *inter alia, with a view to optimizing a level of economic exploitation which is sustainable also in the longer term.* Where structural over-supply of a particular commodity on the world market occurs, associated projects should not involve measures which exacerbate the problem.
- 4.2 The Fund may also give special attention to measures including feasibility studies and other technical assistance projects aimed at providing a basis for increased local processing of commodities in developing producing countries.
- 5.1 The Fund may give special consideration to measures aimed at strengthening the competitive position of commodities facing difficulties such as a falling market share in competition with synthetic substitutes and a declining trend in real term export earnings

resulting from structural changes in their markets; inter alia, by seeking new outlets and encouraging innovative technologies to enhance the value of these products. These measures should demonstrate the potential for improvement in long-term competitiveness.

- 6.1 Among projects of a comparable nature, priority shall be given to those where the finance provided by the Fund would yield significant benefits to a number of developing producing countries with a large part of their population depending on the commodity in question.
- 6.2 The Fund shall promote and facilitate measures aimed at vertical diversification with a view to:
 - (i) Increase remuneration to producers through value-added measures to the commodities; and
 - (ii) Assisting in developing other alternatives where demand for traditional commodities is experiencing a downward trend.

**GUIDELINES FOR PRIORITISATION
OF
PROJECT FINANCING**

GUIDELINES FOR PRIORITISATION OF PROJECT FINANCING

*(Adopted by the Executive Board on 13 October 2003 at its Thirty-Sixth Meeting and
amended by the Executive Board on 20 April 2004 at its Thirty-Seventh Meeting)*

The projects recommended by the Consultative Committee and approved by the Executive Board could be ranked so as to determine in which order the projects will receive financing. For this purpose the scheme given below could be applied. Under each heading explanations are given which aspects should be taken into account.

- I. Developmental Aspects (30)
 - Impact on poverty alleviation and reaching the target beneficiaries within the project period
 - Contributing to the attainment of the specific objectives of the Five-Year Action Plan 2003-2007, i.e. enhancing competitiveness of commodities, diversification of commodity production and trade including expansion of primary processing in producing countries and value-addition, and broadening the range of exportable commodities and their respective chains.

- II. Beneficiary Focus (25)
 - LDCs
 - Poorer strata of population in other developing countries and countries with economies in transition
 - Small producers, processors and exporters

- III. Project Design (15)
 - Paying attention to the chain management concept
 - Efficiency
 - Innovativeness
 - Expected Replicability
 - Private sector involvement
 - Capabilities of the Project Executing Agency

- IV. Financial Aspects (10)
 - Co-financing and counterpart contributions
 - Loan financing

- V. Balance Across Commodities (10)
 - Importance of commodity for the target beneficiaries
 - Previous support to the commodity and CFC Member countries

- VI. Urgency (10)

Total score: 100

**GUIDELINES FOR APPLICATION
OF
THE LOANS POLICY**

GUIDELINES FOR APPLICATION OF THE LOANS POLICY

Introduction

1. The Governing Council at its Twelfth Annual Meeting considered the draft Guidelines on eligibility of borrowers and guarantors and other forms of security contained in doc. CFC/GC/12/7. The Governing Council agreed that the Guidelines, as amended by the Governing Council, can be applied provisionally and would be reviewed by the Governing Council at its Thirteenth Annual Meeting. In the application of the guidelines the creditworthiness of borrowers and guarantors would in each case need to be thoroughly assessed. Loans extended by the CFC shall be in conformity with the requirements established by the IMF for the respective countries.

2. The Governing Council recognized that the Agreement Establishing the Common Fund for Commodities states in Article 18.3 (c) that loans can be given to:

- an International Commodity Body (ICB)
- an agency of an ICB or
- a Member or Members

Guidelines

3. The Guidelines, as amended by the Governing Council, are as follows:

Group A: to be interpreted as “**Members**” and, thus, as eligible borrowers.

“Members” are generally defined in Article 5 of the Agreement as those States and intergovernmental organisations which have ratified, accepted, approved or acceded to the Agreement.

