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Notes

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The world coffee market traditionally suffers severe price fluctuations. Coffee[1] is second only to petroleum in primary commodity sales,[2] and provides employment for over twenty million people.[3] Coffee is almost exclusively produced and exported by developing countries that depend heavily on coffee trade for foreign exchange earnings.[4] In fact, importing nations consume approximately three-fourths of global production.[5]

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1. Coffee beans consist of the cherry-like fruit of the coffee tree. Richard B. Bilder, *The International Coffee Agreement: A Case History in Negotiation*, 28 LAW & CONTEMP. PROBS. 328, 331 (1963). Coffee is grown commercially only in tropical regions. *Id.* The two major types of coffee beans are Arabica and Robusta. J. DE GRAAFF, THE ECONOMICS OF COFFEE 58 (1986). Arabica beans are divided into washed and unwashed Arabicas. *Id.* at 61. The washed Arabicas are further divided into "Colombian Milds," grown in Colombia, and "Other Milds," grown in Central America. *Id.* at 62. Unwashed Arabicas, grown mainly in Brazil, *id.*, are also known as "Brazilian Arabicas." Robusta beans, usually unwashed, are grown in Africa. *Id.* at 61. These four varieties are partly substitutes for each other and partly complementary. *Id.*

2. BART S. FISHER, THE INTERNATIONAL COFFEE AGREEMENT: A STUDY IN COFFEE DIPLOMACY 3 (1972). A primary commodity is defined as: "any product of farm, forest or fishery or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade." CHARTER FOR AN INTERNATIONAL TRADE ORGANIZATION, March 24, 1948, art. 56(1), U.N. Doc. E/Conf.2/78, *reprinted in* U.N. Doc. ICITO/1/4 (1948), *and in* U.S. DEP'T OF STATE, PUB. NO. 3206, COMMERCIAL POLICY SERIES 113 (1948). This document is commonly known as the Havana Charter.

3. JAMES MWANDHA ET AL., COFFEE: THE INTERNATIONAL COMMODITY AGREEMENTS xii (1985).

4. In 1985, Colombia's coffee exports accounted for 51% of its reported exchange earnings. DONNA U. VOGT, INTERNATIONAL COFFEE AGREEMENT: A STATUS REPORT 3 (Congressional Research Service, No. 90-159, 1990). Also in 1985, the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua earned 25% to 63% of total export revenues from coffee. *Id.*; *see also* DE GRAAFF, *supra* note 1, at 58; MWANDHA, *supra* note 3, at xii.

5. FOREIGN AGRIC. SERV., U.S. DEP'T OF AGRIC., NO. 2-94, TROPICAL PRODUCTS: WORLD MARKETS AND TRADE 3 (1994) [hereinafter TROPICAL PRODUCTS]. For the 1994-1995 season, world coffee consumption is estimated at 99 million

Beginning in the early 1960s, coffee producing and consuming countries agreed upon the use of export quotas in the pursuit of reasonable market prices and stable supplies. International Coffee Agreements were signed in 1962,[6] 1968,[7] 1976[8] and 1983.[9] While each agreement had a specific duration[10] and improved upon previous agreements, none succeeded in stabilizing coffee market prices over an extended time period.

In 1989, coffee producing and consuming countries failed to renew the export quotas. Market prices dropped significantly, and, in 1992, reached the lowest level in twenty years. In response, coffee producing countries advocated the enactment of a new agreement and a return to export quotas. Coffee importers, however, advocated a free and unrestricted trade in coffee.[11] In September 1993, twenty-eight coffee producing nations from Asia, Africa and Latin America formed the Association of Coffee Producing Countries.[12] The producer group established the Coffee Retention Plan to promote a stable balance of market supply

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bags; 74 million bags in importing nations, and 25 million bags in producing countries. *Id.* One bag of coffee equals 60 kilograms or 132.276 pounds of green coffee. International Coffee Agreement 1962, *opened for signature* Sept. 28, 1962, art. 2(2), 14 U.S.T. 1911, 1914, 469 U.N.T.S. 169, 174 [hereinafter ICA 1962].

6. ICA 1962, *supra* note 5.

7. International Coffee Agreement 1968, *opened for signature* Mar. 18, 1968, 19 U.S.T. 6333, 647 U.N.T.S. 3 [hereinafter ICA 1968].

8. International Coffee Agreement 1976, *opened for signature* Jan. 31, 1976, 28 U.S.T. 6401, 1024 U.N.T.S. 3 [hereinafter ICA 1976].

9. International Coffee Agreement 1983, *opened for signature* Jan. 1, 1983, T.I.A.S. No. 11,095, 1333 U.N.T.S. 119 [hereinafter ICA 1983].

10. The first two agreements were for five years. ICA 1962, *supra* note 5, art. 71(1), 14 U.S.T. at 1945, 469 U.N.T.S. at 240; ICA 1968, *supra* note 7, art. 69(1), 19 U.S.T. at 6390, 647 U.N.T.S. at 84. The last two agreements were for six years. ICA 1976, *supra* note 8, art. 68(1), 28 U.S.T. at 6463, 1024 U.N.T.S. at 35; ICA 1983, *supra* note 9, art. 68(1), T.I.A.S. No. 11,095, at 71, 1333 U.N.T.S. at 149.

11. NATIONAL COFFEE ASS'N OF U.S.A., NCA SPECIAL BULLETIN, No. 259 (1992). The National Coffee Association (NCA) advised the U.S. government that "[t]he interests of the United States Coffee Consumer and industry are best accommodated by free and unrestricted trade in coffee." *Id.* The NCA is an industry trade association representing 85% of U.S. coffee trading and roasting activities. RICHARD L. LUCIER, THE INTERNATIONAL POLITICAL ECONOMY OF COFFEE: FROM JUAN VALDEZ TO YANK'S DINER 125 (1988).

12. Association members produce "nearly ninety percent" of the world's coffee supply. FOREIGN AGRIC. SERV., U.S. DEP'T OF AGRIC., No. 2-93, WORLD COFFEE SITUATION 18 (1993) [hereinafter WORLD COFFEE SITUATION]. Signatories included Angola, Bolivia, Brazil, Burundi, Cameroon, Central African Republic, Colombia, Congo, Costa Rica, Ecuador, El Salvador, Ethiopia, Gabon, Ghana, Guatemala, Honduras, Indonesia, Ivory Coast, Kenya, Madagascar, Nicaragua, Nigeria, Rwanda, Tanzania, Togo, Uganda, Venezuela and Zaire. *Id.*

and demand.[13] The producer group attempted to raise coffee market prices by requiring members to withhold certain percentages of all coffee ready for exportation.[14] Market followers predicted that any rise in the market price would inevitably lead to cheating by certain members.[15] Instead, market prices rose quickly and consuming countries' stocks were reduced. From October 1993 to May 1994, prices rose from less than seventy cents per pound to over one dollar per pound.

This Note examines this attempt by producers to bring long-term price stability to the world coffee market. Part I identifies the forces creating severe price instability in the coffee market. Part II describes the development of past International Coffee Agreements and their fundamental components. Part III details the provisions of the 1993 Coffee Retention Plan. Part IV evaluates the 1993 Coffee Retention Plan vis-à-vis previous agreements. This Note concludes that while the 1993 Coffee Retention Plan remedies serious weaknesses in previous agreements, it is questionable whether price stability will be achieved in the long run.

I. FORCES UNDERLYING THE INSTABILITY OF COFFEE MARKET PRICES

An examination of the supply and demand structure of the coffee market reveals why prices fluctuate so severely. In the short run, coffee price fluctuations result from the interaction between price inelastic supply and price inelastic demand in the coffee market. Coffee production and coffee consumption thus do not change significantly with most changes in price.[16]

In the short run, coffee supply is price inelastic.[17] As is true for agricultural products in general, the short-run supply of coffee cannot react even to severe price fluctuations. In response to a price decrease, coffee growers often will not reduce production

13. 1993 Coffee Retention Plan, art. 2 [hereinafter 1993 PLAN] (on file with the *Minnesota Journal of Global Trade*).

