

No. 21294

MULTILATERAL

Agreement establishing the Union of Banana Exporting Countries. Concluded at Panama City on 17 September 1974

Authentic text: Spanish.

Registered by Panama on 1 November 1982.

MULTILATÉRAL

Accord portant création de l'Union des pays exportateurs de bananes. Conclu à Panama le 17 septembre 1974

Texte authentique : espagnol.

Enregistré par le Panama le 1^{er} novembre 1982.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ ESTABLISHING THE UNION OF BANANA EXPORTING COUNTRIES

The Governments of the Republics of Colombia, Costa Rica, Honduras, Guatemala and Panama, determined to strengthen the fraternal bonds between their countries, acutely aware of the need to bring about a gradual integration of their economies, to expand their markets and, above all, to secure and sustain fair and remunerative prices for the sale of bananas produced and exported by member countries, thereby improving the living standard of the workers and maintaining equitable terms of trade, have decided to conclude this Agreement establishing the Union of Banana-exporting Countries (Unión de Países Exportadores de Banano — UPEB).

CHAPTER I. ESTABLISHMENT AND OBJECTIVES

Article 1

The Union of Banana-exporting Countries, hereinafter referred to as UPEB, is hereby established as an international organization with intergovernmental and permanent status.

Article 2

The basic objectives of UPEB are:

- (a) To secure and sustain fair and remunerative prices for the sale of bananas produced and exported by member countries;
- (b) To promote the adoption of common policies and create the machinery for carrying them out, with a view to rationalizing the cultivation, export, transport, marketing and price of bananas from member countries;

¹ Came into force on 31 January 1976 in respect of the following States, i.e., eight days after the date of deposit of the fourth instrument of ratification with the Government of Panama, in accordance with article 37:

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
Colombia	23 January 1976
Costa Rica	14 May 1975
Honduras	23 January 1976
Panama	20 January 1975

Subsequently, the Agreement came into force for the following States on the date of deposit of their instrument of ratification with the Government of Panama, in accordance with article 37:

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
Guatemala	28 May 1976
(With effect from 28 May 1976.)	
Dominican Republic	7 March 1978
(With effect from 7 March 1978.)	
Nicaragua	25 March 1980
(With effect from 25 March 1980.)	

Thereafter, the following State deposited an instrument or provisional acceptance with the Government of Panama, in accordance with article 38:

<i>State</i>	<i>Date of deposit of the instrument of provisional acceptance</i>
Venezuela	20 August 1982
(With effect from 20 August 1982.)	

- (c) To take co-ordinated action to expand markets and promote the consumption of bananas;
- (d) To adopt appropriate measures to re-establish a balance between the supply of and demand for bananas at remunerative prices, when market conditions so require;
- (e) To foster among the members technical co-operation and the exchange and dissemination of new technologies relating to the cultivation, processing, marketing, transport and industrialization of the said product;
- (f) To promote the industrialization of the banana plant and fruit as well as the marketing, at the best possible prices, of banana products and by-products;
- (g) To devise and promote the adoption of measures ensuring participation in the international banana market by each of the member countries;
- (h) To promote, where necessary, the adoption of programmes for diversifying banana cultivation;
- (i) To foster international co-operation in all matters relating to this Agreement.

CHAPTER II. MEMBERS

Article 3

The members of UPEB are the countries which sign the present Agreement and bring it into force in accordance with the provisions of articles 37 and 38 of this Agreement.

Membership shall also be open to any other banana-producing and banana-exporting sovereign State which expresses an interest in joining UPEB and accedes to this Agreement in accordance with the relevant provisions.

A country shall be considered to be a banana-exporting country when it is a net exporter of that fruit, that is, when its banana exports exceed its banana import.

CHAPTER III. STRUCTURE

Article 4

The organs of UPEB shall be as follows:

- (a) The Conference of Ministers;
- (b) The Council; and
- (c) The Office of the Executive Director.

Section One. THE CONFERENCE OF MINISTERS

Article 5

The Conference of Ministers shall be the highest UPEB authority and shall be composed of Ministers or Secretaries of State designated by each country. The said officials may bring to meetings with them from their countries such experts, advisers and representatives of national banana producers or of banana workers' trade unions as they consider appropriate.

