Mr. Chairman,

In a more general statement made on behalf of FAO in Review Working Party IV (document W.9/72), we gave an outline of FAO's main constitutional functions and responsibilities in the field of international commodity policy. In my remarks today, I shall take this information as read, and I shall address myself more specifically to some of the questions arising from the proposals put forward by the United Kingdom delegation. In doing so, I cannot at this stage present to you the considered views of the FAO. All the same, you can regard the following remarks as indicative of our present thinking on these matters and, indeed, it is our hope that you may find it possible to take account of them in your deliberations over the coming weeks.

I. General Guiding Lines

On the whole, the main changes proposed for the general guiding lines seem acceptable, and welcome in some respects, from the viewpoint of the FAO - though this still leaves open the question whether further changes may be needed.

As was explained to us so well by Mr. Johnston, the "new look" version of the General Principles differs from the old in three major respects:

The first is that commodity agreements, or arrangements, are no longer regarded as a regrettable necessity but rather, on certain conditions, as desirable or even essential tools of economic stability and progress. This is well in line with FAO pronouncements on these matters. We have felt for quite some time that Chapter VI was conceived a little too much in terms of policing action and that a more positive approach was needed, in the interests of producers and consumers alike.

The second innovation is the substitution of the word "arrangements" for "agreements". Here I should like to draw a distinction between (i) the recognition as such that more than "agreements" in the traditional sense of Chapter VI may be required as against (ii) the proposal that all such "arrangements" in
the wider sense should be dealt with under the new machinery as proposed. The first, it seems to us, meets a real need, and it checks well with the conclusions and recommendations of the FAO Conference. In fact, we think that it is a considerable merit of the United Kingdom proposals that they face so squarely the fact that the commodity-by-commodity approach cannot be treated quite apart from other and more flexible types of arrangements. But in accepting this wider approach, as the United Kingdom delegation itself has recognized, the procedural problems of demarcation lines between the activities under the proposed Agreement and those of other agencies with related functions do, of course, become even more complex. Moreover, even when we just look at the proposals as one self-contained whole and without reference to these inter-organizational problems, the new terminology may well create some considerable complications. The old Chapter VI, just as its "new look" version, are attempts to define as clearly and concisely as possible certain guiding lines and procedures for international commodity action. But in speaking, in Chapter VI, of "agreements" in the narrower sense, we had a fairly clear idea as to the types of action to which these guiding lines and procedures were to be applied. Even there, as experiences of recent years have shown, the framework of Chapter VI proved too rigid in some respects. Any such framework applied to a much wider and heterogeneous selection of forms of inter-governmental action may be even much more difficult to apply. Much will depend on the definition given to the term "arrangements" in this context. This is a point on which it would be of much interest to hear the views of the United Kingdom delegation in a little more detail.

The third innovation concerns the new terminology and conditions for Commodity Control Agreements which abandon the strict Charter Rules governing the circumstances under which the conclusion of such Agreements is permitted. This is a matter on which we are entirely in agreement. In fact, the same point was stressed in an FAO Conference Resolution three years ago, which asked the Economic and Social Council to reconsider this very matter in any revision of Chapter VI. One might even go further by saying that such a change would merely recognize a de facto practice which has been observed for quite some time. The first major postwar agreement, for instance, namely the Wheat Agreement of 1949, was concluded at a time when neither burdensome stock nor widespread unemployment constituted a major reason for its coming into being. Instead, it was based on the much more sensible concept of the need for stability in good times as well as bad. Another example, of small importance perhaps in world affairs but rather instructive as a test case in more than one respect, concerns the plans now being shaped for an agreement on olive oil. Here again instability as such is the reason for proceeding with such negotiations, and no-one has seriously put forward the contention that it is not possible to negotiate a Commodity Control Agreement on Olive Oil merely because the circumstances of Article 61 of Chapter VI are not given.
II. Procedures and Administration

In considering some of the questions of procedures and administration and their relationship to the work of FAO, I should like to do so under two main aspects: (1) Secretarial Services and (2) Intergovernmental Activities. To start with, however, some general comments may be of help.

The kind of problems of co-ordination which we here have got to solve, are well known to anyone who has at any time had to concern himself with questions of interdepartmental organization within a government or within a large international agency. Take, for instance, the simple case of an Area Section which inter alia deals with Australia; a Commodity Section which includes Wool; and a Functional Section which deals with Trade. This sounds quite a sensible departmental arrangement. But clearly, when it comes to considering a question of Australian wool trade, the three chaps from the departments concerned will obviously have to get together. It would be no good saying that this is none of the business of the wool chap, or the trade chap, or the Australia chap. Obviously, the only way of solving a problem of this kind is by commonsense co-operation.