14. 1993 PLAN, *supra* note 13, art. 8.

15. *See* Neil Behrmann, *Some Analysts Say New Coffee Producer Cartel Formed in Brazil is Doomed to Ultimate Failure*, WALL ST. J., Sept. 27, 1993, at C12 (noting one analyst's feeling that "[c]onsuming nations aren't taking the pact seriously because they believe that it will fall apart"); James Brooke, *A New Coffee Cartel Tries Its Hand*, N.Y. TIMES, Oct. 3, 1993, § 3, at 11 (noting another analyst's feeling that "[w]ithout consumer involvement, this is an honesty plan").

16. Bilder, *supra* note 1, at 333.

17. *Id.* at 331. In other words, coffee production does not readily expand or contract over short periods even when prices vary dramatically. *Id.*

because of the fixed and variable cost structure in the coffee industry.[18] Fixed costs in the coffee industry are a relatively large portion of overall costs,[19] and include the costs of clearing land and planting coffee trees.[20] By contrast, the variable costs associated with harvesting are a relatively small portion of overall costs.[21] As long as growers are able to cover their marginal variable costs through coffee sales, they lack an incentive to reduce production. Even if prices drop dramatically relative to the overall average cost, growers will not reduce coffee production.[22] In response to a short-run price increase, coffee growers cannot increase production because of the biological time lag associated with coffee production.[23] Coffee trees require three to five years of growth before the beans are ready for harvest.[24] Despite this lag in production, coffee growers have traditionally improved production methods and increased planting during extended pe-

18. Growers experience very low "out of pocket" production costs. PAUL STREETEN & DIANE ELSON, DIVERSIFICATION AND DEVELOPMENT: THE CASE OF COFFEE 16 (1971).

19. THOMAS GEER, AN OLIGOPOLY: THE WORLD COFFEE ECONOMY AND STABILIZATION SCHEMES 35 (1971).

20. STREETEN & ELSON, *supra* note 18, at 16.

21. *Id.* A grower's variable costs are often further decreased through the economic aid of state marketing authorities. MWANDHA, *supra* note 3, at 24. Some marketing authorities deliberately cushion growers against price fluctuations by keeping the price paid to growers more or less constant. *Id.* Funds accumulated during periods of high prices may be used to subsidize growers' prices in leaner years. *Id.* Marketing authorities establish production and export subsidies, preferential tax treatments for coffee producers and export duties. *Id.* at 26. Production subsidies help growers improve coffee quality, and also fund research and development. *Id.* at 24. In contrast, export duties on coffee have particularly helped Latin American governments, sometimes providing as much as 50% of total fiscal revenue. *Id.* at 29. For further information on production, see M.TH.A. PIETERSE & H.J. SILVIS, THE WORLD COFFEE MARKET AND THE INTERNATIONAL COFFEE AGREEMENT 14-15 (1988); DE GRAAFF, *supra* note 1, at 54-55.

22. Bilder, *supra* note 1, at 331. "The principal costs of cultivation to the grower arise from the cost of purchasing and clearing land and planting trees, rather than in harvesting, and a crop will generally be harvested regardless of market price." *Id.*

23. *Id.*

24. *Id.* A coffee tree will bear productively for 25 to 45 years. *Id.* Robusta trees yield crops after three years, and Arabica trees yield crops after five years. MWANDHA, *supra* note 3, at 6. Moreover, a heavy yield depletes the growing power of a coffee tree, so that even when favorable weather follows the next year, production decreases. FISHER, *supra* note 2, at 5.

riods of high prices.[25] Producers, however, can only increase the immediate market supply by tapping into accumulated stocks.[26]

Coffee demand is also price inelastic in the short and long run.[27] A rise or fall in the market price has minimal effects on consumption habits. One commentator believes that taste preferences cause consumers to ignore moderate price fluctuations.[28] Taste preferences may also be a reason why, in the face of rising prices, some consumers do not switch to substitute products such as tea or soft drinks. Obviously, however, there is a price level above which consumers will reduce their consumption.[29]

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25. For example, on July 17, 1975, a frost destroyed or severely damaged 1.5 billion of the 2.9 billion coffee trees in Brazil, and world market prices rose dramatically. *Rising Coffee Prices and the Federal Response: Joint Hearings Before Certain Subcomms. of the House of Representatives Comm. on Government Operations and the Comm. on Agriculture*, 95th Cong., 1st Sess. 135-39 (1977) [hereinafter *Rising Coffee Prices*] (statement of Julius L. Katz, Assistant Secretary, Bureau of Economic and Business Affairs, Department of State). Brazil responded by undertaking a $1 billion replanting program to restore its coffee production. *Id.* Although only Brazil's coffee trees were damaged by the frost, other countries also increased production. *Id.* Colombia spent $70 million to plant 200,000 hectares of new coffee. *Id.* Many other countries adopted policies to increase the use of fertilizers and pesticides. *Id.*

Once enough young coffee trees begin bearing fruit, market supply increases, and market prices fall. STREETEN & ELSON, *supra* note 18, at 15-16. This discourages new planting, but trees planted in the last three to five years begin bearing fruit, and market supply continues to grow. *Id.* Such continued growth in world supply only exacerbates the rate of decline in prices. *Id.*

26. MWANDHA, *supra* note 3, at 22.

27. The world short-term price elasticity of demand has been estimated at -0.19. VOGT, *supra* note 4, at 4 n.7 (citing INTERNATIONAL MONETARY FUND, PRIMARY COMMODITIES: MARKET DEVELOPMENTS AND OUTLOOK 53-54 (1988)). Thus a 10% increase in price leads to a 2% decrease in consumption. MWANDHA, *supra* note 3, at 30.

28. RANDAL G. STEWART, COFFEE: THE POLITICAL ECONOMY OF AN EXPORT INDUSTRY IN PAPUA NEW GUINEA 238-40 (1992). Historically, taste preferences created rigid patterns of trade and solidified certain trade relationships to the advantage of large coffee producing and consuming countries. *Id.*

29. The 1975 frost in Brazil caused coffee prices to soar, and officials in New York City and Chicago asked consumers to reduce their consumption between 20% and 50%. *Rising Coffee Prices*, *supra* note 25, at 37-42 (statement of Elinor Guggenheimer, Commissioner, Consumer Affairs for New York City; statement of Jane Byrne, Commissioner, Consumer Affairs for Chicago). In late 1976, a New York City poll showed that 52% of those surveyed had either quit drinking coffee, or were drinking less than usual. *Id.* at 39. The New York City "cut-coffee-consumption" campaign received letters of support from 3000 U.S. and Canadian consumers. *Id.*

Over the past thirty years long-term demand for coffee has decreased.[30] Over the same period, major producing countries have reduced their economic reliance on coffee for export income.[31] Over the long run, price stability will be achieved only if producing countries keep growth to a reasonable level during supply shortages, thereby avoiding the predictable market oversupply that occurs a few years later. Historically, however, individual countries have not been willing to limit production and forego anticipated profits during the period just preceding the predicted period of oversupply.[32] Throughout this century, the oversupply of coffee relative to consumer demand remains the primary cause of declining market prices.[33]

II. EVOLUTION OF PAST INTERNATIONAL COFFEE AGREEMENTS

The stabilization of both coffee export revenues and import payments was the driving force[34] behind each of the four International Coffee Agreements signed from 1962 to 1983. To accomplish this goal, the agreements attempted "to avoid excessive fluctuations in the levels of world supplies, stocks and prices which are harmful to both producers and consumers."[35] Each agreement primarily used export regulations in an at-

30. WORLD COFFEE SITUATION, *supra* note 12, at 14. In 1962, U.S. per capita coffee consumption peaked at 3.12 cups per day. *Id.* In 1993, U.S. per capita coffee consumption was at 1.87 cups per day. *Id.* This translates to U.S. per capita coffee consumption of almost 16 pounds of coffee in 1960 and 10 pounds of coffee in 1993. TROPICAL PRODUCTS, *supra* note 5, at 18. The long-term price elasticity of demand has been estimated at -0.23. VOGT, *supra* note 4, at 4 n.7 (citing INTERNATIONAL MONETARY FUND, PRIMARY COMMODITIES: MARKET DEVELOPMENTS AND OUTLOOK 53-54 (1988)).

