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FIFTH INTERNATIONAL TIN AGREEMENT

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FIFTH INTERNATIONAL TIN AGREEMENT

PREAMBLE

The participating countries, recognizing:

(a) The significant assistance to economic growth, especially in developing producing countries, that can be given by commodity agreements in helping to secure stabilization of prices and steady development of export earnings and of primary commodity markets;

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

(c) The exceptional importance of tin to numerous countries whose economy is heavily dependent upon favourable and equitable conditions for its production, consumption or trade;

(d) The need to protect and foster the health and growth of the tin industry, especially in the developing producing countries, and to ensure adequate supplies of tin to safeguard the interests of consumers;

(e) The importance to tin producing countries of maintaining and expanding their import purchasing power; and

(f) The desirability of improving efficiency in the use of tin in both the developing and industrialized countries, as an aid to the conservation of world tin resources;

Have agreed as follows:

CHAPTER I: OBJECTIVES

ARTICLE 1

Objectives

The objectives of this Agreement are:

(a) To provide for adjustment between world production and consumption of tin and to alleviate serious difficulties arising from surplus or shortage of tin whether anticipated or real;

(b) To prevent excessive fluctuations in the price of tin and in export earnings from tin;

(c) To make arrangements which will help to increase the export earnings from tin, especially those of the developing producing countries, so as to provide such countries with resources for accelerated economic growth and social development, while at the same time taking into account the interests of consumers;

(d) To ensure conditions which will help to achieve a dynamic and rising rate of production of tin on the basis of a remunerative return to producers, which will help to secure an adequate supply at prices fair to consumers and to provide a long-term equilibrium between production and consumption;

(e) To prevent widespread unemployment or under-employment and other serious difficulties which may result from maladjustments between the supply of and the demand for tin;

(f) To improve further the expansion in the use of tin and the indigenous processing of tin, especially in the developing producing countries;

(g) In the event of a shortage of supplies of tin occurring or being expected to occur, to take steps to secure an increase in the production of tin and a fair distribution of tin metal in order to mitigate serious difficulties which consuming countries might encounter;

(h) In the event of a surplus of supplies of tin occurring or being expected to occur, to take steps to mitigate serious difficulties which producing countries might encounter;

(i) To review disposals of non-commercial stocks of tin by Governments and to take steps which would avoid any uncertainties and difficulties which might arise;

(j) To keep under review the need for the development and exploitation of new deposits of tin and for the promotion, through, *inter alia*, the technical and financial assistance resources of the United Nations and other organisations within the United Nations system, of the most efficient methods of mining, concentration and smelting of tin ores;

(k) To promote the development of the tin market in the developing producing countries in order to encourage a more important role for them in the marketing of tin; and

(l) To continue the work of the International Tin Council under the Fourth International Tin Agreement⁽¹⁾ (hereinafter referred to as the Fourth Agreement) and previous International Tin Agreements.

CHAPTER II: DEFINITIONS

ARTICLE 2

Definitions

For the purposes of this Agreement:

TIN means tin metal, any other refined tin or the tin content of concentrates or tin ore which has been extracted from its natural occurrence. For the purposes of this definition, "ore" shall be deemed to exclude (a) material which has been extracted from the ore body for a purpose other than that of being dressed and (b) material which is discarded in the process of dressing.

(1) Treaty Series No. 91 (1971), Cmnd. 4831.

- TIN METAL** means refined tin of good merchantable quality assaying not less than 99.75 per cent.
- BUFFER STOCK** means the buffer stock established and operated in accordance with the provisions of chapter X of this Agreement.
- TIN METAL HELD** means the metal holding of the buffer stock, including metal which has been bought for the buffer stock but not yet received, and excluding metal which has been sold from the buffer stock but not yet delivered, by the Manager of the buffer stock.
- TONNE** means a metric ton, *i.e.* 1,000 kilogrammes.
- CONTROL PERIOD** means a period which has been so declared by the Council and for which a total permissible export tonnage has been fixed.
- QUARTER** means a calendar quarter beginning on 1 January, 1 April, 1 July or 1 October.
- NET EXPORTS** means the amount exported in the circumstances set out in part one of annex C to this Agreement less the amount imported as determined in accordance with part two of the same annex.
- PARTICIPATING COUNTRY** means a country whose Government has ratified, approved, accepted or acceded to this Agreement, or given notification of intention to ratify, approve, accept it, or accede to it, or any territory or territories whose separate participation has taken effect under article 53, or, as the context may require, the Government of such country or of such territory or territories themselves, or an organization referred to in article 54.
- PRODUCING COUNTRY** means a participating country which the Council has declared, with the consent of that country, to be a producing country.
- CONSUMING COUNTRY** means a participating country which the Council has declared, with the consent of that country, to be a consuming country.
- CONTRIBUTING COUNTRY** means a participating country which has contributions in the buffer stock.
- A SIMPLE MAJORITY** is attained if a motion is supported by a majority of the votes cast by participating countries.
- A SIMPLE DISTRIBUTED MAJORITY** is attained if a motion is supported by both a majority of the votes cast by producing countries and a majority of the votes cast by consuming countries.
- A TWO-THIRDS DISTRIBUTED MAJORITY** is attained if a motion is supported by both a two-thirds majority of the votes cast by producing countries and a two-thirds majority of the votes cast by consuming countries.
- ENTRY INTO FORCE** means, except when qualified, the initial entry into force of this Agreement, whether such entry into force is provisional in accordance with article 50 or definitive in accordance with article 49.
- FINANCIAL YEAR** means a period of one year beginning on 1 July and ending on 30 June of the next year.
- A SESSION** shall comprise one or more meetings of the Council.

THE INTERNATIONAL TIN COUNCIL: CONSTITUTIONAL PROVISIONS

CHAPTER III: MEMBERSHIP

ARTICLE 3

The Council

(a) The International Tin Council (hereinafter called the Council), established by the previous International Tin Agreements, shall continue in being for the purpose of administering the Fifth International Tin Agreement, with the membership, powers and functions provided for in this Agreement.

(b) The seat of the Council shall be in London, unless the Council decides otherwise.

ARTICLE 4

Participation in the Council

(a) The Council shall be composed of all the participating countries.

(b) (i) Each participating country shall be represented in the Council by one delegate, and may designate alternates and advisers to attend sessions of the Council;

(ii) An alternate delegate shall be empowered to act and vote on behalf of the delegate during the latter's absence or in other special circumstances.

(c) Each participating country shall constitute a single member of the Council, except as otherwise provided in article 53.

ARTICLE 5

Categories of participants

(a) Each member of the Council shall be declared by the Council, with the consent of the country concerned, to be a producing or a consuming country, as soon as possible after receipt by the Council of notice from the Secretary-General of the United Nations that such member has deposited its instrument of ratification, approval, acceptance or accession under article 48 or 52, or notification of intention to ratify, approve, accept or accede to this Agreement under article 50 or article 52.

(b) The membership of producing countries and consuming countries shall be based respectively on their domestic mine production and their consumption of tin metal provided that:

(i) The membership of a producing country which is a substantial consumer of tin metal derived from its own domestic mine production shall with the consent of that country be based on its exports of tin; and

(ii) The membership of a consuming country which produces from its own domestic mines a substantial proportion of the tin it consumes shall with the consent of that country be based on its imports of tin.

(c) In its instrument of ratification, approval, acceptance or accession or in its notification of intention to ratify, approve, accept or accede to this Agreement, each Government may state the category of participating countries to which it considers that it should belong.

(d) At the first ordinary session of the Council after the entry into force of this Agreement, the Council shall take the decisions necessary for the application of this article by a majority of votes cast by the participating countries listed in annex A, and by a majority of votes cast by the participating countries listed in annex B, the votes being counted separately and voting rights being set out as in annexes A and B to this Agreement, the operation of article 13 being left out of account for this purpose.

ARTICLE 6

Change of category

(a) Where the position of a participating country has changed from that of a consuming to that of a producing country, or vice versa, the Council shall, on the request of that country or on its own initiative with the country's consent, consider the new position and determine what tonnage or percentage would be applicable for the purposes of the relevant annexes to this Agreement.

(b) The Council shall determine the date when the tonnage and/or percentage, as the case shall require, which it has arrived at under paragraph (a) of this article, shall come into effect.

(c) From the date of coming into effect determined by the Council under paragraph (b) the participating country concerned shall cease to hold any of the rights and privileges in, or to be bound by any of the obligations under, this Agreement which pertain to countries in its previous category, except any undischarged financial or other obligations incurred by the country in its previous category, and shall acquire all the rights and privileges in, and shall be bound by all of the obligations under, this Agreement which pertain to countries in its new category:

Provided that:

- (i) If the change of category is from that of a producing country to that of a consuming country, the country which has changed shall nevertheless retain its rights to the refund at the termination of this Agreement of its share in the liquidation of the buffer stock in accordance with articles 25 and 26; and
- (ii) If the change of category is from that of a consuming country to that of a producing country, the conditions laid down by the Council for the country which has changed shall be equitable as between the country and the other producing countries already participating in this Agreement.

CHAPTER IV: POWERS AND FUNCTIONS

ARTICLE 7

Powers and functions of the Council

The Council:

(a) Shall have such powers and perform such duties as may be necessary for the administration and operation of this Agreement.

(b) Shall receive from the Executive Chairman, whenever it so requests, such information with regard to the holdings and operations of the buffer stock as it considers necessary to fulfil its functions under this Agreement.

(c) May request participating countries to furnish available data concerning tin production, the production costs of tin, the level of tin production, tin consumption, international trade in and stocks of tin and any other information necessary for the satisfactory administration of this Agreement, not inconsistent with the national security provisions as laid down in article 44, and the countries shall furnish to the fullest extent possible the information so requested.

(d) Has the power to borrow for the purposes of the Administrative Account established under article 16, or of the Buffer Stock Account in accordance with article 24.

(e) Shall publish after the end of each financial year a report of its activities for that year.

(f) Shall publish after the end of each quarter, but not earlier than three months after the end of that quarter in the absence of a contrary decision by the Council, a statement showing the tonnage of tin metal held at the end of that quarter.

(g) Shall make whatever arrangements are appropriate for consultation and co-operation with:

(i) The United Nations, its appropriate organs—particularly the United Nations Conference on Trade and Development—the specialized agencies, other organisations within the United Nations system and appropriate intergovernmental organizations; and

(ii) Non-participating countries which are Members of the United Nations or members of its specialized agencies or which were parties to the previous International Tin Agreements.

ARTICLE 8

Procedures of the Council

The Council:

(a) Shall establish its own rules of procedure.

(b) May make whatever arrangements it considers necessary to advise the Executive Chairman at times when the Council is not in session.

(c) May appoint such committees as it considers necessary to assist it in the performance of its functions, and may draw up their terms of reference; these committees may, unless the Council otherwise decides, establish their own rules of procedure.

ERRATA SLIP

Treaty Series No. 110 (1977)

INTERNATIONAL TIN AGREEMENT, 1975

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CORRECTION

On page 57 *delete* :

“Iceland 29 June 1976”

- (d) (i) May at any time, by a two-thirds distributed majority, delegate to any committee any power which the Council may exercise by a simple distributed majority, other than those relating to :
- assessment of contributions under article 19;
 - floor and ceiling prices under articles 27 and 31;
 - assessment of export control under articles 32, 33, 34, 35 and 36; or
 - action in the event of a tin shortage under article 40;
- (ii) Shall, by a two-thirds distributed majority, fix the membership and terms of reference of any such committee; and
- (iii) May by a simple majority revoke at any time any delegation of powers to any such committee or the appointment of any such committee.

ARTICLE 9

Statistics and studies

The Council :

(a) Shall, at least once in every quarter, estimate the probable production and consumption of tin during the following quarter or quarters, with a view to assessing the total statistical tin position for that period, and in this connexion, may take into account such other factors as are relevant.

(b) Shall make arrangements for the continuing study of the production costs of tin, the level of tin production, price trends, market trends and the short-term and long-term problems of the world tin industry; to this effect it shall undertake or promote such studies on problems of the tin industry as it deems appropriate.