The term “Member” should, in the context of Article 18.3 (c), be interpreted in such a way as to also include the following:

	Guarantees Required
Category 1: Ministries authorised by their Governments and, if necessary, approved by Parliament, to take loans	No
Category 2: National Banks, for example Central Banks	No
Category 3: Governments of large administrative regions within countries	Normally* Not
Category 4: International Financial Institutions, for example Regional Development Banks (e.g. the African Development Bank, the Asian Development Bank, the PTA Bank), owned by States, where: <ul style="list-style-type: none"> - all members are Members of the Fund - some members are Members of the Fund 	No
Category 5: State owned banks involved in development	Normally not
Category 6: Parastatals	Normally Yes
Category 7: Inter-governmental organisations, where: <ul style="list-style-type: none"> - all members are Members of the Fund - some members are Members of the Fund 	Normally Yes

Group B: to be interpreted as “agencies of ICBs” and, thus, as eligible borrowers.

With respect to the criterion “agency of an ICB”, as applied in the Agreement Establishing the Fund, the Working Group recommends that this be interpreted so as to include appointment by the relevant ICB of a borrower for the purpose of a particular project. The form of such appointment should be at the discretion of the ICB in each case. The Working Group recommends to consider the following to be eligible as agencies of ICBs:

Category 1: Private Banks and other credit institutions, active in commodity development financing, with a focus on social (e.g. gender) aspects and poverty alleviation and which have a track record of such activities and of repayment.	Yes
Category 2: Federations of co-operatives, recognised by national governments.	Yes

* The qualification “normally” is suggested with a view to provide a possibility for the Executive Board to make exceptions in individual cases based on the characteristics and condition of the borrower and other particular circumstances regarding the project in question.

Group C : to be eligible as **guarantors**

Article 18, paragraph 3 (c) of the Agreement addresses the issue of guarantors by stating that loans may be covered by governmental or other suitable guarantees from the ICB or the Member or Members designated by such ICB”.

The following are to be included among eligible guarantors:

1. Central Banks Ministries
2. Multilateral institutions
3. Parastatal institutions State owned development banks
4. Private guarantors
 - Private banks
 - Other financial institutions
 - Mutual Savings Associations
 - Non-financial institutions

The Borrower and the Guarantor cannot be the same institution with respect to any one loan.

Group D: Other forms of **security**.

As far as other forms of security are concerned, the following can be considered as collateral, provided that the objects or rights concerned belong to the borrower or the guarantor and have a market value:

- Pledged cash deposits
- Assignment of rights, e.g. under contracts or insurance policies
- Real Estate
- Commercial stocks
- Goods to be delivered / in transit
- Movable assets (vehicles, equipment, etc.)
- Equity
- Insurance policies

Pursuant to Article 32, Paragraph 2 of the Agreement Establishing the Common Fund for Commodities, the Fund may upon departure of a Member from the Fund settle all liabilities outstanding from that Member to the Fund, against the amount of Directly Contributed Capital then due to be returned to the Member. Thus the paid-in Directly Contributed Capital of a Member State will automatically constitute collateral for a loan, or loans, taken by that Member State through its Government (with Parliamentary approval, if required).

**GUIDELINES FOR CO-OPERATION
WITH NON-GOVERNMENTAL
ORGANISATIONS (NGOs)**

GUIDELINES FOR CO-OPERATION WITH NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

(Adopted by the Governing Council at its Fifteenth Annual Meeting on 9 December 2003)

1. There are three main functional areas in which the Common Fund and NGOs/CSOs could establish cooperation:

Information sharing, research and analysis:

2. Many NGOs play a role in collection and dissemination of information. NGOs could perform research, analysis and collect data pertinent to the Common Fund's operations and thus could provide valuable inputs or alternative viewpoints into the Common Fund's activities. They can be important partners in disseminating results of Common Fund financed projects.

Policy dialogue:

3. Some international NGOs play a visible role in policy debate at the international level. NGOs are an instrument by which commodity-dependent communities could voice their opinion. Therefore, they could be particularly important in strengthening participatory approaches in the Common Fund's projects taking into consideration the interests of beneficiaries. NGOs could also enhance the advocacy role of the Common Fund by making the Fund better known to a wider audience.