31. *See* FISHER, *supra* note 2, at 265; WERNER BAER, THE BRAZILIAN ECONOMY: GROWTH AND DEVELOPMENT 369 (1989). The agricultural portion of Brazil's economic output decreased from 16% in 1959 to less than 10% in 1975. *See* BAER, *supra*, at 369.

32. MWANDHA, *supra* note 3, at 23.

33. FISHER, *supra* note 2, at 1-12. Brazil's overproduction accounts for most of the world's oversupply during this century. *Id.* at 7.

34. PIETERSE & SILVIS, *supra* note 21, at 47.

35. ICA 1983, *supra* note 9, art. 1(2), T.I.A.S. No. 11,095, at 5, 1333 U.N.T.S. at 122; *see also* ICA 1962, *supra* note 5, art. 1(2), 14 U.S.T. at 1913, 469 U.N.T.S. at 172; ICA 1968, *supra* note 7, art. 1(2), 19 U.S.T. at 6336, 647 U.N.T.S. at 6; ICA 1976, *supra* note 8, art. 1(2), 28 U.S.T. at 6404, 1024 U.N.T.S. at 5. The objectives of the agreements were:

1. To achieve a reasonable balance between world supply and demand on a basis which will assure adequate supplies of coffee at fair prices to consumers and markets for coffee at remunerative prices to producers and which will be conducive to long-term equilibrium between production and consumption;

tempt to stabilize production and prices.[36] Despite the fact that long-term equilibrium between production and consumption remained a constant objective,[37] each agreement was actually created to respond to short-term market crises. No agreement has succeeded in stabilizing prices for an extended period. In fact, a new agreement has been enacted almost every six years to address a new market crisis.

A. THE 1962 AGREEMENT

In the first half of this century, coffee market prices fluctuated severely.[38] The U.S. government, however, was against any long-term commodity agreement between consuming and producing nations.[39] Even as late as the Eisenhower Administration, participation in a long-term international coffee agreement was viewed, in the words of one commentator, "as a sin against free enterprise."[40] The Kennedy Administration, how-

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2. To avoid excessive fluctuations in the levels of world supplies, stocks and prices which are harmful to both producers and consumers;
3. To contribute to the development of productive resources and to the promotion and maintenance of employment and income in Member countries, thereby helping to bring about fair wages, higher living standards and better working conditions;
4. To increase the purchasing power of coffee-exporting countries by keeping prices in accordance with provisions of paragraph (1) of this Article and by increasing consumption;
5. To promote and increase the consumption of coffee by every possible means;
6. In general, in recognition of the relationship of the trade in coffee to the economic stability of markets for industrial products, to further international cooperation in connection with world coffee problems.

ICA 1983, *supra* note 9, art. 1, T.I.A.S. No. 11,095, at 5, 1333 U.N.T.S. at 121-22; *see also* ICA 1962, *supra* note 5, art. 1, 14 U.S.T. at 1913-14, 469 U.N.T.S. at 172; ICA 1968, *supra* note 7, art. 1, 19 U.S.T. at 6335-36, 647 U.N.T.S. at 6; ICA 1976, *supra* note 8, art. 1, 28 U.S.T. at 6404, 1024 U.N.T.S. at 5.

36. PIETERSE & SILVIS, *supra* note 21, at 47.

37. ICA 1962, *supra* note 5, art. 1(1), 14 U.S.T. at 1913, 469 U.N.T.S. at 172; ICA 1968, *supra* note 7, art. 1(1), 19 U.S.T. at 6335, 647 U.N.T.S. at 6; ICA 1976, *supra* note 8, art. 1(1), 28 U.S.T. at 6404, 1024 U.N.T.S. at 5; ICA 1983, *supra* note 9, art. 1(1), T.I.A.S. No. 11,095, at 5, 1333 U.N.T.S. at 121; *see also* PIETERSE & SILVIS, *supra* note 21, at 46.

38. *See* LUCIER, *supra* note 11, at 118. The Great Depression led to a substantial reduction in world coffee demand. *Id.* Prices fell from $.25 per pound in 1925 to $.08 per pound in 1931. *Id.* World demand recovered after World War II, and surplus producer stocks diminished. *Id.* at 119. The rise in market prices induced Brazil and other producers to increase planting. *Id.* However, in 1953, a severe frost in Brazil and the outbreak of the Korean War caused prices to rise significantly. PIETERSE & SILVIS, *supra* note 21, at 59.

39. *See* FISHER, *supra* note 2, at 21-23.

40. ARTHUR M. SCHLESINGER, JR., A THOUSAND DAYS: JOHN F. KENNEDY IN THE WHITE HOUSE 190 (1965).

ever, began to take an active roll in forming an international coffee agreement.[41] The administration feared that economic failure in Latin America would lead to the spread of communism.[42] U.S. coffee importers also supported this change in policy out of economic self-interest. They feared that economic disruption would lead to difficulties in obtaining coffee supplies.[43] Support from the domestic industry most concerned with coffee market stability greatly eased congressional passage of the 1962 Agreement.[44]

The 1962 Agreement established the International Coffee Organization ("ICO") to administer the provisions of the agreement and to supervise its operation.[45] The 1962 Agreement established export quotas to assure that coffee prices would not decline below the general level of 1962 prices.[46] Each producing country's quota was based upon its historical share of world exports rather than projected production.[47] Countries that were already large coffee producers were thus assured of maintaining their world export shares. At the same time, historically smaller exporters wishing to increase their coffee exports were prevented from doing so. However, the agreement did not regulate

41. FISHER, *supra* note 2, at 27-29. In June 1958, the United States formed a Coffee Study Group, composed of all the major coffee producing and coffee consuming countries. *Id.* at 22. On December 4, 1961, this Group produced a draft document that became the basis for the 1962 Agreement. LUCIER, *supra* note 11, at 123.

42. *See* FISHER, *supra* note 2, at 27; LUCIER, *supra* note 11, at 124. On March 13, 1961, President Kennedy presented his "Alliance for Progress" speech. FISHER, *supra* note 2, at 28. Kennedy proposed U.S. readiness to "cooperate in serious case-by-case examinations of commodity market problems" with Latin American countries. *Id.*

43. LUCIER, *supra* note 11, at 124-27. The NCA expressed the collective viewpoint of the U.S. coffee industry. *Id.* In 1960, the United States accounted for more than 50% of world coffee imports. Id. at 121.

44. *Id.* at 133.

45. ICA 1962, *supra* note 5, art. 7(1), 14 U.S.T. at 1918, 469 U.N.T.S. at 180.

46. *Id.* art. 27(2), 14 U.S.T. at 1926, 469 U.N.T.S. at 198. Export quotas support prices by limiting the exports of each member. Bilder, *supra* note 1, at 329 n.2.