Broadly speaking, the FAO with its terms of reference relating to all aspects of a major sector of the world's primary commodities - namely, all products of farm, forest and fishery - can be likened to the commodities department, or, if you like, to the wool chap in our example; and the concept of an ITO, which was designed primarily in functional terms, can be said to represent the trade chap. I think you will agree with my saying that ever since the early days of the first conception of these two organizations, no-one has ever quite faced up to the problem of how to deal with this logically inevitable overlap of responsibilities on matters of concern to both. This is particularly true of the subject-matter of Chapter VI because this deals not merely with trade but with production and consumption as well. We believe that it would be useful at this stage to face the problems squarely, with a view to sorting out our ideas as clearly as possible.

The overlap of functions in the study group concept, for instance, is brought our even more clearly than before by the widened definition given to the function of study groups in the United Kingdom proposals. A study group, as described in Article I:2, is no longer conceived merely as a preparatory stage for arriving at a commodity agreement. Instead, by providing a centre for considering questions relating to the production, consumption and trade of a commodity, or commodity group, the study group is recognized as a useful instrument in its own right which it may be worth while maintaining even when the prospect of a more formal Agreement may be dim or even after an Agreement has been concluded and a Council established. Surely, in such circumstances, it would be a little difficult to convince the wool chap that a study group dealing with the production, consumption, and trade of wool is none of his business and should be handed over to the trade chap. Indeed, an argument on such lines might merely mean that while it goes on, urgent work may be delayed until some other enterprising independent chap might in the meantime set up a group of his own - thus adding a little further to proliferation and confusion.

But, what in fact should be done?
II. (i) Co-ordination of Secretarial Services

The problems at the secretarial level, while they are not easy ones by any means, should with some good will be capable of solution. The main condition here is that in the joint search for such solutions the sole consideration must be the efficiency of work and prospects of results.

There are many ways of getting things done at the secretarial level. We of the FAO Secretariat have been in this business for nearly ten years now and as we gain some experience, we tend to get less and less interested in merely formal conflicts of competence. And this, I think, is true for other international secretariats as well. What one wants is to be able to work effectively and efficiently, and to help in saving the money of the world's taxpayers by making the best possible use of existing secretarial facilities and skills. Up to a point, this may best be achieved, on certain conditions, by working closely with, or even through, some other organization. There are certain limits, of course, to the degree of such indirect methods which an international secretariat can adopt. Within such limits, however, it should be possible to agree on some give-and-take by working through one agency in one case and through another in the other. By these and other means, two international secretariats can arrive at some mutually satisfactory arrangement for working together as partners and friends, on equal terms.

(ii) Intergovernmental Activities

The problem of co-ordination at the intergovernmental level is a rather more difficult one. Good will and practical organization will not here be sufficient in themselves unless we can also sort out fully the logical implications of work for two masters with differing memberships. The extent to which this can be done will depend on the constitutional set-up considered.

The procedures now proposed for the administration of the new Agreement are based on the concept of a kind of double holding-company arrangement. A commodity group is to depend on, and report to, the signatories; and the signatories in turn are to report to, and in certain respects depend on, the CONTRACTING PARTIES. This is a difficult concept even in itself, quite apart from the question of relationships with other organizations. The delegate for Canada raised a very important point yesterday when he referred to the complications which may arise from the provision that in the settlement of disputes, a commodity council with weighted voting should accept as its superior an organ which not only differs in membership but also operates on a one-country one-vote basis. This, I fear, may be just one of several difficulties which may arise from this concept of a hierarchy of masters or part-masters, such as the signatories and the CONTRACTING PARTIES, each with different membership.
When we now come to relating these problems to another organization such as the FAO, they become even more complex. The FAO is an autonomous body, composed of 71 members and with its own constitutional rights and responsibilities in the field of commodity policy consultations and negotiations. As I have just mentioned, it is one of the constitutional functions of the FAO to convene and run commodity groups which concern themselves with the production, consumption and trade of agricultural products. The FAO can also set up groups to deal with functional aspects of commodity policy, as they affect agricultural products. Furthermore, the FAO may decide, or be called upon as indeed it recently was called upon by the United Nations Assembly, to deal with some multi-commodity arrangements. It also maintains, through its Committee on Commodity Problems, a more general organ for keeping commodity policy matters of FAO concern under continuous review and for advising its superior bodies - the Conference and Council - on suitable action.

