
STABEX

USER'S GUIDE

Third
ACP-EEC
Convention

November 1985

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STABEX : user's guide

1. As decided during the course of the negotiations which resulted in the signing of the third ACP-EEC Convention, a joint ACP-EEC panel of experts met twice, once in April/May and again in November 1985, to decide on the technical details for the implementation of Stabex. The conclusions which emerged from the work of this panel were approved by the ACP-EEC Council of Ministers on 21 June and noted by the ACP-EEC Committee of Ambassadors on 22 November.

2. This guide, developed from these conclusions on the basis of a draft text prepared by the departments of the Commission of the European Communities, has been approved by the abovementioned panel.

Its aim is to present a comprehensive and detailed view of the manner in which the system operates. Specifically, it is intended to provide the users of the system with a precise description of the different phases of, and information necessary for, the processing of requests.

It is the hope of the authors that its distribution to interested parties will contribute to an improvement in the clarity, efficiency and speed of operation of the system.

3. The guide consists of three parts:
 - part one gives a concise overview of the characteristics of the system.
 - part two provides a detailed description of its method of operation and administration, in particular in relation to the actual processing of requests.
 - part three, which is directed specifically at users, aims to provide the practical assistance (notably through detailed instruction for use of the standard forms) and know-how required for the implementation of the system.

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PART ONE: THE STABEX SYSTEM

A. General

I. The purpose of Stabex

1. According to Article 147 (1) of the third Lomé Convention, the purpose of the Stabex system is to mitigate the ill effects of fluctuations in the ACP States' earnings from exports to the Community of agricultural commodities, by providing cash transfers to offset loss of earnings caused by falls in export prices, sales or both. The system was introduced under the first Lomé Convention (1975-79), improved and expanded under Lomé II (1980-84), and is now governed by Title II, Chapter 1 of the third of these five-year pacts, Lomé III, which runs until 1990.
2. Unlike most commodity agreements, Stabex does not aim to stabilize export earnings by direct intervention on commodity markets. Stabex transfers depend on the results of market transactions and relate to actual volume of exports and selling prices, without affecting either. Stabex does not, therefore, duplicate existing price stabilization systems.
3. Stabex does not duplicate the only other existing export earnings stabilization system, the IMF's compensatory financing facility (CFF) whose rules and aims are different from those of Stabex. The CFF was introduced to provide short-term balance-of-payments support, while Stabex is intended to address the root causes of loss of earnings in the context of structural development assistance.

II. Stabex coverage

4. Stabex coverage is confined to the 66 African, Caribbean and Pacific developing countries currently linked to the Community by the third Lomé Convention.

Consequently, Stabex as a rule applies only to ACP States' exports to the Community, and the proportion of total exports covered thus varies from product to product, depending on the pattern of the different countries' trade.

(1) Article 17(1) of the first Lomé Convention, Article 23(1) of Lomé II and Article 147(1) of Lomé III. Article numbers in this text refer to the third Lomé Convention. All the Articles in that Convention, relating to Stabex, are annexed to this paper.

5. Where an ACP State exports the bulk of its production of commodities covered by the system to destinations other than the Community, however, the system does provide for the possibility of a derogation to cover exports to all destinations (1).

Similarly, a derogation is available in respect of exports of a given ACP State to other ACP States (2).

6. Stabex coverage is confined to agricultural commodities. The original list included 29 products (3), since extended to 44 under Lomé II and 48 under Lomé III (4).

B. Determining transfer entitlements

I. The "recorded loss"

7. Fluctuations in export earnings can be measured by any one of a number of formulas. The application period for Stabex is a calendar year known as the year of application.
8. The actual export earnings for the application year are measured against a reference level based on average earnings over the preceding four years, in order to arrive at a figure for recorded losses. Stabex does not take estimates for future earnings into account, since the system was designed to function with the highest possible degree of automaticity.
9. There are two exceptions to this rule. If an ACP country decides to process a commodity it has previously exported in the unprocessed state or to start exporting a product it has not traditionally produced, then Article 158(4) allows it to select a three-year reference period instead.

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- (1) Article 150(3). To date the derogation has been accorded to 13 ACP States: Burundi, Cape Verde, Comoros, Ethiopia, Guinea-Bissau, Lesotho, Rwanda, Seychelles, Solomon Islands, Swaziland, Tonga, Tuvalu and Western Samoa.
 - (2) Article 150(2): such a derogation has been granted in favour of two ACP States: Dominica (for its exports of coconuts and coconut oil) and Niger (for cowpeas).
 - (3) One of which was iron ore; under Lomé III this has been brought under Sysmin.
 - (4) Article 148.

10. The other derogation is designed to cater for exceptional circumstances which affect normal production. A declaration adopted by the ACP-EEC Council of Ministers in Fiji in April 1977 (1) allows the reference level to be worked out on the basis of figures for earlier years where these constitute the last "normal" period.

11. It should be noted that Stabex does not offer compensation for aggregate export losses across the board. In other words, loss of earnings is calculated purely in terms of a specific product, product group or sector. We are talking therefore about "gross" loss of earnings.

II. The "relevant loss" and the "transfer basis"

12. For a loss to be accepted as giving entitlement to a transfer, certain conditions must be fulfilled. In particular, the system applies only to:
(a) - losses of a certain magnitude (§ 13 to 15) and
(b) - real losses (§ 16).

13. Stabex only provides coverage in respect of a product on the list where the economy of a particular country depends to a significant extent on exports of that product. There is therefore a "dependence threshold": exports of the product to all destinations must account for a certain minimum percentage of total exports to all destinations (2).

14. Similarly, the system will not offer compensation for a loss of earnings which amounts to less than a given percentage of "normal" earnings for the product (i.e. of the reference level); this is known as the "fluctuation threshold".

15. On the principle that least-developed, landlocked and island ACP-States should receive more generous treatment, all three Lomé Conventions have set the dependence and fluctuation thresholds at a lower percentage for such countries - 1.5 % instead of the usual 6 % (3).

(1) "For the purposes of applying the provisions relating to the reference period, where an ACP State reports difficulties due to a year characterized by exceptional events, the seriousness of which has been recognized by the international community, the Community declares itself ready to seek on a case-by-case basis, in conjunction with the ACP State concerned, a solution to these difficulties through as favourable as possible an interpretation of the existing provisions."

(2) However, the rules do allow claims in respect of related products to be grouped in a single transfer application and thus reach the dependence threshold where the different products taken individually might not qualify. See also § 57 to 66.

(3) See the annex for lists of these categories of States.

16. As a rule coverage is provided only in respect of exports to the Community. Unless a derogation is accorded, in other words, no account is taken of loss of earnings on exports to other destinations.

This does not mean, however, that the system ignores the overall movement of earnings from exports to all destinations; losses on earnings from exports of a particular product to the Community may be wholly or partly offset by earnings from exports of the same product to other destinations. If an ACP State's earnings from exports to all destinations are up on the reference level, the Stabex mechanism is not triggered. Similarly, where the value of the "all destinations" loss is lower than the value of the loss incurred on exports to the Community alone, Stabex will cover only the value of the "all destinations" loss.

The rationale for this is that if the system provided compensation in respect of that part of an "EEC" loss in excess of an "all destinations" loss, it would give ACP States accorded the "all destinations" derogation a less favourable treatment than the others, since for the former the loss is calculated by reference to export earnings irrespective of destination.

17. Where, after application of these rules, it is acknowledged that an ACP State has actually incurred a loss of earnings, the sum involved is known as the "relevant loss". To that is added a standard 2 % to cover any statistical errors or omissions; the resulting figure is the transfer basis.

III. Consultations and reductions; calculating the transfer amount

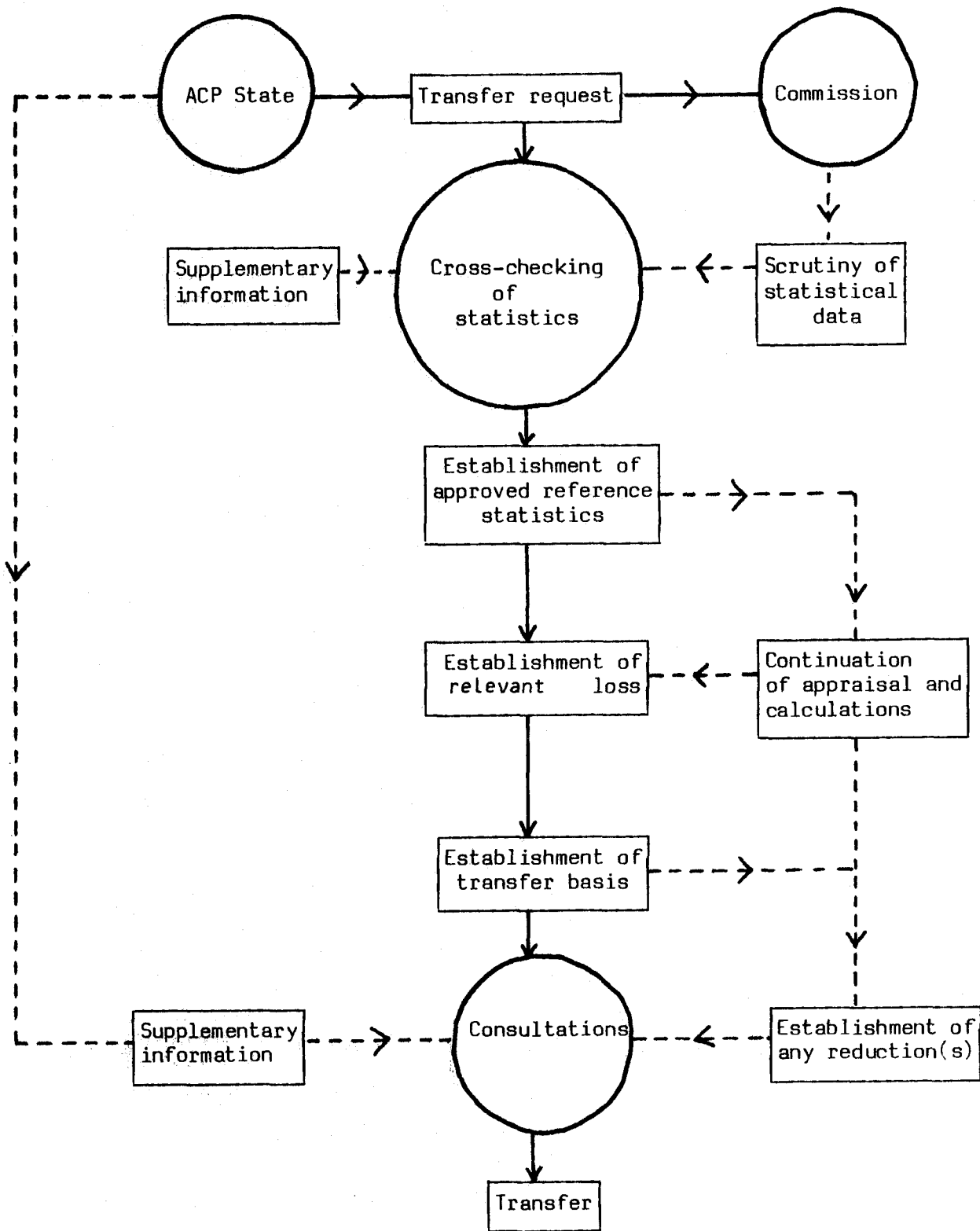
18. Unless (a) the amount of resources available is insufficient for an application year (1) or (b) a reduction has to be made as a consequence of consultations as referred to in Article 164, then automatically the loss is to be fully compensated in accordance with the transfer basis as defined in paragraph 17 above.
19. Before deciding what the final transfer sum will be, therefore, the causes and circumstances of the loss must be investigated. Three possible scenarios may be considered.
- i) Exports to the Community often represent just a fraction of total exports of a product, which in turn account for only a proportion of total marketed production. If the loss reflects a proportional decline in exports to all destinations and beyond that in marketed production, then it may be necessary to examine why the fall in production has come about.
 - ii) If marketed production has remained more or less stable, on the other hand, and there has been a marked decline in exports to destinations, with a corresponding fall in exports to the Community, then the reasons for the fall in total exports must be examined.

(1) see § 28

- iii) Finally, exports to the community may decline as a percentage of the total despite the fact that total exports and marketed production have remained fairly stable, and again the cause for this development must be sought.
20. Naturally, only a significant movement in one or more of these indicators will lead to consultations being held between the Commission and the ACP State concerned in order to assess the reasons underlying the changes. Where change has come about as a result of action on the part of the government or local businesses, the transfer basis will be reduced by an amount decided during the consultations. The actual transfer will then be equal to the transfer basis minus the deduction.
21. The three scenarios outlined above are illustrated by the charts on the following pages.

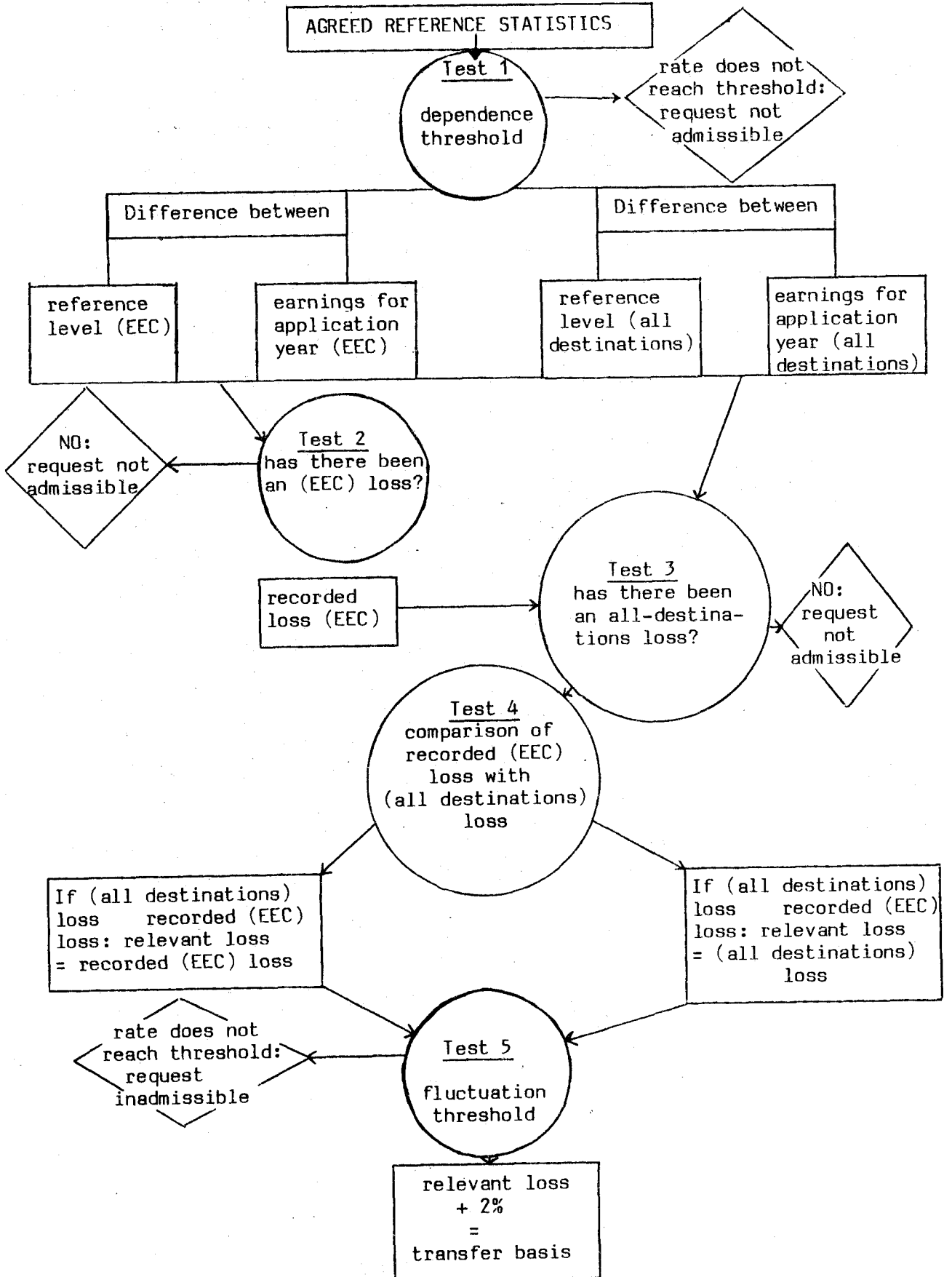
Processing a transfer request

(main stages)



Calculation of the transfer basis

(DESTINATION COVERED : EEC¹)