Article 6

The functions of the Conference of Ministers shall be to:

- (a) Formulate general UPEB policy guidelines;
- (b) Evaluate the functioning of UPEB and the accomplishment of its objectives;
- (c) Adopt any amendments to this Agreement and submit them to the respective Governments through the appropriate channels;
- (d) Review and resolve, at the request of any member country, cases in which that country considers that it has been seriously disadvantaged by a decision of the Council on any matter relating to:
 - (i) The regulation of supply or demand;
 - (ii) The establishment of prices;
 - (iii) Financial contributions to the organization;
- (e) Appoint the Executive Director and establish his terms of appointment;
- (f) Decide on the admission of new members, in accordance with this Agreement and any regulations supplementing it.

The Conference of Ministers shall always endeavour to take decisions by consensus. If that should none the less prove impossible, the Conference shall settle the matter by an affirmative vote of three quarters of the member countries, subject to the provisions of article 16 of this Agreement.

Article 7

The Conference of Ministers shall normally meet once a year, but may in exceptional cases meet at the request of any member country or of the Council.

Meetings shall be held at UPEB headquarters unless the ministers decide otherwise in accordance with the relevant rules of procedure.

The rules of procedure shall establish the schedule and procedure for convening regular and special meetings.

The Conference shall elect a President and a Vice-President from among its members at each meeting.

As long as the President or the person acting in his stead remains in office, his country's vote and position shall be conveyed by the alternate official appointed for that purpose by the relevant head of delegation, except at informal meetings.

Article 8

The presence at meetings of three quarters of the members of the Conference of Ministers shall constitute a quorum.

Section Two. THE COUNCIL

Article 9

The Council shall be composed of a representative and an alternate from each member State, who must be nationals of the country which they represent and must be accredited to UPEB by the Government in question as permanent delegates.

The representatives to the Council may bring to meetings with them from their countries such advisers and representatives of national banana producers or of banana workers' trade unions as they consider appropriate.

Article 10

The functions of the Council shall be to:

- (a) Determine UPEB policies within the framework of the objectives of this Agreement and the general guidelines set by the Conference of Ministers;
- (b) Make the general arrangements necessary for the implementation of this Agreement and of the decisions of the Conference of Ministers, and direct the management of UPEB affairs;
- (c) Recommend to the Conference of Ministers such measures as it deems appropriate to improve the income and living standards of workers and producers involved in banana production in the various countries;
- (d) Conclude such agreements with third countries or with other organizations as it deems necessary to accomplish UPEB objectives, having due regard to the policies formulated by the Conference of Ministers;
- (e) Submit to the Conference of Ministers any amendments to this Agreement aimed at strengthening UPEB and improving its operation;
- (f) Convene special sessions of the Conference of Ministers when it deems it advisable;
- (g) Approve the annual budget drafted by the Executive Director;
- (h) Recommend the assessments or contributions to be paid by Member States, in accordance with the provisions of this Agreement;
- (i) Appoint the External Auditor of the organization and review and approve the reports which he submits;
- (j) Adopt the plans and programmes of work submitted to it by the Executive Director;
- (k) Study the reports and decide on the recommendations submitted to it by the Executive Director;
- (l) Adopt the annual report of activities and the financial reports of the organization, for submission to the Governments of member countries;
- (m) Authorize the issuance of an annual report on the organization's main aspects and activities;
- (n) Establish such committees or operational machinery as may be required for the proper functioning of UPEB;
- (o) Issue such regulations as may be needed for the organization's operation;
- (p) In general, review and resolve any matter of common interest relating to the banana industry, within the framework of the objectives of this Agreement.

Article 11

The Council shall also be responsible for considering and adopting, within the framework of the general objectives of this Agreement, supplementary agreements on the following specific matters: the regulation of supply or demand, prices, and the establishment of special funds.

Such supplementary agreements must contain provisions allowing for their proper implementation, administration, supervision and monitoring. In addition, they shall stipulate the manner of adopting decisions and the corresponding voting procedures. They shall enter into force in accordance with the internal legislation of each country.