In all such intergovernmental FAO commodity activities, the principles of Chapter VI are accepted as general guiding lines. Some of the provisions of Chapter VI have proved a little too rigid but some of the practical difficulties encountered so far might actually be taken care of by the amendments now proposed for a more flexible "new look" version of such an agreed code of behaviour in the field of commodity action. In any case, no major logical conceptual difficulty would seem involved in the acceptance of such a code by more than one agency. Moreover, even if some FAO members would not wish to consider themselves bound by such a code, the fact that some others were bound, say, for instance, as part of their GATT obligations, probably would in itself be sufficient in practice to prevent any major departures from the code. On questions for which the code might require specific rulings on the merits of the case, such as, for instance, that of "permissible deviations" (Article IV:1(d) of the proposed draft) or a ruling concerning the type of a proposed arrangement (Article IV:2), it might be possible to refer for advice to an inter-agency co-ordinating committee on the lines of ICCICA. This would not preclude any one of the agencies concerned from establishing some additional safeguards of its own, to ensure the compatibility of certain types of commodity action with contractual obligations under their respective constitutions or agreements, or with respect to conventions concluded under their auspices.

Our main concern, therefore, in regard to the new proposals, is not with any difficulties of acceptance of a code of intergovernmental behaviour but rather with the proposed delegation to another body of FAO's constitutional rights of action in the commodity policy field, both at the preparatory and the negotiating level.

The provisions of draft Article I, for instance, can be taken as an illustration of the kind of difficulties to which I here refer. Article I:1 provides that any intergovernmental organization "may submit" to the Standing Committee of the Signatories a statement of special trade difficulties in a commodity and proposals for their solution. The Standing Committee of the Signatories is then to decide whether or not the submission justifies the establishment of a study group of other exploratory machinery. The second
Paragraph of the same article sets out the widened definition of a study group to which I have already referred. It also provides that the reports of all such study groups are to go to the Signatories. Paragraph 3 provides that a United Nations organization such as the FAO "may send an observer to any study group who may at the wish of the study group be invited to take part in its deliberations".

Obviously, it would be difficult to square any such procedures with FAO's constitutional functions and responsibilities which make it possible, and often necessary, for the FAO not only to convene and run study groups but also to have these groups report to FAO's own superior organs.

Draft Article II, particularly when read in conjunction with draft Article XI, reserves to the Signatories the sole right for the convening of negotiating commodity conferences. Here again, any such procedures would be difficult to reconcile with FAO's rights for the negotiation of conventions or other forms of binding agreements, as provided for in the FAO Constitution. I have to add here that at the present time the FAO follows the procedures laid down by the United Nations Economic and Social Council Resolution 296 under which it requests the Secretary-General of the United Nations, acting on the advice of ICCICA, to convene a negotiating commodity conference as soon as adequate preparation, under FAO auspices holds out a reasonable chance for the success of such a conference. Actually, the acceptance by the FAO of the procedures laid down under ECOSOC Resolution 296 represents a considerable voluntary limitation of FAO's own constitutional rights of negotiation. Three main reasons can be cited for the FAO's acceptance of these procedures: first, Resolution 296 provided for procedures of an interim character and thus did not involve the renunciation of constitutional rights on a permanent basis. Second, by giving some weight to the advice of ICCICA, to which the FAO nominates one of the members, some indirect part at least is given to the FAO in the formulation of decisions concerning the convening of such conferences. Third, let me say quite frankly that the de facto acceptance of these interim procedures by the FAO may be largely due to the fact that at the time the Resolution was passed, neither the FAO Secretariat, nor the FAO Members, gave sufficient thought to the fact that it did, in fact, represent a major limitation of FAO's constitutional negotiating rights. A similar limitation of such constitutional rights on a permanent basis (including even the right of decision as to whether or not such negotiations should be held under any auspices) and the delegation of all such rights to a new body on which the FAO is not itself represented, would not in any case be a matter within the competence of the Director-General of the FAO but could only be decided by a two-thirds majority of the FAO Conference. The importance of such a decision would be enhanced by the fact that under the procedures now proposed it would relate not merely to agreements in the sense of Chapter VI but also to other types of binding arrangements for one or more commodities.