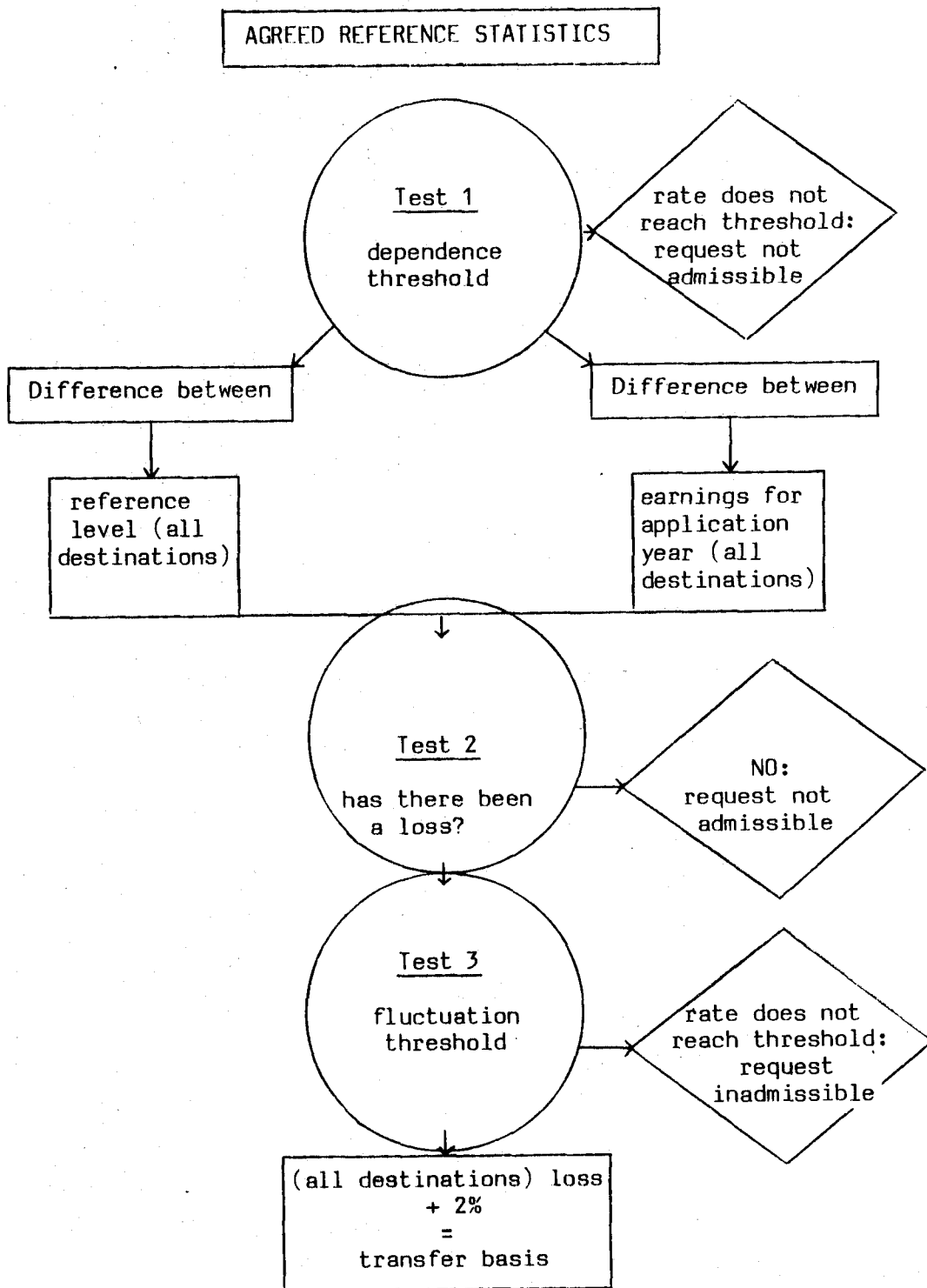


The procedure is similar for cases governed by the "intra-ACP trade"

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derogation, except that "EEC" should be replaced by "EEC + ACP". For cases governed by the "all destinations" derogation, see the chart on page 8.

(DESTINATION COVERED : ALL DESTINATIONS)



C. Calculating the transfer basis

22. In order to work out the transfer basis, it is necessary (a) to calculate average export earnings for the four years prior to the application year, and (b) to deduct from that average figure the actual earnings for the application year.
23. As regards the choice of currency, there are in fact just two possibilities - the currency of the ACP State concerned and the ECU - since, as we have already pointed out, transfers may be denominated only in ECUs and, consequently, must be worked out in that monetary unit. Moreover, these issues were discussed at length between the Community and the ACP States, both during the lifetime of Lomé II and in the course of the Lomé III negotiations. An agreement was finally reached whereby:
- the ECU is to be used as a basis for the series of calculations which have to be carried out;
 - the method of calculation used since 1976 for converting earnings for the four reference years and the application year from the national currency into ECU will continue to be used as a rule;
 - the effects of excessive exchange rate fluctuations will be mitigated by use of a corrective known as the "tunnel method", to be applied whenever the rate of exchange between an ACP currency and the ECU has moved during the application year by more than 10 % against the average rate over the four reference years; the corrective (1) works both ways, for both appreciation and depreciation, and operates by replacing the real rate for the application year with a fictitious one which limits the variation to 10 %.

D. Allocation and use of transfers

24. An ACP State which receives a Stabex transfer is free to decide how the money is to be spent. Nevertheless, it must exercise its discretionary powers in conformity with the rules of the Convention, in particular that which states that transfers should be used to maintain financial flows in the sector in which the loss of earnings has occurred. Sometimes the situation in the sector concerned is such, however, that it would be pointless to shore up existing production structures, and the Convention therefore also provides that the money can be directed, for the purposes of diversification, to other sectors of the economy (2).

(1) Article 160(4).

(2) Articles 147(2) and 170(2)

25. The machinery for monitoring the allocation and use of transferred resources has been strengthened from one Convention to the next. Lomé I simply required the ACP States to notify the Commission annually of how the money had been used (1). Lomé II set a twelve-month time limit for this notification, and added a requirement to supply information about the planned use of transfers before the signing of the transfer agreement (2). Now, Lomé III stipulates that transfer requests must include "substantial information ... on the programmes and operations to which the ACP State has allocated or undertakes to allocate the funds" (3). It also contains a clause allowing new transfer decisions to be held up in the event of persistent failure to report on the use made of funds previously transferred (as under Lomé II, the report must be submitted within twelve months of the signing of the transfer agreement (4).

E. Resources and management of the system

26. For the five years of Lomé I (1975-79) the Community endowed Stabex with a total of 375 million ECU (5); the figure was increased to 550 million ECU (6) for Lomé II (1980-84). For the lifetime of Lomé III (1985-89) the Stabex endowment has been set at 925 million ECU. In each case the money is part of the European Development Fund.
27. For the purposes of administration, this overall endowment is divided into five instalments corresponding to the five application years. The money available for each year consists of:
- the annual instalment (now 185 million ECU) (7);
 - the balance remaining from the previous year's instalment;
 - possible repayments by ACP States;
 - interest on part of the annual instalment which may be floated on the financial market for a fixed period.
28. Should this money turn out to be insufficient for a particular application year, the Commission may
- (a) use up to 25 % of the next year's instalment, and
 - (b) reduce all transfers by a certain amount (in which case least-developed, landlocked or island ACP States have to be given more generous treatment).

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- (1) Article 20 of Lomé I.
(2) Article 41 of Lomé II.
(3) Article 157 and Annex 4 of the transfer request form
(4) Article 171
(5) Plus an additional 5 million ECU to cover the accession to the Convention of a number of new ACP States.
(6) Plus 7 million ECU for new members.
(7) Minus any amounts used in advance. See § 28.

If the sum of transfers exceeds the money available for the year even after the reductions, the matter is referred to the ACP-EEC Council of Ministers.

29. There are provisions for replenishment by ACP States other than those on the list of least-developed countries. The obligation to repay a transfer depends on subsequent export performance, prices and earnings and takes effect only if and when the necessary conditions are fulfilled. Following a two-year grace period, the sum owing must then be repaid at the rate of one-fifth per year. The amounts transferred do not bear interest. If the repayment conditions are not fulfilled within seven years of the year following that in which the transfer was paid, the obligation lapses.

PART TWO: OPERATION AND ADMINISTRATION OF STABEX

30. The funds allocated to Stabex are administered by the Commission of the European Communities (1), which takes the final transfer decision following its examination of a request jointly with the ACP State concerned (2). The processing of requests is explained in section A below.

Finally, the Commission has to be informed by the ACP State concerned of the programmes or operations on which the latter spends, or undertakes to spend the funds transferred (3). The Commission makes sure that the information regarding the use or intended use of the transfer conforms to the objectives of the Stabex mechanism in accordance with article 147. The function is dealt with in section B.

It is also up to the Commission to determine whether the conditions triggering the obligation to repay a particular transfer have been fulfilled (4). The procedure is described in section C.

Section D contains a description of the year-to-year management of the system by the Commission.

A. SUBMISSION AND PROCESSING OF TRANSFER REQUESTS

31. The Stabex compensation mechanism can operate only if the ACP State which has incurred a loss of export earnings submits an application.

I. Admissibility criteria

32. The first thing the Commission does is to check whether a request is admissible, i.e. that all the conditions which qualify a country for a transfer have been fulfilled. There are six conditions:

- (a) The application for a transfer must be in respect of the products listed in Article 148(1) or a group of products allowed under Article 148(2)(b) (5).

(1) Article 152

(2) Article 167

(3) Article 173

(4) Inter alia Articles 157, 167(1), 170(2) and 170(3).

(5) A grouped transfer is one for which the ACP States has opted for the arrangement referred to in Article 148(2)(b) - See § 57 to 60.

- (b) Transfer requests submitted on the appropriate application form must reach the Commission not later than 31 March of the year following the application year (1), a condition that is fulfilled, if they are submitted to the Commission delegation in the ACP State concerned by that date.
 - (c) In addition to the necessary statistical information, applications must include substantial information on the loss of earnings and also the programmes and operations to which the ACP State has allocated or intends to allocate the funds (2). Substantial information must be defined with reference to Annexes 3 and 4 of the transfer request form. Such substantial information will comprise diagnosis of the problems in the sector or sectors concerned, statistics, and fund allocation details (3). Transfer requests are considered inadmissible until the Commission is in possession of this information, which must be in line with the objectives set out in Article 147.
 - (d) Requests are also inadmissible if the fall in earnings from exports to the Community is the result of a trade policy of the ACP State concerned adversely affecting exports to the Community in particular (4).
 - (e) The dependence threshold must have been reached: Article 161(1) provides that the system applies only where during the year preceding the year of application, earnings from the export of each product to all destinations, re-exports included, represented at least 6 % of total earnings from exports of goods, i.e. to all destinations (5).
 - (f) The fluctuation threshold must have been reached: Article 162 stipulates that there is entitlement to a transfer only if the loss incurred amounts to at least 6 % of the reference level (6).
33. The final decision as regards admissibility may depend on the results of the cross-checking, which constitutes the initial stage of the processing of requests. A full description of the calculations will therefore be given in the next section.

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- (1) Article 163(a)
 - (2) Article 157
 - (3) Article 170(3)
 - (4) Article 163(b)
 - (5) "The percentage shall be 4.5 % in the case of sisal" (Article 161(1), and 1.5 % for least-developed, landlocked and island ACP States (Articles 257, 260 and 263 respectively).
 - (6) Or 1.5 % for least-developed, landlocked or island ACP States - see Articles 257, 260 and 263.

II. Statistical cross-checking

34. Article 165(2) offers two formulas for obtaining the figures to be used in determining the transfer basis:

- (a) either the figures are obtained by cross-checking Community and ACP statistics using fob values,
- (b) or they are obtained by multiplying the unit values for the exports of the ACP State in question, as shown in that ACP State's statistics, by the quantities imported by the Community, as shown in Community statistics.

The implication here is that the currency used for cross-checking will be that of the applicant ACP State, since the values will be expressed in that currency (1). For the purposes of comparison figures in the Community statistics must be converted into that currency.

Similarly, since the Community's import figures are expressed CIF, they must be converted into the prescribed FOB values using a special coefficient.

35. Article 165(3) allows the ACP State, when submitting a transfer request, to choose one of the two formulas described in the previous paragraph. However, one or two factors limit the exercise of its discretion:

- (a) in the case of a grouped transfer request (2) the same formula should as far as possible be used for each product in the group;
- (b) in the case of a repeated transfer request (3) the formula will be the same as that used for appraisal of the earlier requests.
- (c) the considerations set out in (a) and (b) also apply to the choice of the statistical series to be used for the purposes of cross-checking stricto sensu, under Article 165(2)(a); the same statistical series must be chosen for each product and year concerned.

(1) That applies only to the cross-checking operation and is without prejudice to the choice of currency for calculating the transfer basis.

(2) See § 32.

(3) A repeated transfer request is one containing figures for at least one year of the reference period which have been cross-checked in connection with the appraisal of an earlier application submitted by the same country in respect of the same product.

36. The fact that Article 165(3) allows the ACP State a choice of statistics to be used for examination of a transfer request does not relieve the Commission from the need to check with the ACP State on the consistency of the available figures e.g. ACP as well as EEC figures.
37. Where special circumstances can be adduced, data already cross-checked can be altered by agreement.

III. ECU conversion and method of calculation

38. When cross-checking is complete, the Commission is in possession of all the facts it needs for processing the transfer request. At this stage quantities are expressed in metric tons and values in the currency of the applicant ACP State.

Before starting on the necessary calculations, all values must be converted into ECUs except those used for the calculation of the dependence rate; the various sums involved in the processing of a Stabex transfer request are all worked out in ECUs.

39. A separate conversion is carried out for each reference year and the application year, as a rule at the annual average exchange rate for the year in question. However, Article 160(4) contains a special corrective mechanism, the "tunnel", which is triggered when the ECU/ACP currency exchange rate for the application year has appreciated or depreciated by more than 10 % against the average for the four reference years. In this case the real exchange rate is replaced by a fictitious rate, which limits the fluctuation to 10 %.
40. The Commission must therefore look at every request to see whether the tunnel mechanism applies. First it has to work out the maximum allowable exchange rate fluctuation by finding the four-year average for the reference period, then adding and subtracting 10 % to determine the "ceiling" and "floor" of the tunnel. Where the real exchange rate for the application year is between the upper and lower limits, the mechanism does not apply.

Where the real exchange rate is outside the tunnel, however, it must not be used; it is replaced by the nearest permitted rate, i.e. when a currency has appreciated by more than 10 %, a fictitious rate equivalent to the average rate for the reference period plus 10 % is used, or, in the case of depreciation, the average minus 10 %.

Note that such fictitious exchange rates can be used only for the conversion of actual earnings for the application year; earnings for a reference year must be converted according to the usual rule, i.e. at the real average exchange rate.

41. Once all the values needed for processing an application have been converted into ECUs, the necessary calculations can be carried out to determine (a) whether the request fulfills all the conditions for admissibility and (b) what the transfer basis is.

There are six calculations, which are carried out in the following order:

- (a) dependence rate (Article 161)
- (b) reference level (Article 158(3))
- (c) recorded loss (Article 158(2))
- (d) agreed loss (Article 159(3))
- (e) fluctuation rate (Article 162)
- (f) transfer basis (Article 158(2)).

IV. Dependence threshold

42. Article 161 defines the dependence threshold as a minimum percentage of 6% (1), except for least-developed, landlocked and island ACP States, for which the threshold is 1.5 %. The figure refers to total earnings from exports to all destinations of each of the Stabex products as a percentage of a country's total earnings from exports of goods. If a product fails to reach that threshold a transfer request in respect of that product is inadmissible.
43. The percentage is calculated on the basis of values for the year preceding the application year, assuming that year was a "normal" one. However, such an assumption may not always be justified; an ACP State may for instance have incurred large losses in the year preceding the application year as well. The Convention provides for this eventuality where losses are the result of a substantial fall in production caused by natural disaster. If the volume of production in the year preceding the application year (i.e. the fourth year of the reference period) is less than 50 % of average output for the first three years of the reference period, then the dependence threshold is calculated using the special provision in Article 161(3). In this case, the dependence threshold is calculated using the average export earnings from that product over the first three years of the reference period as a percentage of the average export earnings from all goods over the corresponding three-year period.

V. Reference level, recorded loss and relevant loss

44. The value of lost export earnings on a product or group of products is worked out by setting real earnings for the application year against average earnings for the four previous years (reference level). For the purposes of comparison the earnings in question are those from exports to destinations covered by the system, which as a rule means the Community. Where Stabex covers an ACP country's exports to other ACP States, the earnings used for the calculation relate to those destinations.

(1) 4.5 % for sisal

In cases where the system covers exports to all destinations, the reference level and real earnings for the application year are based from the outset on the value of total exports of the product under consideration.

45. As regards Community only or Community-plus-ACP coverage, as a rule the reference level and earnings for the application year are worked out on the basis of the value of exports to the appropriate destinations only.

However, the loss determined in this way, which is known as the recorded loss, is not necessarily the relevant loss. The loss on exports to all destinations may turn out to be smaller than the loss on exports to destinations covered by the system or there may be an aggregate surplus. Since Stabex compensates only the relevant losses incurred, Article 159(3) provides that the pay-out must not exceed the all-destinations loss where that is smaller than the "EEC" loss; thus the relevant loss in respect of which compensation is provided may be lower than the recorded loss.

46. Except in the case of transfer requests submitted by ACP States covered by the all-destinations derogation, the reference level and real earnings for the application year must therefore be worked out twice:

- (a) once taking account only of earnings from exports to the destinations covered, the Community or other ACP States as well, and
- (b) again taking account of earnings from exports to all destinations.

The relevant loss for the purposes of Stabex compensation will be the smaller of the two figures.

VI. Fluctuation threshold and transfer basis

47. Article 162 defines the fluctuation threshold as a minimum percentage, generally 6 %, but reduced to 1.5 % for least-developed, landlocked and island ACP States. The figure represents the difference between actual earnings for the application year and the reference level. Where that difference is less than the threshold figure, a transfer request is inadmissible.

We have already seen how the figure for the relevant loss is arrived at, and that it may be restricted to the (lower) value of losses on exports to all destinations. Where that happens it is the relevant loss rather than the recorded loss which is used to calculate the fluctuation rate.