47. *See* ICA 1962, *supra* note 5, art. 28(1), Annex A, 14 U.S.T. at 1926, 469 U.N.T.S. at 198; STEWART, *supra* note 28, at 248. Brazil and Colombia received inflated quotas, while African countries received much smaller quotas. *See* ICA 1962, *supra* note 5, Annex A, 14 U.S.T. at 1926, 469 U.N.T.S. at 198. The "basic export quotas" were totalled and adjusted up or down after being compared to worldwide consumption estimates. *Id.* art. 28(2), 14 U.S.T. at 1926, 469 U.N.T.S. at 200. Historically based export quotas allowed the reinforcement of established trade patterns and ensured that any changes evolved slowly over time. *See* STEWART, *supra* note 28, at 248.

exports to all consumer markets. Despite objections from the United States and the large Latin American producers, the agreement exempted shipments to countries having a low per capita consumption and considerable potential for expansion.[48] The intention was to increase coffee consumption in these countries by selling at prices lower than in the agreement's regulated markets.[49] The exemption effectively created a two-tier pricing system.

Votes within the ICO were also allocated according to historical world market shares. Although the agreement equally distributed votes between producing and consuming nations,[50] countries with the largest export quotas and import volumes received most of the votes.[51]

Both exporting and importing countries soon discovered ways to undermine the agreement's objectives.[52] Under the agreement, customs agents were required to monitor all coffee imports for "Certificates of Origin."[53] It was not until October 1, 1964, however, that the ICO ruled that importing countries could not admit coffee exports from members without such documentation.[54] Even after enforcing Certificate of Origin requirements, countries found additional ways to circumvent the terms of the agreement. Some exporting countries used invalid Certificates, asserting that nowhere in the agreement was it stated that the Certificates had to be valid.[55] More importantly, exporters shipped large quantities of coffee to countries with low per capita consumption levels, where it was then redirected to the United States and other traditional consuming countries.[56]

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48. ICA 1962, *supra* note 5, art. 40, Annex B, 14 U.S.T. at 1930-31, 469 U.N.T.S. at 208.

49. PIETERSE & SILVIS, *supra* note 21, at 64.

50. The exporting and importing members each held a total of 1000 votes. ICA 1962, *supra* note 5, art. 12(1), 14 U.S.T. at 1919, 469 U.N.T.S. at 184.

51. Each member received five basic votes. *Id.* art. 12(2), 14 U.S.T. at 1919, 469 U.N.T.S. at 184. The remaining votes of exporting members were divided in proportion to their respective basic export quotas. *Id.* art. 12(3), 14 U.S.T. at 1919, 469 U.N.T.S. at 184. The remaining votes of importing members were divided in proportion to the average volume of their respective coffee imports in the preceding three-year period. *Id.* art. 12(4), 14 U.S.T. at 1919, 469 U.N.T.S. at 184.

52. LUCIER, *supra* note 11, at 129-30.

53. PIETERSE & SILVIS, *supra* note 21, at 64-65.

54. FISHER, *supra* note 2, at 85-86.

55. LUCIER, *supra* note 11, at 129.

56. PIETERSE & SILVIS, *supra* note 21, at 64. Coffee exports to these nontraditional markets became known as "tourist coffee." *Id.* Exporters would also ship coffee through nonmember exporting countries to traditional consuming countries. LUCIER, *supra* note 11, at 129-30.

African producing countries justified these methods of circumventing the agreement by arguing that the basic export quotas unfairly limited their potential for export growth.[57] In fact, the ICO refused to increase their export quotas even when there was a substantial decrease in the world coffee supply. In 1963, for example, Brazil's exports were lower than expected,[58] and African producers requested that the ICO allow them to expand their basic export quotas.[59] The ICO refused this request.[60] The rigidity of quotas remained a continuing controversy between small producing countries and the traditional coffee producing giants.[61]

The use of export quotas under the 1962 Agreement succeeded in sustaining market prices above the targeted level. However, the export quotas dramatically increased the amount of coffee warehoused in producing countries. The warehoused stocks rose from 6.5 million bags in the mid-1950s to their highest level of 83 million bags in 1966.[62] The reduction of warehoused stocks was a main concern of both coffee producing countries and consuming countries as they negotiated a renewal of the agreement.

B. THE 1968 AGREEMENT

The 1968 Agreement[63] retained the essential elements of the 1962 Agreement, with additional measures providing for an

57. LUCIER, *supra* note 11, at 128, 134-35.

58. *Id.* at 131. The Brazilian state of Paranã experienced both frosts and fires in August and September 1963. *Id.*

59. *Id.*

60. *Id.* Any change in the annual export quotas required a two-thirds majority vote. ICA 1962, *supra* note 5, arts. 30, 32, 14 U.S.T. at 1926-27, 469 U.N.T.S. at 200, 202.

61. FISHER, *supra* note 2, at 95-103.

62. MWANDHA, *supra* note 3, at 114.

63. ICA 1968, *supra* note 7. Final approval of the 1968 Agreement was delayed until 1970 due to a controversy regarding the discrimination by certain producer nations in favor of soluble coffee. FISHER, *supra* note 2, at 133-46. The controversy surrounded Brazil's financial incentives for the processing of green coffee into a soluble powder from which instant coffee was made. *Id.* at 133. Brazil did not tax soluble coffee exports, which gave Brazilian soluble coffee processors a cost advantage over U.S. soluble coffee processors. *Id.* at 134. The NCA publicly condemned any importation of Brazilian soluble coffee. *Id.* However, some American corporations purchased soluble coffee plants in Brazil, thus acquiring a financial interest in importing soluble coffee back to the United States. *Id.* at 143. The United States refused to approve the 1968 Agreement until a compromise was reached. *Id.* at 139. A provision was included in the agreement prohibiting an exporting country from applying governmental measures that led to discriminatory treatment in favor of soluble

"indicator price"[64] and a Diversification Fund.[65] The indicator price resolved the controversy between larger and smaller producing nations over the rigidly maintained export quotas.[66] If the world market price for coffee rose above a specified price ceiling, export quotas would be increased. Conversely, if the world market price fell below a specified floor, export quotas would be decreased. Under the indicator price mechanism, if larger producing countries experienced a severe decrease in production and market prices rose, other producing countries were allowed to increase exports.[67]

The Diversification Fund supported the development of alternative crops and industries in coffee producing nations in an effort to limit the global production of coffee and reduce warehoused stocks.[68] Contributions to the Fund were required from every major exporter.[69] While Brazil and the United States strongly supported the Fund, each did so for different reasons. The Brazilian government recognized that high levels of coffee

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coffee as compared to green coffee. ICA 1968, *supra* note 7, art. 44, 19 U.S.T. at 6369-72, 647 U.N.T.S. at 52-56. This controversy showed how the United States fought hard to keep the processing of commodities in *developed* countries and diverted away from *developing* countries. LUCIER, *supra* note 11, at 146-47.

64. ICA 1968, *supra* note 7, arts. 35-37, 19 U.S.T. at 6359-62, 647 U.N.T.S. at 38-42.

65. *Id.* art. 54, 19 U.S.T. at 6379-81, 647 U.N.T.S. at 68-71.

66. *See* FISHER, *supra* note 2, at 122, 128. The 1962 Agreement did not establish a target price range. *Id.* at 127. The International Coffee Council had been given the responsibility to separately negotiate each and every price and quota adjustment. ICA 1962, *supra* note 5, art. 34, 14 U.S.T. at 1927-28, 469 U.N.T.S. at 202. In March 1965, the ICO had decided upon market floor and ceiling prices as cut-offs for an increase or decrease in basic export quotas. FISHER, *supra* note 2, at 95. This indicator price had to remain above or below the cut-off market prices for 15 consecutive days before the adjustment of any export quotas. LUCIER, *supra* note 11, at 133 n.29.