(c) Shall keep itself informed of new uses of tin and the development of substitute products which might replace tin in its traditional uses.

(d) Shall encourage closer relationships with and wider participation in organizations devoted to research into the efficient exploration for and production, processing and use of tin; and

(e) Shall make a study of alternative means to supplement or replace existing methods of financing the buffer stock.

CHAPTER V: ORGANIZATION AND ADMINISTRATION

ARTICLE 10

Executive Chairman and Vice-Chairmen of the Council

(a) The Council shall, by a two-thirds distributed majority and by ballot, appoint an independent Executive Chairman, who may be a national of one of the participating countries. The appointment of the Executive Chairman shall be considered at the first ordinary session of the Council after the entry into force of this Agreement.

(b) An Executive Chairman shall not be appointed if he has been actively engaged in the tin industry or in the tin trade during the five years preceding his appointment and shall comply with the conditions set out in article 12.

(c) A member of the staff of the Council shall not be excluded from appointment as Executive Chairman by virtue of paragraph (b) of this article.

(d) The Executive Chairman shall hold office for such period and on such other terms and conditions as the Council may determine.

(e) The Executive Chairman shall preside over sessions and meetings of the Council; he shall have no vote.

(f) The Council shall elect annually two Vice-chairmen, one from among the delegates of the producing countries and one from among the delegates of the consuming countries. The two Vice-chairmen shall be designated respectively First Vice-chairman and Second Vice-chairman. The First Vice-chairman shall be selected for each alternate year from producing countries and consuming countries respectively.

(g) If the Executive Chairman resigns or is permanently unable to perform his duties, the Council shall appoint a new Executive Chairman in accordance with the procedure provided for in paragraph (a) of this article. Pending such appointment, or during temporary absences of the Executive Chairman, he shall be replaced by the First Vice-chairman, or if necessary by the Second Vice-chairman, who shall have only the duties of presiding over sessions and meetings, unless the Council decides otherwise. The Council shall also provide in its Rules of Procedure for the appointment of an Acting Chief Executive Officer responsible for the administration and operation of this Agreement in accordance with article 12, during temporary absences of the Executive Chairman, or pending the appointment of a new Executive Chairman in accordance with this paragraph.

(h) When a Vice-chairman performs the duties of the Executive Chairman he shall have no vote; the right to vote of the country he represents may be exercised in accordance with the provisions of sub-paragraph (ii) of paragraph (b) of article 4 and paragraph (c) of article 14.

ARTICLE 11

Sessions of the Council

(a) The Council shall hold four ordinary sessions a year. The Council may also hold such special sessions as may be required.

(b) The Secretary-General of the United Nations shall convene the first ordinary session of the Council under this Agreement in London. This session shall begin within eight days after entry into force of this Agreement.

(c) Sessions shall be convened, at the request of any participating country or as may be required by the provisions of this Agreement, by the Executive Chairman or, after consultation with the First Vice-Chairman, and on his behalf by the Acting Chief Executive Officer in the event of the incapacity of the Executive Chairman. Sessions may also be convened by the Executive Chairman at his discretion.

(d) Sessions shall, unless otherwise decided by the Council, be held at the seat of the Council. Except in the case of sessions convened under article 31, at least seven days' notice of each session shall be given.

(e) Delegates holding two-thirds of the total votes of all producing countries and two-thirds of the total votes of all consuming countries shall together constitute a quorum at any session or meeting of the Council. If for any session of the Council, there is not a quorum as defined above, a further session shall be convened after not less than seven days, at which delegates holding more than 1,000 votes shall together constitute a quorum.

ARTICLE 12

The staff of the Council

(a) The Executive Chairman appointed under article 10 shall be responsible to the Council for the administration and operation of this Agreement in accordance with the decisions of the Council.

(b) The Executive Chairman shall also be responsible for the management of the administrative services and staff.

(c) The Council shall appoint a Manager of the Buffer Stock (hereinafter called the Manager) and a Secretary and shall determine the terms and conditions of service of those two officers.

(d) The Council shall give instructions to the Executive Chairman as to the manner in which the Manager is to carry out his responsibilities laid down in this Agreement.

(e) The Executive Chairman shall be assisted by the staff considered necessary by the Council. All staff, including the Manager and the Secretary of the Council, shall be responsible to the Executive Chairman. The method of appointment and the conditions of employment of the staff shall be approved by the Council.

(f) Neither the Executive Chairman nor members of the staff shall have any financial interest in the tin industry, tin trade, tin transport, tin publicity, or other activities related to tin.

(g) In the performance of their duties, neither the Executive Chairman nor the members of the staff shall seek or receive instructions from any Government or person or authority other than the Council or a person acting on behalf of the Council under the terms of this Agreement. They shall refrain from any action which might reflect on their position as international officials responsible only to the Council. Each participating country undertakes to respect the exclusively international character of the responsibilities of the Executive Chairman and the members of the staff and not to seek to influence them in the discharge of their responsibilities.

(h) No information concerning the operation or administration of this Agreement shall be revealed by the Executive Chairman, the Manager, the Secretary of the Council or other staff of the Council, except as may be authorized by the Council or as is necessary for the proper discharge of their duties under this Agreement.

CHAPTER VI: VOTES IN THE COUNCIL

ARTICLE 13

Percentages and votes

(a) The producing countries shall together hold 1,000 votes. Each producing country shall receive five initial votes; the remainder shall be divided among the producing countries as nearly as possible in proportion to the percentages of each producing country as listed in annex A or as otherwise determined in accordance with this article.

(b) The consuming countries shall together hold 1,000 votes. Each consuming country shall receive five initial votes, or, if there are more than 30 consuming countries, the highest whole number so that the total of such initial votes shall not exceed 150; the remainder shall be divided among the consuming countries as nearly as possible in proportion to the percentage of each consuming country as listed in annex B or as otherwise determined in accordance with this article.

(c) No participating country shall have more than 450 votes.

(d) There shall be no fractional votes.

(e) Where, by reason of the failure of one or more Governments of the countries listed in annex A or annex B to ratify, approve, accept, or accede to, or to give notification of intention to ratify, approve, accept or accede to this Agreement, or by reason of a change in the category of a participating country in accordance with article 6, or by reason of the withdrawal of a participating country, or by reason of the operation of any of the provisions of this Agreement, the total of the percentages of the producing countries or of the consuming countries becomes less than 100, or the total of their respective votes becomes less than 1,000, the balance of percentages and votes shall be distributed among the other producing or consuming countries, as the case may be, as nearly as possible in proportion to the percentages they already hold so that the respective totals of the percentages of producing and consuming countries are each 100, and the respective totals of their votes each 1,000.

(f) (i) If, prior to entry into force of this Agreement, a Government of a country not listed in annex A or B has ratified, approved, accepted or acceded to this Agreement, or has given notification of intention to ratify, approve, accept or accede to this Agreement; or

(ii) If, after the entry into force of this Agreement, the Government of any country not already a participating country ratifies, approves, accepts or accedes to this Agreement, or gives notification of intention to ratify, approve, accept, or accede to it, or if any participating country has been approved for a change in its category in accordance with article 6;

the Council shall determine a percentage for that country, and shall re-determine the percentages of other participating countries in proportion to their current percentages so that the respective totals of the percentages of producing and consuming countries are each 100 and the respective totals of their votes each 1,000. Except as provided in paragraph (i) of this

article, a percentage determined in accordance with this paragraph shall take effect upon the date decided by the Council for the purposes of this article as if it were one of the percentages listed in annex A or annex B, as the case may be.

- (g) (i) The Council shall review the percentages of the producing countries in annex A and re-determine them in accordance with the rules of annex F. Except for the first re-determination, which shall take place at the first ordinary session of the Council, the percentage of a producing country shall not, during any period of 12 months, be reduced by more than one-tenth of its percentage at the commencement of that period;
- (ii) In any action which it may propose to take in accordance with the rules of annex F, the Council shall give due consideration to any circumstances stated by any producing country as being exceptional and may, by a two-thirds distributed majority, waive or modify the full application of those rules;
- (iii) The Council may, from time to time, by a two-thirds distributed majority revise the rules of annex F, and any such revision shall have effect as if it were included in that annex;
- (iv) The percentages resulting from the procedure set out in this paragraph shall be published and shall take effect upon the first day of the quarter following the date of the decision of the Council in replacement of the percentages listed in annex A.

(h) The Council shall at its first ordinary session revise annex B and shall publish the revised annex, which shall be effective for the purpose of this article forthwith; and subsequently, at sessions to be held during the second quarter of each calendar year the Council shall review the figures of the consumption of tin of each consuming country for each of the three preceding calendar years and shall publish revised percentages for each consuming country on the basis of the averages of such figures of consumption, which percentages shall take effect on 1 July next following for the purposes of this article as if they were the percentages listed in annex B.

(i) When, by reason of the application of paragraph (f) of this article, the percentages of producing countries have been proportionately adjusted, during a control period declared by the Council in accordance with article 33, the Council shall then publish as soon as possible the revised table of percentages which shall come into force for the purposes of article 33 with effect from the first day of the quarter following the period in which the decision to revise percentages was taken.

ARTICLE 14

Voting procedure of the Council

(a) Each member of the Council shall be entitled to cast the number of votes it holds in the Council. When voting, a delegate shall not divide his votes. When abstaining, a delegate shall be deemed not to have cast his votes.

(b) Decisions of the Council shall, except when otherwise provided, be taken by a simple distributed majority.

(c) Any member may, in a form satisfactory to the Council, authorize any other member to represent its interests and to exercise its voting rights at any session or meeting of the Council.

CHAPTER VII: PRIVILEGES AND IMMUNITIES

ARTICLE 15

Privileges and immunities

(a) The Council shall be accorded in each participating country such currency exchange facilities as may be necessary for the discharge of its functions under this Agreement.

(b) The Council shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property and to institute legal proceedings.

(c) The Council shall have in each participating country, to the extent consistent with its law, such exemption from taxation on the assets, income and other property of the Council as may be necessary for the discharge of its functions under this Agreement.

(d) The status, privileges and immunities of the Council in the territory of the United Kingdom shall continue to be governed by the Headquarters Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the International Tin Council signed at London on 9 February 1972⁽²⁾.

FINANCIAL PROVISIONS

CHAPTER VIII: ACCOUNTS AND AUDIT

ARTICLE 16

Financial accounts

(a) (i) There shall be kept two accounts—the Administrative Account and the Buffer Stock Account—for the administration and operation of this Agreement;

(ii) The administrative expenses of the Council, including the remuneration of the Executive Chairman, the Manager, the Secretary and the staff, shall be entered into the Administrative Account;

(iii) Any expenditure which is solely attributable to buffer stock transactions or operations, including expenses for borrowing arrangements, storage, commission and insurance, shall be entered into the Buffer Stock Account by the Manager;

(iv) The liability of the Buffer Stock Account for any other type of expenditure shall be decided by the Executive Chairman.

(b) The Council shall not be responsible for the expenses of delegates to the Council or the expenses of their alternates and advisers.

⁽²⁾ Treaty Series No. 38 (1972), Cmnd. 4938.

ARTICLE 17

Cash contributions—currency of payment

Cash payments to the Administrative Account by participating countries under articles 19 and 58, cash payments to the Buffer Stock Account by contributing countries under articles 21, 22 and 23, cash payments from the Administrative Account to participating countries under article 58 and cash payments from the Buffer Stock Account to contributing countries under articles 21, 22, 23 and 25 shall be assessed in pounds sterling and paid in sterling or, at the option of the country concerned, the equivalent of the amount due in sterling at the rate of exchange on the date of payment may be paid in any currency which is freely convertible into sterling on the London foreign exchange market.

ARTICLE 18

Audit

(a) The Council shall appoint auditors for the purpose of auditing its books of account.

(b) The Council shall as soon as possible after the end of each financial year publish the independently audited Administrative and Buffer Stock Accounts, provided that such Buffer Stock Accounts shall not be published earlier than three months after the end of the financial year to which they relate.