Project operations support:

4. NGOs could help identifying and articulating development problems and needs of commodity-dependent communities. NGO involvement could contribute to the responsiveness, accountability and transparency in the project processes. NGOs could develop and enhance public awareness of development efforts and facilitate the participation of affected communities in project design and implementation. As a result, they could build local support to attain the objectives of the Common Fund and increase its effectiveness. A world Bank study showed that a greater involvement of NGOs enhances the sustainability of projects. NGOs could sensitise public opinion and mobilise local resources.

5. The participation of NGOs in the Common Fund's operations could be operationalised by the following means:

- Memoranda of Understanding: NGOs may sign Memoranda of Understanding with the Common Fund in order to establish a formal framework for co-operation;
- Attendance of Workshops: NGOs may be invited to participate in CFC workshops, expert meetings, technical conferences or seminars on subjects which fall within their field of interest. Participation of NGOs are restricted to the technical level meetings which excludes meetings such as Governing Council, Executive Board and Consultative Committee;

- Exchange of Publications: NGOs may exchange with the Common Fund general publications such as technical papers and annual reports;
 - Project Implementation: NGOs may be considered to act as Project Executing Agency (PEA) of Common Fund-financed projects if they fulfil the required prerequisites. NGOs may also participate in project operations as collaborating institutions;
6. The Common Fund would need to take into account the following aspects when considering co-operation with NGOs/CSOs:
- Congruence with the mandate of CFC: partnership activities must be in line with the Common Fund's mandate and enhance the effectiveness of its work;
 - Convergence of objectives and interest: partnership activities would focus on areas and on subjects of mutual interest;
 - Transparency: NGOs wishing to cooperate with CFC must be fully transparent and information on them should be fully available in the public domain. NGOs also must have an established structure and be sufficiently representative of the field of interest in which the NGO operates;
 - Accountability: partnership activities would be determined with a clear and unambiguous set of responsibilities. The rights and obligations of each party shall be clearly spelt out in any agreement entered into;
 - Experience: co-operation in Common Fund's project operations would be restricted to NGOs with a solid knowledge of and demonstrated previous experience in the specific area and region addressed by the project. The NGO must be concerned with matters covering an area of CFC's field of activity and in a position to give practical assistance in that field;
7. Before any form of formal relationship is established with an NGO, such organisation must supply the Common Fund with the information requested by the Managing Director.

V

UNCTAD RESOLUTION 93(IV): THE INTEGRATED PROGRAMME FOR COMMODITIES

*(The numbering of the footnotes have been adjusted for
the purpose of the present compilation)*

UNCTAD RESOLUTION 93(IV): THE INTEGRATED PROGRAMME FOR COMMODITIES

RESOLUTION

93 (IV). Integrated Programme for Commodities¹

The United Nations Conference on Trade and Development,

Recalling the Declaration and the Programme of Action on the Establishment of a New International Economic Order² as well as the Charter of Economic Rights and Duties of States,³ which lay down the foundations of the new international economic order. General Assembly resolution 623 (VII) of 21 December 1952 and the recommendation contained in annex A.II.1 of the Final Act adopted at the first session of the Conference,

Recalling, in particular, section I, 3, paragraph (a) (iv), of the Programme of Action on the Establishment of a New International Economic Order, relating to the preparation of an over-all integrated programme for “a comprehensive range of commodities of export interest to developing countries”,

Recalling also section I, paragraph 3, of General Assembly resolution 3362 (S-VII) of 16 September 1975, which states, *inter alia*, that “an important aim of the fourth session of the United Nations Conference on Trade and Development, in addition to work in progress elsewhere, should be to reach decisions on the improvement of market structures in the field of raw materials and commodities of export interest to the developing countries including decisions with respect to an integrated programme and the applicability of elements thereof”,

Taking note of the work undertaken on commodities in preparation for the fourth session of the Conference, in particular the proposals submitted by the Secretary-General of UNCTAD for an integrated programme for commodities⁴,

Reaffirming the important role of UNCTAD in the field of commodities.

Bearing in mind resolution 16 (VIII) of 19 December 1975 of the Committee on Commodities concerning decisions by the Conference at its fourth session with respect to an integrated programme for commodities, on, *inter alia*:

- (a) Objectives;
- (b) Commodities to be covered;
- (c) International measures;
- (d) Follow-up procedures and time-table for the implementation of agreed measures.