67. ICA 1968, *supra* note 7, art. 34, 19 U.S.T. at 6359, 647 U.N.T.S. at 38.

68. *Id.* art. 54, 19 U.S.T. at 6379-81, 647 U.N.T.S. at 68-71. The Diversification Fund was established "to further the objectives of limiting the production of coffee in order to bring supply into reasonable balance with world demand." *Id.* art. 54(1), 19 U.S.T. at 6379, 647 U.N.T.S. at 68. "The contribution of each exporting Participant shall be utilized for programmes or projects approved by the Fund carried out inside its territory, but in any case twenty percent of the contribution shall be payable in freely convertible currency for use in any programmes or projects approved by the Fund." *Id.* art. 54(4), 19 U.S.T. at 6380, 647 U.N.T.S. at 70.

69. *Id.* art. 54(2), 19 U.S.T. at 6379, 647 U.N.T.S. at 68. Participation in the Fund was compulsory for each member that was not an importing member, and that had an export entitlement over 100,000 bags. *Id.* A participant was obligated to contribute, in quarterly installments, the equivalent of $0.60 multiplied by the number of bags it actually exported in excess of 100,000 bags. *Id.* art. 54(3), 19 U.S.T. at 6380, 647 U.N.T.S. at 68.

production would eventually translate into lower market prices.[70] The U.S. government, concerned about the economic stability of coffee producing countries, sought to decrease these countries' economic dependence on coffee exports.[71]

In 1971, cooperation among producing nations ended as a result of the devaluation of the U.S. dollar.[72] The devaluation caused a reduction in the real earnings of producing countries from coffee export sales. To compensate for lost earnings, most producing countries sought to increase their coffee exports. As a result of dissension over this issue, producing countries were unable to reach any agreement on quota levels for the 1972-73 season.[73] In December 1972, the 1968 Agreement's economic provisions were not renewed.[74]

From 1972 to 1975, market prices remained stable without a functioning international coffee agreement. In July 1975, the stability was interrupted when Brazil experienced a severe frost.[75] From 1975 to 1977, U.S. coffee prices rose more than five hundred percent.[76] The increase in market prices stung U.S. consumers and caused U.S. importers to suffer from drastically reduced domestic sales.[77]

C. THE 1976 AGREEMENT

The 1976 Agreement,[78] through which the U.S. government actively sought to protect U.S. consumers and importers, attempted to stimulate world coffee production.[79] First, export

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70. *See* LUCIER, *supra* note 11, at 138. Between 1962 and 1967, the Brazilian government paid growers to destroy an estimated 1.7 billion out of a total 4.1 billion coffee trees, *id.* at 136, reducing world production by more than 5%, *id.* at 138.

71. PIETERSE & SILVIS, *supra* note 21, at 66.

72. LUCIER, *supra* note 11, at 148.

73. *Id.*

74. *Id.* at 149.

75. *Id.* at 43; *see supra* note 25.

76. New York spot prices of Brazilian Arabica coffee rose from $0.68 per pound in July 1975 to $3.69 per pound in April 1977. TROPICAL PRODUCTS, *supra* note 5, at 23.

77. For years Brazil and other major producers violated the 1968 Agreement by not exporting their allotted quotas in full. PIETERSE & SILVIS, *supra* note 21, at 67. U.S. importers resented this constant undershipping, especially after the 1975 frost. *Id.* During negotiations toward the 1976 Agreement, U.S. negotiators sought to introduce incentives to put any accumulated stocks on the market even when market prices were firm. *Rising Coffee Prices*, *supra* note 25, at 169-70.

78. ICA 1976, *supra* note 8.

79. For an analysis of the 1976 Agreement, see *Rising Coffee Prices*, *supra* note 25, at 169-80.

quotas were separated into two parts: two-thirds fixed and one-third variable.[80] The variable quota was determined by the amount of coffee each country produced. The more coffee a certain country produced in proportion to other countries, the larger that country's export quota.[81] Smaller producer countries thus had an incentive to increase production. Second, the ICO monitored producer shortfalls and increased other exporting members' quotas by the amount of the shortfall.[82] Third, the Diversification Fund was eliminated.[83]

The composite indicator price continued to control the adjustment of quotas.[84] Until 1980, however, high market prices remained above the level at which quotas became operative. The agreement's target price level was between $1.20 and $1.40 per pound.[85]

D. THE 1983 AGREEMENT AND SUBSEQUENT DEVELOPMENTS

The 1983 Agreement[86] included essentially the same provisions as the 1976 Agreement.[87] Two developments, however,

80. ICA 1976, *supra* note 8, art. 35(1), 28 U.S.T. at 6435-36, 1024 U.N.T.S. at 22. The fixed part corresponded to at least 70% of the global annual quota, and the variable part corresponded to as much as 30% of the global annual quota. *Id.*

81. *Id.* art. 35, 28 U.S.T. at 6435-36, 1024 U.N.T.S. at 22. The 1976 Agreement states that the variable part of the basic export quota "shall be distributed among exporting Members in the proportion which the verified stocks of each exporting Member bear to the total verified stocks of all exporting Members having basic quotas." *Id.* art. 35(2), 28 U.S.T. at 6436, 1024 U.N.T.S. at 22. U.S. officials predicted a redistribution of market shares to African and Central American countries, thus potentially lowering Brazil's market share from 38% to 31%. *Rising Coffee Prices*, *supra* note 25, at 177. The fixed and variable quota system ensured that overproduction would remain a feature of the world coffee market. The stockholdings in producer countries effectively eliminated any risk of market undersupply caused by a frost or drought. *See* STEWART, *supra* note 28, at 250.

82. ICA 1976, *supra* note 8, art. 40(1), 28 U.S.T. at 6439, 1024 U.N.T.S. at 23-24.

83. Countries were no longer required to submit production plans to the ICO as required under the 1968 Agreement. *Compare* ICA 1968, *supra* note 7, art. 48, 19 U.S.T. at 6375-77, 647 U.N.T.S. at 62-64 *with* ICA 1976, *supra* note 8, art. 50, 28 U.S.T. at 6450, 1024 U.N.T.S. at 29.

84. ICA 1976, *supra* note 8, art. 33, 28 U.S.T. at 6432-35, 1024 U.N.T.S. at 20. The composite indicator price was the average of the indicator prices for Other Milds and Robusta coffees. *Id.* art. 33(1)(b)(i), 28 U.S.T. at 6432, 1024 U.N.T.S. at 20.

85. PIETERSE & SILVIS, *supra* note 21, at 84. Quota adjustments were planned at $1.15, $1.20, $1.40, $1.45 and $1.50. *Id.*

86. ICA 1983, *supra* note 9.

87. *See supra* notes 78-85 and accompanying text.

eventually led to a breakdown of cooperation between producing and consuming countries and an end to the 1983 Agreement in 1989.[88] First, the variable quota's incentive to produce resulted in continued accumulation of surplus stocks. This surplus coffee sold at highly discounted prices in nonmember markets and effectively established a two-tier pricing system.[89] Again, the price differentiation between countries facilitated the use of nonmember markets as conduits to the member consumer markets. Although the agreement provided penalties for cheating,[90] the ICO failed to impose them.[91]

Second, changing trends in consumer demand led importers to reject the quota structure under the agreement. In the 1980s, U.S. consumers increasingly differentiated between traditional beans and gourmet beans, and demand for gourmet beans rose dramatically.[92] Inherent in the established quota structure of the agreements, however, was a rigidity in the relative supply between different types of coffee beans. One cause of the rigidity between different beans was that quotas were set on a country by country basis.[93] Because climate and geography determine the type of bean produced by each country, fixed export shares between countries resulted in rigid relative supplies of different types of beans. Another cause of the rigidity in the relative supply was that the indicator price included only certain types of coffee beans, specifically the less expensive Robusta beans.[94]

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88. For a summary of market problems under the 1983 Agreement, see ED&F MAN COFFEE LTD., THE INTERNATIONAL COFFEE AGREEMENT: THE LAST CHANCE! 11 (1991).