The Council may also conclude specific agreements with importing countries.

Article 12

The Council shall also be responsible for instructing the Executive Director to carry out the administrative work required for including in this Agreement all the banana-producing and banana-exporting countries which were not among the original signatories and for setting guidelines for any contacts which he must establish with other countries in connection with the objectives of this Agreement.

Article 13

The Council shall meet as often as necessary, as laid down in its own rules of procedure.

The meetings shall be held at UPEB headquarters, unless the Council decides otherwise.

Article 14

Each member country shall be given adequate advance notice of all meetings of the Council, as laid down in the rules of procedure. In order for a meeting to be held, the presence of at least three quarters of the Council members shall be required.

Decisions of the Council shall be adopted by the assent of all members present.

Where a matter cannot be resolved at one meeting, it shall be given further study with a view to finding formulas which will facilitate a decision on it by consensus.

The meeting at which the matter is taken up again must be held at least two weeks after the closure of the meeting at which the disputed matter was debated.

If consensus is not reached even then, the question may be resolved after at least 24 hours have elapsed by a ninety-five per cent (95%) majority of the weighted votes.

In cases where the percentage indicated is not obtained, another meeting must be called, to be held within no less than 15 and no more than 30 days, at which the decision may be adopted by a minimum of ninety per cent (90%) of the weighted votes.

Article 15

The member countries shall together have a total of one thousand (1,000) votes in the Council, distributed in proportion to their respective banana exports.

Every two years the Council shall redistribute the votes on the basis of the statistics reflecting the latest three years of each country's exports, excluding

any year or years in which there may have been appreciable declines in exports as a result of *force majeure*. In the latter instance, the data to be used are those from the immediately preceding year or years not affected by such exceptional circumstances.

For the purposes of this article, the Council shall use statistics compiled by UPEB itself.

Article 16

If a member country considers that a decision of the Council relating to the matters referred to in article 6 (d) seriously jeopardizes its interests, it may appeal the said decision before the Conference of Ministers, which shall confine itself to sustaining it or revoking it by unanimous agreement. While that appeal is being made or if the Conference does not reach unanimous agreement, the countries which voted in favour of taking the decision may agree in the Council to put it into effect in so far as they are concerned.

Article 17

The Council shall have a President and a Vice-President, who shall exercise their functions for six months and shall be appointed according to the alphabetical order of member countries. The vote and position of the country of the person presiding over the meetings shall be conveyed by the alternate official appointed for that purpose by the Government in question.

The posts of President and Vice-President of the Council may not be held simultaneously by representatives of the same country.

Article 18

The Council may invite to its meetings observers from third countries or from international or regional bodies, when it so decides by a simple majority.

It may likewise accord permanent status to such observers, under the terms and conditions established in the rules of procedure.

Article 19

UPEB shall have an Office of the Executive Director, which shall provide technical and administrative support to the Conference of Ministers and to the Council as needed. It shall have the staff required for that purpose.

Section Three. OFFICE OF THE EXECUTIVE DIRECTOR

Article 20

The Office of the Executive Director shall be administered by an Executive Director, who shall be a person of high moral and technical qualifications and shall, in performing his functions, refrain from receiving or soliciting instructions from member States, from other countries and from persons or authorities outside the organization. In addition, he may not act in a manner incompatible with his status as an international civil servant.

The Executive Director must be a citizen of one of the States Parties to this Agreement and shall reside at UPEB headquarters. He shall be appointed for a three-year term and may be re-elected only once.

In the event of his temporary or permanent absence, the Executive Director shall be replaced by a person designated by the Council.

Article 21

The Executive Director shall be the highest administrative official of the Office of the Executive Director, and it shall therefore be his responsibility to manage UPEB affairs in accordance with instructions from the Council. He shall attend the meetings of the Conference of Ministers and the Council, where he shall have the right to speak but not to vote. In addition, he shall be the legal representative of the organization.