Nearly every one of the subsequent articles of the proposed draft raises in one or the other way the same kind of conceptual difficulties, though on a smaller scale.
Our main concern at this stage is simply to set out the problem, since we feel that such an exposé may help you in taking account of these difficulties in your future deliberations. The originators of the plan may themselves have some ideas as to how these difficulties of constitutional compatibility could be overcome. Meanwhile, I cannot do more at this stage than volunteer some preliminary reflections. It seems to me that in dealing with these kinds of difficulties, one may easily get stuck if one thinks in terms of procedures involving a hierarchy of different masters, or part-masters, with different memberships. There may be another more promising way of approach. This might be based on the analogy of a man who, in concluding a contract, submits it to different kinds of experts for checking and advice. He may submit it to his lawyer for advice in regard to legal consistency with his other contractual commitments. Similarly, he may have to ask his investment expert or manager for an opinion on compatibility with some of his other commitments or operating programmes. Even if the advice is not binding in itself, it will clarify the relation of the new commitment to contractual obligations already undertaken which are binding. Moreover, it would be quite possible to think of an arrangement whereby the members of a club agree among themselves that they will accept as binding their joint advice, or the advice of their legal advisor, regarding the compatibility of any new obligations with their commitments as members of the club. They could provide for certain exemptions from the club rules, on defined conditions, or they could agree on procedures for permitting deviations on the merits of the case. This would not mean, however, that as long as compatibility is assured, they could not be free to join, and act in, other clubs. This kind of thinking can perhaps point the way to the solution of some of the constitutional difficulties to which I referred, keeping in mind the need for a new formulation of Article XX:1(h) of the General Agreement.

Draft Article III gives two smaller illustrations of the difficulties already outlined in general terms. Under III(a) the negotiation or operation of commodity arrangements would not initially be open to any FAO Members not Signatories to the proposed Agreement. III(f) would exclude from the assurance of equitable treatment any non-participating FAO Members who were not Signatories.

As to draft Article IV, clauses (a) - (c) seem acceptable. The "permissible deviation" clause provided under IV(c) seems in principle a wise and welcome innovation. Here again, however, while the main concern with rulings under IV(c) may reasonably be expected to rest with the CONTRACTING PARTIES, it may also be necessary to provide for the possibility at least of similar rulings by the FAO in regard to consistency of agricultural commodity arrangements with the FAO Constitution and objectives and with other binding commitments concluded under FAO auspices. This, in fact, is again the kind of problem to which the analogy of the private contract checks was meant to relate.

I have already referred to provision IV:2 which would give the Signatories the sole responsibility for deciding on the classification of an arrangement by type and thus on the kinds of rules which should be applied to that particular arrangement.
As to IV.3, I must admit that I have always been a little uncertain, even in the version of Article 61.6 of Chapter VI, of the precise meaning and implications of this provision for by-passing the rules on certain conditions - and I still am. I should therefore like to reserve our comment on this point.

Article V, in paragraphs 1 and 2(d), establishes the Signatories as the sole superior body to whom the Councils are to report. Under 3(b), it provides that the Signatories may appoint, "at their discretion", a non-voting representative of a United Nations agency such as the FAO, to a Commodity Council. The provision under 3(b) corresponds to Charter Article 64.3 which from FAO's point of view raised some problems. The words "at their discretion" are new and add to these problems.

Article VIII, in paragraph 2, gives the Signatories sole rights for certain supervisory functions over all commodity arrangements. Article IX, in paragraph 1(a), hands over to the Signatories the reviewing functions now performed by ICCICA. Such reviews are also undertaken by the FAO in connection with the work of the FAO Committee on Commodity Problems. The reviews prepared by the Signatories are to be made available to other agencies concerned "for information", but the CONTRACTING PARTIES alone are entitled, under IX.2, to have their observations taken into account by the Signatories.

Article IX provides that (1) no signatory shall negotiate or conclude or join a commodity arrangement except in accordance with provisions of the Agreement, and (2) each signatory shall recognize the Signatories collectively as the sole authority in all matters of principle relating to commodity arrangements. Of these two provisions, the first might, with some considerable modifications, be turned into the more easily acceptable concept of a commitment to the observance of an agreed code of intergovernmental behaviour in commodity matters. The second, on the other hand, establishes a kind of monopoly responsibility of the Signatories which it would be difficult to reconcile with some of the functions of other Agencies.

I should like to reserve our right of further comment on any of the Articles proposed.

Some concluding remarks

Consultations preparatory to an Agreement on the lines proposed by the United Kingdom delegation may take a good deal of time. During that time the status of these proposals will be one of interim uncertainty. Meanwhile, ICCICA for various well-known reasons to which the new proposals have now been added, also finds itself in an uncertain or, as one might say, double-interim state. Some may hope that part of all this interim uncertainty may be taken care of by some organizational enabling provisions which would make it possible for a new Organization established by the CONTRACTING PARTIES to carry out in the meantime some of the functions to be assigned later to the Signatories and to the CONTRACTING PARTIES themselves by means of the proposed