1 The Conference adopted this resolution without dissent.

2 General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974.

3 General Assembly resolutions 3281 (XXIX) of 12 December 1974.

4 TD/184 and Corr.1. Reproduced in *Proceedings of the United Nations Conference on Trade and Development. Fourth Session.* vol. III. *Basic Documentation* (United Nations publication. Sales No. E.76.II.D.12)

Part one. Action taken by the Conference

Affirming the importance to both producers and consumers, notably the developing countries, of commodity exports for foreign exchange earnings and of commodity imports for welfare and economic development,

Recognizing the need to conduct international trade on the basis of mutual advantage and equitable benefits, taking into account the interests of all States, particularly those of the developing countries,

Recognizing also the need for improved forms of international co-operation in the field of commodities which should promote economic and social development, particularly of the developing countries,

Recognizing further the urgent need for substantial progress in stimulating food production in developing countries and the important bearing of international commodity policies on this aim,

Recalling the proposal in the Manila Declaration and Programme of Action for the establishment of a common fund for the financing of international commodity stocks, coordinated national stocks or other necessary measures within the framework of commodity arrangements,

Bearing in mind the view that there might be financial savings in operating a central facility for the purpose of financing buffer stocks,

Taking note of the readiness of a number of countries, expressed prior to and at the fourth session of the Conference, to participate in and financially support a common fund,

Noting that there are differences of views as to the objectives and modalities of a common fund,

Convinced of the need for an over-all approach and an integrated programme for commodities which is a programme of global action to improve market structures in international trade in commodities of interest to developing countries, and which is consistent with the interests of all countries, particularly those of the developing countries, and assures a comprehensive view of the various elements involved while respecting the characteristics of individual commodities,

Decides to adopt the following Integrated Programme for Commodities:

I. Objectives

With a view to improving the terms of trade of developing countries and in order to eliminate the economic imbalance between developed and developing countries, concerted efforts should be made in favour of the developing countries towards expanding and diversifying their trade, improving and diversifying their productive capacity, improving their productivity and increasing their export earnings, with a view to counteracting the adverse effects of inflation, thereby sustaining real incomes. Accordingly the following objectives are agreed:

1. To achieve stable conditions in commodity trade, including avoidance of excessive price fluctuations, at levels which would:

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- (a) be remunerative and just to producers and equitable to consumers;
 - (b) take account of world inflation and changes in the world economic and monetary situations;
 - (c) promote equilibrium between supply and demand within expanding world commodity trade;
2. To improve and sustain the real income of individual developing countries through increased export earnings, and to protect them from fluctuations in export earnings, especially from commodities;
 3. To seek to improve market access and reliability of supply for primary products and the processed products thereof, bearing in mind the needs and interests of developing countries;
 4. To diversify production in developing countries, including food production, and to expand processing of primary products in developing countries with a view to promoting their industrialization and increasing their export earnings;
 5. To improve the competitiveness of, and to encourage research and development on the problems of, natural products competing with synthetics and substitutes, and to consider the harmonization, where appropriate, of the production of synthetics and substitutes in developed countries with the supply of natural products produced in developing countries;
 6. To improve market structures in the field of raw materials and commodities of export interest to developing countries;
 7. To improve marketing, distribution and transport systems for commodity exports of developing countries, including an increase in their participation in these activities and their earnings from them.

II. *Commodity coverage*

The commodity coverage of the Integrated Programme should take into account the interests of developing countries in bananas, bauxite, cocoa, coffee, copper, cotton and cotton yarns, hard fibres and products, iron ore, jute and products, manganese, meat, phosphates, rubber, sugar, tea, tropical timber, tin, and vegetable oils, including olive oil, and oilseeds, among others, it being understood that other products could be included, in accordance with the procedure set out in section IV below.