Article 22

It shall be the function of the Executive Director to:

- (a) Ensure compliance with the objectives of this Agreement, its rules of procedures and the decisions of the Conference of Ministers and the Council;
- (b) Draft the annual budget of the organization and submit it to the Council for approval;
- (c) Make preparations for the meetings of the Conference of Ministers and the Council;
- (d) Serve as the channel of communication between UPEB and member countries and between UPEB and any organizations or bodies with which it has relations;
- (e) Convene and co-ordinate according to the schedule and manner specified in the rules of procedure the meetings of any committees or working groups that may be established;
- (f) Collect contributions from member States and administer UPEB assets;
- (g) Appoint and dismiss the staff of the Office of the Executive Director in accordance with the applicable rules of procedure, the staff being selected on the basis of equitable geographical distribution among the States Parties to this Agreement;
- (h) Carry out the instructions of the Conference of Ministers and the Council.

Article 23

In addition, the Executive Director shall be responsible for regularly reviewing the conditions of the production, processing, export, marketing and consumption of bananas and banana by-products; carrying out studies and compiling the necessary data on banana-related activities and on the effects of any supplementary agreements which may be in force; and establishing a permanent system of information among member States on the most important aspects of such activities.

Article 24

It shall be incompatible with the duties of the Executive Director and with the status of staff members of the Office of the Executive Director to hold a direct economic interest in any banana-related activities.

The staff of the Office of the Executive Director shall refrain from receiving instructions from any member State or from any authority outside UPEB.

CHAPTER IV. EXTERNAL AUDITING

Article 25

The External Auditor shall at the end of each financial year review the accounting books and records of UPEB and shall submit the relevant financial reports to the Council. The External Auditor may at any time ask to see the organization's accounts, on his own initiative or that of the Council and may submit to the Council such reports as he deems pertinent.

CHAPTER V. JURIDICAL PERSONALITY AND PRIVILEGES AND IMMUNITIES

Article 26

UPEB shall have legal personality and, in particular, the authority to lease, purchase and dispose of movable or immovable property and to initiate judicial proceedings.

Spanish shall be the official language of the organization. However, the Council may make any other language official, particularly when the accession of new members so requires.

Article 27

UPEB headquarters shall be in Panama City. The Government of the country in which the headquarters is situated shall, within 60 days after it has been set up, conclude with the organization an agreement on the privileges and immunities of UPEB¹, of the representatives of member States to the Conference of Ministers and the Council during their stay in the headquarters country in connection with the exercise of their functions, and of the Executive Director and other officials and experts working for the Office of the Executive Director.

CHAPTER VI. CO-OPERATION

Article 28

The Council shall make the necessary arrangements for consulting or co-operating with the United Nations and its bodies, especially the United Nations Conference on Trade and Development (UNCTAD), the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Industrial Development Organization (UNIDO), as well as with the Organization of American States (OAS), the Inter-American Institute for Agricultural Sciences (IIAS) and other international, regional, subregional or national agencies, and also with countries or groups of countries, as it deems appropriate, particularly the Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA)² and the Board of the Cartagena Agreement (JUNAC). Bearing in mind the role played in international trade by the FAO Intergovernmental Group on Bananas and by UNCTAD, it shall keep them informed, as it deems appropriate, of its work activities.

The Council may also make suitable arrangements to maintain effective contacts with individuals or bodies corporate involved in the banana trade.

¹ United Nations, *Treaty Series*, vol. 1042, p. 3.

² *Ibid.*, vol. 455, p. 3.

CHAPTER VII. FINANCIAL PROVISIONS

Article 29

The cost of implementing and administering this Agreement shall be defrayed by annual contributions from member States, in accordance with article 6 (f) above.

Twenty-five per cent (25%) of the annual budget of UPEB shall be paid by member countries in equal shares. The cost of the remaining seventy-five per cent (75%) shall be apportioned among member countries according to the number of votes each one has in the Council.

Article 30

If a member State does not pay its full contribution within six months of the date on which it is due, its right to vote in the Council shall be suspended until it has made full payment. However, such suspension shall not deprive it of its other rights nor shall it relieve it of any obligations which it has assumed by virtue of this Agreement.

Article 31

The expenses of delegations to the Conference of Ministers and of representatives in the Council or in any committees or working groups which may be established shall be borne by the respective Governments.