89. STEWART, *supra* note 28, at 261.

90. *See* ICA 1983, *supra* note 9, art. 42, T.I.A.S. No. 11,095, at 45-46, 1333 U.N.T.S. at 138. For example, if an exporting member exceeded its quota, a quantity equal to 110% of that excess would be deducted from one or more subsequent quotas. *Id.* art. 42(3), T.I.A.S. No. 11,095, at 45, 1333 U.N.T.S. at 138. A second violation carried the same penalty. *Id.* art. 42(4), T.I.A.S. No. 11,095, at 45, 1333 U.N.T.S. at 138. A third violation carried the additional penalties of a suspension of voting rights and possible exclusion from the agreement. *Id.* art. 42(5), T.I.A.S. No. 11,095, at 45, 1333 U.N.T.S. at 138.

91. ED&F MAN COFFEE LTD., *supra* note 88, at 11, 16.

92. Mark Robichaux, *Boom in Fancy Coffee Pits Big Marketers, Little Firms*, WALL ST. J., Nov. 6, 1989, at B1. Retail sales of gourmet coffee rose from $210 million in 1983 to an estimated $675 million in 1989. *Id.* Gourmet coffee sales account for more than 10% of all coffee sales. *Id.* Gourmet coffee is the only segment, aside from decaffeinated coffee, that continues to grow in the overall declining coffee market. *Id.*

93. *See supra* text accompanying note 47.

94. The composite indicator price included only specific coffees from the Other Milds and Robusta coffees. PIETERSE & SILVIS, *supra* note 21, at 50. The 1983 Agreement allowed for the establishment of price ranges and price differ-

Therefore, an increase in the demand for and price of gourmet coffee beans, without a corresponding rise in the demand for and price of Robusta beans, did not result in an increase in the supply of gourmet beans.[95] U.S. importers thus claimed that they were unable to increase their imports of gourmet beans to meet increased consumer demand.[96]

The U.S. government recognized both of these problems and advocated changes in the agreement.[97] Although the U.S. government was somewhat flexible in negotiating a new agreement,[98] U.S. importers demanded that any new agreement comprehensively address the two-tier pricing system and the inflexible patterns of supply.[99] Without the assurance of an acceptable agreement, U.S. importers advocated free market trade as purportedly in the consumer's best interests.[100]

In 1989, the agreement's economic provisions expired. Brazil, Colombia and Mexico flooded the market with large quantities of coffee and prices tumbled.[101] From 1989 through 1993,

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entials for the principal groups of coffee and a composite price range. ICA 1983, *supra* note 9, art. 38(2), T.I.A.S. No. 11,095, at 43, 1333 U.N.T.S. at 137. However, countries agreed upon the same composite indicator price as under the 1976 Agreement. *See supra* note 84 and accompanying text. Thus, the composite indicator price did not include market prices for Brazilian Arabicas and Colombian Milds. PIETERSE & SILVIS, *supra* note 21, at 50. Price quotations for Brazilian and Colombian coffees were administered by the coffee authorities in those countries. *Id.* Importing countries felt that these price quotations would have a large influence on the composite indicator price, thus enabling the Brazilian and Colombian coffee authorities to manipulate the agreement. *Id.*

95. ED&F MAN COFFEE LTD., *supra* note 88, at 11, 14.

96. The 1983 Agreement allowed for quota adjustments in response to market price fluctuations of the principal types of coffee. ICA 1983, *supra* note 9, art. 39(3), T.I.A.S. No. 11,095, at 43-44, 1333 U.N.T.S. at 137. Otherwise, quotas were fixed for a period of four quarters. *Id.* art. 33(6), T.I.A.S. No. 11,095, at 38, 1333 U.N.T.S. at 135.

97. ALLEN WALLIS, COMMODITY MARKETS AND COMMODITY AGREEMENTS 4 (Bureau of Public Affairs, U.S. Dep't of State, Current Policy No. 791, 1986) (In order "[t]o stabilize prices effectively, the agreement must allocate quotas according to an exporter's available supply").

98. While supporting international trade through free markets, the U.S. government continued to pursue a new coffee commodity agreement. BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, GIST, INTERNATIONAL COMMODITY AGREEMENTS (Apr. 1986).

99. *See* NATIONAL COFFEE ASS'N OF U.S.A., RESOLUTION OF BOARD OF DIRECTORS (Feb. 8, 1988); NATIONAL COFFEE ASS'N OF U.S.A., FOR IMMEDIATE RELEASE (Feb. 6, 1989).

100. *See* NATIONAL COFFEE ASS'N OF U.S.A., RESOLUTION OF BOARD OF DIRECTORS (Feb. 8, 1988).

101. VOGT, *supra* note 4, at 1. From June to July 1989, the New York spot prices of Brazilian Arabica coffee fell from $1.15 per pound to $0.78 per pound. TROPICAL PRODUCTS, *supra* note 5, at 23.

prices remained at relatively low levels, averaging around seventy cents per pound.[102] During informal meetings with other ICO members, U.S. officials insisted that any future agreement use a universal quota system.[103] The universal quota system would restrict exports to nonmember nations, as well as member nations, thus eliminating uneven prices between member and nonmember countries. The universal quota system would also establish a separate indicator price mechanism for each type of bean.[104] Members of the U.S. coffee industry continued to support a free market,[105] with strong support from some congressional members.[106]

In September 1993, the United States announced its withdrawal from the ICO.[107] A released statement read, "[g]iven our decades of commitment to international co-operation in coffee, we do not take this step lightly. We simply do not have the support at home to remain in the International Coffee Agreement."[108] Some coffee producing countries strongly criticized the U.S. withdrawal.[109] The United States defended its withdrawal by stating a preference for free market conditions.[110]

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102. This average is for New York spot prices of Brazilian Arabica coffee, from July 1989 through June 1993. TROPICAL PRODUCTS, *supra* note 5, at 23.

103. VOGT, *supra* note 4, at 13.

104. *Id.*

105. *See supra* note 11.

106. Senator Hank Brown (R-Colo.) filed an amendment to the Commerce State Adjustment measure to prevent the United States from contributing funds to the ICO. Behrmann, *supra* note 15, at C12.

107. *U.S. Leaving World Coffee Organization*, ATLANTA J. & CONST., Sept. 28, 1993, at C3. The U.S. withdrawal was effective October 1, 1993. *Id.*

108. *U.S. Announces Withdrawal from ICO*, Agence Fr. Presse, Financial, Sept. 27, 1993, *available in* LEXIS, Nexis Library, Curnws File. U.S. monetary contributions significantly helped defray the ICO's administrative costs. *Coffee Countries Discuss Grounds for Budget Changes*, Agence Fr. Presse, Financial, Sept. 28, 1993, *available in* LEXIS, Nexis Library, Curnws File. The United States contributed about 19% ($790,000) of the ICO's total budget. *Id.*

109. One Brazilian official expressed that "[a]t a time when producers most needed the cooperation of consumers, the U.S. decided to withdraw. This signals a certain indifference on the part of the new U.S. administration." Caroline Bulloch, *U.S. Quits Coffee Forum as Support for Commodity Pacts Fades*, Reuter Eur. Bus. Rep., BC Cycle, Sept. 27, 1993, *available in* LEXIS, Nexis Library, Curnws File.