CHAPTER IX: THE ADMINISTRATIVE ACCOUNT

ARTICLE 19

The budget

(a) The Council shall at its first ordinary session after the entry into force of this Agreement approve the budget of contributions and expenditure on the Administrative Account for the period between the date of entry into force of this Agreement and the end of the first financial year. Thereafter, it shall approve a similar annual budget for each financial year. If at any time during any financial year, because of unforeseen circumstances which have arisen or are likely to arise, the balance remaining in the Administrative Account is likely to be inadequate to meet the administrative expenses of the Council, the Council may approve a necessary supplementary budget for the remainder of that financial year.

(b) On the basis of the budgets described in paragraph (a) of this article, the Council shall assess in pounds sterling the contribution to the Administrative Account of each participating country, which shall be liable to pay its full contribution to the Council on notice of assessment. Participating countries with 21 or more votes on the date of assessment shall each pay 1 per cent of the total budget and participating countries with 20 or less votes on the date of assessment shall each pay three-tenths of 1 per

cent of the total budget. That portion of the budget which is not covered by the above payments shall be met by a payment in respect of each vote which a participating country holds on the date of assessment of one two-thousandth of the total amount required.

(c) Any participating country which fails to pay its contribution to the Administrative Account within six months of the date of notice of assessment may be deprived by the Council of its right to vote. If such a country fails to pay its contribution within 12 months of the date of notice of assessment, the Council may deprive it of any other rights under this Agreement, provided that the Council shall, on receipt of any such outstanding contribution, restore to the country concerned the rights of which it has been deprived under this paragraph.

CHAPTER X: THE BUFFER STOCK ACCOUNT

ARTICLE 20

Establishment of the buffer stock

(a) A buffer stock shall be established, the aggregate of which shall consist of contributions by producing countries in accordance with article 21 and of contributions by consuming countries in accordance with article 22.

(b) The resources of the buffer stock may be supplemented by borrowing from the capital market and by making arrangements as stated in article 24.

(c) For the purposes of this article, any part of a contribution made in cash shall be deemed to be equivalent to the quantity of tin metal which could have been purchased at the floor price in effect at the date when this part is called in accordance with article 21 or contributed under article 22.

ARTICLE 21

Contributions by producing countries

- (a) (i) Producing countries shall make contributions to the buffer stock in either cash, tin metal or a combination of both, amounting to the equivalent of 20,000 tonnes of tin metal of which the equivalent of 7,500 tonnes shall be due on the entry into force of this Agreement;
- (ii) The Council shall decide what portion of the initial and subsequent contributions shall become due in cash or in tin metal;
- (iii) Subject to the provisions of sub-paragraph (iv), payment of the initial contributions shall be made on the date of the first ordinary session of the Council under this Agreement;
- (iv) Producing countries shall make the payment of the cash portion of any contribution due by them on the date determined by the Council and shall deliver the portion due in tin metal not later than three months from the date of such decision;

(v) Notwithstanding the provisions of sub-paragraph (iii), the Council may at any time determine by which date or dates and in what instalments the whole or part of the balances of the aggregate contribution shall be made. However, the Council may authorize the Executive Chairman to request payment of instalments of these balances at not less than fourteen days' notice;

(vi) If at any time the Council holds cash assets in the Buffer Stock Account whose total amount exceeds the sum of the initial contributions required under sub-paragraph (i) and of any additional contributions received under article 22, the Council may authorize refunds out of such excess to the producing countries in proportion to the contributions they have made under this article. At the request of a producing country, the refund to which it is entitled may be retained in the buffer stock. The balances remaining to be paid out of the aggregate contributions due under sub-paragraph (i) shall be increased by the amount of such refunds, but not by the amount of any refund authorized but retained in the buffer stock.

(b) Contributions due in accordance with paragraph (a) of this article may, with the consent of the contributing country concerned, be made by transfer from the buffer stock held under the Fourth Agreement.

(c) The contributions referred to in paragraph (a) of this article shall be apportioned among the producing countries according to the percentages in annex A, as reviewed and re-determined at the first ordinary session of the Council in accordance with paragraph (g) of article 13.

(d) (i) If on or after the entry into force of this Agreement a country listed in annex A deposits an instrument of ratification, approval, acceptance or accession, or gives notification of intention to ratify, approve, accept, or accede to, this Agreement, or if a consuming country has changed its category to that of a producing country in accordance with article 6, the contribution of that country shall be determined by the Council with reference to its percentage in annex A;

(ii) Contributions determined under sub-paragraph (i), shall be made on the date of the deposit of such instrument or on the date determined by the Council under paragraph (b) of article 6;

(iii) In this connexion, the Council may direct that refunds, not exceeding in the aggregate the amount of any contribution received under sub-paragraph (i), be made to the other producing countries or consuming countries. If the Council decides that such refunds or parts of such refunds are to be made in tin metal, it may attach to these refunds such conditions as it deems necessary. At the request of a producing country, the refund to which it is entitled may be retained in the buffer stock.

(e) (i) A producing country which for the purpose of making a contribution under this article wishes, during a period of export control, to export tin from stocks lying within that country may apply to the Council for permission to export the tonnage so desired in addition to its permissible export tonnage, if any, determined under article 34;

- (ii) The Council shall consider any such application and may approve it subject to such conditions as it deems necessary. Subject to these conditions being satisfied and to the furnishing of such evidence as the Council may require to identify the metal or concentrates exported with the tin metal delivered to the buffer stock, paragraphs (b) and (d) of article 34 and paragraph (a) of article 36 shall not apply to such exports.

(f) Contributions in tin metal may be accepted by the Manager in warehouses officially approved by the London Metal Exchange or at such other place or places as are determined by the Council. The brands of tin so delivered shall be brands registered with and recognized by the London Metal Exchange.

ARTICLE 22

Additional contributions

(a) Consuming countries may, upon conditions agreed upon by the Council, make contributions to the buffer stock in either cash, tin metal or a combination of both, up to an additional amount equivalent to 20,000 tonnes of tin metal. Notwithstanding the conditions which shall have been imposed under this paragraph, the Council may refund to any country which has made a contribution to the buffer stock under this paragraph the whole or any part of such contributions. If such refund or part of such refund is made in tin metal the Council may attach to this refund the conditions which it deems necessary.

(b) Any country invited to the United Nations Tin Conference, 1975, may make contributions to the buffer stock in cash, or in tin metal or both, subject to the agreement of the Council and upon such conditions as shall include conditions as to refund. Such contribution shall be additional to the contributions shown in paragraph (a) of article 21 and paragraph (a) of this article.

(c) The Executive Chairman shall notify the participating countries of the receipt of any contributions received under paragraphs (a) and (b) of this article and shall also notify any non-participating countries which have made a contribution under paragraph (b) of this article of the receipt of any such contribution.

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

ARTICLE 23

Penalties relating to contributions

(a) The Council shall determine penalties to be applied to countries which fail to meet their obligations under sub-paragraph (v) of paragraph (a) of article 21.

(b) If a producing country does not fulfil its obligations under article 21, the Council may deprive it of any or all of its rights and privileges under this Agreement and may also require the remaining producing countries to make good the deficit in cash or in tin metal or in both.

(c) If a part of the deficit is to be made good in tin metal, the producing countries which are making good that deficit shall be permitted to export the amounts required of them in addition to any permissible export amounts that may have been determined under article 34. Subject to the furnishing of such evidence as the Council may require to identify the metal or concentrates exported with the tin metal delivered to the buffer stock, paragraphs (b) and (d) of article 34 and paragraph (a) of article 36 shall not apply to such exports.

(d) The Council may at any time and on such conditions as it may determine:

- (i) Declare that the default has been remedied;
- (ii) Restore the rights and privileges of the country concerned; and
- (iii) Refund the additional contributions made by the other producing countries under paragraph (b) of this article together with interest at a rate which shall be determined by the Council, taking into account prevailing international interest rates, provided that, in respect of that part of the additional contribution which has been made in tin metal, such interest shall be calculated on the basis of an appropriate price for tin metal on the date of the decision of the Council under paragraph (b) of this article, on a recognized market to be agreed by the Council. If such refunds or parts of such refunds are made in tin metal the Council may attach to these refunds the conditions which it deems necessary.

ARTICLE 24

Borrowing for the buffer stock

(a) The Council may borrow for the purposes of the buffer stock and upon the security of tin warrants held by the buffer stock such sum or sums as it deems necessary provided that the maximum amount of such borrowing and the terms and conditions thereof shall have been approved by the majority of the votes cast by consuming countries and all the votes cast by producing countries.

(b) The Council may, by a two-thirds distributed majority, make any other arrangements it sees fit for borrowing for the purpose of the buffer stock or to supplement its resources.

(c) Without prejudice to paragraph (d) of this article, all charges connected with these borrowings and arrangements shall be assigned to the Buffer Stock Account, but the Council may decide that participating non-contributing countries may contribute towards these charges. The Executive Chairman shall make regular reports to the Council on the operation of this paragraph. The operation of this paragraph shall be considered in relation to the provisions of paragraph (d) of article 22.

(d) No obligation shall be laid upon any participating country under this article without the consent of that country.

(e) In the event of any financial resources being made available to the Council, the Council may, by a two-thirds distributed majority decide to modify the figures stated in paragraph (a) of article 21 and paragraph (a) of article 22.

CHAPTER XI: LIQUIDATION OF THE BUFFER STOCK

ARTICLE 25

Liquidation procedure

(a) On the termination of this Agreement, all buffer stock operations under articles 28, 29, 30, 31 or paragraph (b) of article 26 shall cease. The Manager shall thereafter make no further purchase of tin metal and may sell tin metal only as authorized by paragraphs (b), (c) or (i) of this article.

(b) Unless the Council substitutes other arrangements for those contained in this article, the Manager shall, in connexion with the liquidation of the buffer stock, take the steps set out in paragraphs (c), (d), (e), (f), (g), (h), (i) and (j) of this article.

(c) As soon as possible after the termination of this Agreement, the Manager shall make an estimate of the total expenses of liquidation of the buffer stock in accordance with the provisions of this article and shall set aside from the balance remaining in the Buffer Stock Account a sum which is in his opinion sufficient to meet such expenses. Should the balance remaining in the Buffer Stock Account be inadequate to meet such expenses, the Manager shall sell a sufficient quantity of tin metal to provide the additional sum required.

(d) Subject to and in accordance with the terms of this Agreement, the share of each contributing country in the buffer stock shall be refunded to that country.

(e) (i) The share of each contributing country shall be ascertained in accordance with paragraph (f) of this article;

(ii) Upon the request of all contributing countries, the Council shall revise paragraph (f) of this article.

(f) For the purpose of ascertaining the share of each contributing country in the buffer stock, the Manager shall adopt the following procedure:

(i) The contributions of each contributing country to the buffer stock, excluding any contribution or part of a contribution which has been made under article 22 and which has been refunded under article 22, shall be evaluated, and for this

purpose any contribution or portion of any contribution made by a contributing country in metal shall be calculated at the prevailing floor price in effect on the date of call-up of such contribution and shall be added to the total contributions made by that country in cash;

- (ii) All the tin metal held by the Manager on the date of termination of this Agreement shall be valued on the basis of an appropriate price for tin metal on that date on a recognized market to be agreed by the Council, and an amount to that value shall be added to the total cash held by him at that date after setting aside a sum as required by paragraph (c) of this article;
- (iii) If the total arrived at under sub-paragraph (ii) is greater than the sum total of all the contributions made to the buffer stock by all the contributing countries, calculated in accordance with sub-paragraph (i), the surplus shall be apportioned among the contributing countries in proportion to the total contributions to the buffer stock of each contributing country multiplied by the number of days that such contributions have been at the disposal of the Manager on the termination of this Agreement. For this purpose contributions in tin metal shall be calculated in accordance with sub-paragraph (i) and each individual contribution, in metal or in cash, shall be multiplied by the number of days that it has been at the disposal of the Manager. For the purpose of calculating the number of days that a contribution has been at the disposal of the Manager neither the day on which the contribution was received by him nor the day of the termination of this Agreement shall be counted. The amount of surplus so apportioned to each contributing country shall be added to the total of the contributions of that country, calculated in accordance with sub-paragraph (i). In calculating the apportionment of such a surplus a forfeited contribution shall not be regarded as having been at the disposal of the Manager during the period of forfeiture;
- (iv) If the total arrived at under sub-paragraph (ii) is less than the sum of all the contributions made to the buffer stock by all the contributing countries, the deficit shall be apportioned among the contributing countries in proportion to their total contribution. The amount of the deficit so apportioned to each contributing country shall be deducted from the total of the contributions of that country, such contributions shall be calculated in accordance with sub-paragraph (i);
- (v) The result of the foregoing calculation shall in the case of each contributing country, be treated as its share of the buffer stock.

