



International Coffee Council
103rd Session
23 – 25 September 2009
London, England

**Status of the
International Coffee Agreement 2007
as at 25 August 2009 and options for its
entry into force**

Background

1. The attached document contains a report on the status of signatures and deposit of instruments of ratification, acceptance or approval of the International Coffee Agreement (ICA) 2007 and options for its entry into force.
2. Documents DN-54/09/ICA 2007 and DN-59/09/ICA 2007, circulated in May and August 2009 respectively, notified Members of the opportunity to sign the 2007 Agreement and deposit instruments during the 103rd Session of the Council. Document WP-Council 196/09 contains draft Resolutions relating to the 2001 and 2007 Agreements for consideration by the Council at its 103rd Session.
3. The Executive Director urges all Governments that have yet to complete membership formalities for the 2007 Agreement to make every effort to accelerate the procedures required.
4. The following Annexes are included in this document:

Annex I	Membership of the ICO under the ICA 2007
Annex II	Percentage of votes necessary for the entry into force of the ICA 2007
Annex III	Article 42 of the ICA 2007 (Entry into force)

Action

The Council is requested to consider this report.

STATUS OF THE INTERNATIONAL COFFEE AGREEMENT (ICA) 2007 AS AT 25 AUGUST 2009

Background

1. The ICA 2007 was adopted by the International Coffee Council on 28 September 2007 through Resolution 431. On 25 January 2008, the Council designated the International Coffee Organization (ICO) as the Depositary for the Agreement and it opened for signature at the ICO headquarters in London on 1 February 2008 until 31 August 2008, and for deposit of instruments of ratification, acceptance or approval until 30 September 2008.

2. At its 101st Session in September 2008, the Council noted that the requirements for entry into force of the 2007 Agreement had not yet been met in the case of exporting Members. It approved Resolution 438 extending the 2001 Agreement until 30 September 2009 to enable Governments to complete membership procedures for the ICA 2007. The Council further approved Resolutions 439 and 440 which respectively extended the time for signature and deposit of instruments until **25 September 2009**. Procedures for membership are set out in document ED-2033/08 Rev. 2.

Status of 2007 Agreement

3. Paragraph (1) of Article 42 of the ICA 2007 provides that the Agreement shall enter into force definitively when signatory Governments holding at least two-thirds of the votes of the exporting Members and signatory Governments holding at least two-thirds of the votes of the importing Members, calculated as at 28 September 2007¹, without reference to possible suspension under the terms of Article 21, have deposited instruments of ratification, acceptance or approval.

4. As at 25 August 2009, 34 exporting Members and four importing Members have signed the Agreement, and 15 exporting Members and two importing Members have ratified, accepted, or approved the Agreement or deposited notifications of provisional application (see Annex I). Annex II shows the status of the percentage of the votes necessary for the entry into force of the 2007 Agreement. Governments are listed in four categories, as shown below:

- Section A: Governments which have completed all the required procedures
- Section B: Governments which have signed the Agreement but not completed the required procedures
- Section C: Governments which have not signed the Agreement
- Section D: Governments invited to the 98th Session of the Council at which the ICA 2007 was adopted.

¹ See document EB-3934/07.

5. In the case of importing Members, signatory Governments holding at least two-thirds of the votes of importing Members need to deposit instruments of ratification, acceptance or approval or notifications of provisional application. Two importing Members holding 89.8% of the votes of importing Members have completed the necessary procedures and the requirement for votes has therefore been met by this category of Members.

6. In the case of exporting Members, signatory Governments holding at least two-thirds of the votes of exporting Members need to deposit instruments of ratification, acceptance or approval, or notifications of provisional application. Fifteen exporting Members holding 43.1% of the votes of exporting Members have completed the necessary procedures. An additional 19 exporting Members holding a potential 46.7% of the votes of exporting Members have signed the ICA 2007 but have not yet deposited instruments or notifications of provisional application. The requirement for votes has therefore not yet been met by this category of Members.