110. "From July 1989 to the present a free market has ensued. Many people in our private sector who had operated for almost a decade under the structure of an international agreement developed a preference for this new environment," said a U.S. delegate at the ICO conference. *Id.*

III. THE 1993 COFFEE RETENTION PLAN

In September 1993, coffee producing countries abandoned hopes of renewing a commodity agreement with the support of consuming nations, and instead formed a producer cartel called the Association of Coffee Producing Countries (the "Association"). On October 1, 1993, the Association implemented its Coffee Retention Plan (the "1993 Plan").[111]

A. PROVISIONS OF THE 1993 PLAN

1. Retention of Coffee Stocks

The 1993 Plan uses a technique different from that under previous agreements to determine the amount that a producing nation can export. Previous agreements first determined total world coffee exports and then divided this amount between all producing countries. The 1993 Plan does not explicitly determine a level of world coffee exports. Instead, the 1993 Plan attempts to lower world exports by requiring each producing country to retain and store a certain percentage of exports.[112] The 1993 Plan uses an indicator price to determine the level of future retention or release of stored stocks as prices fluctuate. The 1993 Plan also provides for different retention levels for the two main types of coffee beans, Arabica and Robusta.[113]

The 1993 Plan began by setting retention levels for Arabica beans, and similar retention levels for Robusta beans were later established.[114] Different retention levels were set for each of two consecutive phases, a preliminary stabilization phase and a long-term stabilization phase. In the preliminary phase, when the indicator price is below seventy-five cents per pound, the retention level is twenty percent of coffee exports.[115] When the indicator price is between seventy-five and eighty cents, the re-

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111. 1993 PLAN, *supra* note 13, art. 6.

112. *Id.* arts. 8-14. The 1993 Plan allows quota exemptions only for countries having annual exports less than 400,000 bags, based on average exports for the period 1989-1992. *Id.* art. 42. The 1993 Plan does not include quota exemptions for new markets.

113. *Id.* art. 16.

114. Retention levels and the establishment of a composite indicator price for Robusta beans began on January 19, 1994. TROPICAL PRODUCTS, *supra* note 5, at 26. For Robusta coffee, a 20% retention is required if the indicator price is below $.60 per pound. *Id.* at 25. For prices between $.65 and $.80, no retention is required. *Id.* A controlled release of stocks takes place when the market price remains above $.70 per pound. *Id.*

115. 1993 PLAN, *supra* note 13, art. 9.

tention level is ten percent.[116] When the indicator price is between eighty and eighty-five cents, coffee retention is suspended.[117] When the indicator price is above eighty-five cents, members release previously retained stocks.[118]

Once all retained stocks are released for the first time, the long-term phase begins to operate and a new set of retention levels is applied. When the indicator price is below eighty cents the retention level is twenty percent.[119] When the indicator price is between eighty and eighty-five cents, the retention level is ten percent.[120] When the indicator price is between eighty-five and ninety cents, retention is suspended.[121] When the indicator price is above ninety cents, members release previously retained stocks and retention levels are suspended.[122]

2. Storage of Retained Stocks

The 1993 Plan requires storage of retained stocks in approved warehouses[123] and in areas clearly marked and separate from other goods.[124] Although substantial amounts of storage space were built under the 1976 Agreement,[125] purchasing and storing excess production remains very costly.[126] To fulfill its own retention obligations, for example, the Brazilian government privatized the retention program and forced domestic ex-

116. *Id.*
117. *Id.* art. 11.
118. *Id.* art. 13.
119. *Id.* art. 14.
120. *Id.*
121. *Id.*
122. *Id.* art. 14, para. 1.
123. *Id.* art. 15.
124. *Id.* art. 15, para. 1. Upon delivery to the warehouse, a Deposit Certificate is issued. *Id.* art. 15, para. 2. The Deposit Certificate confirms the retention deposit, identifies the beans and indicates that the beans are of export quality. *Id.* The retained coffee cannot be transported or replaced. *Id.* art. 15, para. 5. Coffee can be stored for several years without serious deterioration. V.D. WICKIZER, COFFEE TEA AND COCOA 57 (1951). When storing coffee, avoiding humidity is more important than maintaining a certain temperature. *Id.* Thus, storage in the country of production is usually more difficult than in temperate-zone consuming markets. *Id.*
125. DE GRAAFF, *supra* note 1, at 57. In the 1970s, Brazil had the capability to store 60 million bags of coffee. *Id.*
126. For example, Brazil's 1993 estimated cost for storing 20% of exports was $60-80 million. *Coffee Producing Countries Join Forces to Try to Boost World Prices*, Agence Fr. Presse, Financial, Sept. 23, 1993, *available in* LEXIS, Nexis Library, Curnws File. The Brazilian government proposed a two dollar levy on each 60 kilogram (132 pound) bag of coffee beans to help finance the Association. *Brazil Proposes Coffee Levy to Finance New Organization*, Agence Fr. Presse, Dec. 15, 1993, *available in* LEXIS, Nexis Library, Curnws File.

porters to bear the costs of buying and storing any retained coffee.[127]

3. Enforcement and Sanctions

The 1993 Plan utilizes several different verification techniques. First, a valid Certificate of Origin is required in order for coffee to be exported.[128] To obtain a Certificate of Origin, each private exporter must turn over a deposit certificate indicating the amount of coffee deposited for storage.[129] Second, each member government must inspect the storage warehouses[130] and send a copy of the inspection or verification report to the Retention Management Committee.[131] This Committee periodically verifies the member country's own inspections by ordering internationally recognized auditors to verify the retention reports.[132] Third, the Committee relies upon the ICO's published export statistics as a final verification.[133] Each member must pay for expenses incurred in the administration and control of the 1993 Plan, including expenses incurred in the auditors' retention verification.[134]

The 1993 Plan severely punishes any cheating.[135] For the first violation, when a retention deficit is established by audit, the violating country must add to storage stocks twice the amount of the deficit.[136] The second violation requires an addition to storage of three times the deficit.[137] A third violation carries the additional penalty of having the country's voting rights at the Retention Management Committee suspended.[138] After the third violation, the Committee can exclude the infringing country from the 1993 Plan.[139]

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127. Patrick McCurry, *Brazil Gets to Grips with Coffee Scheme*, FIN. TIMES, Mar. 4, 1994, at 32. Exporters will not be allowed to ship coffee without proof that they have stored 20% of the shipment volume. *Id.*

128. 1993 PLAN, *supra* note 13, art. 22.

129. *Id.* art. 22, para. 1.

130. *Id.* art. 17.

131. *Id.* art. 18.

132. *Id.* art. 19.

133. *Id.* art. 24.

134. *Id.* art. 40.

135. *Id.* arts. 27-32.

136. *Id.* art. 27.

137. *Id.* art. 28.

138. *Id.* art. 29.

139. *Id.* art. 29, para. 1.

4. Member Voting Rights

Members exercise their voting rights through representatives appointed to the Retention Management Committee.[140] Although the Committee usually acts by consensus, a two-thirds majority vote is sufficient.[141] Each member's number of votes is proportional to its exports,[142] so the voting power remains with the larger exporting countries. As in previous agreements, Brazil and Colombia hold the most votes.[143]

B. RESULTS

The 1993 Plan had an immediate effect on coffee market prices. Beginning in October 1993, the market price steadily increased, as did the Plan's indicator price.[144] By May 1994, the indicator price rose above ninety cents per pound, and members suspended the retention of coffee exports.[145] The 1993 Plan therefore succeeded in its main goals of increasing market prices and reducing consuming countries' warehoused stocks.