(g) Subject to the provisions of paragraph (c) of this article, the share of each contributing country in the cash and tin metal available for distribution in accordance with paragraph (f) of this article shall be allocated to it, provided that if any contributing country has forfeited the whole or part of its rights to participate in the proceeds of the liquidation of the buffer stock by virtue of articles 19, 23, 36, 45, 46 or 56, it shall

to that extent be excluded from the refund of its share and the resulting residue shall be apportioned between the other contributing countries in proportion to their respective shares in the buffer stock.

(h) The ratio of tin metal to cash allocated under the provisions of paragraphs (d), (e) and (g) of this article to each contributing country shall be the same.

(i) Each contributing country shall be repaid the cash allocated to it as the result of the procedure set out in paragraph (f), and either:

(i) The tin metal so allocated to each contributing country may be transferred in such instalments and over such period as the Council may deem appropriate, but in any case not exceeding twenty-four months; or

(ii) At the option of any contributing country any such instalment may be sold and the net proceeds of such sale paid to that country.

(j) When all the tin metal has been disposed of in accordance with paragraph (i) of this article, the Manager shall distribute among the contributing countries any balance remaining of the sum set aside under paragraph (c) of this article in the proportions allocated to each country in accordance with paragraphs (e) and (f) of this article.

ARTICLE 26

Liquidation and export control

(a) When fixing the total permissible export tonnage for any control period in accordance with the provisions of article 32, the Council shall, in the light of consideration given to the renewal of this Agreement under paragraph (c) of article 57, decide whether there is need to reduce the tonnage of tin metal currently held in the buffer stock. In such case, the total permissible export tonnage may be fixed at such figure, lower than the figure which the Council would otherwise have fixed as the total permissible export tonnage for that period, as the Council may decide.

(b) Within the framework of instructions of the Council, the Manager may sell from the buffer stock at any price, but not less than the floor price, the quantities of tin metal by which the Council has reduced the total permissible export tonnages in accordance with the provisions of paragraph (a) of this article.

ECONOMIC PROVISIONS

CHAPTER XII: FLOOR AND CEILING PRICES

ARTICLE 27

Floor and ceiling prices

(a) For the purposes of this Agreement there shall be floor and ceiling prices for tin metal which shall be expressed in Malaysian ringgit or in any other currency which the Council may decide. The range between the floor and ceiling prices shall be divided into three sectors.

(b) The initial floor and ceiling prices and sectors within the price range shall be those in force under the Fourth Agreement at the date of the termination of that Agreement.

(c) The Council may at any session decide the extent of each or any of the sectors referred to in paragraph (a) of this article.

(d) (i) The Council shall at its first ordinary session after the entry into force of this Agreement and, based on continuing studies, at any time thereafter or in accordance with the provisions of article 31, consider whether the floor and ceiling prices are appropriate for the attainment of the objectives of this Agreement and may revise either or both of them. If the Council does not determine new floor and ceiling prices at its first ordinary session after the entry into force of this Agreement, the floor and ceiling prices and sectors within the price range shall remain the same as those in force at the date of the termination of the Fourth Agreement.

(ii) In so doing, the Council shall take into account the short-term developments and medium-term trends of tin production, the production costs of tin and the level of tin production and consumption, the existing capacity for mine production, the adequacy of the current price to maintain sufficient future mine production capacity and other relevant factors affecting movements in the price of tin.

(e) The Council shall publish as soon as possible any revised floor and ceiling price, including any provisional or revised price determined under article 31 and any revised division of the range.

CHAPTER XIII: MANAGEMENT OF BUFFER STOCK OPERATIONS

ARTICLE 28

Operation of the buffer stock

(a) The Manager shall, in conformity with article 12 and within the provisions of this Agreement and the framework of instructions of the Council, be responsible to the Executive Chairman for the operation of the buffer stock.

(b) For the purposes of this article, the market price of tin shall be the price of tin in that market recognized by the Council at the termination of the Fourth Agreement or such other price as the Council may at any time decide.

(c) If the market price of tin—

(i) Is equal to or greater than the ceiling price, the Manager shall, unless instructed by the Council to operate otherwise and subject to articles 29 and 31, offer for sale at the market price on recognized markets such tin as is at his disposal until the market price of tin falls below the ceiling price or the tin at his disposal is exhausted;

- (ii) Is in the upper sector of the range between the floor and ceiling prices, the Manager may operate on recognized markets at the market price if necessary to prevent the market price from rising too steeply, provided he is a net seller of tin;
- (iii) Is in the middle sector of the range between the floor and ceiling prices, the Manager may operate only on special authorization by the Council;
- (iv) Is in the lower sector of the range between the floor and ceiling prices, the Manager may operate on recognized markets at the market price if necessary to prevent the market price from falling too steeply, provided he is a net buyer of tin; or
- (v) Is equal to or less than the floor price, the Manager shall, unless instructed by the Council to operate otherwise, if he has funds at his disposal and subject to articles 29 and 31, offer to buy tin on recognized markets at the floor price until the market price of tin is above the floor price or the funds at his disposal are exhausted.

(d) For the purposes of this article recognized markets shall be taken to mean the Penang Straits Tin Market, the London Metal Exchange, and/or any other market which may be from time to time recognized by the Council for the purposes of the operation of the buffer stock.

(e) The Manager may engage in forward transactions under paragraph (c) of this article only if these will be completed before the termination date of this Agreement or before some other date after the termination of this Agreement as determined by the Council.

ARTICLE 29

Restriction or suspension of buffer stock operations

(a) Notwithstanding the provisions of sub-paragraphs (ii) and (iv) of paragraph (c) of article 28, the Council may restrict or suspend forward transactions of tin when the Council considers it necessary to achieve the purposes of this Agreement.

(b) Notwithstanding the provisions of sub-paragraphs (i) and (v) of paragraph (c) of article 28, the Council, if in session, may restrict or suspend the operations of the buffer stock if, in its opinion, the discharge of the obligations laid upon the Manager by those sub-paragraphs will not achieve the purposes of this Agreement.

(c) At such times as the Council is not in session, the power to restrict or suspend operations under paragraph (b) of this article shall be vested in the Executive Chairman.

(d) The Executive Chairman may at any time revoke a restriction or suspension made under paragraph (c) of this article.

(e) Immediately after a decision by the Executive Chairman to restrict or suspend the operations of the buffer stock under paragraph (c) of this article, he shall convene a session of the Council to review such decision. Such session shall be held within fourteen days after the date of the restriction or suspension.

(f) The Council may confirm or cancel any restriction or suspension under paragraph (c) of this article. If the Council does not come to a decision, buffer stock operations shall be resumed or continue without restriction in accordance with the provisions of article 28.

(g) So long as any restriction or suspension of the operations of the buffer stock determined in accordance with this article remains in force, the Council shall review this decision at intervals of not longer than six weeks. If at a session to make such a review the Council does not come to a decision in favour of the continuation of the restriction or suspension, buffer stock operations shall be resumed.

ARTICLE 30

Other operations of the buffer stock

(a) The Council may authorize the Manager to buy tin from, or sell tin to or for the account of, a governmental non-commercial stock. The Council may also authorize the Manager to buy tin from contributing countries to the buffer stock of the Fourth Agreement from their share of the liquidation of the buffer stock under that Agreement. The provisions of paragraph (c) of article 28 shall not apply to buying or selling of tin for which authority has been given in accordance with the provisions of this paragraph.

(b) Notwithstanding the provisions of articles 28 and 29, the Council may authorize the Manager, if his funds are inadequate to meet his operational expenses, to sell sufficient quantities of tin at the current price to meet expenses.

ARTICLE 31

The buffer stock and changes in exchange rates

(a) The Executive Chairman may convene, or any participating country may request him to convene, a session of the Council immediately to review the floor and ceiling prices if the Executive Chairman or the participating country, as the case may be, considers that changes in exchange rates make such a review necessary. Sessions may be convened under this paragraph at less than seven days' notice.

(b) In the circumstances set forth in paragraph (a) of this article, the Executive Chairman may, pending the session of the Council referred to in that paragraph, provisionally restrict or suspend the operations of the buffer stock if such a restriction or suspension is in his opinion necessary to prevent buying or selling of tin by the Manager to an extent likely to prejudice the purposes of this Agreement.

(c) A restriction or a suspension of buffer stock operations under this article may be confirmed, amended or cancelled by the Council. If the Council does not come to a decision, buffer stock operations, if provisionally restricted or suspended, shall be resumed.

(d) Within thirty days of its decision to confirm, amend or cancel a restriction or a suspension of buffer stock operations under this article, the Council shall consider the determination of provisional floor and ceiling prices and may determine these prices. If the Council does not determine provisional floor and ceiling prices in accordance with this paragraph, the existing floor and ceiling prices shall, subject to the provisions of paragraph (f) of this article, remain in force.

(e) Within ninety days from the establishment of provisional floor and ceiling prices, the Council shall review these prices and may determine new floor and ceiling prices. If the Council does not determine new floor and ceiling prices in accordance with this paragraph, the provisional floor and ceiling prices shall remain in force.

(f) If the Council does not determine provisional floor and ceiling prices in accordance with paragraph (d) of this article, it may at any subsequent session determine what the floor and ceiling prices shall be.

(g) Buffer stock operations shall be resumed in accordance with the provisions of article 28 on the basis of such floor and ceiling prices as are determined in accordance with paragraphs (d), (e) or (f) of this article, as the case may be.

CHAPTER XIV: EXPORT CONTROL

ARTICLE 32

Determination of export control

(a) The Council may from time to time determine the quantities of tin which may be exported from producing countries in accordance with the provisions of this article and may declare a control period and shall, by the same decision, fix a total permissible export tonnage for that control period. In fixing such a permissible export tonnage the Council shall take into account the estimates of production and consumption made under paragraph (a) of article 9, the quantity of tin metal and cash held in the buffer stock, the quantity, availability and probable trend of other stocks of tin, the trade in tin, the current price of tin metal and any other relevant factors.

(b) It shall also be the duty of the Council to adjust supply to demand so as to maintain the price of tin metal between the floor and ceiling prices. The Council shall also aim to maintain available in the buffer stock tin metal and cash adequate to rectify discrepancies between supply and demand which may arise.

(c) The limitation of exports under this Agreement in each control period shall depend on the decision of the Council, and no such limitation shall operate in any period unless the Council has declared it to be a control period and fixed a total permissible export tonnage in respect of it.

(d) The Council may declare control periods and fix total permissible export tonnages, notwithstanding the restriction or suspension of buffer stock operations in accordance with the provisions of article 29 or 31.

(e) A total permissible export tonnage previously fixed under paragraph (a) of this article may be increased, but not decreased, by the Council during the control period to which it relates.

(f) When, under the provisions of paragraph (a) of this article, the Council has declared a control period and has fixed a total permissible export tonnage in respect of that period, the Council may at the same time call upon any country which is also a producer of tin from mines within its territory or territories to put into effect for that period such a limitation of its exports of tin derived from such production as may be agreed to be appropriate between the Council and the country concerned. The Council may also consult with countries which are consumers of tin with a view to improving the effectiveness of controls on supplies of tin coming on to international markets.