48. If the fluctuation threshold has been exceeded, the transfer basis shall be the relevant loss, determined as described in section V, plus 2 % for statistical errors and omissions (1).

(1) Article 158(2)

VII. Consultations and reductions

49. Article 164 provides for consultations to be held where there is a significant change in the trend of all-destinations exports, of production of the product in question or of the proportion of exports to the Community. Implementation of this provision raises several questions, namely:

- (a) On the basis of what indicators should the said trends be measured?
- (b) What changes should be looked upon as significant?
- (c) Should the transfer basis be kept as it stands, or reduced?
- (d) If the transfer basis is to be reduced, by how much?

50. For statistical purposes, the changes referred to in Article 164 would be reflected in the trends of:

- (a) total marketed production of the product concerned;
- (b) exports to all destinations as a proportion of marketed production;
- (c) exports to the Community as a proportion of total exports.

Like the transfer basis, this trend is also measured by comparing the situation in the application year with the average over the reference period. By contrast with the transfer basis, which is worked out using absolute values and figures, the comparisons discussed here relate to quantities. Moreover, the comparison referred to in (a) is expressed as a percentage, whereas the comparison referred to in (b) and (c) are made between two percentages. They are therefore expressed as percentage points.

51. In order to trigger off the consultation process referred to in Article 164, the change or changes recorded have to be significant. A change should be considered significant if,

- (a) the volume of marketed production for the application year is at least 15 % lower than the average volume over the reference period;
- (b) the percentage of exports to all destinations in relation to marketed production during the application year is at least fifteen points lower than the average percentage over the reference period;
- (c) the percentage of exports to the Community in relation to exports to all destinations is, during the application year, at least fifteen points lower than the average percentage over the reference period;
- (d) the sum of the points referred to in (b) and those in (c) is at least fifteen.

52. In considering whether the transfer basis should be reduced, it is necessary to identify the causes of the changes that have come about. The starting-point for this scrutiny is the "substantial information" on the loss of earnings which the ACP State has to provide, pursuant to Articles 157 and 170(3), when the transfer request is submitted in order to allow sectoral problems to be "diagnosed". As a rule, the kind of change that would warrant a reduction would be one caused by circumstances within the control of the ACP States concerned.
53. If the conclusion from the consultations is that a reduction is warranted, it must then be decided by what amount the transfer basis should be cut. In certain cases, in view of the particular situation in question, it is possible to put a figure on the reduction by taking account of possible gains in the same sector of production. In these cases, the amount of the reduction may be determined, for example, by reference to the principle contained in Article 148(2)(b).
54. Except in these cases, the amount of the reduction is determined according to principles, which reflect each individual change in the criteria referred to above. Where a reduction is fully warranted, the amount is calculated as follows:
- (a) marketed production: the transfer basis is reduced by a percentage equal to the percentage fall in marketed production;
 - (b) all-destinations exports as a proportion of marketed production: the transfer basis is reduced by a percentage equal to the difference (in points) between the percentage average for the reference period and the percentage for the application year;
 - (c) exports to the Community as a percentage of exports to all destinations: the transfer basis is reduced by a percentage equal to the difference (in points) between the percentage average for the reference period and the percentage for the application year.

Naturally, the sum finally deducted will not necessarily be exactly the same as the amount resulting from those calculations. Where the ACP State is only partly responsible for the change, the reduction will be proportionately smaller; this is what the whole consultation process is about.

55. There is some problem in applying Article 164 where there is an accumulation of reasons for making a reduction. The question arises as to how to add up the reductions. To add several percentages and apply the total to the transfer basis may have too drastic an impact on the transfer. Therefore, the percentages are applied in successive stages, in other words the second reduction is made by applying the given percentage to the transfer basis as it results from the first reduction, and so on (1).

(1) It should be noted that the order in which these operations are carried out has no effect on the final outcome.

56. Where there has been a significant change, for the purposes of Article 164, in the trend of exports to the Community as a proportion of all-destination exports, then Article 159(3) may also be applicable (1). The combined application of both Articles in such cases could mean that the transfer basis was reduced twice for the same reason. Accordingly, where Article 159(3) has been applied a significant change in exports to the Community as a proportion of total exports should not be used to justify a reduction in the transfer basis under Article 164.

However, the two articles may be applied successively to the other variables mentioned in Article 164, namely marketed production and exports as a proportion of marketed production.

VIII. Processing of a grouped transfer request

57. Article 148(2)(b) allows an ACP State to submit a transfer request in respect of one of the groups of products there listed. For the purposes of processing such a request, the product group is treated as a single product (and the individual products within it as "sub-products").

This poses no problems for the value-based calculations (dependence rate, reference level, recorded and agreed losses, fluctuation threshold and transfer basis), when the sums relating to each sub-product are simply added together.

58. This method cannot be used, however, for the calculations involving percentage volumes, which are needed:

- (a) to determine the impact of a natural disaster (Article 161(3));
- (b) to work out any reductions (Article 164).

59. For the purposes of Article 161(3), i.e. to determine whether a substantial fall in production has occurred as a result of a natural disaster, an appropriate conversion factor should be used to arrive at the quantity of the least-processed sub-product which corresponds to the weight of each of the other sub-products in the group. The conversion factor must be shown on the transfer request.

60. Where the calculation of reductions following consultations under Article 164 is concerned, it may be found that a significant change in production and exports of one sub-product is wholly offset by a movement in the opposite direction for another sub-product. Production and export trends should be considered from the outset in terms of the whole group, using the same kind of conversion factor.

(1) See § 44 to 46

IX. Advances and down payments

61. Article 170 provides for the payment of advances in order to speed transfers. Unlike a transfer request, an application for an advance may be submitted for appraisal before the end of the application year to which it relates.

The Commission considers requests for advances in the light of an important criterion designed to minimise the danger of cost overruns, which would throw the system into deficit. This is that exports of the product between the last period for which statistics have been provided and the end of the application year are going to be negligible or at least fairly predictable, either because a natural disaster has wiped out production or because production and exports are seasonal and known in advance. In the case of seasonal exports the request should be accompanied by monthly figures for previous years demonstrating the seasonal trends.

62. It must be borne in mind when considering a request for an advance that future exports cannot be predicted with absolute certainty nor is a subsequent shortfall of funds to be ruled out, and therefore advances must be limited to a percentage of the likely transfer basis; this should be worked out as soon as the necessary figures for the whole application year are available.
63. An advance is not the same thing as down payment. A down payment may be made where a transfer request has been processed and entitlement to a certain minimum transfer has already been established. If on examination of the request the period needed for complete appraisal looks likely to be long, the Commission can pay out a first instalment, which is subsequently deducted from the final transfer basis once that is known.

X. Transfer agreement

64. Where appraisal of a transfer request establishes a transfer basis, the Commission adopts a transfer decision (1). For each transfer, a transfer agreement must be concluded between the Commission and the ACP State concerned (2).

Before the transfer agreement can be signed, certain conditions must be fulfilled.

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- (1) Article 167(1); where funds are insufficient, this decision is subject to the decision that the Council may take under Article 155(4).
- (2) Article 167(2).

- (a) The ACP State concerned must furnish substantial information relating to the programmes and operations to which it has allocated or undertakes to allocate the funds (1). Substantial information is taken to mean that relating to the diagnosis of the problems in the sector or sectors concerned, statistics, and the allocation plan. Generally this will be the same as the information an ACP State has to provide when submitting a transfer request (2), and the Commission again has to see that it is consistent with the objectives set out in Article 147. The information supplied just prior to the signing of the transfer agreement, however, will usually be more up-to-date than that supplied with the transfer request, particularly where decisions have been taken in the interim on the allocation of funds, or adjustments have been made to take account of the final size of the transfer.
- (b) The ACP State must also specify the bank account into which it wants the transfer to be paid and the currency of payment, which must be the currency of a Community Member State. The transfer sum, denominated in ECUs, will be converted into the currency selected at the rate prevailing on the day of payment.

B. UTILIZATION OF TRANSFERRED FUNDS

I. Principles governing the use of funds

65. The purpose of Article 147(2) is to ensure that the funds are used in accordance with the objectives of the system. It also stipulates that the funds transferred must be devoted to maintaining financial flows in the sector in question or, for the purpose of promoting diversification, directed towards other appropriate sectors and used for economic and social development. Provided this principle is adhered to, this definition of the possible range of uses of the funds leaves the ACP States with a fair amount of room for manoeuvre within which they can decide, in all sovereignty, on the policies and programmes to which the funds have been or will be devoted (3). It is up to the Commission to ensure that the use projected, decided or actually made of the funds is in fact in conformity with the principles of Article 147(2). To this end, the ACP States have to provide information before and after the signing of a transfer agreement.

(1) Article 170(3)
(2) Article 157
(3) Article 170(2)

II. Information to be provided before the signing of the transfer agreement

66. The ACP States have to give information in several successive stages, the first being the submission of the transfer request itself. Under Article 157, it is stated that every transfer request has to include substantial information on the loss of earnings and on the programmes and operations to which the ACP State has allocated or undertakes to allocate the funds (1). This information, which forms part of the request, is examined by the Commission at the same time as the request is appraised, in liaison with the ACP State concerned.

67. It is explicit in this provision that the information to be provided at this initial stage may concern programmes or operations to which the ACP State has already allocated funds equivalent to part or even the whole of the anticipated transfer. Thus, under the Convention it is possible for the funds transferred to be devoted to reimbursement of money which the ACP State has already spent on operations with objectives compatible with those of Stabex.

This provision fits in perfectly with the ultimate aims of the system, the effectiveness of which depends to a great extent on speedy action. This is particularly true when urgent measures are required immediately in the sector in which the loss of earnings has occurred. It is obvious in such cases that diagnosis of the problems in the sector is very important.

68. The Commission ensures, that the operations or programmes for which the allocation has already been decided, or is merely projected, do conform to the objectives of the system (2). Should the result of such examination be negative, the Commission will endeavour to obtain alternative proposals from the ACP State concerned, speedily and in consultation with that State.

69. It has the entire period set aside for appraisal of the transfer request in which to do this. In order to enable the ACP States concerned to put forward new suggestions if the original proposals prove not to conform to the objectives of the system, it is stipulated in Article 170(3) that the ACP State receiving a transfer has to communicate, before the transfer agreement is signed, information relating to the same subjects as those covered by the information provided when the transfer request was submitted - substantial information relating to the programmes or operations to which that State has allocated or undertaken to allocate the funds, in accordance with the objectives set out in Article 147 (3). Since the amount of the transfer as it results from the appraisal is not known when the transfer request is submitted, it may be necessary to update the information on the proposed use in order to adjust to the final amount of the transfer. Moreover, the wording of Article 170(3) is such that it is necessary to specify whether the funds have been allocated to a sector other than that where the loss was incurred; in this case, the ACP State has to tell the Commission why it decided to allocate the funds in this way.

(1) For the form to be used to this end, see § 158 to 162

(2) See Article 157 and Article 170(3)

(3) For the form to be used here see § 169 to 173

70. It must be stressed that information on whether the actual or projected use of the funds to be transferred is in conformity with the objectives of the system is a prerequisite for the signing of any transfer agreement. If such information is not forthcoming in the framework provided for in Article 170(3) or if it does not fit the framework provided for in Article 147(2), the signing of the said agreement will be either held up or subject to the ACP State's submission of alternative proposals.

III. Information to be provided after the signing of the transfer agreement

71. Within twelve months of the signing of the transfer agreement the recipient ACP State has to send the Commission a report on the use which it has actually made of the funds transferred (1). As a rule, this would be confirmation of the information provided before the transfer agreement was signed together with an assessment of the impact of the allocation. It follows that the report on use of funds, referred to in Article 171, must be submitted also in cases where the ACP State has already allocated the equivalent of the funds to be transferred, even before the signing of the transfer agreement, to operations acknowledged to be in conformity with the objectives of the system.

Where the funds are not to be used until after the transfer has been made, they must be allocated in accordance with the information provided earlier. Since it is stated expressly in Articles 157 and 170(3) that the recipient ACP State has entered into an undertaking on this point, the transferred funds may be used for a different purpose only if the ACP State and the Commission agree on another use which conforms to the objectives set out in Article 147(2).

72. If, upon expiry of the twelve months, part of the funds transferred has not been used for the declared purpose, the ACP State has to inform the Commission of this. In this case a supplementary report must be submitted as soon as the remaining balance has actually been used.
73. If the report on the use of funds has not been forwarded within the twelve months following the signing of the transfer agreement, or if the report is incomplete or calls for other comments on the indications given on the actual use of the funds, the Commission has to ask the ACP State concerned for an explanation. The latter has to provide substantiation within two months (2).
74. There is another equally important provision which supplements this new one in Article 171(2) and that is Article 171(3), which covers the case in which the ACP State fails to provide the required substantiation within the two-month deadline. In this case, the Commission has to refer the matter to the Council of Ministers and inform the ACP State concerned that it has done so. If, within three months from the date on which the matter was referred to the Council of Ministers, the ACP State has still not provided the required information, the Commission may hold up the signing of any transfer agreement relating to a new transfer to which that same ACP State may be entitled for as long as the State in question fails to fulfill its obligation to submit the report on the use of the first transfer. The ACP State concerned has to be notified immediately if the Commission takes such a decision.

(1) Article 171(1) - see the appropriate form, § 175 to 184

(2) Article 171(2)

C. REPLENISHMENT OF STABEX FUNDS AND REPAYMENT OF TRANSFERS

I. How the system works

75. As a rule, Stabex transfers are repayable. However, least-developed ACP States are exempt from this obligation (1). For other ACP States the obligation to repay is contingent upon increased earnings from exports of a product for which a transfer has been paid. Three conditions relating to unit values, the level of exports and the level of earnings have to be fulfilled. Each year over the seven years following that in which the transfer was paid, the Commission checks to see whether these conditions are fulfilled. If they are the ACP State must contribute to the system an amount equal to the sum by which the earnings for the year under consideration exceed those for the previous four years; such contribution may in no case be larger than the original transfer, however. The replenishment obligation lapses if the three conditions are not met within seven years following the year of transfer.
76. For repayments as for the transfer basis, all amounts used in the calculations are denominated in ECUs (2) and the Article 160(4) "tunnel" (3) is used if the conditions for its use have been met.

II. Checking the replenishment conditions

77. Article 173(2) sets out the three conditions which must simultaneously have been fulfilled in the preceding year in order to give rise to an obligation to contribute to the replenishment of the system:
- (a) the unit value of the product under consideration exported to the Community must be higher than its average unit value during the four years prior to the year in question;
 - (b) the quantity of the product exported to the Community during that year must be at least equal to the average of the quantities exported to the Community during the preceding four years;
 - (c) earnings (i.e. quantity times unit value) for the year and the product under consideration must amount to at least 106 % of average earnings from exports to the Community over the preceding four years.
78. Article 173(2) stipulates that the Commission must determine in accordance with Article 165 whether those replenishment conditions are fulfilled. This reference to the article which provides for cross-checking means that:

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- (1) Article 172 and 257
 - (2) See § 12 of the report by the panel of experts referred to in Chapter III
 - (3) See § 13 of the experts' report

- (a) the procedure followed in applying Article 173(2) must be the same as for cross-checking in connection with the appraisal of a transfer request, in particular as regards the involvement of the ACP State concerned (1);
- (b) the Commission's substantive approach should also be the same here as for cross-checking (2).

79. Problems may arise with the cross-checking procedure when dealing with the conditions for repayment of an aggregated transfer. Since aggregated products are treated as a single product (3) the three conditions listed in Article 173(2) must be considered in relation to the group of products as a whole. This poses a problem for assessment of the quantity of exports (4).

In order to compare the quantities of exports of a number of related products it is necessary to use a conversion factor to arrive at the quantity of the least-processed sub-product equivalent to the weight of each of the other sub-products (5).

80. A similar problem arises when it comes to deriving a unit value for the grouped product from the unit values of each of the sub-products (6). To take account of the relative importance of each sub-product, a conversion factor is used to show the equivalent quantity of least-processed product contained in that sub-product. The total earnings from each sub-product divided by the total quantities thus obtained gives us the unit value for the grouped product for each year. To obtain the average unit value for the grouped product over the reference period, earnings from that product over the four years are added up and divided by the total quantities of the grouped product exported over the same period, calculated using the conversion factor described above.

81. Article 174(4) provides that in seeing whether the replenishment conditions are fulfilled and calculating the amount to be repaid, "account shall be taken of trends established in exports to all destinations". This provision called for elucidation on two scores: when can the figures for exports to the Community be applied as they stand, and how in fact can "account be taken" of the trend of exports to all destinations?

In its report, mentioned above, the panel of experts recommended that Article 173(4) be interpreted as follows:

- (a) Unit value (7) should be assessed purely on the basis of exports to the Community.

(1) See § 11 of the experts' report
(2) See § 34 to 37
(3) Article 148(2)(b)
(4) Article 173(2)(b)
(5) See § 57 to 60
(6) Article 173(2)(a)
(7) Article 173(2)(a)

(b) In order to assess quantities (1) it is necessary to look both at the trend of total exports as a proportion of marketed production and at the trend of exports to the Community as a proportion of exports to all destinations, in accordance with the method used to evaluate changes in those variables under Article 164 for the purposes of working out the size of a reduction (2). Where one or other of these two percentages is down on the average for the reference period, the quantities exported to the Community during the year under consideration should be increased correspondingly.

(c) Where the quantities have been corrected as described above, earnings (3) should be assessed by multiplying the unit values by those corrected quantities.