7. The Secretariat will continue to monitor the position of votes required for the entry into force of the Agreement as signatory Governments deposit instruments, and notify Members when the requirement has been met.

Way forward

8. There are a number of possibilities for the entry into force of the ICA 2007, including:

A. Requirement for entry into force is met before 25 September 2009 and the ICA 2007 enters into force provisionally or definitively:

- Time-limits for deposit of instruments by signatory Governments extended
- Signatory Governments may notify the Depositary at any time that they will apply the Agreement provisionally
- Procedures for accession by non-signatory Governments established

B. Signatory Governments which have deposited instruments meet and decide the ICA 2007 should enter into force provisionally or definitively among themselves:

- Time-limits for deposit of instruments for ICA 2007 by signatory Governments extended
- Signatory Governments may notify the Depositary at any time that they will apply the Agreement provisionally
- Procedures for accession by non-signatory Governments established

C. The ICA 2001 is further extended, to allow further time for Governments to complete the necessary formalities for membership of the ICA 2007:

- Time-limits for signature and deposit of instruments for ICA 2007 extended
- Signatory Governments may notify the Depositary at any time that they will apply the Agreement provisionally

A. Requirement for entry into force met before 25 September 2009

9. Under the provisions of paragraph (2) of Article 42, if the 2007 Agreement did not enter into force definitively by 25 September 2008, it may enter into force provisionally at any time within the next 12 months if signatory Governments holding at least two-thirds of the votes in each category of Members have deposited instruments of ratification, acceptance or approval or have notified the Depository that they will apply the Agreement provisionally. Under the provisions of paragraph (1) of Article 42, it shall enter into force definitively at any time if it is provisionally in force and the percentage requirements are satisfied by the deposit of instruments of ratification, acceptance or approval.

10. This option would require signatory Governments with at least 23.6% of the votes of exporting Members to ratify, accept or approve the 2007 Agreement by 25 September 2009, in addition to Governments which have completed all the procedures listed in Section A of Annex II. This scenario appears unlikely as major signatory Governments listed in Section B of Annex II require further time to complete the necessary formalities.

11. If the requirement for entry into force is met, the Council would consider a draft Resolution extending the time-limit for deposit of instruments by signatory Governments listed in Section B of Annex I, and would also consider establishing procedures for accession by non-signatory Governments listed in Sections C and D of Annex II.

B. Meeting of signatory Governments

12. Under the provisions of paragraph (3) of Article 42, if the 2007 Agreement has entered into force provisionally but has not entered into force definitively by 25 September 2009, it shall cease to be in force provisionally unless signatory Governments which have deposited instruments decide that it shall continue in force provisionally for a period of time. Paragraph (4) of the same Article provides that if the ICA 2007 has not entered into force either definitively or provisionally by 25 September 2009, signatory Governments that have deposited instruments may, by mutual consent, decide that it shall enter into force definitively among themselves.

13. A meeting of Governments which have completed all the procedures (see Section A of Annex II) could be held if so wished on 25 September 2009 or a subsequent date to decide whether the Agreement should either continue in force provisionally (if the requirements for provisional entry into force have been met by that date) or enter into force definitively among themselves. If they decide that the 2007 Agreement should enter into force among themselves, the Council would consider a draft Resolution extending the time-limit for deposit of instruments of ratification, acceptance or approval by signatory Governments, and would also consider establishing procedures for accession by non-signatory Governments.

C. Further extension of the ICA 2001

14. Under the provisions of Article 52 (Duration and termination) of the ICA 2001, the Agreement may be extended beyond 30 September 2007 for one or more successive periods not to exceed six years in total. The ICA 2001 has been extended twice, for a period of one year, on each occasion to enable Governments to complete membership formalities for the ICA 2007 (by Resolution 432 until 30 September 2008 and by Resolution 438 until 30 September 2009).

15. If the requirements necessary for the entry into force of the ICA 2007 have not been met by the time of the 103rd Council Session, the 2001 Agreement could be extended for a further year with a view to avoiding financial difficulties for the Organization (see document WP-Council 196/09 containing a draft Resolution).