ARTICLE 33

Control periods

(a) Control periods shall correspond to quarters, provided that, on any occasion when the limitation of exports is being introduced for the first time during the currency of this Agreement or is being re-introduced after an interval during which there has been no limitation of exports, the Council may declare as the control period any period not being greater than five months or less than two months, ending on 31 March, 30 June, 30 September or 31 December.

(b) The Council shall not declare a control period unless it finds that at least 10,000 tonnes of tin metal are likely to be held in the buffer stock at the beginning of that period, except that:

- (i) If a control period is declared for the first time after an interval during which no limitation of exports was in force, the figure for the purposes of this paragraph shall be 5,000 tonnes, and
- (ii) The Council may by a two-thirds distributed majority revise in respect of any control period the required figures of 10,000 tonnes or 5,000 tonnes, as the case may be, to take account of the total capacity of the buffer stock at that time.

(c) A total permissible export tonnage which has become effective shall not cease to be effective during the course of the period to which it relates by reason only of the fact that the buffer stock holding has fallen below the minimum tonnage of tin metal required under paragraph (b) of this article or any other tonnage substituted therefor under the same paragraph.

(d) A control period already declared may be cancelled before, or terminated during, the currency of that period by the Council and the period so cancelled or terminated shall not be regarded as a control period for the purposes of paragraph (f) of article 32 and sub-paragraph (ii), (iii) and (iv) of paragraph (a) of article 36.

(e) Notwithstanding the provisions of this article, if, under the Fourth Agreement, a total permissible export tonnage has been fixed in respect of the last quarter of that Agreement and is still effective at the termination of that Agreement:

- (i) A control period, commencing upon the entry into force of this Agreement, shall be deemed to have been declared under this Agreement; and
- (ii) The total permissible export tonnage for such control period shall be at the same quarterly rate as that fixed by the Fourth Agreement for the last quarter of that Agreement unless and until revised by the Council in accordance with the provisions of article 32:

Provided that, if at the time of the first ordinary session of the Council under this Agreement less than 10,000 tonnes are held in the buffer stock, the Council shall consider the position at its first ordinary session, and if a decision to continue the limitation of exports is not reached, the period in question shall cease to be a control period.

ARTICLE 34

Division of total permissible export tonnage

(a) The total permissible export tonnage for any control period shall be divided among producing countries in proportion to their production or export figures, as appropriate, for the last four consecutive quarters which preceded the control period and which were not declared control periods. In the division of the total permissible export tonnage under this paragraph, the Council shall give due consideration to any circumstances referred to in Rule 6 of annex F, or stated by any producing country as being exceptional according to Rule 9 of annex F, and may, with the consent of other producing countries, use for that country production or export figures, as appropriate, relating to another period decided by the Council.

(b) (i) Notwithstanding the provisions of paragraph (a) of this article the Council may, with the consent of a producing country, reduce its share in the total permissible export tonnage and redistribute the tonnage of the reduction among the other producing countries in proportion to the percentages of those countries, or if circumstances so require, in some other manner;

(ii) The quantity of tin determined according to sub-paragraph (i) for any producing country for any control period shall for the purposes of this article be deemed to be the permissible export tonnage of that country for that control period.

(c) Each producing country shall take such measures as may be necessary to maintain and enforce the provisions of this article so that its exports shall correspond as closely as possible to its permissible export tonnage for any control period.

(d) (i) It shall be the duty of any producing country which believes itself unlikely to be able to export in any control period as much tin as it would be entitled to export in accordance with its permissible export tonnage for that control period, to make to the Council a declaration to that effect as soon as possible, but in any case not later than two calendar months after the date upon which such permissible export tonnage has become effective;

- (ii) If the Council has received such a declaration, or is of the opinion that any producing country is unlikely to be able to export in any control period as much tin as it would be entitled to export in accordance with its permissible export tonnage, the Council may take such steps as will, in its opinion, ensure that the total permissible export tonnage required will in fact be exported.

(e) For the purposes of this article, the Council may decide that exports of tin from any producing country shall include the tin content of any material derived from the mineral production of the country concerned.

ARTICLE 35

Point of export

Tin shall be deemed to have been exported if, in the case of a country named in annex C, the formalities set out in that annex opposite the name of that country have been completed, provided that:

- (i) The Council may, from time to time, with the consent of the country concerned, revise annex C and any such revision shall have effect as if it were included in that annex; and
- (ii) If any tin shall be exported from any producing country by any method which is not provided for by annex C, the Council shall determine whether such tin shall be deemed to have been exported for the purposes of this Agreement and, if so, the time at which such export shall be deemed to have taken place.

ARTICLE 36

Penalties relating to export control

- (a) (i) The net exports of tin from each producing country for each control period shall be limited, except as otherwise provided for in this Agreement, to the permissible export tonnage for that country for that control period;
- (ii) If, notwithstanding the provisions of sub-paragraph (i), the net exports of tin from a producing country in any control period exceed its permissible export tonnage for that control period by more than five per cent, the Council may require the country concerned to make an additional contribution to the buffer stock not exceeding the tonnage by which such exports exceed its permissible export tonnage. Such a contribution shall be in tin metal or in cash or in such proportions of tin metal and cash and before such date or dates as the Council may decide. That part, if any, of the contribution which is to be paid in cash shall be calculated at the floor price in effect on the date of the decision. That part, if any, of the contribution which is to be made in tin metal shall be included in and shall not be additional to the permissible export tonnage of the country in question for the control period in which such contribution is due to be made;

- (iii) If, notwithstanding the provisions of sub-paragraph (i), the aggregate net exports of tin from a producing country in any four successive control periods including, if appropriate, the control period referred to in sub-paragraph (ii) exceed by more than one per cent the aggregate of its permissible export tonnages for those periods, the permissible export tonnages of that country during each of the four subsequent control periods may be reduced by one-quarter of the aggregate tonnage so over-exported or, if the Council so decides, by any greater fraction not exceeding one-half. Such reduction shall take effect in and from the control period next following that in which the decision was taken by the Council;
- (iv) If, after any four such successive control periods, during which the aggregate net exports of tin from a country have exceeded its permissible export tonnage as mentioned in sub-paragraph (iii), the aggregate net exports of tin from that country in any four further successive control periods, which shall not include any control period covered by sub-paragraph (iii), exceed the aggregate of the permissible export tonnages for those four control periods, the Council may, in addition to reducing the total permissible export tonnage of that country in accordance with the provisions of sub-paragraph (iii), declare that the country shall forfeit a part, which shall on the first occasion not exceed one-half, of its rights to participation on liquidation of the buffer stock. The Council may at any time restore to the country concerned the portion of its rights so forfeited on such terms and conditions as it may determine;
- (v) It shall be the duty of a producing country which has exported a tonnage of tin in excess of its permissible export tonnage and of any tonnage permitted by other provisions of this article to take effective steps to correct its breach of this Agreement at the earliest possible opportunity. The Council, when deciding the action to be taken under this paragraph, shall take account of any failure to take steps or delay in doing so.

(b) For the purposes of sub-paragraphs (ii), (iii) and (iv) of paragraph (a) of this article, control periods for which total permissible export tonnages have been fixed, tonnages which have been exported in excess of such permissible export tonnages, and penalties which have been imposed under article 33 of the Fourth Agreement shall be deemed, as from the entry into force of this Agreement, to have been fixed, exported or imposed under this article.

ARTICLE 37

Special exports

(a) At any time when it has declared a control period the Council may, by a two-thirds distributed majority, permit the export (hereinafter called a special export) of a specified quantity of tin in addition to the permissible export amount referred to in paragraph (a) of article 34, on the condition that:

- (i) it considers that the proposed special export is destined to form part of a governmental stockpile; and
- (ii) it considers that the proposed special export is unlikely to be used for any commercial or industrial purpose during the currency of this Agreement.

(b) The Council may by a two-thirds distributed majority impose such conditions upon a special export as it deems necessary.

(c) If the provisions of article 39 and the conditions imposed by the Council under paragraph (b) of this article are fulfilled, a special export shall not be taken into account when the provisions of paragraph (b) and (d) of article 34 and paragraph (a) of article 36 are being applied.

(d) The Council may by a two-thirds distributed majority at any time revise the conditions in paragraph (a) of this article, provided that any such revision shall be without prejudice to anything done by a country in pursuance of permission given and conditions already imposed under paragraph (b) of this article.

ARTICLE 38

Special deposits

(a) A producing country may at any time with the consent of the Council make special deposits of tin metal with the Manager. A special deposit shall not be treated as part of the buffer stock and shall not be at the disposal of the Manager.

(b) A producing country which has informed the Council of its intention of making a special deposit of tin metal originating within that country shall, subject to furnishing such evidence as the Council may require to identify the metal or the concentrates for conversion into tin metal which is the subject of the special deposit, be permitted to export such metal or concentrates in addition to any permissible export amount that may have been allocated to that country under article 34 and, subject to the compliance by the producing country with the requirements of article 39, paragraphs (b) and (d) of article 34 and paragraph (a) of article 36 shall not apply to such exports.

(c) Special deposits may be accepted by the Manager only at such place or places as may be convenient to him.

(d) The Executive Chairman shall notify the participating countries of the receipt of any such special deposit, but not sooner than three months after the date of receipt.

(e) A producing country which has made a special deposit of tin metal may withdraw the whole or part of that special deposit in order to fulfil the whole or part of its permissible export amount in any control period. In such a case the amount withdrawn from the special deposit shall be regarded as having been exported for the purposes of article 33 in the control period in which the withdrawal was made.

(f) In any quarter which has not been declared a control period any special deposit shall be at the disposal of the country which has made the deposit, subject only to the provisions of paragraph (h) of article 39.

(g) All charges incurred in connexion with any special deposit shall be borne by the country making the deposit and no charges shall be borne by the Council.

ARTICLE 39

Stocks in producing countries

- (a) (i) The stocks of tin within any producing country which have not been exported within the definition for that country contained in annex C shall not at any time during a control period exceed the tonnage shown against that country in annex D;
- (ii) Such stocks shall not include tin in the course of transport between the mine and the point of export as defined in annex C;
- (iii) The Council may revise annex D, but, if in doing so it has increased the tonnage listed in annex D against any country, it may impose conditions, including conditions as to period and subsequent export, in relation to any such addition.

(b) Any increase in the proportion approved under paragraph (a) of article 36 of the Fourth Agreement and still operative at the termination of that Agreement and any conditions imposed in connexion therewith shall be deemed to have been approved or imposed under this Agreement unless the Council otherwise decides within six months after the entry into force of this Agreement.

(c) Any special deposit made under article 38 shall be deducted from the amount of stocks permitted under this article to be held during a control period within the producing country concerned.

- (d) (i) Where in a producing country mentioned in annex E tin ore is unavoidably extracted from its natural occurrence in the mining of the other minerals mentioned in that annex and for that reason the limitation of stocks prescribed in paragraph (a) of this article would unreasonably restrict the mining of those other minerals, additional stocks of tin-in-concentrates may be held within that country to the extent that these are certified by the Government of that country as having been won exclusively in association with those other minerals and actually retained in that country, provided that the proportion which such additional stocks bear to the total amount of the other minerals mined shall not at any time exceed the proportion stated in annex E;

- (ii) Except with the consent of the Council, the export of such additional stocks shall not commence until after the liquidation of all the tin metal in the buffer stock and the rate of export thereafter shall not exceed one-fortieth of the whole or two hundred and fifty tonnes, whichever is the greater, in each quarter.

(e) Countries listed in annex D or annex E shall, in consultation with the Council, make regulations governing the maintenance, protection and control of such additional stocks as may be approved in accordance with this article.

(f) The Council may, with the consent of the producing country concerned, revise annex D and annex E.

(g) Each producing country shall forward to the Council at such intervals as the Council may require statements as to the stocks of tin within its territory which have not been exported in accordance with the

definition for that country in annex C. Such statements shall not include tin in course of transport between the mine and the point of export as defined in annex C. These statements shall show separately the stocks held under paragraph (d) of this article.