82. Article 173(3) provides that where the three conditions are fulfilled simultaneously, the ACP State pays back into the system an amount equal to the difference between the actual earnings derived in the preceding year from exports to the Community and the average of earnings from exports to the Community during the four years prior to the preceding year.

83. Clearly - an interpretation confirmed by the experts' report - the amount to be repaid should be determined by a method analogous to that used for the purposes of Article 159(3): it should not exceed the gain in total earnings from exports of the product during the year under consideration, where that is less than the gain in earnings from exports to the Community alone.

III. Arrangements for repayment

84. Payments by way of replenishment of Stabex, unlike transfer entitlements, are not paid up immediately in full. Repayments are spread over five years, preceded by a two-year deferment period starting from the time when the replenishment obligation is notified to the ACP State.

It is to be noted that seven years from the year when the transfer payment was made the replenishment obligation lapses insofar as the conditions laid down in Article 173 have not been met in respect of this transfer (4).

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- (1) Article 173(2)(b)
 - (2) See § 53 and 54
 - (3) Article 173(2)(c)
 - (4) Article 172

85. Article 174(2) allows the ACP State to decide whether repayment should be made:

- (a) direct to the system, i.e. by placing at the disposal of Stabex an amount in the currency of the Member State used for the transfer payment equivalent to the ECU-denominated sum found to be repayable (1);
- (b) by deduction from transfer rights - repayments due can be offset against an agreed transfer entitlement; if, as a result of the inadequacy of the system's resources to cover a given application year, all transfers for that year are reduced, the repayment due is nevertheless deducted from the full transfer entitlement;
- (c) by payment in local currency; the amount repayable is still worked out in ECUs, of course, and ECUs are also used for calculating whether repayment has been made in full and seeing that the replenishment obligation does not exceed the transfer.

Where an ACP State opts to make repayment in local currency, the contribution is used, as a matter of priority, to cover local expenditure charged to the European Development Fund in connection with EDF-financed projects.

(1) At the prevailing ECU/Member State currency rate of exchange; where several currencies have been used for transfers, repayment must be in those currencies in the same proportions. These obligations are enshrined in the transfer agreement.

D. YEAR-TO-YEAR MANAGEMENT OF THE SYSTEM

I. The time schedule

86. When the third Convention of Lomé is compared with its predecessors it can be seen that there is an important innovation in that provision is made in Article 168 for the timing of the different stages of appraisal of the transfer requests. Of course, to make sure that a transfer request is not rejected merely because the deadline for appraisal has not been kept, the negotiators were careful not to make such deadlines absolutely binding. Nevertheless, this provision is of major importance for both individual requests and requests as a whole. The two parties - the Commission and the ACP State concerned - will have to make every effort in future to ensure that appraisal of a request is completed by the 31 July following receipt.
87. The starting point for the time schedule referred to in Article 168 is the 31 March of the year following the application year, which is the final deadline for acceptance of requests.¹ Under the Convention, a period of two months is allowed from this moment for cross-checking statistics. By 31 May at the latest the Commission has to notify the requesting ACP State of the result of the cross-checking and, if this is not possible, of the reason why the operation was not completed.²
88. A two-month deadline for consultations is also written into the Convention.³ This period runs from the date when the results of the cross-checking operation are given, that is no later than 31 May, except of course in the - exceptional - cases where it has not been possible to complete the cross-checking by then. Once this deadline has expired - i.e. no later than 31 July - the Commission has to inform the ACP State of the amount of the transfer resulting from appraisal of the request. Where the appraisal process has run according to plan, it should be completed at the very latest four months after receipt of the request.
89. As we have already pointed out, certain transfer requests cause problems which cannot be solved in the time allowed under the Convention. Express account is taken of this in Article 168(4), which states that the Commission has to report to the Committee of Ambassadors on 30 September on the progress made with the processing of all transfer requests, notably those which it has not been possible to appraise fully by that date.

1 Article 163(a)
2 Article 168(1)
3 Article 168(2)

II. Procedure where resources prove inadequate

90. Article 152 states that the Community shall allocate to the system for the duration of the third Convention an amount of 925m ECU to cover all its commitments under the system. As a consequence of the division of this amount into annual instalment, these are available as a rule only for a given year of application. Therefore provision must be made for the procedure to follow should the annual funds prove inadequate. This procedure is set out in Article 155, the first three paragraphs of which describe the measures which the Commission is allowed to take on its own authority to reduce the transfers if necessary. If, following such reduction, the amounts of the transfers still exceed the funds available, the matter has to be referred to the Council of Ministers.
91. The first measure which the Commission is authorized to take is the advance use of the following year's instalment.¹ This possibility is limited to 25% of that instalment, i.e. to 46.25m ECU. If the shortfall is below this sum, advance use may be made of the lower sum. If the shortfall is higher than 46.25m ECU, the Commission has to reduce each transfer.
92. The principle of this reduction is simple, since it concerns that part of the transfer which corresponds to the fluctuation threshold.² On these terms, a transfer is admissible only where the loss accounts for a certain percentage in relation to the reference level. This percentage is generally 6% but, for the least-developed, landlocked and island ACP States, it is 1.5%. The amount resulting from the **application of this percentage to the given reference level equals the sum by which the transfer should be reduced.**³ The part to be paid out is therefore equal to the part of the loss which exceeds the fluctuation threshold. Moreover, a reduction calculated in this manner is not applicable in all cases; it, too, is limited by the following two principles.

1 Article 155(1).

2 See § 28.

3 Article 155(3)(a).

93. According to the first of these principles, the reduction may not exceed a certain percentage of the transfer. ¹ This is generally 40%, and 30% for the least-developed and landlocked states. ² If the sum worked out in this manner is lower than the amount of the reduction calculated in accordance with the principles set out in the preceding paragraph, the reduction is limited to this lower sum.
94. The second principle limiting the application of a possible reduction is based on the absolute amount of the transfer in question; for certain ACP States, the reduction is made only once a certain order of magnitude has been reached. For the island ACP States, the reduction is calculated only on the basis of that part of the transfer in excess of 1m ECU, whereas for the least-developed and landlocked ACP States this fixed portion is 2m ECU. ³ If the transfer in question is even lower than one or the other of these amounts, depending on the case in point, there will be no reduction at all.
95. A reduction is made in application of Article 155(2) or 155(3) if advance use of the following year's instalment does not suffice to fill the gap. However, it is not possible in this case, as it is when an advance is made, to tailor the amount to fit the shortfall exactly. Hence, if the reduction produces a surplus in excess of the shortfall, the surplus is to be shared out amongst all the transfers that have been reduced and in proportion to the amount of each reduction.
96. Given that the reduction which the Commission is authorized to practise affects only a limited part of the transfers, it is quite possible that the funds available may prove insufficient for transfers to be paid out in their entirety, even once they have been reduced. In this case, the Commission has to present a report to the Council on the probable development of the system. On the basis of this report, the Council of Ministers then assesses the situation and examines the steps to be taken to remedy the situation. Such steps may not be taken outside the framework of the Convention. ⁴

1 Article 155(3)(c).

2 Thus, the percentage for island ACP States is 40%.

3 Article 155(2).

4 Article 155(4).

PART THREE : COOPERATION WITH THE ACP STATES' AUTHORITIES ON IMPLEMENTATION OF THE SYSTEM

A. COOPERATION ON STATISTICS

I. Choice of statistical sources and the Stabex correspondent

97. The actual situation of the production and marketing of each product covered by Stabex varies a great deal from one ACP State to another, as does the institutional framework. Hence, when cooperating on statistics and customs matters, it is not possible to use the same sources in all ACP States and for all products.

There are three main sources of statistics, namely:

- (a) product organizations such as "caisses de stabilisation" or marketing boards, the tasks of which include trading operations such as purchases from producers and intervention in sales;
- (b) the customs departments which compile external trade statistics and issue origin certificates;
- (c) the central banks, which can record exports at different stages (when licences are issued, when deposits are lodged by exporters, when foreign currency is received from sales, and so on);
- (d) any other government agency responsible for compiling foreign trade statistics (statistical office, foreign trade centre, other ministry departments, and so on).

In addition to these public or semi-public sources there may be private ones, such as (private or public) operators covering an entire sector, and so on.

98. Implementation of the system calls for utilization for "each product" of the statistics, which reflect most accurately the true situation in the ACP State concerned. This statistical source must be used to fill in all the forms to be used within the system.

Fluctuations in export earnings can be assessed only on the basis of homogeneous series of statistics. Thus, it is important to use the same statistical source as far as possible. Each ACP State is obliged, in its cooperation with the Commission for the implementation of Stabex, to avoid any unnecessary change of statistical source. Any justified changes must be notified and substantiated and any repercussions of such a change on the calculations must be duly pointed out.

99. It should be noted that any series of statistics used in implementing Stabex for the purposes of notifying exports or cross-checking must be expressed in local ACP currency, which is the common denominator for adding up foreign exchange earnings. Such amounts, expressed in ACP local currency, must reflect the equivalent value of the earnings in terms of foreign currency.¹
100. The amounts referred to must be expressed in FOB values.² Statistics compiled on the basis of estimates or market prices are no use for Stabex purposes, given that price fluctuation is a decisive factor in the fluctuation of export earnings. Therefore, it is necessary to obtain the true FOB value of each export sales contract.
101. There may be a few practical difficulties in applying this principle, mainly in connection with the moment chosen for data collection. Under Article 165, it is possible to take statistics into account at the moment when the goods are exported or when the country collects the amount of its export earnings.

The moment at which the data are obtained is of minor importance, provided that the method of collection is consistent. The statement at 31 December of the year of application must be drawn up in the same way as that for each year of the reference period.

102. Statistical cooperation is coordinated on the ACP side by the **Stabex correspondent**. This body's task is both more important and more difficult if the ACP State exports more than one product covered by the system for which more than one statistical source has to be used.

It is the ACP State's duty to identify the most suitable institution or body to act as Stabex correspondent. Its main task is to draw up, the notifications referred to in Article 166(2) and the requests for advances or transfers.

The ACP State concerned officially designates the Stabex correspondent and notifies the Commission of such designation. The Commission must also be notified immediately of any change in the office of Stabex correspondent.

II. The concept of marketed production

103. Marketed production refers to the quantities delivered by the producers to the organization responsible for the marketing of the product in question and not only the quantities destined for export. This factor is important in determining whether consultations are called for.³ Account must necessarily be taken of the trend of marketed production when a transfer request is being appraised.

1 Article 160(1).

2 Article 165(2).

3 Article 164.

104. In some cases production as a whole is destined for export. Therefore, the figures on marketed production will be identical - or almost identical - to those on total exports. In other cases, where there is domestic consumption, such produce may be supplied by the market intervention agency. Thus, the latter body will have precise figures on total marketed production.

III. Re-exports from the Community¹

105. "Exports" are defined in Article 165(1). In accordance with this provision, Stabex may be implemented in respect of products covered by the system where they are:

- (a) released for home use in the Community, or
- (b) brought into the Community under the inward processing arrangements in order to be processed.

According to this definition, it is not enough that goods be dispatched from an ACP State to the Community; in addition they must be subjected to one of the two operations referred to in Article 165(1).

It follows that the ACP statistics on quantities might diverge from the statistics to be adopted because of re-exports from the Community of goods from an ACP State that have not been cleared through customs on Community territory or brought in under the inward processing arrangements. Given that the system cannot cover such re-exports, precise details must be obtained about them wherever possible.

¹ See the report of the Panel of Experts on the implementation of the declaration on Article 166 of the third ACP-CEE Convention, § 13 and the supplementary report and its annex "Memorandum on Methodology of the Community's and the Member States' external trade statistics".

106. The main way used hitherto to discover such divergences of statistics has been the monthly notifications, which are the only forms on which the destinations, broken down by Member State of the Community, are stated for the monthly exports. It is on the basis of this relatively detailed information that it is possible generally to identify the cargoes that account for the divergences recorded.

IV. Shipping time and time taken for customs clearance

107. The time lags are another of the factors that might cause divergences between ACP and EEC statistics. Given that the system may apply only to exports from the ACP States that have undergone one of the two operations referred to in Article 165(1), the ACP statistics may indeed diverge from the EEC Statistics because of the lapse of time that has expired between the respective moments of recording. This problem can be solved only by means of individual research operations where necessary, notably on the basis of the monthly notifications.

B. MONTHLY NOTIFICATIONS

I. The "notifiable" products

108. Under Article 166(2), each ACP State has to send the Commission monthly statistics on the volume and value of its total exports and its exports to the Community¹ and, where available, on the volume of marketed production, for each product covered by Stabex. The system may apply, for the ACP State in question, to products which reach the dependence threshold referred to in Article 161. At the beginning of each year, by the end of the month of January, the Commission and the Stabex correspondent determine the products in respect of which there is an obligation to send in monthly statistical notifications.

II. Frequene of notifications

109. It is stipulated clearly in Article 166(2) that notifications must be sent for every month. The purpose of the notifications is to enable easier and more rapid checks to be made on the data presented in the transfer request. They are justified in particular by the need to record very precisely all exports made at the beginning and end of a calendar year.

¹ It is understood that ACP States that have been granted a derogation under Article 150(2) or (3) have to send in notification of exports to the destinations covered by the system (see § 118 and § 119).

Monthly notification is a prerequisite agreed upon jointly by the Commission and the ACP States for payment of the advances referred to in Article 170(1). The advances are assessed by comparing a standard year's exports, compiled on the basis of monthly exports over the preceding four years at least, with the pattern of the first few months of the application year.

110. All questions on the form must be completed. If there are no exports, this must be indicated by marking "nil" on the relevant line. Unknown data should be indicated using the term "not available".

Failure to send monthly notifications or a delay in sending them may result in delays with transfer requests which extend beyond the limits set out in Article 168(2) and, therefore, in delays with the processing of requests for advances.

III. Deadlines for submission of monthly notifications

111. There is no mention in Article 166(2) of the deadline for sending monthly notifications to the Commission. It is obvious that speed of transmission and reliability of the notifications do not necessarily always go together. There is no point sending monthly notifications unless they are kept distinctly separate from other statistical information, notably that given on the transfer request forms when the latter are sent in. Given that such requests have to be submitted no later than 31 March of the year following the application year¹, monthly notifications should be sent in, as a rule, not later than two months following the end of the month covered by each notification.
112. Where it proves impossible to submit monthly notifications in respect of a product to which the system may apply, it is nonetheless essential to provide statistics on longer periods. If it proves impossible to adhere to the two-month deadline, the forms may then be introduced later. In this case, such information - on the longest possible period of the year - must reach the Commission **before** any transfer request is made and **separately** from such request.

IV. Corrigenda

113. Monthly notifications concerning periods for which no cross-checking operation as set out in Article 165(2) has been carried out may be corrected at any time.² This may be done by means of notifications recapitulating statistics. When information on marketed production for a given period becomes available, it is useful to send this in, accompanied by a recapitulation of all information already provided for the same period.

¹ Article 163(a).

² However, if such corrigenda are sent in together with a transfer request, it is essential that the reasons be explained as well as the nature of the errors that have given rise to the corrigendum.

V. Notification of marketed production¹

114. Account is taken in the wording of Article 166(2) of the fact that it is difficult to provide statistics on marketed production. If it is not possible to submit monthly statistics on marketed production at the same rate as those on the compulsory items on the notification form, ACP States should endeavour to provide information on marketed production **prior to** presenting any transfer request. This information should be transmitted **separately** from that request, by completing lines 1 to 4 of the monthly notification form referred to below.

VI. Monthly notification form

115. A specimen of the standard form to be used for monthly notifications of statistics is illustrated on the following page. A form must be sent in by the ACP State concerned for each individual product to which the system may apply. It may not be used for several products which are being grouped within the meaning of Article 148(2)(b).

The name of the ACP State issuing the notification should be entered on line 1 of the form. The name of the product, in accordance with the nomenclature of Article 148(1), should be given on line 2. The period covered by the form, i.e. the month to which the statistics refer (bearing in mind the content of § 126 above), should be shown on line 3.

116. Marketed production, where data are available,² should be entered on line 4. Quantities should be given in metric tons. If the unit of measurement normally used to express the quantity is a different one - e.g. a measurement of volume - the conversion factor used for calculating the weight in metric tons should be stated in the right-hand column.
117. The information given on lines 5, 6 and 7 should refer to quantities and values. The latter should be declared FOB and in the local currency of the ACP State concerned. These figures should not include any re-exports. They must be drawn up on the basis of origin certificates. Line 5, which shows exports of the product in question to all destinations, must be filled in by all ACP States.

1 See § 103.

2 See § 114.

STABILIZATION OF EXPORT EARNINGS

Monthly notification form to be addressed to the Commission
To be completed on the basis of the certificates of origin
issued by the national authorities

1. Exporting ACP State

2. Product⁽¹⁾

3. Period covered by the form

4. Marketed production⁽³⁾ in the period under consideration
Quantity (metric tonnes) Conversion factor⁽²⁾

Value (fob national currency)

5. Total exports of the product in question to all destinations⁽⁴⁾

6. Exports of the product in question to the Community^{(4) (5)}

61. Exports by country of destination⁽⁴⁾

611. Belgo-Luxembourg Economic Union

612. Denmark

613. Federal Republic of Germany

614. Greece

615. Spain

616. France

617. Ireland

618. Italy

619. Netherlands

620. Portugal

621. United Kingdom

62. Total for heading under 61.⁽⁵⁾

7. Exports of the product in question to other ACP States^{(4) (6)}

Signature of correspondent and official stamp

Date

(1) A "product" is defined as any one product listed under Article 148(1), taken individually and not each product group mentioned under Article 148(2)(b). However, notification by individual product does not prejudice the right to exercise the option laid down in Article 148(2).