III. *International measures of the Programme*

1. It is agreed that steps will be taken, as described in section IV, paragraphs 1 to 3, below, towards the negotiation of a common fund.
2. It is also agreed to take the following measures, to be applied singly or in combination, including action in the context of international commodity arrangements between producers and consumers, in the light of the characteristics and problems of each commodity and the special needs of developing countries:

Part one. Action taken by the Conference

- (a) Setting up of international commodity stocking arrangements;
- (b) Harmonization of stocking policies and the setting up of co-ordinated national stocks;
- (c) Establishment of pricing arrangements, in particular negotiated price ranges, which would be periodically reviewed and appropriately revised, taking into account, *inter alia*, movements in prices of imported manufactured goods, exchange rates, production costs and world inflation, and levels of production and consumption;
- (d) Internationally agreed supply management measures, including export quotas and production policies and, where appropriate, multilateral long-term supply and purchase commitments;
- (e) Improvement of procedures for information and consultation on market conditions;
- (f) Improvement and enlargement of compensatory financing facilities for the stabilization, around a growing trend, of export earnings of developing countries;
- (g) Improvement of market access for the primary and processed products of developing countries through multilateral trade measures in the multilateral trade negotiations, improvement of schemes of generalized preferences and their extension beyond the period originally envisaged, and trade promotion measures;
- (h) International measures to improve the infrastructure and industrial capacity of developing countries, extending from the production of primary commodities to their processing, transport and marketing, as well as to the production of finished manufactured goods, their transport, distribution and exchange, including the establishment of financial, exchange and other institutions for the remunerative management of trade transactions;
- (i) Measures to encourage research and development on the problems of natural products competing with synthetics and consideration of the harmonization, where appropriate, of the production of synthetics and substitutes in developed countries with the supply of natural products produced in developing countries;
- (j) Consideration of special measures for commodities whose problems cannot be adequately solved by stocking and which experience a persistent price decline.

3. The interests of developing importing countries, particularly the least developed and the most seriously affected among them, and those lacking in natural resources, adversely affected by measures under the Integrated Programme, should be protected by means of appropriate differential and remedial measures within the Programme.

4. Special measures, including exemption from financial contributions, should be taken to accommodate the needs of the least developed countries in the Integrated Programme.

5. Efforts on specific measures for reaching arrangements on products, groups of products or sectors which, for various reasons, are not incorporated in the first stage of application of the Integrated Programme should be continued.

6. The application of any of the measures which may concern existing international arrangements on commodities covered by the Integrated Programme would be decided by governments within the commodity organizations concerned.

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IV. Procedures and time-table

1. The Secretary-General of UNCTAD is requested to convene a negotiating conference open to all members of UNCTAD on a common fund no later than March 1977.

2. The Secretary-General of UNCTAD is further requested to convene preparatory meetings prior to the conference referred to in paragraph I above concerning, *inter alia*:

- (a) Elaboration of objectives;
- (b) The financing needs of a common fund and its structure;
- (c) Sources of finance;
- (d) Mode of operations;
- (e) Decision-making and fund management.

3. Member countries are invited to transmit to the Secretary-General of UNCTAD, prior to 30 September 1976, any proposals they may have concerning the above and related issues.

4. The Secretary-General of UNCTAD is further requested to convene, in consultation with international organizations concerned, preparatory meetings for international negotiations on individual products, in the period beginning 1 September 1976. These meetings should complete their work as soon as possible, but not later than February 1978. The task of the preparatory meetings shall be to:

- (a) Propose appropriate measures and techniques required to achieve the objectives of the Integrated Programme;
- (b) Determine financial requirements resulting from the measures and techniques proposed;
- (c) Recommend follow-up action required through the negotiation of commodity agreements, or other measures;
- (d) Prepare draft proposals of such agreements for the consideration of governments and for use in commodity negotiating conferences.

5. The Secretary-General of UNCTAD is further requested to convene, as and when required, commodity negotiating conferences as soon as possible after the completion of each preparatory meeting held pursuant to paragraph 4 above. These negotiations should be concluded by the end of 1978.

6. The Secretary-General of UNCTAD is requested to undertake the necessary arrangements for the servicing of the preparatory meetings and the subsequent commodity negotiating conferences, in co-operation with the secretariats of the specialized commodity bodies and other organizations concerned.

7. It is agreed that international negotiations or renegotiations on individual commodities covered by existing agreements shall be in accordance with appropriate established procedures for the purpose of concluding international arrangements.

8. The Trade and Development Board is instructed to establish an *ad hoc* intergovernmental committee to coordinate the preparatory work and the negotiations, to deal with major policy issues that may arise, including commodity coverage, and to co-ordinate the implementation of the measures under the Integrated Programme.

145th plenary meeting
30 May 1976