(h) A country which holds special deposits under article 38 or is permitted to increase tonnages in accordance with the provisions of paragraph (a) of this article shall, not later than twelve months before the termination of this Agreement, inform the Council of its plans for the disposal of such special deposits and the export of all or part of such increased tonnages, but not including additional stocks whose export is governed by paragraph (d) of this article, and shall consult with the Council as to the best means of making such export without avoidable disruption of the tin market and in harmony with the provisions for the liquidation of the buffer stock under article 26. The producing country concerned shall give due consideration to the recommendations of the Council.

CHAPTER XV: TIN SHORTAGE

ARTICLE 40

Action in the event of a tin shortage

(a) If at any time, when the price is in or above the upper sector, the Council concludes that a serious shortage of supplies of tin has developed or is likely to develop, the Council:

- (i) May, in accordance with paragraph (a) of article 32 and paragraph (d) of article 33, terminate any export control which might be in operation and recommend the level of stocks which should not be exceeded; and
- (ii) Shall recommend to the participating countries that they take all possible steps to ensure as rapid an increase as possible in the amount of tin which they are able to make available.

(b) The Council shall determine the period of time during which measures provided for in this article shall remain in effect; such period shall be reckoned in quarters, it being understood that when these measures are applied for the first time under this Agreement or are applied again after an interval when there was no recognized shortage, the Council may declare as a period of applicability of these measures any period not longer than five months or shorter than one month and ending on 31 March, 30 June, 30 September or 31 December.

(c) The Council may cancel any measures taken on the basis of this article before their entry into force or terminate them while in progress or extend them from quarter to quarter.

(d) In the light of the Council's estimates of production and consumption made under paragraph (a) of article 9, and taking into account the amount of tin metal and cash held in the buffer stock and all other relevant factors, in particular, the utilization of production capacity, the availability of other tin stocks and the trend in current prices, the Council shall carry out any studies necessary to enable it to estimate total tin demand and availability for the declared period and such subsequent periods as it may determine.

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

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

(g) The Council shall, at each session held while this article is in effect, review the results of measures taken under this article since the preceding session.

OTHER PROVISIONS

CHAPTER XVI: MISCELLANEOUS

ARTICLE 41

General obligations of members

(a) Participating countries shall during the currency of this Agreement use their best endeavours and co-operate to promote the attainment of its objectives.

(b) The participating countries shall accept as binding all decisions of the Council under this Agreement.

(c) Without prejudice to the general scope of paragraph (a) of this article, participating countries shall in particular observe the following:

- (i) They shall not, so long as sufficient quantities of tin are available to meet their full requirements, prohibit or limit the use of tin for specified end-uses except in circumstances in which such prohibition or limitation would not be inconsistent with other international agreements on trade;
- (ii) They shall create conditions which would promote the transfer of tin production from less efficient to more efficient enterprises; and
- (iii) They shall encourage the conservation of the natural resources of tin by preventing the premature abandonment of deposits.

ARTICLE 42

Fair labour standards

The participating countries declare that, in order to avoid the depression of living standards and the introduction of unfair competitive conditions in world trade, they will seek to ensure fair labour standards in the tin industry.

ARTICLE 43

Disposal of tin from non-commercial stockpiles

(a) A participating country desiring to dispose of tin from non-commercial stockpiles shall, at adequate notice, consult with the Council concerning its disposal plans.

(b) At the time when a participating country gives notice of a plan to dispose of tin from non-commercial stockpiles, the Council shall promptly enter into official consultations on the plan with that country for the purpose of assuring adequate fulfilment of the provisions of paragraph (d) of this article.

(c) The Council shall from time to time review the progress of such disposals and may make recommendations to the disposing participating country. Any participating country so concerned shall give due consideration to the recommendations of the Council.

(d) Disposals from non-commercial stockpiles shall be made with due regard to the protection of tin producers, processors and consumers against avoidable disruption of their usual markets and against adverse consequences of such disposals on the investment of capital in exploration and development of new supplies and the health and growth of tin mining in the producing countries. The disposals shall be in such amounts and over such periods of time as will not interfere unduly with production and employment in the tin industry in the producing countries and as will avoid creating hardships to the economies of the participating producing countries.

ARTICLE 44

National security

(a) Nothing in this Agreement shall be construed:

- (i) To require a participating country to furnish any information the disclosure of which it considers contrary to its essential security interests;
- (ii) To prevent a participating country from taking, either singly or with other countries, any action which it considers necessary for the protection of its essential security interests where such action relates to traffic in arms, ammunition or implements of war, or to traffic in other goods and materials carried on directly or indirectly for the purpose of supplying a military establishment of any country, or which is taken in time of war or other emergency in international relations;
- (iii) To prevent a participating country from entering into or carrying out any intergovernmental agreement, or other agreement on behalf of a country for the purpose specified in this paragraph, made by or for a military establishment for the purpose of meeting essential requirements of the national security of one or more of the countries participating in such agreements; or

(iv) To prevent a participating country from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

(b) Participating countries shall notify the Executive Chairman as soon as possible of any action they take respecting tin in consequence of subparagraph (ii) or (iv) of paragraph (a) of this article and the Executive Chairman shall so notify other participating countries.

(c) Any participating country which considers its economic interests under this Agreement seriously injured by action taken by any other participating country or countries, other than action taken in time of war, under the provisions of paragraph (a) of this article, may complain to the Council.

(d) On receipt of such a complaint the Council shall review the facts of the situation and shall by a majority of the total votes held by all consuming countries and a majority of the total votes held by all producing countries decide whether the complainant country is justified in its complaint and shall, if it so decides, permit the complainant country to withdraw from this Agreement.

CHAPTER XVII: COMPLAINTS AND DISPUTES

ARTICLE 45

Complaints

(a) Any complaint that any participating country has committed a breach of this Agreement for which a remedy is not provided elsewhere in this Agreement shall, at the request of the country making the complaint, be referred to the Council for a decision.

(b) Save where otherwise provided in this Agreement, no participating country shall be found to have committed a breach of this Agreement unless a resolution to that effect is passed. Any such finding shall specify the nature and extent of the breach.

(c) If the Council finds under this article that a participating country has committed a breach of this Agreement, the Council may, unless some other penalty is provided elsewhere in this Agreement, deprive the country concerned of its voting and other rights until it has remedied the breach or has otherwise fulfilled its obligations.

(d) For the purposes of this article, the expression "breach of this Agreement" shall be deemed to include the breach of any condition imposed by the Council or failure to fulfil any obligation laid upon a participating country in accordance with this Agreement.

ARTICLE 46

Disputes

(a) Any dispute concerning the interpretation or application of this Agreement which is not settled by negotiation shall, at the request of any participating country, be referred to the Council for decision.

(b) Where a dispute has been referred to the Council in accordance with this article a majority of participating countries or any participating countries holding not less than one-third of the votes in the Council may require the Council, after full discussion, to seek the opinion of the advisory panel referred to in paragraph (c) of this article, on the issues in dispute before giving its decision.

(c) (i) Unless the Council, by a unanimous decision of votes cast, agrees otherwise, the panel shall consist of:

Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience nominated by the producing countries;

Two such persons nominated by the consuming countries; and

A chairman selected unanimously by the four persons nominated above, or, if they fail to agree, by the Executive Chairman;

(ii) Persons appointed to the advisory panel shall act in their personal capacity and without instructions from any Government;

(iii) The expenses of the advisory panel shall be paid by the Council.

(d) The opinion of the advisory panel and the reasons therefor shall be submitted to the Council which, after considering all the relevant information, shall decide the dispute.

CHAPTER XVIII: FINAL PROVISIONS

ARTICLE 47

Signature

This Agreement shall be open for signature at United Nations Headquarters from 1 July 1975 to 30 April 1976 inclusive, by parties to the Fourth Agreement and by Governments invited to the United Nations Tin Conference, 1975.

ARTICLE 48

Ratification, approval, acceptance

This Agreement shall be subject to ratification, approval or acceptance by the signatory Governments in accordance with their respective constitutional procedures. A signatory Government which intends to ratify, approve or accept this Agreement may give notification of intention to do so. Instruments of ratification, approval or acceptance, or notifications of intention to ratify, approve or accept, shall be deposited with the Secretary-General of the United Nations.

ARTICLE 49

Definitive entry into force

(a) This Agreement shall, for the Governments which have deposited instruments of ratification, approval, acceptance or accession, enter into force definitively as soon after 30 June 1976 as such instruments have been

deposited by Governments representing at least six producing countries holding together at least 950 votes as set out in annex A and at least nine consuming countries holding together at least 300 votes as set out in annex B⁽⁹⁾.

(b) For any Government which has deposited an instrument of ratification, approval, acceptance or accession after the definitive entry into force of this Agreement, this Agreement shall enter into force definitively on the date of the deposit of such instrument.

(c) If this Agreement has entered into force provisionally under paragraph (a) of article 50, then as soon as instruments of ratification, approval, acceptance or accession have been deposited by Governments representing countries satisfying the conditions laid down in paragraph (a) of this article, it shall enter into force definitively for those Governments.

ARTICLE 50

Provisional entry into force

- (a) (i) If this Agreement has not entered into force definitively by 1 July 1976 or, if the Fourth Agreement is extended, by the day following the termination of that Agreement, this Agreement shall then enter into force provisionally for Governments which have deposited instruments of ratification, approval, acceptance or accession, or notifications of intention to do so, if such instruments or notifications have been deposited by Governments representing at least six producing countries holding together at least 950 votes as set out in annex A, and at least nine consuming countries holding together at least 300 votes as set out in annex B;
- (ii) For each Government which has deposited an instrument of ratification, approval or acceptance of, or accession to, or has given notification of intention to ratify, approve, accept or accede to, this Agreement while it is provisionally in force, this Agreement shall enter into force provisionally on the date of the deposit of such instrument or notification.

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

ARTICLE 51

Expiry of notifications of intention

If this Agreement has entered into force definitively under paragraph (a) or paragraph (c) of article 49, and if any Government which has given a notification of intention to ratify, approve, accept or accede has failed to deposit an instrument of ratification, approval, acceptance or accession within a period of ninety days from the date of definitive entry into force, that Government shall cease to participate in this Agreement, provided that:

⁽⁹⁾ These conditions were fulfilled on 14 June 1977.

- (i) The Council may extend the period aforesaid if so requested by that Government; and
- (ii) That Government may cease to participate in this Agreement before the expiry of the period aforesaid or any extension thereof by giving to the Secretary-General of the United Nations at least thirty days' notice.

ARTICLE 52

Accession

(a) Any Government invited to the United Nations Tin Conference, 1975, or any party to the Fourth Agreement shall have the right to accede to this Agreement upon conditions to be determined by the Council. Instruments of accession from such Governments shall state that they accept all those conditions.

(b) The conditions laid down by the Council shall be equitable, in respect of voting rights and financial obligations, as between the Governments seeking to accede and other Governments already participating in this Agreement.

(c) Upon the accession of a producing country to this Agreement the Council:

- (i) Shall fix, with the consent of that country, the tonnages and proportions to be shown against that country in annexes D and E where appropriate; and
- (ii) Shall also fix the circumstances for the purpose of export control to be shown against the name of that country in annex C. The tonnage, proportion or description so fixed shall have effect as though it were included in such annexes.

(d) Any Government referred to in paragraph (a) of this article which intends to accede to this Agreement may give notification of intention to do so.

(e) The Council of the Fourth Agreement may, pending the entry into force of this Agreement, determine the conditions referred to in paragraph (a) of this article, subject to confirmation by the Council of this Agreement and the Government or Governments concerned.

(f) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE 53

Separate participation

A Government may, at the time of depositing its instrument of ratification, approval, acceptance or accession, or giving notification of intention to ratify, approve, accept or accede, or at any time thereafter, propose the separate participation as a producing or as a consuming country, as may be appropriate, of any territory or territories, interested in the production

or consumption of tin, for whose international relations the Government is responsible and to which this Agreement applies or will apply when this Agreement enters into force. Such separate participation shall be subject to the consent of the Council and to the conditions which the Council may determine.