(2) State the conversion factors, if any, used to determine the quantities expressed in metric tonnes.

(3) Marketed production refers to the quantities delivered by the producers to the organisation responsible for the marketing of the product in question.

(4) Excluding re-exports.

(5) Not to be completed by ACP States with 'all destinations' status (Article 150(1)(c)).

(6) To be completed only by ACP States with 'intra-ACP trade' status (Article 150(1)(b)).

118. The ACP States benefiting from the derogation referred to in Article 150(1)(c), according to which the system covers exports irrespective of destination, do not have to fill in lines 6 and 7. The others, including those benefiting in respect of certain products from the derogation referred to in Article 150(1)(b), according to which the system covers exports to other ACP States, should fill in point 6. The information under this heading is broken down by Community Member State (lines 611 to 619) as well as giving the total (line 62).
119. ACP States benefiting from the derogation under Article 150(1)(b), which covers intra-ACP trade - and **only** those ACP States - should also fill in line 7 in respect of products for which the derogation has been granted.
120. Each notification of monthly statistics should be dated, stamped, and signed by the Stabex correspondent.

C. PREPARATION OF A TRANSFER REQUEST

121. When presenting a transfer request, ACP States are obliged to use the standard form drawn up for that purpose. The form has four annexes attached to it. Some useful explanations are given here for filling in the form and its annexes.

I. Transfer request form

122. There is a specimen of this standard form on the following page. First of all, it should be noted that the request must reach the Commission or the delegation in the ACP State concerned before 31 March of the year following the application year.¹
123. The application year should be entered on line 1.
124. The product or products for which a transfer is being requested should be entered on line 2. The product concerned should be specified, using the correct description as in Article 148(1), in the left-hand column. The numbers in the ACP State's own customs tariff - not the Nimexe code - corresponding to that same product should be given in the right-hand column. This will enable checks to be made on whether different series of statistics refer to the same product.

¹ Article 163(a).

STABILIZATION OF EXPORT EARNINGS

Transfer request form to be addressed to the Commission before 31 March

1. I hereby request a transfer, in accordance with Title II, Chapter 2 of the third ACP-EEC Convention of Lomé, for the year of application 19.....

2. This request covers the following product(s):

Product(s)	National Customs Tariff Heading No.
a)
b)
c)
d)

3. As regards the choice provided for in Article 148 (2) (a) and (b), the transfer request should be processed in application of

a) b) ⁽¹⁾

4. As regards the choice provided for in Article 165 (2) (a) and (b), the statistical data to be used in the appraisal of the transfer request shall be those obtained by the formula laid down in

a) b) ⁽¹⁾

5. This request includes 4 annexes. ⁽²⁾

Signature and official stamp

Date

⁽¹⁾Mark the appropriate box.

⁽²⁾If the request is to be processed on the basis of Article 148 (2) (b), (globalised request), it is necessary to include a statistical annex (Annex 1) for each of the products concerned.

125. Several lines are provided under point 2 so that an ACP State which wishes to opt for grouping several products together in a single transfer request can do so. In this case the application must concern products covered by Article 148(2). Where the ACP State wishes to take advantage of this possibility, box (b) under point 3 of the form should be marked. If the ACP State wishes each product to be dealt with individually or if the request concerns only one product, box (a) should be marked.
126. The other option open is the choice provided for in Article 165(2). In Article 165(3) it is stated that the requesting ACP State should choose between two sets of statistics to be used for processing the request, either
- (a) those obtained by cross-checking Community and ACP-State statistics, or
 - (b) those obtained by multiplying the unit values for the exports of the ACP State in question, as given in that ACP State's statistics, by the quantities imported by the Community, as shown in Community statistics.

The choice must be made in accordance with the principles set out in § 35 to 37, in brief:

- (a) for a "grouped" transfer request, the same procedure will be applied as far as possible to each grouped product;
 - (b) for a "repeated" transfer request, the same procedure followed for appraisal of the initial transfer request(s) will be followed for appraisal of subsequent request(s).
127. The transfer request must be dated, signed, and stamped by the national authorizing officer.

II. Statistical annex (Annex 1)

128. Annex 1 to the transfer request form is to be used to provide statistical data in support of the request. The following pages contain a specimen of that annex. The name of the requesting ACP State and the product should be stated again at the top of the form. Where the request is being grouped, a statistical annex should be completed for each of the products in question.
129. On the left of the following line, the reference period should be stated, i.e. the four years preceding the application year, and on the right there is a space in which the application year, i.e. the year for which the transfer is requested, should be entered.

STABILIZATION OF EXPORT EARNINGS
Statistical Annex to transfer request form

Annex 1

Requesting Country:
 Reference period 19..... to 19.....⁽¹⁾

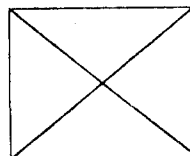
Product :
 Year of application 19.....⁽²⁾

Quantity
 (metric tonnes)

Value
 (fob national
 currency)

I. Value of total exports of all goods to all destinations^{(3) (4)}

- 1. 19.....
 - 2. 19.....
 - 3. 19.....
 - 4. 19.....
- } ⁽¹⁾

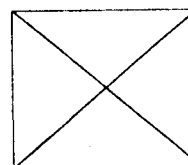


.....

II. Quantity of marketed production of the product in question⁽⁵⁾

- 1. 19.....
 - 2. 19.....
 - 3. 19.....
 - 4. 19.....
 - 5. 19.....
- } ⁽¹⁾

.....



III. Exports of the product in question to all destinations^{(3) (4)}

- 1. 19.....
 - 2. 19.....
 - 3. 19.....
 - 4. 19.....
 - 5. 19.....
- } ⁽¹⁾

.....

.....

IV. Exports of the product in question to the Community^{(3) (4) (6) (7)}

- 1. 19.....
 - 2. 19.....
 - 3. 19.....
 - 4. 19.....
 - 5. 19.....
- } ⁽¹⁾

.....

.....

V. Local ACP currency exchange rate

- 1. 19.....
 - 2. 19.....
 - 3. 19.....
 - 4. 19.....
 - 5. 19.....
- } ⁽¹⁾

in relation to
 the reference
 currency ⁽⁸⁾

or

in relation to
 the ECU ⁽⁸⁾

.....

.....

⁽¹⁾ The years concerned are the four years preceding the application year — lines 1. to 4. in sections I. to V.

⁽²⁾ Application year — line 5. in sections II. to V.

⁽³⁾ To be completed on the basis of origin certificates issued by the national authorities (Article 151).

⁽⁴⁾ Excluding re-exports (Article 161)

⁽⁵⁾ Marketed production is taken to mean the quantities delivered by the producers to the organisation responsible for the marketing of the product in question.

⁽⁶⁾ Not to be completed for ACP States with "all destinations" status (Article 150 (1) (c)).

⁽⁷⁾ For ACP States with "intra-ACP trade" status (Article 150(1)(b), add earnings from exports to other ACP States to those from exports to the Community.

⁽⁸⁾ Choose one rate only. The rate shown must, in each case, be the average annual rate.

VI. Conversion factor

1. If the quantities are expressed in units other than metric tonnes, please state the rate for converting such units into weight :

1 unit of is equivalent to tonnes.

2. If the request is grouped, within the meaning of Article 148 (2) (b), please state the conversion factor to be used for determining the quantity of the least-processed product which corresponds to the weight (in metric tonnes) of each of the remaining products.

a) 1 tonne of is equivalent to tonne of

b) 1 tonne of is equivalent to tonne of

c) 1 tonne of is equivalent to tonne of

VII. Statistical source :

for I :

for II :

for III and IV :

for V :

for VI :

Signature and official stamp

Date

130. Regarding the years that make up the reference period, it should be pointed out that there are two exceptions to the principle set out above. The first is the case referred to in Article 158(4)¹, in which the reference period is only three years, and, second, the cases to which the Fiji declaration applies.² If one of these exceptions applies, this should be stated explicitly and the forms filled in accordingly.
131. Once the reference and application years have been determined, they should be stated in sections I to V of Annex 1, under which the numbers 1 to 4 correspond each time to the reference years and number 5 always refers to the application year.
132. It should be emphasized that all statements on exports must be made on the basis of origin as certified by the national authorities.³ Figures must not include re-exports.⁴ The values entered on the form must be expressed FOB and in the local currency of the requesting ACP State. These principles apply to all statistics on earnings.
133. It should also be remembered that there is a general principle whereby changes to data used for the previous appraisal of a "repeated" transfer request may be admissible only where special reasons so warrant.⁵ These reasons must be stated explicitly.
134. Section I is for information on the value of total exports of all goods to all destinations. There is no need to state quantities and that is why the relevant space has been left blank. The data provided in this section serve for the calculation of the dependence rate,⁶ which is normally assessed on the basis of earnings for the year preceding the application year. There is provision in Article 161(3) for an exception in the event of a natural disaster, in which case reference is made to the average of the first three years of the reference period. If this exception does not apply, it is sufficient to fill in line 4.

1 See § 9.
2 See § 10.
3 Article 151.
4 Article 161.
5 See § 37.
6 Article 161.

135. Information on marketed production (section II) is an essential element in the processing of a transfer request.¹ The value of marketed production is unimportant and, therefore, it need not be stated. As in all other columns relating to quantities, the figures entered here should be in metric tons. If some other measurement is used, it should be specified and the conversion factor used for calculating the weight in metric tons be entered at point 1 of section VI.
136. Section III must be filled in by all requesting ACP States irrespective of their status under Article 150. On the other hand, ACP States that have been granted the derogation referred to in Article 150(1)(c), according to which the system covers exports to all destinations, do not have to fill in section IV.
137. The others - that is the ACP States for which the system covers exports to the Community and those for which the system covers, in addition, exports of certain products to other ACP States - also have to fill in section IV. Where the latter products are concerned, the figures to be given in this section must also include exports to other ACP States.
138. **Section V of the statistical annex should show the rate of exchange vis-à-vis the ACP currency for each of the five years involved.** If the rate in relation to the ECU is known, it would be preferable to state that rate. If not, it is also permissible to state a rate in relation to another reference currency, the dollar, SDR or any other convertible currency quoted on the international market. **The rate given should be the average annual rate in all cases.**
139. Section VI shows the conversion factors, but it is necessary to enter these only when they are needed for the processing of a transfer request. The first of these is the factor giving the equivalent for units of quantity other than metric tons, already mentioned in § 151. Next come the conversion factors which are used, in the case of a grouped request within the meaning of Article 148(2)(b), to determine the quantity of least-processed product that corresponds to the weight of each of the other products. It is sufficient to state in the statistical annex the conversion factor for the least-processed product.
140. Section VII shows the source of the statistics given in the preceding sections.
141. The statistical annex to the transfer request must also be dated, signed, and stamped by the national authorizing officer.

¹ See Article 164 and, for the notion of "marketed production", § 103.

III. Annex relating to preliminary estimate of the transfer basis (Annex 2)

142. Annex 2 to the transfer request form consists of a preliminary estimate of the transfer basis by reference to the values given in the statistical annex (Annex 1). It is not essential that this form be filled in for the transfer request to be processed. This estimate, which is made even before any statistics have been cross checked, can be used only as an indication.

The six sections of Annex 2, a specimen of which is shown on the following pages, cover all the operations necessary to determine the transfer basis. It was not possible to make provision on this for for all the exceptions allowed under the Convention. Therefore, if an ACP State intends to request exceptional treatment or a derogation, for which there is no provision on the form, and if it intends to use the form nevertheless, it should amend the form accordingly.

143. Section I is intended to show whether Article 160(4) is applicable.¹ First of all, using the information provided on lines 1 to 4 of section V of the statistical annex, the average of the annual exchange rates of the ACP currency vis-à-vis the ECU has to be worked out for the four years of the reference period. Next (line 2), a theoretical upward fluctuation of 10% is calculated by raising the rate given on line 1 by 10%. Line 3 shows a theoretical downward fluctuation of 10%, worked out by lowering the rate given on line 1 by 10%. Line 4 should show the rate for the application year, as stated on line 5 of section V of the statistical annex. If this actual rate (line 4) is inside the "tunnel", that is within the bracket of the amounts given on lines 2 and 3, Article 160(4) is not applicable. In this case, the actual rate should be entered again on line 5. On the other hand, if the actual rate (line 4) is outside the "tunnel" Article 160(4) is applicable. In this case, the closer of the two extreme rates (line 2 or 3) should be used instead of the actual rate. Hence, the fictitious rate to be used should be entered on line 6. Therefore, there should be a rate stated either on line 5 or on line 6. This is the rate to be used for converting the amounts relating to the application year into ECUs.
144. Section II consists of the value in ECUs of the sums given in local currency in the statistical annex. Part A matches section I of the statistical annex, part B matches section III and part C matches section IV.² The exchange rates stated in section V of the statistical annex must be used for the conversion operation.³ As in the statistical annex, lines 1 to 4 correspond to the four reference years⁴ and line 5 to the application year. The years in question should be specified in parts A, B and C, which will then give all the values, expressed in ECUs, needed to process the transfer request.

1 § 38 to 44 (so-called "tunnel" method).

2 Where it is necessary to fill in these sections of the statistical annex; see § 136 and 137

3 Except where Article 160(4) applies in respect of the application year; see § 143

4 It should usually suffice in part A to give the value for the year preceding the application year, i.e. line 4.

STABILIZATION OF EXPORT EARNINGS
Annex 2 to the transfer request form

Provisional calculation of the transfer basis by reference
to the values given in the statistical annex (Annex 1))
to the transfer request form ⁽¹⁾

I. APPLICABILITY OF ARTICLE 160(4)

- 1. Average exchange rate of local currency in relation to the ECU (V.1 to V.4 of Annex 1)
- 2. Upward fluctuation of 10%
- 3. Downward fluctuation of 10%
- 4. Rate for application year (V.5 of Annex 1)
- 5. If the rate at 4. is within the range of the figures at 2. and 3., Article 160 (4) is not applicable.
Use the rate at V.5 (of Annex 1)
- 6. If the rate at 4. is outside the range of the figures at 2. and 3., Article 160 (4) should be applied instead of the rate at V.5 (of Annex 1).
Use the rate at 2. or 3., whichever is the closest.

II. CONVERSION INTO ECUS OF THE VALUES STATED IN LOCAL CURRENCY IN THE STATISTICAL ANNEX (ANNEX 1)

Value
(in ECU)

A. Value of total exports of all goods to all destinations

- 1. 19.....
- 2. 19.....
- 3. 19.....
- 4. 19.....

B. Exports of the product(s) in question to all destinations

- 1. 19.....
- 2. 19.....
- 3. 19.....
- 4. 19.....
- 5. 19.....

C. Exports of the product(s) in question to the Community

- 1. 19.....
- 2. 19.....
- 3. 19.....
- 4. 19.....
- 5. 19.....

⁽¹⁾ It is not compulsory to fill out this form in order to present a transfer request.

III. CALCULATION OF THE DEPENDENCE RATE

- 1. Total export earnings from goods for the year preceding the application year (A.4.)⁽¹⁾
- 2. Earnings from exports of the product(s) to all destinations for the years preceding the application year (C.4.)⁽¹⁾
- 3. $\frac{2}{1} \cdot 100 =$ %
- 4. Dependence threshold applicable (1.5%/6%)
- 5. The threshold has/has not been reached.

IV. CALCULATION OF THE LOSS OF EARNINGS⁽²⁾

- 1. Reference level (EEC) :
Average of the amounts (C.1., C.2., C.3., C.4.)
- 2. Actual earnings for the application year (EEC) (C.5)
- 3. Loss (EEC)
- 4. Reference level (all destinations) :
Average of the amounts (B.1., B.2., B.3., B.4.)
- 5. Actual earnings for the application year (all destinations) (B.5.)
- 6. Loss (all destinations)
- 7. If 3. is lower than 6. the loss is 3.
- 8. If 3. is higher than 6. the loss is 6.

V. CALCULATION OF THE FLUCTUATION RATE

- 1. Reference level ⁽³⁾
- 2. Loss (IV.7. or IV.8.)
- 3. $\frac{2}{1} \cdot 100 =$ %
- 4. Fluctuation threshold applicable (1.5%/6%)
- 5. The threshold has/has not been reached.

VI. CALCULATION OF THE TRANSFER BASIS

- 1. Loss (IV.7. or IV.8)
- 2. 1. + 2%

⁽¹⁾ In the currency chosen by the ACP State.

⁽²⁾ Where the derogation referred to in Article 150(3) has been granted, there is no need to fill out lines 1, 2, 3, 7 and 8.

⁽³⁾ Please state here the information given on line IV.4. if the derogation referred to in Article 150(3) has been granted. Where line IV.8. is to be used, please state the information given in line IV.4. and not in line IV.1.