16. If the ICA 2001 is further extended, the Council would consider a draft Resolution extending the time-limit for signature by Governments listed in Section C of Annex II, and for deposit of instruments of ratification, acceptance or approval by Governments listed in Sections B and C of Annex II.

Financial and other implications of options A and B

17. It should be noted that options A and B would have financial implications for the Organization, as countries which have not completed membership procedures are not required to pay contributions to the Administrative Budget. In the case of the 2001 Agreement which entered into force on 1 October 2001, only 18 Members of the 1994 Agreement had completed the procedures by 25 September 2001, resulting in a financial shortfall for the Organization. In September 2001, the Council adopted Resolution 405, with a view to alleviating the adverse impact of this shortfall on the Organization. The Resolution provided for basing contributions to the 2001/02 Administrative Budget on the assumption that a substantial number of Members of the 1994 Agreement as extended would become Members of the ICA 2001 during the course of the financial year. Nevertheless, the Reserve Fund was depleted by £812,000 in the financial year 2001/02 alone.

18. The designation of representations and office-holders for ICO bodies established under the ICA 2007 would need to be determined at the 103rd Session of the Council, before these bodies could meet. They include the Projects Committee, Promotion and Market Development Committee and Finance and Administration Committee, as well as the Statistics Committee. In the case of the Private Sector Consultative Board, this matter is already included on the Agenda of the Council. The results of a preparatory workshop on the implementation of the Consultative Forum will be considered by the Council at this Session.

19. The Rules of the Organization and Financial Rules were finalized by the Council at its 102nd Session in March 2009 and will take effect on the entry into force of the ICA 2007. Strategic documents such as the strategic action plan for 2009-14, development strategy for coffee and programme of activities are scheduled to be discussed and approved at the 103rd Session of the Council.

Other matters

Notification of provisional application

20. Under the provisions of Article 41 (Provisional application), a signatory Government which intends to ratify, accept or approve the 2007 Agreement may, at any time, notify the Depository that it will apply the Agreement provisionally in accordance with its legal procedures.

Accession

21. Accession is generally used by States wishing to express their consent to be bound by a treaty where the deadline for signature has passed. Article 43 (Accession) provides that the Government of any State member of the United Nations or of any of its specialized agencies or any intergovernmental organization described in paragraph (3) of Article 4 may accede to the 2007 Agreement in accordance with procedures which shall be established by the Council. It should be noted that instruments of accession cannot be considered for the purposes of entry into force. The Council will review the situation of membership regularly, and may decide at a future Session to establish procedures for accession, in accordance with Article 43.

Conclusions

22. As it is unlikely that option A would be feasible and in the light of the adverse financial implications of option B outlined in paragraph 17 above, option C would appear to be the preferred way forward, involving the extension of the 2001 Agreement and time-limits for signature and deposit of instruments relating to the ICA 2007.

**MEMBERSHIP OF THE INTERNATIONAL COFFEE ORGANIZATION
UNDER THE INTERNATIONAL COFFEE AGREEMENT 2007**

The position of signatures, notification of provisional application and instruments of ratification, acceptance and approval as at **25 August 2009** is as follows:

	DATE OF SIGNATURE	NOTIFICATION OF PROVISIONAL APPLICATION	TYPE OF INSTRUMENT DEPOSITED	DATE OF DEPOSIT OF INSTRUMENT	PERCENTAGE OF VOTES FOR THE PURPOSES OF ENTRY INTO FORCE
Exporting Members (34)					
Angola	19 May 2008				
Brazil	19 May 2008				
Cameroon	23 May 2008				
Central African Republic	22 May 2008				
Colombia	20 May 2008	2 December 2008			10.00
Costa Rica	29 May 2008				
Côte d'Ivoire	18 July 2008		Approval	15 October 2008	2.60
Cuba	29 August 2008		Ratification	4 December 2008	0.50
Ecuador	30 September 2008		Ratification	30 September 2008	1.30
El Salvador	25 June 2008		Ratification	4 December 2008	1.70
Ethiopia	28 August 2008				
Gabon	22 July 2008		Acceptance	25 February 2009	0.50
Ghana	11 July 2008		Ratification	17 August 2009	0.50
Guatemala	29 August 2008				
Guinea	2 July 2008				
Honduras	27 June 2008				
India	28 August 2008		Ratification	22 September 2008	3.60
Indonesia	25 June 2008		Ratification	5 February 2009	5.50
Kenya	22 May 2008		Ratification	22 May 2008	1.20
Liberia	26 August 2008				n.a.
Malawi	28 August 2008				
Mexico	23 June 2009				
Nicaragua	19 March 2009		Ratification	12 August 2009	1.60
Nigeria	21 July 2008				
Panama	1 July 2008		Ratification	12 March 2009	0.60
Papua New Guinea	7 November 2008				
Rwanda	18 July 2008				
Tanzania	23 July 2008				
Thailand	4 August 2009		Ratification	4 August 2009	0.80
Timor-Leste	19 August 2008		Ratification	5 January 2009	n.a.
Togo	23 May 2008				
Vietnam	28 August 2008		Approval	28 August 2008	12.70
Yemen	27 February 2008				n.a.
Zimbabwe	20 August 2009				
Total					43.10

	DATE OF SIGNATURE	NOTIFICATION OF PROVISIONAL APPLICATION	TYPE OF INSTRUMENT DEPOSITED	DATE OF DEPOSIT OF INSTRUMENT	PERCENTAGE OF VOTES FOR THE PURPOSES OF ENTRY INTO FORCE
Importing Members (4)					
European Community	17 June 2008		Approval	17 June 2008	68.00
<i>Austria</i>					
<i>Belgium</i>					
<i>Bulgaria</i>					
<i>Cyprus</i>					
<i>Czech Republic</i>					
<i>Denmark</i>					
<i>Estonia</i>					
<i>Finland</i>					
<i>France</i>					
<i>Germany</i>					
<i>Greece</i>					
<i>Hungary</i>					
<i>Ireland</i>					
<i>Italy</i>					
<i>Latvia</i>					
<i>Lithuania</i>					
<i>Luxembourg</i>					
<i>Malta</i>					
<i>Netherlands</i>					
<i>Poland</i>					
<i>Portugal</i>					
<i>Romania</i>					
<i>Slovakia</i>					
<i>Slovenia</i>					
<i>Spain</i>					
<i>Sweden</i>					
<i>United Kingdom</i>					
Switzerland	22 May 2008				
Turkey	28 August 2008				n.a.
United States of America	28 August 2008		Acceptance	28 August 2008	21.80
Total					89.80

n.a. = not applicable

**PERCENTAGE OF VOTES NECESSARY FOR THE
ENTRY INTO FORCE OF THE 2007 AGREEMENT
(AS AT 25 AUGUST 2009)**

EXPORTING MEMBERS		IMPORTING MEMBERS	
A. Exporting Governments which have completed all the required procedures		A. Importing Governments which have completed all the required procedures	
	Percentage of votes for the purposes of entry into force		Percentage of votes for the purposes of entry into force
Colombia *	10.0	European Community	68.0
Côte d'Ivoire	2.6	United States of America	21.8
Cuba	0.5		
Ecuador	1.3		
El Salvador	1.7		
Gabon	0.5		
Ghana	0.5		
India	3.6		
Indonesia	5.5		
Kenya	1.2		
Nicaragua	1.6		
Panama	0.6		
Thailand	0.8		
Timor-Leste	n.a.		
Vietnam	12.7		
Total (15)	43.1	Total (2)	89.8
B. Exporting Governments which have signed the Agreement but not completed the required procedures		B. Importing Governments which have signed the Agreement but not completed the required procedures	
	Percentage of votes for the purposes of entry into force		Percentage of votes for the purposes of entry into force
Angola	0.5	Switzerland	1.8
Brazil	24.4	Turkey	n.a.
Cameroon	1.2		
Central African Republic	0.5		
Costa Rica	1.8		
Ethiopia	2.8		
Guatemala	3.6		
Guinea	0.8		
Honduras	2.9		
Liberia	n.a.		
Malawi	0.5		
Mexico	2.6		
Nigeria	0.5		
Papua New Guinea	1.5		
Rwanda	0.8		
Tanzania	1.1		
Togo	0.6		
Yemen	n.a.		
Zimbabwe	0.6		
Total (19)	46.7	Total (2)	1.8