ARTICLE 54

Intergovernmental organizations

(a) Any reference to a Government in articles 47, 48, 49, 50, 51 and 52 shall be construed as including a reference to an intergovernmental organization having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements.

(b) Such an organization shall not itself hold any votes, but in the case of votes on matters within its competence, it shall be entitled to cast the votes of its member States and shall cast them collectively. In such cases, the member States of the organization in question shall not be entitled to exercise their individual voting rights.

ARTICLE 55

Amendment

(a) The Council may, by a two-thirds majority of the total votes held by all producing countries and a two-thirds majority of the total votes held by all consuming countries, recommend to participating countries amendments to this Agreement. The Council shall, in its recommendation, fix the time limit within which each participating country shall notify the Secretary-General of the United Nations whether or not it ratifies, approves or accepts the amendment.

(b) The Council may extend the time fixed by it under paragraph (a) of this article for notification of ratification, approval or acceptance.

(c) If, within the time fixed under paragraph (a) of this article or extended under paragraph (b) of this article, an amendment is ratified, approved or accepted by all participating countries it shall take effect immediately on the receipt by the Secretary-General of the United Nations of the last ratification, approval or acceptance.

(d) If, within the time fixed under paragraph (a) of this article or extended under paragraph (b) of this article, an amendment is not ratified, approved or accepted by participating countries holding all of the votes of producing countries and by participating countries holding two-thirds of the total votes of all consuming countries, it shall not take effect.

(e) If, by the end of the time fixed under paragraph (a) of this article or extended under paragraph (b) of this article, an amendment is ratified, approved or accepted by participating countries holding all of the votes of producing countries and by participating countries holding two-thirds of the total votes of all consuming countries:

- (i) The amendment shall, for the participating countries by which ratification, approval or acceptance has been signified, take effect at the end of three months next following the receipt by the

Secretary-General of the United Nations of the last ratification, approval or acceptance necessary to comprise all of the votes of producing countries and two-thirds of the total votes of all consuming countries; and

- (ii) Any participating country which does not ratify, approve or accept an amendment by the date of its coming into effect shall as of that date cease to participate in the Agreement, unless any such participating country satisfies the Council at its first session following the effective date of the amendment that its ratification, approval or acceptance could not be secured in time by reason of constitutional difficulties, and the Council decides to extend for such participating country the period fixed for ratification, approval or acceptance until these difficulties have been overcome.

(f) If a consuming country considers that its interests will be adversely affected by an amendment it may, before the date of its coming into effect, give notice to the Secretary-General of the United Nations of withdrawal from this Agreement. Withdrawal shall become effective on the effective date of the amendment. The Council may, at any time, on such terms and conditions as it considers equitable, permit such country to withdraw its notice of withdrawal.

(g) Any amendment to this article shall take effect only if it is ratified, approved or accepted by all participating countries.

(h) The provisions of this article shall not affect any power under this Agreement to revise any annex to this Agreement or the operation of any other article of this Agreement which provides for a specific procedure relating to the modification of this Agreement.

ARTICLE 56

Withdrawal

A participating country which withdraws from this Agreement during its currency, except :

- (i) In accordance with the provisions of paragraph (d) of article 44 or paragraph (f) of article 55; or
- (ii) Upon at least twelve months' notice being given to the Secretary-General of the United Nations not earlier than one year after the entry into force of this Agreement,

shall not be entitled to any share of the proceeds of the liquidation of the buffer stock under the terms of article 25 nor shall it be entitled to a share of the other assets of the Council under the terms of article 57 on the termination of this Agreement.

ARTICLE 57

Duration, extension and termination

(a) The duration of this Agreement shall, except as otherwise provided in this article or in paragraph (b) of article 50, be five years from the date of entry into force.

(b) The Council may by a two-thirds majority of the total votes held by all producing countries and a two-thirds majority of the total votes held by all consuming countries extend the duration of this Agreement by a period or periods not exceeding twelve months in all.

(c) The Council, in a recommendation to the participating countries, not later than four years after the entry into force of this Agreement, shall inform them whether it is necessary and appropriate that this Agreement should be renewed and, if so, in what form; it shall at the same time consider what the relationship between the supply of and demand for tin is likely to be at the expiration of this Agreement.

- (d) (i) A participating country may at any time give notice in writing to the Executive Chairman that it intends to propose at the next session of the Council the termination of this Agreement;
- (ii) If the Council, by a two-thirds majority of the total votes held by all producing countries and by all consuming countries, adopts the proposal to terminate, it shall recommend to the participating countries that this Agreement shall terminate;
- (iii) If participating countries holding two-thirds of the total votes of all producing countries and two-thirds of the total votes of all consuming countries notify the Council that they accept that recommendation, this Agreement shall terminate on the date the Council shall decide, being a date not later than six months after the receipt by the Council of the last of the notifications from those participating countries.

ARTICLE 58

Procedure on termination

(a) The Council shall remain in being for as long as may be necessary for the carrying out of paragraph (b) of this article, for the supervision of the liquidation of the buffer stock and any stocks held in producing countries in accordance with article 39 and for the supervision of the due performance of conditions imposed under this Agreement by the Council or under the Fourth Agreement; the Council shall have such of the powers and functions conferred on it by this Agreement as may be necessary for the purpose.

(b) On termination of this Agreement:

- (i) The buffer stock shall be liquidated in accordance with the provisions of article 25;
- (ii) The Council shall assess the obligations into which it has entered in respect of its staff and shall, if necessary, take steps to ensure that, by means of a supplementary estimate to the Administrative Account raised in accordance with article 19, sufficient funds are made available to meet such obligations;
- (iii) After all liabilities incurred by the Council, other than those relating to the Buffer Stock Account, have been met, the remaining assets shall be disposed of in the manner laid down in this article;

- (iv) If the Council is continued, it shall retain its archives, statistical material and all other documents;
- (v) If the Council is not continued but a body is created to succeed the Council, the Council shall transfer its archives, statistical material and all other documents to such successor body and may by a two-thirds distributed majority either transfer all or any of its remaining assets to such successor body, or otherwise dispose of them as the Council may direct;
- (vi) If the Council is not continued and no successor body is created the Council shall transfer its archives, statistical material and any other documents to the Secretary-General of the United Nations or to any international organization nominated by him or, failing such nomination, as the Council may determine, and the remaining non-monetary assets of the Council shall be sold or otherwise realized in such manner as the Council may direct;
- (vii) The proceeds of realization of non-monetary assets and any remaining monetary assets shall then be distributed in such a manner that each participating country shall receive a share proportionate to the total of the contributions which it has made to the Administrative Account established under article 19.

ARTICLE 59

Authentic texts of the Agreement

The texts of this Agreement in the Chinese, English, French, Russian and Spanish languages are all equally authentic, the originals being deposited with the Secretary-General of the United Nations⁽⁴⁾.

In witness whereof the undersigned, having been duly authorized to this effect by their respective Governments or authorities, have signed this Agreement on the dates appearing opposite their signatures.

[For signatures, ratifications, approvals, acceptances, accessions and notifications of intention to ratify etc., etc. see pages 56-57.]

⁽⁴⁾ After the Agreement has been registered with the United Nations, texts in the Chinese, English, French, Russian and Spanish languages will be published in the United Nations Treaty Series, available through Agency Section, Her Majesty's Stationery Office, P.O. Box 569, London, SE1 9NY—Tel. 01-928 6977, ext. 410.

ANNEX A

Percentages and votes of producing countries

Country	Percentage	Votes		
		Initial	Additional	Total
Australia	4.37	5	42	47
Bolivia	18.06	5	174	179
Indonesia	13.71	5	133	138
Malaysia	43.60	5	421	426
Nigeria, Federal Republic of	4.17	5	40	45
Thailand	12.55	5	121	126
Zaire, Republic of	3.54	5	34	39
Total	100.00	35	965	1,000

Note: The countries, percentages and votes listed in this annex are those arrived at during the United Nations Tin Conference, 1975, at which the Fifth International Tin Agreement was drawn up. The list of countries and the figures are subject to revision from time to time in accordance with the operation of the provisions of this Agreement.

ANNEX B

Percentages and votes of consuming countries

Country	Percentage	Votes		
		Initial	Additional	Total
Austria	0.31	5	3	8
Belgium/Luxembourg ...	1.95	5	17	22
Bulgaria	0.48	5	4	9
Canada	2.91	5	25	30
Cuba	0.05	5	1	6
Czechoslovakia	1.91	5	16	21
Denmark	0.30	5	3	8
Dominican Republic...	0.03	5	0	5
France	6.09	5	52	57
German Democratic Republic	0.53	5	5	10
Germany, Federal Republic of	8.16	5	70	75
Hungary	0.68	5	6	11
India	1.88	5	16	21
Ireland... ..	0.04	5	1	6
Italy	4.37	5	38	43
Japan	18.55	5	160	165
Korea, Republic of	0.38	5	3	8
Netherlands	2.50	5	21	26
Nicaragua	0.03	5	0	5
Poland... ..	2.39	5	20	25
Romania	1.62	5	14	19
Spain	1.99	5	17	22
Switzerland	0.41	5	3	8
Turkey... ..	0.72	5	6	11
United Kingdom of Great Britain and Northern Ireland	8.10	5	70	75
United States of America ...	29.56	5	254	259
Union of Soviet Socialist Republics	3.21	5	28	33
Yugoslavia	0.85	5	7	12
Total	100.00	140	860	1,000

Note: The countries, percentages and votes listed in this annex are those arrived at during the United Nations Tin Conference, 1975, at which the Fifth International Tin Agreement was drawn up. The list of countries and the figures are subject to revision from time to time in accordance with the operation of the provisions of this Agreement.

ANNEX C

PART I

Circumstances in which tin shall be deemed to have been exported for the purpose of export control

Australia	Tin shall be deemed to be exported on the date of the Restricted Goods Export Permit issued under the Customs (Prohibited Exports) Regulations.
Bolivia	Tin shall be deemed to have been exported when it has passed the control of the Customs Authorities of Bolivia for payment of export duty.
Indonesia	Tin shall be deemed to have been exported from Indonesia when the tin has been cleared through customs and/or when tin concentrates have been delivered to and weighed by the smelter under customs' supervision and the customs officials have issued a customs certificate for such tin. Such tin shall not include tin subsequently imported into Indonesia for domestic consumption.
Malaysia	Tin shall be deemed to have been exported from Malaysia at the time at which the Royal Customs and Excise Department of Malaysia has weighed the concentrates or, where the concentrates have been smelted before the payment of export duty, has weighed the metal for the payment of such export duty.
Nigeria, Federal Republic of	Tin shall be deemed to have been exported when the concentrates have been delivered to the smelter, weighed and passed for payment of royalty: Provided that tin not delivered to the smelter shall be deemed to have been exported when a waybill has been delivered by the Nigerian Railway Corporation acknowledging the delivery for export of concentrates to that Corporation.
Thailand	Tin shall be deemed to have been exported from Thailand when the Department of Mineral Resources has officially certified that the concentrates have been delivered to and weighed by a smelting company in Thailand, provided that tin for export not delivered to a smelting company shall be deemed to have been exported from Thailand when the Department of Mineral Resources has issued an export permit in respect of such tin.
Zaire, Republic of	Tin shall be deemed to have been exported when a through bill of lading has been delivered by a carrier affiliated to the Comité intérieur des Transporteurs de la République du Zaire acknowledging the delivery of the tin to that carrier.

If, for any reason, no such document has been delivered for a particular consignment, the tonnage of tin in that consignment shall be deemed to have been exported for the purposes of this Agreement when export documents have been delivered by the Customs Administration of the Republic of Zaire.

General proviso

Any tin transported from a producing country during a control period shall be deemed to have been exported and treated as part of the permissible export tonnage of that country for that control period, except:

- (a) as stated in this annex in respect of Australia; or
- (b) as may be determined by the Council in accordance with sub-paragraph (ii) of article 35, unless the formalities set out in this annex opposite the name of that producing country have been completed in respect of that tin before the beginning of the control period.