145. Section III concerns the calculation of the dependence rate.¹ This may be worked out in the currency of the ACP country or in ECUs. Line 1 should show again the value entered on line 4 of section II, part A, and line 2 should show the value entered on line 4 of section II, part C. Line 3 gives the calculation of the percentage of the value stated on line 2 in relation to that on line 1. Line 4 shows the dependence threshold, which will be either 6% or 1.5%, depending on the status of the requesting ACP State.² If the figure on line 3 is higher than that on line 4, the conclusion on line 5 will be that the threshold has been reached.
146. Section IV concerns the calculation of the loss of earnings. The form has been designed to deal with the normal application of the system, which, as a general rule, covers exports to the Community. For a request involving a product for which the requesting ACP State has been granted the "intra-ACP trade" derogation³, the values of such exports should be entered on lines 1, 2 and 3. Where the "all destinations" derogation⁴ applies, lines 1, 2, 3, 7 and 8 should not be filled in.
147. The calculation of the reference level is shown on line 1 of section IV; this is equivalent to the average of the values for the four reference years. The values in question are given on lines 1 to 4 of section II, part C. Line 2 should show once more the actual earnings for the application year as they appear on line 5 of section II, part C. The difference between line 1 and line 2 gives the loss in earnings from exports to the Community. Lines 4, 5 and 6 show the calculation of the loss of earnings from exports to all destinations. This calculation must be made on the basis of the corresponding values as given in section II, part B. If the loss from exports to the Community (line 3) is lower than the "all destinations" loss (line 6), the "EEC" loss should be entered on line 7 as the final result. On the other hand, if the "all destinations" loss (line 6) is lower than the "EEC" loss (line 3), the amount given on line 6 should be repeated on line 8. Thus the final result will appear either on line 7 or on line 8.
148. This loss will be used to calculate the fluctuation rate, which is dealt with in section V. Line 1 of this section shows the reference level again, that is, if the "EEC" loss is to be taken into consideration (line 7 of section IV), the level given on line 1 of section IV. However, if the loss to be taken into consideration in section IV is that from exports to all destinations (line 8 of section IV), the reference level calculated on the basis of such exports, given on line 4 of section IV, should be repeated here. Line 2 of section V should show the loss as calculated in section IV, i.e. the amount given either on line 7 or on line 8 of that section. Line 3 shows the calculation of the fluctuation rate. Line 4 gives the fluctuation threshold, which is 6% or 1.5%, depending on the status of the requesting ACP State.⁵ If the figure on line 3 is higher than that on line 4 the conclusion on line 5 will be that the threshold has been reached.

1 The provisional calculation concerns only the normal case of Article 161(1) and not the case of a natural disaster referred to in § 3 of this Article.
2 Article 161(1) and (2); if sisal is involved, for which the percentage is 4.5%, this figure should be stated instead.
3 Article 150(1)(b).
4 Article 150(1)(c).
5 Article 162(1) and (2).

149. Section VI concerns the calculation of the transfer basis proper. The loss, as it results from the calculation to be made in section IV and as given on line 7 or 8 of that section, should be entered once again on line 1. Line 2 shows the same amount plus the 2% provided for in Article 158(2), which defines the transfer basis.

The provisional calculation does not include an estimate of any reductions since the grounds for making reductions do not depend only on the figures but also on the outcome of any consultations.

IV. Annex on the cause of loss of earnings (Annex 3)

150. Annex 3 is designed to provide information on the diagnosis of the problems in the sector or sectors concerned (1). The standard form of this annex is shown on the following page.

This information is important and even essential in many respects. Pursuant to Article 170(3) the ACP State requesting a transfer must communicate, if it intends to allocate the funds to a sector other than that in which the loss was incurred, the reasons for so doing. One reason may well be that the cause of the loss is not to be found within the sector, or again that it would not be possible to remedy the situation by any practical means that the ACP State concerned may employ.

151. Substantial qualitative information about the loss is also important, pursuant to Article 164, and information on any consultations or reductions that may prove necessary. It is clear that the request will be processed more rapidly (2) if as much information as possible is available.
152. Annex 3 contains five sections, the first of which deals only with the essential question of whether the cause of the loss is within or outside the sector. As for the other sections (except 5), it is sufficient to put a tick in the relevant boxes.

1 Articles 157 and 170(3).

2 Article 170(1) and the timetable in Article 168.

STABILIZATION OF EXPORT EARNINGS

**Annex 3 to transfer request form
(pursuant to Article 157)**

Cause of loss of earnings

1. Is the cause of the loss of earnings within the affected sector/outside the affected sector?⁽¹⁾

2. Decline in **marketed production** due to ⁽²⁾ :

- 2.1. Natural disaster
- 2.2. Adverse weather conditions
- 2.3. Drop in external demand
- 2.4. Problems in the sector
- 2.5. Sectoral support problems
- 2.6. Other

3. Decline in export earnings from the product concerned **to all destinations** due to ⁽²⁾ :

- 3.1. Decline in marketed production
- 3.2. Increased domestic consumption
- 3.3. Increased local processing
- 3.4. Fall in quantities exported
- 3.5. Fall in prices
- 3.6. Other

4. Decline in export earnings from the product concerned **to the Community** due to ⁽²⁾ :

- 4.1. Fall in prices
- 4.2. Fall in quantities exported
- 4.3. Chartering problems
- 4.4. Non-tariff barriers
- 4.5. Health regulations
- 4.6. Other reasons.

5. Detailed comments on reasons for loss of earnings : indicate relative weight to be given to different factors and, if appropriate, any significant change in conditions of production, management, producer prices, local consumer prices, local processing, stocks, external demand, transport facilities, diversifications, etc. ⁽³⁾

Signature and official stamp

Date

⁽¹⁾ Delete where necessary

⁽²⁾ Put a tick in the appropriate box; if several factors are involved, tick each of the boxes

⁽³⁾ If the space provided is insufficient, please use extra sheets

153. Sections 2 to 4 deal with the different types of change referred to in more detail in § 50 to 52. To be precise, they concern:
- (a) a possible decline in marketed production (section 2);
 - (b) a possible decline in earnings from exports of the product concerned to all destinations (section 3);
 - (c) a possible decline in earnings from exports of the product concerned to the Community (section 4).
154. The reasons listed in each section are not exhaustive, hence the heading "other". Where this heading is chosen, more detailed information should be given in section 5.
155. There may be several reasons, even within the same section. In this case, all relevant boxes should be ticked. The first point in section 3 refers to the section immediately above it. It would be appropriate to tick this box where a decline in earnings from exports to all destinations is due only to a decline in marketed production (3.1.), the reason for which should be given in section 2.
156. The information to be given in to be provided sections 2 to 4 does not obviate the need for more information under section 5. This information **must be as detailed as possible** and go along the lines of that indicated, by way of example, in section 5.
157. Annex 3 to the transfer request should also be dated, signed, and stamped by the national authorizing officer.

V. Annex on the allocation of funds (Annex 4)

158. Annex 4 is designed to provide information on the allocation of funds, which a requesting ACP State has to send in together with its request, pursuant to Article 157. The standard form for this is shown on the following page.

It is perhaps useful to look again at the three basic principles governing this obligation.¹

- (a) The use to which the funds are put must be in conformity with the objectives of the system as stated in Article 147(2);
- (b) the information supplied comes in the form of an undertaking on the part of the ACP State to allocate the actual funds received, should the transfer be granted, in accordance with the information thus provided;

¹ See § 66 to 70.

STABILIZATION OF EXPORT EARNINGS
Annex 4 to transfer request form

Allocation of resources

1. Has a sum equivalent to the transfer amount already been allocated? ⁽¹⁾

Yes In part No

2. If you plan to allocate the requested transfer sum either totally or partially to a sector other than that where the loss of earnings was incurred, give reasons for such allocation, indicating diversification aims, sectors to which the money will be allocated and expected effects in terms of economic and social development ^{(2) (3)}.

3. Give details of programmes or operations to which transfer sum has been allocated or to which you undertake to allocate it if this request is approved ^{(2) (3)}.

Signature and official stamp

Date

⁽¹⁾ Mark the appropriate box
⁽²⁾ See Articles 147(2), 157 and 170(3)
⁽³⁾ If the space provided is insufficient, please use extra sheets

- (c) the information presented when the transfer request is submitted may be updated at any time prior to the signing of the transfer agreement.¹
159. This annex has three sections, the first of which deals only with whether a sum equivalent to the requested transfer amount has already been allocated in full, in part or not at all.
160. The question to be answered in section 2 concerns the two possibilities open at the start, namely whether the sum is to be allocated inside or outside the sector. Under Article 170(3), the reasons for allocating any funds outside the sector must be given.
161. Section 3 should show details of programmes or operations to which the ACP State has allocated or undertakes to allocate the funds to be transferred should the request be approved. The amounts spent on each operation or programme should be specified here.
162. Annex 4 should also be dated, signed and stamped by the national authorizing officer.

D. PREPARATION OF A REQUEST FOR AN ADVANCE

163. In the second sentence of Article 170(1), express provision is made for the payment of advances.² Unlike transfer requests, requests for advances may be submitted before the end of the application year to which they relate. If a request for an advance is approved, the ACP State has to submit a transfer request once the application year has ended.
164. A specimen of the standard form to be used for submitting a request for an advance is shown on the following pages. This form has four annexes similar to those attached to the transfer request form. Likewise, lines 1 to 4 are identical, for the most part, to those on the transfer request form; therefore, the remarks relating to the latter form also apply in this context.³

1 Article 170(3).
2 See also § 61 and 62.
3 See § 123 to 127.

STABILIZATION OF EXPORT EARNINGS

Form to request an advance

1. I hereby request, in accordance with Article 170 (1) of the third ACP-EEC Convention of Lomé, an advance on the anticipated transfer for the year of application 19.....

2. This request covers the following product(s):

Product(s)	National Customs Tariff Heading No.
a)
b)
c)
d)

3. As regards the choice provided for in Article 148 (2)(a) and (b), this request for an advance and, consequently, the transfer request should be processed in application of

a) b) ⁽¹⁾

4. As regards the choice provided for in Article 165 (a) and (b), the statistical data to be used in the appraisal of the transfer request shall be those obtained by the formula laid down in

a) b) ⁽¹⁾

5. The statistical data necessary for the evaluation of the request for an advance, in particular :

- the monthly notification forms required by the Commission, duly completed, beginning with the month of January of this year,
- the monthly quantities of the product concerned exported to the EEC/all destinations ⁽²⁾ for a minimum period of 4 years,

are in your possession/are attached to this form ⁽²⁾.

6. This request includes 4 annexes ⁽³⁾.

Signature and official stamp

Date

⁽¹⁾ Mark the appropriate box.

⁽²⁾ Delete as appropriate.

⁽³⁾ If the request is to be processed on the basis of Article 148 para 2 (b), (globalized request), it is necessary to include a statistical annex (Annex I) for each of the products concerned.

STABILIZATION OF EXPORT EARNINGS
Statistical Annex to the form to request an advance

Annex 1

Requesting Country:
 Reference period 19..... to 19.....⁽¹⁾

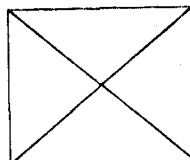
Product :
 Year of application 19.....⁽²⁾

Quantity
 (metric tonnes)

Value
 (fob national
 currency)

I. Value of total exports of all goods to all destinations^{(3) (4)}

- 1. 19.....
 - 2. 19.....
 - 3. 19.....
 - 4. 19.....
- } ⁽¹⁾

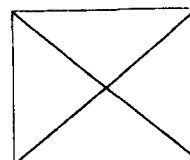


.....

II. Quantity of marketed production of the product in question⁽⁵⁾

- 1. 19.....
 - 2. 19.....
 - 3. 19.....
 - 4. 19.....
 - 5. 19.....
- } ⁽¹⁾

.....



III. Exports of the product in question to all destinations^{(3) (4)}

- 1. 19.....
 - 2. 19.....
 - 3. 19.....
 - 4. 19.....
 - 5. 19.....
- } ⁽¹⁾

.....

.....

IV. Exports of the product in question to the Community^{(3) (4) (6) (7)}

- 1. 19.....
 - 2. 19.....
 - 3. 19.....
 - 4. 19.....
 - 5. 19.....
- } ⁽¹⁾

.....

.....

V. Local ACP currency exchange rate

- 1. 19.....
 - 2. 19.....
 - 3. 19.....
 - 4. 19.....
 - 5. 19.....
- } ⁽¹⁾

in relation to
 the reference
 currency ⁽⁸⁾

or

in relation to
 the ECU ⁽⁸⁾

.....

.....

⁽¹⁾ The years concerned are the four years preceding the application year — lines 1. to 4. in sections I. to V.

⁽²⁾ Application year — line 5. in sections II. to V.

⁽³⁾ To be completed on the basis of origin certificates issued by the national authorities (Article 151).

⁽⁴⁾ Excluding re-exports (Article 161).

⁽⁵⁾ Marketed production is taken to mean the quantities delivered by the producers to the organisation responsible for the marketing of the product in question.

⁽⁶⁾ Not to be completed for ACP States with "all destinations" status (Article 150 (1) (c)).

⁽⁷⁾ For ACP States with "intra-ACP trade" status (Article 150(1)(b)), add earnings from exports to other ACP States to those from exports to the Community.

⁽⁸⁾ Choose one rate only. The rate shown must, in each case, be the average annual rate.

VI. Conversion factor

1. If the quantities are expressed in units other than metric tonnes, please state the rate for converting such units into weight :

1 unit of is equivalent to tonnes.

2. If the request is grouped, within the meaning of Article 148 (2) (b), please state the conversion factor to be used for determining the quantity of the least-processed product which corresponds to the weight (in metric tonnes) of each of the remaining products.

a) 1 tonne of is equivalent to tonne of

b) 1 tonne of is equivalent to tonne of

c) 1 tonne of is equivalent to tonne of

VII. Statistical source :

for I :

for II :

for III and IV :

for V :

for VI :

Signature and official stamp

Date

STABILIZATION OF EXPORT EARNINGS
Annex 2 to the form to request an advance

Provisional calculation of the transfer basis by reference
to the values given in the statistical annex (Annex (1))
to the form to request an advance⁽¹⁾

I. APPLICABILITY OF ARTICLE 160(4)

- 1. Average exchange rate of local currency in relation to the ECU (V.1 to V.4 of Annex 1)
- 2. Upward fluctuation of 10%
- 3. Downward fluctuation of 10%
- 4. Rate for application year (V.5 of Annex 1)
- 5. If the rate at 4. is within the range of the figures at 2. and 3., Article 160 (4) is not applicable.
Use the rate at V.5 (of Annex 1)
- 6. If the rate at 4. is outside the range of the figures at 2. and 3., Article 160 (4) should be applied instead of the rate at V.5 (of Annex 1).
Use the rate at 2. or 3., whichever is the closest.

II. CONVERSION INTO ECUS OF THE VALUES STATED IN LOCAL CURRENCY IN THE STATISTICAL ANNEX (ANNEX 1)

Value
(in ECU)

A. Value of total exports of all goods to all destinations

- 1. 19.....
- 2. 19.....
- 3. 19.....
- 4. 19.....

B. Exports of the product(s) in question to all destinations

- 1. 19.....
- 2. 19.....
- 3. 19.....
- 4. 19.....
- 5. 19.....

C. Exports of the product(s) in question to the Community

- 1. 19.....
- 2. 19.....
- 3. 19.....
- 4. 19.....
- 5. 19.....

⁽¹⁾ It is not compulsory to fill out this form in order to present an advance request.

III. CALCULATION OF THE DEPENDENCE RATE

- 1. Total export earnings from goods for the year preceding the application year (A.4.) ⁽¹⁾
- 2. Earnings from exports of the product(s) to all destinations for the years preceding the application year (C.4.) ⁽¹⁾
- 3. $\frac{2}{1} \cdot 100 =$ %
- 4. Dependence threshold applicable (1.5%/6%)
- 5. The threshold has/has not been reached.

IV. CALCULATION OF THE LOSS OF EARNINGS⁽²⁾

- 1. Reference level (EEC) :
Average of the amounts (C.1., C.2., C.3., C.4.)
- 2. Actual earnings for the application year (EEC) (C.5.)
- 3. Loss (EEC)
- 4. Reference level (all destinations) :
Average of the amounts (B.1., B.2., B.3., B.4.)
- 5. Actual earnings for the application year (all destinations) (B.5.)
- 6. Loss (all destinations)
- 7. If 3. is lower than 6. the loss is 3.
- 8. If 3. is higher than 6. the loss is 6.

V. CALCULATION OF THE FLUCTUATION RATE

- 1. Reference level ⁽³⁾
- 2. Loss (IV.7. or IV.8.)
- 3. $\frac{2}{1} \cdot 100 =$ %
- 4. Fluctuation threshold applicable (1.5%/6%)
- 5. The threshold has/has not been reached.

VI. CALCULATION OF THE TRANSFER BASIS

- 1. Loss (IV.7. or IV.8.)
- 2. 1. + 2%

⁽¹⁾ in the currency chosen by the ACP State.

⁽²⁾ Where the derogation referred to in Article 150(3) has been granted, there is no need to fill out lines 1, 2, 3, 7 and 8.

⁽³⁾ Please state here the information given on line IV.4. if the derogation referred to in Article 150(3) has been granted. Where line IV.8. is to be used, please state the information given in line IV.4. and not in line IV.1.

STABILIZATION OF EXPORT EARNINGS

**Annex 3 to the form to request an advance
(pursuant to Article 157)**

Cause of loss of earnings

1. Is the cause of the loss of earnings within the affected sector/outside the affected sector? ⁽¹⁾

2. Decline in **marketed production** due to : ⁽²⁾

- 2.1. Natural disaster
- 2.2. Adverse weather conditions
- 2.3. Drop in external demand
- 2.4. Problems in the sector
- 2.5. Sectoral support problems
- 2.6. Other

3. Decline in export earnings from the product concerned **to all destinations** due to : ⁽²⁾

- 3.1. Decline in marketed production
- 3.2. Increased domestic consumption
- 3.3. Increased local processing
- 3.4. Fall in quantities exported
- 3.5. Fall in prices
- 3.6. Other

4. Decline in export earnings from the product concerned **to the Community** due to : ⁽²⁾

- 4.1. Fall in prices
- 4.2. Fall in quantities exported
- 4.3. Chartering problems
- 4.4. Non-tariff barriers
- 4.5. Health regulations
- 4.6. Other reasons.