However, a frost insured that the market price would remain above the Plan's target level of ninety cents per pound. On June 26-27, 1994, and July 9-10, 1994, temperatures fell near or below freezing across large parts of the coffee-producing areas of Brazil.[146] Brazil's 1995-1996 coffee production was reduced by an estimated thirty to forty percent.[147] Because Brazil accounts for one-fourth of global coffee exports,[148] market prices in-

140. *Id.* art. 33, para. 1.
141. *Id.* art. 38.
142. *Id.* art. 38, para. 1.
143. *See supra* note 51 and accompanying text.
144. TROPICAL PRODUCTS, *supra* note 5, at 23, 26-27.
145. On May 17, 1994, the 20-day moving average of the ICO's composite indicator price rose to $.91 per pound. *Id.* at 26. *See also* Alison Maitland, *Coffee Stock Sales Agreed as Surge Continues*, FIN. TIMES, May 25, 1994, at 34 (noting that producers agreed to release the remaining 50% of stocks retained); *Coffee at Its Highest Price Since the End of Quotas in '89*, N.Y. TIMES, May 14, 1994, at 48 (noting that producers had reached their price goal).
146. TROPICAL PRODUCTS, *supra* note 5, at 11.
147. *Id.* The U.S. Department of Agriculture conducted a 21-day, 3800-mile field survey to gauge the damage of the two frosts. *Id.* Virtually all of the 260 million coffee trees located in the Brazilian state of Paranã were damaged. *Id.* The U.S. Department of Agriculture estimated that 1995-1996 coffee production in Paranã would be reduced from 2.0 million bags to 0.2 million bags. *Id.*; *see also* Howard Simon, *Freeze in Brazil Drains Stocks in U.S.*, J. COM., Aug. 11, 1994, at A1, A8 (noting that Brazil's own damage estimate for the 1995-1996 crop was 40%).
148. For the 1993-1994 season, Brazil's coffee exports were estimated at 18.5 million bags, and global coffee exports were estimated at 74.5 million bags. WORLD COFFEE SITUATION, *supra* note 12, at 5.

creased to well over three times the price level previous to the Plan's implementation.[149] Coffee growers immediately began to plant new trees and improve their production methods.[150] Through December 1994, coffee prices remained above the target price of ninety cents, thus precluding the retention of coffee exports.

IV. EVALUATION OF PAST COFFEE AGREEMENTS AND THE 1993 PLAN

To evaluate the current and past coffee agreements, one must consider the gains and losses to all parties. The gains to producers, consumers and importers from coffee price stabilization must be considered along with the benefits to producers and the burden to consumers of potentially artificially high prices. Furthermore, one must consider alternative mechanisms to more efficiently achieve results similar to those attained by the 1993 Plan.

A. POTENTIAL EFFECTS OF THE AGREEMENTS

One almost certain effect of each coffee agreement is the stabilization of coffee prices. Export quotas or retention provisions act to stabilize coffee market prices by tempering supply fluctuations.[151] Price stabilization benefits individual producers and producer countries, both of whom are particularly vulnerable to coffee price instability. From the individual growers' perspective, coffee is often the sole crop produced and thus growers are not protected through crop diversification against coffee price fluctuations. From the perspective of coffee producing countries, coffee is often an important source of export revenues.[152] A decrease in coffee prices can have a devastating effect on these economies.[153] Although the 1968 Agreement attempted to alle-

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149. In July 1994, New York spot prices of Brazilian Arabica Coffee averaged $2.11 per pound, as compared to $0.65 per pound in July 1993. TROPICAL PRODUCTS, *supra* note 5, at 23. However, in December 1994, the U.S. Department of Agriculture estimated that rising output in other parts of the world would offset some of Brazil's shortfall. Suzanne McGee, *Coffee Prices Plunge to Lowest Levels Since June*, WALL ST. J., Dec. 14, 1994, at C14.

150. *Id.* at 3.

151. The 1993 Plan stabilized market prices through the use of a retention plan. *See supra* part III.A.1. Previous agreements, such as the 1962 Agreement, stabilized market prices through the use of export quotas. *See supra* part II.A.

152. *See supra* note 4.

153. For example, in Brazil, an estimated two million coffee workers lost their jobs following the collapse of the 1983 Agreement. Brooke, *supra* note 15,

viate this vulnerability by providing funds to diversify these economies, subsequent agreements, including the 1993 Plan, conspicuously lack any diversification programs.[154]

Within consuming countries, the benefits of price stabilization are less clear. On the one hand, coffee importers are vulnerable to price instability to the extent that they focus primarily on coffee and cannot maintain profit margins as prices vary. On the other hand, consumers are less vulnerable to coffee price fluctuations. Coffee purchases form a small percentage of spending for most consumers. Fluctuating coffee prices thus do not translate into substantial fluctuations in a consumer's aggregate spending.

A more questionable potential effect of international coffee agreements is the artificial inflation of coffee prices. The question remains open whether the target prices under any of the agreements, including the 1993 Plan, were set above the long-run equilibrium price that would exist under free market conditions. Given that none of the agreements explicitly stated an objective to raise prices above free market levels, the agreements can be read to merely intend the stabilization of prices at free market levels. However, some argue that the agreements set the target price at an artificially high level. Producer-only agreements, such as the 1993 Plan, especially give rise to suspicion.[155] Producers can rationally be expected to artificially inflate coffee prices to maximize monopoly profits. Furthermore, even though pre-1993 agreements included coffee consuming countries as parties, their interests may not have been adverse to the interests of producing countries. As previously noted, consuming countries pursued earlier agreements in large part for the economic benefit of producing countries.[156] Pre-1993 agreements, therefore, may have also artificially inflated coffee prices for the benefit of producing nations.[157]

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at 11. Brazil lost an estimated $2.5 billion due to the low market prices from 1989 to 1993. *Id.*

154. For a discussion of the 1968 Agreement's Diversification Fund, see *supra* notes 68-71 and accompanying text.

155. The Association's 1993 Plan has been characterized as the work of a coffee cartel, *see, e.g.*, Neil Behrmann, *Coffee Futures Are Drifting as Traders Seek Better Indication of How New Cartel Will Fare*, WALL ST. J., Dec. 6, 1993, at C14, similar to the OPEC oil cartel.

156. *See supra* note 42 and accompanying text.

157. If pre-1993 agreements supported prices that were above the long-run equilibrium level, the agreements levied a hidden tax on consumers and subsidized production in exporting countries. ALLEN WALLIS, NEGOTIATIONS TOWARD

Whether any coffee agreement should be viewed as artificially inflating coffee prices may depend on whether, in the long run, coffee producing nations continue to accumulate stocks. Over the long term, the only way to effectively maintain a target price above the free market level is to artificially reduce long-term aggregate coffee exports through a persistent storage of coffee stocks or a decrease in overall production.

B. Reflections on the 1993 Retention Plan

To the extent that the agreements are purely price stabilization measures, the 1993 Plan seems to offer the most promising stabilization mechanism. The use of a retention plan based on export volume, rather than historical market share, creates greater flexibility by adjusting export quotas to current market production shares. The 1993 Plan's adjustment to current market shares leads to less dissatisfaction with allocated export shares, and thereby eliminates the primary source of producer dissatisfaction underlying the failure of past agreements.[158]

To the extent that the 1993 Plan intends to artificially inflate prices, long-run price inflation can only result from permanently storing coffee stocks. There may be, however, more efficient ways to limit coffee exports than the 1993 Plan's permanent storage of coffee stocks. Options include the burning of excess coffee, leaving fields fallow, crop diversification programs and international economic aid from consuming nations to producing nations. In the past, all of these options have been used to limit the market supply of coffee, but each is conspicuously lacking in the 1993 Plan. Without such measures, coffee producers are forced to continually rely on a retention plan or risk the failure of another coffee agreement. The 1993 Plan's strong oversight and enforcement provisions, however, may provide the unity necessary for long-term success.

V. CONCLUSION

The world coffee market historically suffers from price instability. Four consumer-producer agreements attempted to stabilize prices through export quotas, but all failed to reach a long-term solution. The 1993 Coffee Retention Plan is the latest effort in this direction. By forcing producers to retain certain

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A New Internaitonal Coffee Agreement 2 (Bureau of Public Affairs, U.S. Dep't of State, Current Policy No. 1139, 1988).

158. *See supra* text accompanying notes 57-61.

percentages of coffee earmarked for export, coffee producing nations succeeded in raising the market price to target levels. Continued reliance upon export quotas or export retention plans to stabilize market prices, however, has been unsuccessful in the past. At present, it is too early to determine whether the improvements upon previous International Coffee Agreements in the 1993 Plan will finally achieve the elusive goal of long-term price stability.