n.a. = not applicable

* provisional application

C. Exporting Governments which have not signed the Agreement		C. Importing Governments which have not signed the Agreement	
	Percentage of votes for the purposes of entry into force		Percentage of votes for the purposes of entry into force
Benin	0.5	Japan	7.2
Bolivia	0.6	Norway	1.2
Burundi	0.8		
Congo, Dem. Rep	0.7		
Congo, Rep.	0.5		
Dominican Republic	0.6		
Haiti	0.5		
Jamaica	0.5		
Madagascar	0.6		
Paraguay	0.5		
Philippines*	0.5		
Uganda	2.7		
Venezuela	0.6		
Zambia	0.6		
Total (14)	10.2	Total (2)	8.4
D. Governments invited as observers to attend the 98th Session of the Council at which the ICA 2007 was adopted			
Algeria	Equatorial Guinea	Morocco	South Africa
Argentina	Fiji	Mozambique	Sri Lanka
Armenia	Iceland	Myanmar	Sudan
Australia	Iran, Islamic Republic of	Nepal	Syrian Arab Republic
Belarus	Israel	New Zealand	The former Yugoslav
Belize	Jordan	Oman	Republic of Macedonia
Botswana	Korea, Republic of	Pakistan	Trinidad and Tobago
Cambodia	Kuwait	Peru	Tunisia
Canada	Lao People's Dem. Rep.	Russian Federation	Ukraine
Chile	Lebanon	Saudi Arabia	United Arab Emirates
China	Libyan Arab Jamahiriya	Serbia	Uruguay
Croatia	Malaysia	Sierra Leone	
Egypt	Mauritius	Singapore	

* The Philippines will accede to the ICA 2007 once it enters into force.

ENTRY INTO FORCE OF THE 2007 AGREEMENT

Article 42 (Entry into force) of the ICA 2007 provides that the Agreement shall enter into force as follows:

(1) This Agreement shall enter into force definitively when signatory Governments holding at least two-thirds of the votes of the exporting Members and signatory Governments holding at least two-thirds of the votes of the importing Members, calculated as at 28 September 2007, without reference to possible suspension under the terms of Article 21, have deposited instruments of ratification, acceptance or approval. Alternatively, it shall enter into force definitively at any time if it is provisionally in force in accordance with the provisions of paragraph (2) of this Article and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance or approval.

(2) If this Agreement has not entered into force definitively by 25 September 2008, it shall enter into force provisionally on that date, or on any date within twelve months thereafter, if signatory Governments holding votes as described in paragraph (1) of this Article, have deposited instruments of ratification, acceptance or approval, or have notified the Depositary in accordance with the provisions of Article 41.

(3) If this Agreement has entered into force provisionally but has not entered into force definitively by 25 September 2009, it shall cease to be in force provisionally unless those signatory Governments which have deposited instruments of ratification, acceptance or approval, or have notified the Depositary in accordance with the provisions of Article 41, decide, by mutual consent, that it shall continue in force provisionally for a specific period of time. Such signatory Governments may also decide, by mutual consent, that this Agreement shall enter into force definitively among themselves.

(4) If this Agreement has not entered into force definitively or provisionally by 25 September 2009 under the provisions of paragraph (1) or (2) of this Article, those signatory Governments which have deposited instruments of ratification, acceptance or approval, in accordance with their laws and regulations, may, by mutual consent, decide that it shall enter into force definitively among themselves.