5. Detailed comments on reasons for loss of earnings : indicate relative weight to be given to different factors and, if appropriate, any significant change in conditions of production, management, producer prices, local consumer prices, local processing, stocks, external demand, transport facilities, diversifications, etc. ⁽³⁾

Signature and official stamp

Date

⁽¹⁾ Delete where necessary

⁽²⁾ Put a tick in the appropriate box; if several factors are involved, tick each of the boxes.

⁽³⁾ If the space provided is insufficient, please use extra sheets.

STABILIZATION OF EXPORT EARNINGS
Annex 4 to the form to request an advance

Allocation of resources

1. Has a sum equivalent to the advance amount already been allocated?⁽¹⁾

Yes In part No

2. If you plan to allocate the requested advance sum either totally or partially to a sector other than that where the loss of earnings was incurred, give reasons for such allocation, indicating diversification aims, sectors to which the money will be allocated and expected effects in terms of economic and social development ⁽²⁾⁽³⁾.

3. Give details of programmes or operations to which requested advance sum has been allocated or to which you undertake to allocate it if this request is approved ⁽²⁾⁽³⁾.

Signature and official stamp

Date

⁽¹⁾ Mark the appropriate box

⁽²⁾ See Articles 147(2), 157 and 170(3)

⁽³⁾ If the space provided is insufficient, please use extra sheets

165. Account is taken on line 5 of the application form for an advance of the difficulties of dealing with the request before the end of the application year. In order to keep uncertainty as to the subsequent trend of exports to a minimum, the Commission has to gain insight into the typical pattern of seasonal fluctuations of the quantities exported. To this end, it has to have data on the quantities of the product exported every month for the four reference years at least. In addition, the Commission needs the monthly notification forms giving statistics for the period from January of the application year to the month preceding that in which the application for an advance is submitted.
166. The four annexes to the form to request an advance are the same as those required for a transfer request; the remarks relating to the latter also apply in this context.
167. Special attention should be paid to filling in annex 3, which is to provide an explanation for the loss of earnings, since it is not only a question of providing information about the past. The explanation given should make it possible to draw up a reasonably accurate forecast of the future trend of exports. The reasons for the decline, therefore, must be described in sufficient detail for it to be possible to assess their repercussions on the export opportunities that will be open between the moment when the advance is requested and the end of the application year.
168. The request for an advance and the annexes thereto must be dated, signed, and stamped by the national authorizing officer.

E. INFORMATION TO BE PROVIDED PRIOR TO THE SIGNING OF A TRANSFER AGREEMENT

169. Under Article 170(3), the ACP State receiving a transfer must communicate, before the transfer agreement is signed, substantial information on the programmes and operations to which it has allocated or undertakes to allocate the funds, in accordance with the objectives set out in Article 147.¹ As a rule, this information will be the same as that provided when the transfer request is submitted.² Of course, there is no question of repeating here all the data required for appraisal of the request since that operation will have been completed when this stage is reached. However, it is necessary:

1 See § 66 to 70.

2 Article 157; see § 158 to 162.

(a) to confirm and, where necessary, to update information on the use to which the ACP State undertakes to allocate the funds to be transferred;

(b) give information on the modalities for the payment of the transfer.

170. A specimen of the standard form to be used to comply with Article 170(3) is given on the following pages. This form has seven sections, the first of which serves as an introduction. Section 2 consists of a recapitulation of data relating to the transfer request, which enable it to be identified. Section 3 contains information of a practical nature about payment of the transfer, namely:

(a) the currency chosen for the payment, which must be a currency of one of the Member States of the Community. If payment is requested in more than one of these currencies, the percentages into which the total is to be broken down should be stated;

(b) the bank account(s) into which the funds should be paid must be stated. This must be an account which the recipient ACP State has opened in the Community Member State whose currency has been chosen for payment;

(c) the approximate equivalent in local currency of the transfer entitlement in ECUs. This information will make it easier to see the projected breakdown of programmes to be financed by foreign exchange and those to be financed by local currency.

171. Sections 4 and 5 correspond to sections 1 and 2 of the transfer request.¹ They are used to update information provided earlier, if such updating proves necessary.

172. Section 6 corresponds to section 3 of annex 4 to the transfer request,² but differs in that a distinction is made between programmes or operations to be financed in foreign exchange (61) and programmes or operations to be financed in local currency (62). Amounts allocated to each operation should be stated in ECU and entered in the relevant subsection. If a programme or operation involves foreign-exchange as well as local-currency expenditure, each component should be entered under the relevant heading.

173. The form to be used in the context of Article 170(3) must also be dated, signed, and stamped by the national authorizing officer.

1 See § 159 and 160.

2 See § 161.

STABILIZATION OF EXPORT EARNINGS
Communication to Commission on allocation of funds to be transferred
(Article 170(3) of the third Lomé Convention)

1. In accordance with Article 170 of the third Lomé Convention I have pleasure in notifying you of the programmes and operations to which funds to be transferred under the system for the stabilisation of export earnings, pursuant to the request described below, will be allocated.

2. Particulars of transfer

- 21. ACP State
- 22. Product
- 23. Application year
- 24. Amount (in ECU) of transfer entitlement following appraisal of request

3. Payment details

31. Currencies applied for (state percentage of payment requested in each currency)

- 311. Belgian francs :
- 312. Danish kroner :
- 313. German mark :
- 314. Greek drachmas :
- 315. Spanish pesetas :
- 316. French francs :
- 317. Irish pounds :
- 318. Italian lira :
- 319. Dutch guilders :
- 320. Portuguese escudos :
- 321. Pounds sterling :

32. Bank accounts(s) into which payment is to be made:

33. Approximate equivalent in local currency of amount at 24.

4. Has a sum equivalent to the transfer amount already been allocated?

Yes In part No

5. Do you plan to allocate the requested transfer sum to a sector other than that in which the loss of earnings was incurred?

Yes In part No

52. If you have answered "Yes" or "In part" to Question 51, give reasons for such allocation, indicating diversification aims, sectors to which the money will be allocated, and expected effects in terms of economic and social development ⁽¹⁾⁽²⁾.

6. Give details of programmes or operations to which requested transfer sum has been allocated or to which you undertake to allocate it ⁽¹⁾⁽²⁾.

61. Programmes or operations to be financed in foreign exchange.

62. Programmes or operations to be financed in local currency.

7. The ACP State concerned undertakes, on signing the transfer agreement, to honour the indications given in this form.

Signature and official stamp

Date

⁽¹⁾ See Articles 147(2), 157 and 170(3)
⁽²⁾ If the space provided is insufficient, please use extra sheets

F. PAYMENT

174. As soon as the transfer agreement is signed, the Commission starts the payment procedure proper. The payment is made from a bank account which the Commission has opened in the Member State whose currency has been chosen for the transfer.¹ The Commission informs the national authorizing officer of the recipient ACP State of the value date on which the said account was debited with the sum paid into the recipient ACP State's account. In return, the recipient ACP State informs the Commission of the exact amount that it received in its account.

G. REPORT ON THE USE OF TRANSFERRED FUNDS

175. Under Article 171(1), ACP States receiving transfers are obliged, within twelve months of the signing of the transfer agreement, to send the Commission a report on the use made of the funds transferred.² The following pages contain a specimen of the standard form drawn up jointly for implementation of this provision.
176. The form has seven sections. The first is by way of an "introductory chapter" in which the data concerning the transfer in question are to be entered. Subsections 21 to 25 of section 2 serve the same purpose.
177. Section 3 should give details about the breakdown of funds transferred, showing the amounts that have been converted into ACP currency and those that have not. Subsection 31 is to show currency exchange transactions while subsection 32 provides for calculation of the amounts of allocations received in European currencies and not converted into ACP currency.
178. Sections 4 and 5 give details on the actual use to which the transferred funds have been put. Section 4 shows expenditure on the sector in which the loss of export earnings was incurred and section 5 that on items outside the sector, for the purposes of diversification. The layout of sections 4 and 5 is identical. Column 1 (41 or 51) should give the date of the expenditure. Column 2 (42 or 52) should show the amounts spent, broken down by ACP currency (421 or 521) or foreign exchange (422 or 522). For the latter, the currency in which the acquisition was made should be stipulated. The following column (43 or 53) are to show the items on which the funds were spent, that is the goods or services acquired, while the last column on the right (44 or 45 respectively) is to show the use made of the goods or services.
179. Section 6 serves for the calculation of amounts not yet used by the date on which the report is drafted, in ACP currency (subsection 6.1.) and in foreign exchange (subsection 6.2.).
180. Line 611 shows the total amount available in local currency (this amount is also given on the bottom line, "total", of subsection 31). Heading 612 serves for the calculation of total expenditure in local currency by adding the amounts shown in sections 4 (subsection 421) and 5 (subsection 521). The unexpended balance (613) is determined by deducting the latter amount (612) from the former (611).

1 See § 170(a).

2 See also § 71 to 74.

STABILIZATION OF EXPORT EARNINGS

Report on use of transferred funds
(Article 171 (1) of the third Lomé Convention)

1. In accordance with article 171 (1) of the third Lomé Convention and article _____ of Transfer Agreement n° _____ signed on _____ I have pleasure in submitting the following report on the use of funds transferred under that Agreement.

2. Particulars of transfer

21. ACP State

22. Product

23. Application year

24. Amount (in ECU)

25. Payment currency ⁽¹⁾ ⁽²⁾ :

Foreign currency

amount

251.

252.

253.

3. Currency allocation

31. Statement, in chronological order, of the exchange transactions whereby the amount(s) at para 25 has/have been converted in whole or part into local currency up to the date of this report ⁽²⁾.

	a) date	b) currency	c) amount	d) rate of exchange (foreign/local currency)	e) amount in local currency
311.					
312.					
313.					
314.					
315.					
316.					
317.					
318.					
319.					
					Total _____

32. Statement, for each of the foreign currencies at para 25, of the total amount which has not been changed into local currency ⁽²⁾.

	a) currency	b) total amount	c) amount changed into local currency	d) amount unchanged
321.				
322.				
323.				
				Total _____

⁽¹⁾ State the amount of each foreign currency (currency of one of the Member States of the European Community) in which the payment of the transfer was made.

⁽²⁾ If the space provided is insufficient, reproduce the subsection on a separate sheet.

4. Funds allocated to the sector where loss of export earnings was incurred

41. Date	42. Expenditure from amounts referred to		43. Item of expenditure	44. Utilization of goods or services acquired
	421. at para 31 ⁽¹⁾	422. at para 32 ⁽²⁾		

¹ Express amounts in local currency

² Express amount in foreign currency and, in each case, mention the currency.

5. Funds allocated for purpose of diversification

51. Date	52. Expenditure from amounts referred to		53. Item of expenditure	54. Utilization of goods or services acquired
	521. at para 31 ⁽¹⁾	522. at para 32 ²		

⁽¹⁾ Express amounts in local currency

⁽²⁾ Express amount in foreign currency and, in each case, mention the currency.

6. Balance not yet used.

61. Balance in local currency

611. Total amount of local currency (as referred to at para 31)

612. Total expenditure in local currency

- sum of amounts at para 421

- sum of amounts at para 521

Grand total

613. Balance in local currency (611-612)

62. Balance in foreign currency ⁽¹⁾

621. Amount(s) in foreign currency not changed into local currency

Currency

Amount (321) (322) (323)

622. Total expenditure per currency

- as stated at para 422

- as stated at para 522

Grand total

623. Balance in foreign currency (621-622)

63. Projected use of balance ^{(1) (2)}

⁽¹⁾ State the amount of each foreign currency (currency of one of the Member States of the European Community) in which the payment of the transfer was made.
⁽²⁾ If the space provided is insufficient, reproduce the subsection on a separate sheet.

7. Expected effects ⁽¹⁾ :

71. In sector where loss of earnings occurred :

72. In other sectors to which funds were allocated for the purpose of diversification :

Signature and official stamp

Date

(1) If the space provided is insufficient, please use extra sheets.

181. The same method is used for calculating unexpended balances in each of the currencies used for paying the transfer. Heading 621 shows the amounts of foreign exchange that have not been converted (these sums are given in column (d) of lines 321, 322 and 323). There is a separate column for each currency. Heading 622 serves for the calculation of the total of the expenditure entered under subsections 422 and 522 for each foreign currency. The unexpended balances (623) should be calculated in each currency and correspond to the difference, in each column, between the amounts given under 621 and the total calculated at the end of heading 622.
182. If there are any unexpended balances, either in ACP currency or in one or more of the foreign currencies used for payment of the transfer, a supplementary report must be drawn up on the use made of these funds and the report must be submitted as soon as the funds are spent.
183. The last section, section 7, should give information on the expected effects on the sector in which the loss of earnings was incurred (71) and on other sectors on which funds have been spent for diversification purposes. Of course, if such effects are already apparent by the time the report on the use of funds is drafted, they may be stated in that report. It should be pointed out that no report on the use of funds may be considered complete and duly filled in unless detailed information on all programmes or operations to which funds have been allocated has been given in section 7.
184. The report on the use of funds must also be dated, signed, and stamped by the national authorizing officer.

3rd ACP-EEC ConventionTitle IICo-operation in the field of commoditiesCHAPTER 1Stabilization of export earnings from agricultural commoditiesArticle 147

1. With the aim of remedying the harmful effects of the instability of export earnings and to help the ACP States overcome one of the main obstacles to the stability, profitability and sustained growth of their economies, to support their development efforts and to enable them in this way to ensure economic and social progress for their peoples by helping to safeguard their purchasing power, a system shall be operated to guarantee the stabilization of export earnings, in accordance with Article 160, derived from the ACP States' exports to the Community or other destinations, as defined in Article 150, of products on which their economies are dependent and which are affected by fluctuations in price or quantity or both these factors.
2. In order to attain these objectives, transfers shall be devoted to maintaining financial flows in the sector in question or, for the purpose of promoting diversification, directed towards other appropriate sectors and used for economic and social development.

Article 148

1. The following products shall be covered:

	NIMEXE Code
1. Groundnuts, shelled or not	12.01-31 to 12.01-35
2. Groundnut oil	15.07-74 and 15.07-87
3. Cocoa beans	18.01-00
4. Cocoa paste	18.03-10 to 18.03-30
5. Cocoa butter	18.04-00
6. Raw or roasted coffee	09.01-11 to 09.01-17
7. Extracts, essences or concentrates of coffee	21.02-11 to 21.02-15
8. Cotton, not carded or combed	55.01-10 to 55.01-90
9. Cotton linters	55.02-10 to 55.02-90
10. Coconuts	08.01-71 to 08.01-75
11. Copra	12.01-42

12. Coconut oil	15.07-29, 15.07-77 and 15.07-92
13. Palm oil	15.07-19, 15.07-61 and 15.07-63
14. Palm nut and kernel oil	15.07-31, 15.07-78 and 15.07-93
15. Palm nuts and kernels	12.01-44
16. Raw hides and skins	41.01-11 to 41.01-95
17. Bovine cattle leather	41.02-05 to 41.02-98
18. Sheep and lamb skin leather	41.03-10 to 41.03-99
19. Goat and kid skin leather	41.04-10 to 41.04-99
20. Wood in the rough	44.03-20 to 44.03-99
21. Wood roughly squared or half-squared, but not further manufactured	44.04-20 to 44.04-98
22. Wood sawn lengthwise, but not further prepared	44.05-10 to 44.05-79
23. Fresh bananas	08.01-31
24. Tea	09.02-10 to 09.02-90
25. Raw sisal	57.04-10
26. Vanilla	09.05-00
27. Cloves - whole fruit, cloves and stems	09.07-00
28. Sheep's or lambs' wool, not carded or combed	53.01-10 to 53.01-40
29. Fine animal hair of Angora goats - mohair	53.02-95
30. Gum arabic	13.02-91
31. Pyrethrum - flowers, leaves, stems, peel and roots; saps and extracts from pyrethrum	12.07-10 and 13.03-15
32. Essential oils, not terpenes, of cloves, of niaouli and of ylang-ylang	33.01-23
33. Sesame seed	12.01-68
34. Cashew nuts and kernels	08.01-77
35. Pepper	09.04-11 and 09.04-70
36. Shrimps and prawns	03.03-43
37. Squid	03.03-68
38. Cotton seeds	12.01-66
39. Oil-cake	23.04-01 to 23.04-99
40. Rubber	40.01-20 to 40.01-60
41. Peas	07.01-41 to 07.01-43, 07.05-21 and 07.05-61
42. Beans	07.01-45 to 07.01-47, 07.05-25, 07.05-65 and ex 07.05-99
43. Lentils	07.05-30 and 07.05-70
44. Nutmeg and mace	09.08-13; 09.08-16 09.08-60 and 09.08-70
45. Shea nuts	12.01-70
46. Shea nut oil	ex 15.07-82 and ex 15.07-98
47. Mangoes	ex 08.01-99
48. Dried bananas	08.01-35II

2. Upon presentation of each transfer request, the ACP State shall choose between the following systems:

(a) each product listed in paragraph 1 shall constitute a product within the meaning of this Chapter;

(b) product groups 1 and 2, 3 to 5, 6 and 7, 8 and 9, 10 to 12, 13 to 15, 16 to 19, 20 to 22, 23 and 48, 45 and 46 shall each constitute a product within the meaning of this Chapter.