CHAPTER VIII. OTHER OBLIGATIONS OF MEMBER STATES

Article 32

The member States shall undertake to implement the decisions and resolutions adopted by the competent organs established under this Agreement, as well as to establish or strengthen administrative machinery for accomplishing the objectives set forth therein. They also undertake to provide the statistical data and information which UPEB needs to carry out its mandate in full.

Article 33

The Contracting Parties undertake to recognize and respect the international nature of the functions of the Executive Director and the other members of the Office of the Executive Director, to refrain from influencing or seeking to influence them in the performance of their functions and to grant them the privileges and immunities which each Party grants to persons of like status.

CHAPTER IX. DISPUTES

Article 34

Any dispute relating to the application or interpretation of this Agreement which is not resolved by the members involved shall be submitted, at the request of any member which is a party to the dispute, for decision by the Council.

Before reaching a decision the Council may, by a simple majority vote, seek the opinion of an advisory committee appointed for the purpose.

CHAPTER X. FINAL PROVISIONS

Article 35

This Agreement shall remain in effect for 10 years following the date of its entry into force and shall be renewable for further 10-year periods by decision of the Conference of Ministers. Any Contracting Party may denounce the Agreement whenever it so decides, by means of written notification to the Ministry of Foreign Affairs of the Government of Panama. Such denunciation shall take effect 90 days after the receipt of the notification.

Article 36

When a member has denounced the Agreement, the Council shall, if necessary, proceed to settle accounts. UPEB shall retain the amounts already paid by that member to the administrative budget, and the country in question shall be liable for payment of amounts owed by it to the organization at the time when its denunciation takes effect.

Article 37

This Agreement shall be submitted for ratification in each Contracting State in accordance with its internal law. The instruments of ratification must be deposited with the Ministry of Foreign Affairs of the Republic of Panama, which shall notify the other Contracting Parties accordingly.

The Agreement shall enter into force eight days after the deposit of the fourth instrument of ratification in the case of the first four ratifying Parties and on the respective dates of deposit in the case of the subsequent ratifying Parties.

Article 38

Any Government of a member country may, if its internal law so allows, inform the depositary Ministry of Foreign Affairs of its provisional acceptance of this Agreement while it completes the required formalities for its final ratification. A country which has recourse to this procedure shall have all the rights and duties which final ratification would give it.

Article 39

The Ministry of Foreign Affairs of the Republic of Panama shall be the depositary of this Agreement and shall send certified copies thereof to the Ministries of Foreign Affairs of the Contracting States. It shall immediately notify the Contracting States of the deposit of each of the instruments of ratification as well as of any denunciation that may occur. When the Agreement has entered into force, it shall also send a certified copy thereof to the United Nations Secretariat for registration purposes as stipulated in Article 102 of the Charter of the United Nations.

Article 40

This Agreement shall be open for accession, under the terms established by the Conference of Ministers, by any State which did not originally sign it.

Article 41

No reservations may be entered in respect of any of the provisions of this Agreement.

TRANSITIONAL PROVISIONS

First. Until the agreement referred to in article 27 of this Agreement is signed, the Government of the headquarters country shall grant to UPEB and its staff members the privileges and immunities indispensable for the exercise of their functions.

Second. At its first regular meeting held after the entry into force of this Agreement, the Council shall adopt the budget of UPEB for the period 1975-1976 and shall determine the assessed contribution of each State for that period.

Third. So long as UPEB has not compiled its own statistics as indicated to in the last paragraph of article 15 of this Agreement, the Council shall use the FAO statistical series.

IN WITNESS WHEREOF the respective plenipotentiaries have signed this Agreement, in six copies, at Panama City on 17 September 1974.

For the Government
of Panama:

[FERNANDO MANFREDO Jr.]¹

For the Government
of Colombia:

[GUSTAVO SERRANO GÓMEZ]

For the Government
of Costa Rica:

[JORGE SÁNCHEZ MÉNDEZ]

For the Government
of Guatemala:

[VICTOR VICENTE SECAIRA ESTRADA]

For the Government
of Honduras:

[ABRAHAM BENNATON RAMOS]

¹ Names of signatories appearing between brackets were not legible and have been supplied by the Government of Panama.