PART II

Imports into producing countries

For the purpose of determining net exports of tin under article 35, imports deductible from exports during a control period shall be the amount imported into the producing country concerned during the quarter immediately preceding the declaration of the control period in question, provided that tin imported for smelting and exported shall not be taken into account.

ANNEX D

Stocks in producing countries under article 39

<i>Country</i>	<i>Tonnes</i>
Australia	3,000
Bolivia	8,000
Indonesia	6,200
Malaysia	17,050
Nigeria, Federal Republic of	1,500
Thailand	5,300
Zaire, Republic of	2,000

ANNEX E

Additional stocks won unavoidably

<i>Country</i>	<i>Other mineral</i>	<i>Tin content of concentrates permitted to be stocked additionally for each ton of other mineral mined: (tonnes)</i>
Australia	Tantalo-columbite	1.5
Nigeria, Federal Republic of	Columbite	1.5
Thailand	Wolframite-scheelite	1.5
Zaire, Republic of	Tantalo-columbite	1.5

ANNEX F

Rules for the re-determination of the percentages of the producing countries

RULE 1

The first re-determination of the percentages of the producing countries shall be made at the first ordinary session of the Council under this Agreement. Notwithstanding the provisions of Rule 2, this re-determination shall be made on the basis of the last four quarters immediately preceding the introduction of any export control period for which figures of the production of tin in each of the producing countries are available. New percentages for the producing countries shall be determined in direct proportion to the production of tin in each of them during those four quarters.

Subsequent re-determination of the percentages shall be made at yearly intervals following the first re-determination, provided that no period after the quarters referred to in this Rule shall have been declared to be a control period.

In such subsequent re-determinations, made under this Rule, the new percentages shall be calculated as follows:

- (i) the percentages in the second re-determination shall be in direct proportion to the production of tin in each of the producing countries in the latest twenty-four consecutive calendar months for which figures are available; and
- (ii) the percentages in the third re-determination, and all later re-determinations, shall be in direct proportion to the production of tin in each of the producing countries in the latest thirty-six consecutive calendar months for which figures are available.

RULE 2

Should any period be declared to be a control period, no re-determination of the percentages shall be made until four consecutive quarters have not been declared to be control periods. The next re-determination shall then be made as soon as figures for the production of tin in each of the producing countries in such four consecutive quarters are available, and re-determinations shall be made at yearly intervals thereafter for as long as no period is declared to be a control period.

In any re-determination made under this Rule the new percentages shall be calculated as follows:

- (i) the percentages in the first re-determination following a period of export control shall be in direct proportion to the sum of the production of tin in each of the producing countries in the latest twelve consecutive calendar months for which figures are available and in the four quarters immediately preceding that control period;
- (ii) the percentages in the second re-determination, provided that no further control period shall have been declared, shall be in direct

proportion to the production of tin in each of the producing countries in the latest twenty-four consecutive calendar months for which figures are available; and

- (iii) the percentages in each subsequent re-determination, provided that no further control period shall have been declared, shall be in direct proportion to the production of tin in each of the producing countries in the latest thirty-six consecutive calendar months for which figures are available.

RULE 3

For the purpose of these Rules, re-determination shall be deemed to have been made at yearly intervals if they are made in the same quarter of the calendar year as were the preceding re-determinations.

RULE 4

For the purpose of these Rules, all producing countries shall make available to the Council their latest twelve months' production figures within three months after the date of the latest calendar month. If a country has failed to make such figures available, the production of that country for a period of twelve months shall be calculated by multiplying by twelve the average monthly rate of production figures available for such period.

RULE 5

Figures of the production of tin in any producing country for any period earlier than forty-two months before the date of any re-determination shall not be employed in that re-determination nor shall account be taken of figures of the production of tin in control periods.

RULE 6

The Council may reduce the percentage of any producing country which has failed to export the whole of its permissible export tonnage as determined under paragraph (a) of article 34, or of any greater amount accepted by it under paragraph (b) of that article. In considering its decision, the Council shall regard as mitigating circumstances that the producing country concerned surrendered under paragraph (b) of article 34 a part of its permissible export tonnage in time for effective steps to be taken by the other producing countries to make good the deficit or that the producing country concerned which has failed to export the amount determined under paragraph (a) of article 34 has exported the whole of its permissible export amount as determined under paragraph (a) or (b) of article 34.

RULE 7

If a reduction in the percentage of any producing country is made in accordance with Rule 6, the percentage so made available shall be distributed among the other producing countries in proportion to their percentages current at the date of the decision to make the reduction.

RULE 8

If, by the application of the foregoing Rules, the percentage of a producing country is reduced to less than the minimum figure permitted by the operation of the proviso to paragraph (g) (i) of article 13, then the percentage of that country shall be restored to such minimum figure and the percentages of the other producing countries shall be proportionately reduced so that the total of the percentages is restored to one hundred.

RULE 9

For the purposes of sub-paragraph (ii) of paragraph (g) of article 13, and paragraph (a) of article 34 the following circumstances *inter alia* may be regarded as exceptional: a national disaster, a major strike which has paralysed the tin mining industry for a substantial period, a major breakdown of power supplies or of the main line of transport to the coast or to the point of export as defined in annex C.

RULE 10

For the purposes of these Rules, the calculation for producing countries which are substantial consumers of tin derived from their domestic mine production shall be based on their exports of tin and not on mine production of tin.

RULE 11

In this annex the expression "the production of tin" shall be deemed to refer exclusively to mine production, and smelter production shall accordingly be ignored.

SIGNATURES, RATIFICATIONS, APPROVALS AND
ACCEPTANCES

<i>State</i>	<i>Date of signature</i>	<i>Date of deposit of instrument of ratification, approval (A), or acceptance (AC)</i>
Australia	28 Apr. 1976	8 Nov. 1976
Austria	20 Apr. 1976	29 Aug. 1977
Belgium/Luxembourg	26 Apr. 1976	
Bolivia	30 Apr. 1976	14 June 1977
Canada	29 Apr. 1976	30 June 1976
Czechoslovakia†	27 Apr. 1976	29 June 1976 (A)
Denmark	11 Mar. 1976	12 Aug. 1976
European Economic Community	29 Apr. 1976	
France	23 Feb. 1976	15 July 1977 (A)
Germany, Federal Republic of ...	12 Mar. 1976	29 Sept. 1976 (AC)*
Hungary†	30 Apr. 1976	8 June 1976
India	30 Apr. 1976	9 July 1976
Indonesia	29 Apr. 1976	3 Aug. 1976
Ireland, Republic of	28 Apr. 1976	12 Sept. 1977
Italy	30 Apr. 1976	30 Sept. 1977
Japan	16 Mar. 1976	17 June 1976 (AC)
Malaysia	18 Mar. 1976	18 Mar. 1976
Netherlands	26 Apr. 1976	
Nigeria	22 Apr. 1976	6 July 1976
Poland	29 Apr. 1976	14 June 1977 (AC)
Romania†	29 Apr. 1976	3 Sept. 1976
Soviet Union†	23 Apr. 1976	11 June 1976 (AC)
Spain	29 Apr. 1976	9 Dec. 1976
Thailand	10 Feb. 1976	24 May 1976
United Kingdom†	17 Nov. 1975	28 June 1976
United States	11 Mar. 1976	28 Oct. 1976
Yugoslavia	27 Apr. 1976	29 Dec. 1976
Zaire	30 Apr. 1976	25 July 1977

ACCESSION

<i>State</i>	<i>Date</i>
Bulgaria†	25 May 1977

* Including West Berlin.

† For Declarations see pages 58-59

NOTIFICATIONS OF INTENTION TO RATIFY, APPROVE,
ACCEPT OR ACCEDE

	<i>State</i>	<i>Date</i>
Belgium	30 June 1976
European Economic Community	30 June 1976
Iceland	29 June 1976
Luxembourg	30 June 1976
Netherlands (for the Kingdom in Europe)	28 June 1976
Turkey	9 June 1976

DECLARATIONS

BULGARIA

The instrument of accession deposited by the Government of Bulgaria contained the following declarations:

(Translation) The provisions of Articles 47 and 52 of the Agreement which restrict the opportunity for some States to participate in it, are contrary to the principle of sovereign equality of States.

The maintenance of the state of dependency of some territories, which is mentioned in Article 53 of the Agreement, is in contradiction with the basic principles of international law and the Declaration of the United Nations General Assembly on the granting of independence to colonial countries and peoples (General Assembly Resolution 1514 (XV) of 14 December 1960).

CZECHOSLOVAKIA

On signing the Agreement the Government of the Czechoslovak Socialist Republic made the following declarations:

“ The International Tin Agreement, 1975, is being signed with the reservation of approval by the Government of the Czechoslovak Socialist Republic.

The Czechoslovak Socialist Republic signs the above-mentioned Agreement as a consumer country.

The Government of the Czechoslovak Socialist Republic considers the provisions of the Article 53 of the International Tin Agreement, 1975, to be contradictory to the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514 (XV) of 14 December 1960).”

HUNGARY

On signing the Agreement the Government of the Hungarian People's Republic made the following declarations. Declarations, identical in essence, were also made when depositing their instrument of ratification:

- “(a) The Hungarian People's Republic wishes to become party to the Agreement as an importing country in accordance with Article 5, paragraph (c), thereof.
- (b) The Government of the Hungarian People's Republic calls attention to the fact that the provisions of Article 52, paragraphs (a) and (b), of the Agreement are contrary to the basic principles of international law. It is a postulate of the generally recognized principles of the sovereign equality of States that the Agreement should be open for participation by all States without any discrimination and restriction.
- (c) The Government of the Hungarian People's Republic calls attention to the fact that Article 53 of the Agreement is at variance with the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the United Nations General Assembly on 14 December, 1960 [Resolution 1514 (XV)].”

ROMANIA

On signing the Agreement the Government of the Socialist Republic of Romania made the following declarations:

(Translation) In signing the Fifth International Tin Agreement adopted at Geneva on 21 June 1975 and in reaffirming its position as stated at the United Nations Tin Conference, the Socialist Republic of Romania:

- (a) Considers that the provisions of Article 52 of the Agreement are not in accordance with the principle whereby international multilateral treaties, the subject and purpose of which are of concern to the whole international community, must be open to universal participation;
- (b) Declares that the maintenance in a state of dependence of certain territories, referred to in Article 53 of the Agreement, is not in accordance with the Charter of the United Nations and the instruments adopted by the United Nations concerning the granting of independence to colonial countries and peoples, including the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted unanimously in 1970 in General Assembly Resolution 2625 (XXV), which solemnly proclaims the obligation of States to promote the realization of the principle of equal rights and self-determination of peoples with a view to bringing a speedy end to colonialism.

These declarations were repeated, in essence, on ratification.

UNION OF SOVIET SOCIALIST REPUBLICS

On signing the Agreement the Government of the Union of Soviet Socialist Republics made the following declarations which were repeated on acceptance:

(Translation)

- (a) The provisions of Articles 47 and 52 of the Agreement which restrict the opportunity for some States to participate in it contradict the generally recognized principle of the sovereign equality of States;
- (b) The provisions of Articles 2, 4 and 53 of the Agreement concerning the extension of its operation by participating Governments to territories for whose international relations they are responsible are outdated and contradict the Declaration of the United Nations General Assembly on the granting of independence to colonial countries and peoples [General Assembly Resolution 1514 (XV) of 14 December 1960], which proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;
- (c) The reference in Annex B of the Agreement to the so-called Republic of Korea is illegal, since the South Korean authorities can in no circumstances act on behalf of Korea.

UNITED KINGDOM

On signing the Agreement the Government of the United Kingdom of Great Britain and Northern Ireland made the following declaration:

“ Her Majesty’s Government intend that the United Kingdom should make a financial contribution to the buffer stock of the International Tin Council under the Fifth International Tin Agreement. The basis of this contribution has still to be decided.”

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