Article 149

If, twelve months after the entry into force of this Convention, one or more products not contained in the list in Article 148, but upon which the economies of one or more ACP States depend to a considerable extent, are affected by sharp fluctuations, the Council of Ministers shall decide, not later than six months after the presentation of a request by the ACP State or States concerned, whether or not to include the said product or products in the list, taking account of factors such as employment, deterioration of the terms of trade between the Community and the ACP State concerned and the level of development of the ACP State concerned and the conditions which characterize products originating in the Community.

Article 150

1. The system shall apply to earnings from exports

(a) by each ACP State, to the Community, of each product listed in Article 148;

(b) by the ACP States already benefitting from the derogation referred to in paragraph 2 to the other ACP States, of each product listed in Article 148 for which such derogation has been granted;

(c) by the ACP States already benefitting from the derogation referred to in paragraph 3, to all destinations, of each product listed in Article 148.

2. If so requested by one or more ACP States in respect of one or more of the products listed in Article 148, the Council of Ministers may decide, on the basis of a report established by the Commission, in liaison with the requesting ACP State or States, and not later than six months after the presentation of the request, to apply the system to exports of the products in question from the said ACP State or States to other ACP States.

3. At the request of an ACP State which does not send the bulk of its exports to the Community, the Council of Ministers, on the basis of a report drawn up by the Commission in conjunction with the requesting ACP State, may decide, not later than six months after presentation of the request, that the system shall apply to its exports of the products in question whatever their destination.

Article 151

Each ACP State concerned shall certify that the products to which the system applies have originated in its territory within the meaning of Article 2 of Protocol 1.

Article 152

For the purpose specified in Article 147, the Community shall allocate to the system, for the duration of this Convention, an amount of 925 million ECU to cover all its commitments under the system. This amount shall be managed by the Commission.

Article 153

1. The overall amount referred to in Article 152, shall be divided into a number of equal annual instalments corresponding to the number of years of application.
2. Interest earned by investment in the market, over the period from 1 April to 30 June, of the sum equivalent to half each annual instalment, minus any advances and transfers paid during that period, shall be credited to the system's resources. Interest earned by investment in the market, over the period from 1 July to 31 March, of the sum equivalent to half each second annual instalment, minus any advances and transfers paid during that second period, shall be credited to the system's resources.
3. Whatever balance remains at the end of each of the first four years of application of this Convention shall be carried forward automatically to the following year.

Article 154

The resources available for each year of application are made up of the sum of the following:

- (1) the annual instalment, minus any amounts used under Article 155(1);
- (2) the sums carried forward under Article 153(3);
- (3) the amounts replenished under Articles 172 to 174;
- (4) any amounts made available under Article 155(1);
- (5) the amount of interest earned pursuant to Article 153(2).

Article 155

1. If the total amount of the transfer basis in a year of application, as calculated in accordance with Article 158(2), and where appropriate reduced in accordance with Article 164, exceeds the amount of resources available in the system of that year, advance use shall be made automatically, for each year except the last, of a maximum of 25% of the following year's instalment.

2. If, after the measure referred to in paragraph 1, the amount of resources available is still less than the total amount of the transfer basis for the same year of application, the amount of each transfer basis which exceeds 2 million ECU in the case of ACP States listed under Article 257 and 260, and 1 million ECU in the case of ACP States listed under Article 263, shall be reduced in accordance with paragraph 3.

3. (a) Each transfer basis shall be reduced by an amount calculated by applying to the reference level in question a percentage equal to that referred to in Article 162 applicable to the ACP State concerned.

(b) If, after the reduction referred to in (a), the total amount of the transfer basis so calculated is less than the amount of resources available, the remainder shall be shared among all the transfers in proportion to the percentage by which each transfer was reduced.

(c) In no case shall the reduction of each transfer basis referred to in (a) exceed:

- 30% for the ACP States listed in Article 257 and 260.

- 40% for the other ACP States.

4. If, after the reduction referred to in paragraph 3, the total amount of the transfers which may give rise to a payment exceeds the amount of available resources, the Council of Ministers shall evaluate the situation on the basis of a Commission report on the probable development of the system and shall examine the steps to be taken to remedy that situation, within the terms of this Convention.

Article 156

Before the expiry of the period referred to in Article 152, the Council of Ministers shall decide on the use of any balance remaining from the overall amount referred to in Article 152, including the interest referred to in Article 153(2), as well as on the conditions for future use of any amounts still to be paid by way of replenishment by the ACP States under Articles 172 to 174, following expiry of the period referred to in Article 152.

Article 157

Every request for a transfer shall, in addition to the necessary statistical data, include substantial information on the loss of earnings and also the programmes and operations to which the ACP State has allocated or undertakes to allocate the funds, in accordance with the objectives set out in Article 147.

Such request shall be addressed to the Commission, which shall examine it in conjunction with the ACP State concerned with a view to calculating the amount of the transfer basis and any reduction which may be made pursuant to Article 164.

Article 158

1. In order to implement the system, a reference level and a transfer basis shall be calculated for each ACP State and for exports of each product to the Community and other destinations as defined in Article 150.

2. The difference between the reference level and actual earnings, plus 2% for statistical errors and omissions, shall constitute the basis of the transfer.

3. This reference level shall correspond to the average of export earnings in the four years preceding each year of application.

4. Where, however, an ACP State:

- begins processing a product traditionally exported in the raw state, or
- begins exporting a product which it did not traditionally produce,

the system may be put into operation on the basis of a reference level calculated over the three years preceding the year of application.

Article 159

1. In the case of the ACP States accorded the derogation referred to in Article 150(2), the transfer basis shall be calculated by adding to the earnings from exports of the product or products concerned to the Community the earnings from exports of those products to other ACP States.

2. In the case of the ACP States accorded the derogation referred to in Article 150(3), the transfer basis shall be calculated according to the earnings from exports of the product or products concerned to all destinations.

3. In the case of the ACP States not accorded the derogation referred to in Article 150(3), the transfer basis may in no case exceed those calculated pursuant to paragraph 2 of this Article.

Article 160

1. The export earnings for each year of the reference period and for the year of application shall be determined on the basis of the equivalent in the currency of the ACP State concerned of the earnings expressed in foreign exchange.
2. The reference level shall be calculated after the export earnings for each year of the reference period have been converted into ECUs at the average annual exchange rate for the ECU against the currency of the ACP State concerned over the years in question.
3. For the purpose of the calculation referred to in Article 158(2), the earnings for the year of application shall be converted into ECUs at the average annual exchange rate for the ECU against the currency of the ACP State concerned for the year of application.
4. If there is a fluctuation of more than 10% in the annual average exchange rate of the year of application for the currency of the ACP State concerned against the ECU in relation to the average of the average annual exchange rates for each year of the reference period, the earnings for the year of application shall be converted into ECUs, by way of derogation from paragraph 3 and without prejudice to paragraph 2, at a rate set at a level which restricts the fluctuation to 10% in relation to the said average.

Article 161

1. The system shall apply to the earnings from an ACP State's exports of the products listed in Article 148 if, during the year preceding the year of application, earnings from the export of each product to all destinations, re-exports excluded, represented at least 6% of its total earnings from exports of goods. The percentage shall be 4,5% in the case of sisal.
 2. For the least-developed landlocked and island ACP States, the percentage referred to in paragraph 1 shall be 1,5%.
 3. Where, following a natural disaster, a substantial fall in production of the product in question is recorded during the year preceding the year of application, the percentage referred to in paragraph 1 shall be calculated on the basis of the average export earnings from that product during the first three reference years instead of on the basis of total export earnings during the year preceding the year of application.
- A substantial fall in production shall be taken to mean at least 50% of the average production during the first three reference years.

Article 162

1. An ACP State shall be entitled to request a transfer if, on the basis of the results of one calendar year, its actual earnings, as defined in Article 165, from its exports of each product to the Community and, in the cases referred to in Article 150(1)(b), to other ACP States or, in the cases referred to in Article 150(1)(c), to all destinations, are at least 6% below the reference level.

2. The percentage given in paragraph 1 shall be 1,5% for the least-developed, landlocked and island ACP States.

Article 163

Request for transfers shall be inadmissible in the following cases:

(a) if the request is presented after 31 March of the year following the year of application;

(b) if it emerges from the examination of the request, to be undertaken by the Commission in conjunction with the ACP State concerned, that the fall in earnings from exports to the Community is the result of a trade policy of the ACP State concerned adversely affecting exports to the Community in particular.

Article 164

Should examination of the trend of the requesting ACP State's exports to all destinations and of production of the product in question in the ACP State concerned and of demand in the Community reveal significant changes, consultations shall take place between the Commission and the requesting ACP State to determine whether the transfer basis is to be maintained or reduced, and, if so, to what extent.

Article 165

1. The system shall be implemented in respect of the products listed in Article 148 where they are:

(a) released for home use in the Community, or

(b) brought into the Community under the inward processing arrangements in order to be processed.

2. The statistics used to implement the system shall be:

(a) those obtained by cross-checking Community and ACP State statistics, account being taken of fob values, or

(b) those obtained by multiplying the unit values for the exports of the ACP State in question, as given in that ACP State's statistics, by the quantities imported by the Community, as shown in Community statistics.

3. When submitting the transfer request for each product, the requesting ACP State shall choose one of the two systems set out above.

4. With regard to the product or products for which an ACP State is accorded the derogation referred to in Article 150(2) and 150(3), the export statistics adopted shall be those of the ACP State concerned.

Article 166

1. In order to ensure that the stabilization system functions efficiently and rapidly, statistical and customs co-operation shall be instituted between each ACP State and the Commission.

2. To this end, each ACP State shall notify the Commission, by sending monthly statistics on the volume and value of total exports, and exports to the Community and, where available, on the volume of marketed production, for each product on the list in Article 148 to which the system may apply.

3. The ACP States and the Commission shall adopt by agreement any measures facilitating inter alia the exchange of necessary information, the submission of requests for transfers, the provision of information concerning the use of transfers, the implementation of the replenishment provisions and of any other aspect of the system, by means of the widest possible use of standard forms.

Article 167

1. The Commission shall adopt a transfer decision on completion of the examination carried out in conjunction with the requesting ACP State; this examination shall bear on the statistical data and the calculation of the transfer basis which may give rise to a payment, and also on the information referred to in Article 157.

2. For each transfer a transfer agreement shall be concluded between the Commission and the ACP State concerned.

3. The amounts transferred shall not bear interest.

Article 168

1. The ACP State concerned and the Commission shall take all possible steps to ensure that the cross-checking of statistics referred to in Article 165 is completed not later than 31 May following receipt of the request. Not later than that date, the Commission shall notify the requesting ACP State of the result of the cross-checking operation or, in the event of a delay, the reason why it was not possible to complete the said operation.

2. The ACP State concerned and the Commission shall take all possible steps to ensure that the consultations referred to in Article 164 are concluded not later than two months after the notification referred to in paragraph 1. After this period has elapsed, the Commission shall notify the ACP States of the amount of the transfer resulting from appraisal of the request.

3. Without prejudice to Article 170(1) and not later than 31 July following receipt of the requests, the Commission shall take decisions concerning all transfer requests, except for those where cross-checking or consultations have not been concluded.

4. On 30 September following receipt of the requests, the Commission shall report to the Committee of Ambassadors on the progress made with the processing of all transfer requests.

Article 169

1. In the event of a disagreement between the requesting ACP State and the Commission over the results of the examination referred to in Articles 163 and 164, the requesting ACP State shall have the right to initiate, without prejudice to possible recourse to Article 278, a good offices procedure.

2. The good offices procedure shall be carried out by an expert appointed by agreement between the Commission and the requesting ACP State.

3. Within two months of this appointment, the conclusions of the procedure shall be communicated to the requesting ACP State and to the Commission, which shall take account of them in making the transfer decision.

The ACP State concerned and the Commission shall take all possible steps to ensure that the decision is taken not later than 31 October following receipt of the request.

4. The procedure shall not result in a delay in the processing of any other transfer requests for the same year of application.

Article 170

1. The ACP State concerned and the Commission shall take such steps as are required to ensure that transfers are made rapidly in accordance with the procedure laid down in Article 168. To this end, provision shall be made for the payment of advances.

2. Programmes or operations to which the recipient ACP State undertakes to allocate the transferred resources shall be decided by the State subject to compliance with the objectives laid down in Article 147.

3. Before the transfer agreement is signed, the recipient ACP State shall communicate substantial information relating to the programmes and operations to which it has allocated or undertakes to allocate the funds, in accordance with the objectives set out in Article 147. Substantial information, in the context of this Article and that of Article 157 shall be taken to mean that relating to the diagnosis of the problems in the sector or sectors concerned, statistics, and the allocation plan drawn up by the requesting ACP State. Should the requesting ACP State intend, as specified in Article 147(2), to allocate the funds to a sector other than that where the loss has occurred, it shall communicate to the Commission the reasons for this allocation. In either case, the Commission shall ensure that such communication conforms with Article 157.

Article 171

1. Within twelve months of the signing of the transfer agreement the recipient ACP State shall send the Commission a report on the use which it has made of the funds transferred. The report shall contain all the information specified on the form drawn up jointly in accordance with Article 166.

2. Should the report referred to in paragraph 1 not be presented within the time-limit set or should it call for comment, the Commission shall send a request for substantiation to the ACP State concerned, which shall be obliged to reply thereto within two months.

3. Once the deadline referred to in paragraph 2 has expired, the Commission may, having referred the matter to the Council of Ministers and having duly informed the ACP State concerned, three months after completion of this procedure, suspend application of decisions on subsequent transfer requests until that State has provided the required information.

The ACP State concerned shall be notified of this measure immediately.

Article 172

ACP States which have received transfers shall, with the exception of the least-developed ACP States, contribute to the replenishment of the resources made available for the system by the Community. The replenishment obligation shall disappear if, during the seven-year period following the year during which the transfer was made, the conditions laid down in Article 173 have not been met.

Article 173

1. Where the trend of the export earnings derived from the product which sustained the drop in export earnings that gave rise to the transfer so permits, the ACP States concerned shall help replenish the resources of the system.

2. For the purposes of paragraph 1, the Commission shall determine:

- at the beginning of each year over the seven years following the year during which the transfer was paid,
- until such time as the whole amount of the transfer has been paid back into the system,
- in accordance with Article 165,

whether for the preceding year:

- (a) the unit value of the product under consideration exported to the Community was higher than the average unit value during the four years prior to the preceding year;
- (b) the quantity of the same product actually exported to the Community was at least equal to the average of the quantities exported to the Community during the four years prior to the preceding year;
- (c) the earnings for the year and the product in question amount to at least 106% of the average of earnings from exports to the Community during the four years prior to the preceding year.

3. If the three conditions set out in paragraph 2(a), (b) and (c) are fulfilled simultaneously, the ACP State shall contribute to the system an amount equal to the difference between the actual earnings derived in the preceding year from exports to the Community and the average of earnings from exports to the Community during the four years prior to the preceding year, but in no case shall the amount of the contribution towards the replenishment of the resources of the system exceed the transfer in question.
4. In implementing paragraphs 2 and 3, account shall be taken of trends established in exports to all destinations.

Article 174

1. The amount referred to in Article 173(3) shall be contributed to the system at the rate of one fifth per year after a two-year deferment period beginning in the year during which the obligation to contribute towards replenishment was established.
2. The contribution may be made, at the request of the ACP State, either
 - direct to the system, or
 - by deduction from its transfer rights established before any application of Article 155, or
 - by payment in local currency. In this case, the contribution shall be used, as a matter of priority, to cover local expenditure charged to the European Development Fund (hereinafter referred to as the "Fund") within the framework of development projects to the financing of which it is contributing.

TITLE V

General provisions for the least-developed, landlocked and island ACP States

Chapter 1

Least-developed ACP States

Article 257

1. The following shall be considered least-developed ACP States for the purposes of the Convention:

Antigua and Barbuda
Belize
Benin
Botswana
Burkina Faso
Burundi

Cape Verde
Central African Republic
Chad
Comoros
Djibouti
Dominica

Equatorial Guinea
Ethiopia
Gambia
Grenada
Guinea
Guinea-Bissau
Kiribati
Lesotho
Malawi
Mali
Mauritania
Mozambique
Niger
Rwanda
Saint Christopher and Nevis
Saint Lucia

Saint Vincent and the Grenadines
Sao Tomé and Príncipe
Seychelles
Sierra Leone
Solomon Islands
Somalia
Sudan
Swaziland
Tanzania
Togo
Tonga
Tuvalu
Uganda
Vanuatu
Western Samoa

Chapter 2

Landlocked ACP States

Article 260

1. The landlocked ACP States are:

Botswana
Burkina Faso
Burundi
Central African Republic
Chad
Lesotho
Malawi

Mali
Niger
Rwanda
Swaziland
Uganda
Zambia
Zimbabwe

Chapter 3

Island ACP States

Article 263

1. The island ACP States are:

Antigua and Barbuda
Bahamas
Barbados
Cape Verde
Comoros
Dominica
Fiji
Grenada
Jamaica
Kiribati
Madagascar
Mauritius

Papua New Guinea
Saint Christopher and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Sao Tomé and Príncipe
Seychelles
Solomon Islands
Tonga
Trinidad and Tobago
Tuvalu
Vanuatu
Western Samoa