

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(85) 273 final

Brussels, 31 May 1985

COMMISSION REPORT TO THE ACP-EEC COUNCIL OF MINISTERS

on the application from a number of ACP States for the derogation referred to in Article 150(3) of the third Convention of Lomé

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third Convention of Lomé

I. SUBJECT OF THE REPORT

1. Annex XLIII to the Final Act of the third Lomé Convention contains the following declaration :

"Community declaration on Article 150(3)

The Community has taken note of the derogation requests made during the negotiations under Article 150(3) by the following ACP States : Benin, Burkina Faso, Fiji, Guyana, Mali, Mauritius, Niger Sao Tomé and Príncipe, Sudan, Tanzania, Togo and Uganda.

On the basis of the Commission's report to the Council of Ministers, the Community undertakes to notify its position to the Council not later than six months after the signing of the Convention."

The signing took place on 8 December 1984.

2. In December 1984, the Commission started examining the situation in each of the twelve ACP States that had requested a derogation. This research was carried out in liaison with the ACP States concerned and has been completed in respect of the following seven ACP States, on which the Commission can now present its assessment : Benin, Burkina Faso, Fiji, Mali, Niger, Sao Tomé and Príncipe and Togo.
3. On the other hand, it has not been possible to complete examination of requests by Guyana, Mauritius, Sudan, Tanzania and Uganda. Certain data requires checking and further information will have to be provided. Thus, the Commission will not be able to express an opinion on these five applications until later. As soon as it has the necessary information it will present a supplementary report setting out its position.

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4. The aim of this report is to assess the grounds for the seven applications that have been processed so far. This operation calls for an interpretation of Article 150(3) as well as an analysis of the situation in each of the ACP States concerned as regards the conditions on which the derogation referred to in that Article is granted.

II. PRECEDENT

5. Article 150(3) of the third Lomé Convention stipulates that :

"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."

The second Lomé Convention contained a similar provision in Article 46(3) and the same derogation appeared in the first Lomé Convention in Article 17(4). Hence, it is not possible to interpret Article 150(3) of the third Convention without taking account of the way in which the two earlier provisions were applied.

6. Following the negotiations for the first Lomé Convention, the derogation referred to in Article 17(4) was accorded to five ACP States, namely

Burundi
Ethiopia
Guinea-Bissau
Rwanda
Swaziland.

7. Pursuant to Decision No. 4/77 of the ACP-EEC Council of Ministers, dated 14 April 1977, the derogation was accorded to a further six ACP States, namely :

Cape Verde
Comoros
Lesotho
Seychelles
Tonga
Western Samoa.

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8. The same derogation was maintained for the eleven ACP States referred to above on the basis of Article 46(3) of the second Lomé Convention, as from its entry into force, and pursuant to the joint declaration on that Article (Annex VI to the Final Act, dated 31 October 1979). By virtue of the same declaration and as a result of the negotiations for the second Convention, the "all destinations" derogation was granted to two more ACP States, Solomon Islands and Tuvalu, which brings the total number of derogations in force at present to thirteen.
9. The ACP-EEC Council of Ministers also agreed, by its Decision No. 4/81 of 10 April 1981, that the system would apply to exports from Kiribati, irrespective of destination for the 1981 and 1982 application years. Under Decision No. 3/85 of the ACP-EEC Council of Ministers of 22 February 1985, this derogation was extended, by way of an exception, to cover the 1983 application year.
10. It should be noted that several applications for "all destinations" derogations submitted since the entry into force of the first Lomé Convention have had to be refused. These came from Chad (1977), Vanuatu (1980) and Fiji (1982). In all cases an analysis of the situation showed that the conditions for granting the derogation were not fulfilled. These conditions are summarised below.

III. CRITERIA FOR APPLYING ARTICLE 150(3)

11. The basis for establishing and operating the Stabex system, in line with the regional nature of the Lomé Conventions, is the principle whereby only exports to the Community are covered. As early as the first round of negotiations it proved difficult to justify the Community's being financially responsible for remedying the harmful effects of losses of export earnings from markets other than its own.

Nevertheless, the Community has been aware from the outset that certain ACP States, the economies of which depended particularly on exports of a limited number of products covered by Stabex, by tradition sent the bulk of such exports to third countries - not to have made an exception in their case would have amounted to depriving them of the Stabex "insurance" system, which is why the derogation mechanism was established at the time of the first Lomé Convention.

However, the derogation procedure has always been regarded strictly as an exception, to the general principle of the system and, consequently, has been applied with the utmost care.

12. The main criterion for assessment when applying Article 17(4) of the first Convention and Article 46(3) of the second has been the direction in which the ACP State in question traditionally sends the bulk of its exports.

The terms employed in Article 150(3) of the third Convention ("does not send the bulk of its exports to the Community") indicate clearly that no derogation could be granted to an ACP State which sends the bulk of its exports to the Community.

13. On the other hand, if scrutiny on the statistical data reveals that an ACP State sends the bulk of its exports to markets other than that of the Community, the Council may grant the derogation under Article 150(3). In order to make use of this possibility, of course, the Council has to take a number of other assessment criteria into consideration, inter alia the repercussions of any derogations on the financial stability of the system.

14. One example of a case where not only the main principle referred to above should be taken into account is that of a country which has to redirect its exports completely. It goes without saying that a change in direction may be grounds for granting the derogation, otherwise the provision that makes such a measure possible would be of very limited use. However, such a redirection of export flows to destinations other than the Community must be justified on objective grounds that are not brought about by the requesting ACP State, that is, they are for that state a case of "force majeure".

15. Another important factor among the supplementary criteria that must also be pointed out is the reliability of statistics. It is stated in Article 165(4) of the third Lomé Convention that transfer requests from ACP States with "all destinations" status are processed on the basis of statistics provided by those ACP States, without cross-checking. Consequently, such statistics must meet the requirements for implementing the system.

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IV. ASSESSMENT METHOD

16. As stated in 12. above, the main criterion is the direction in which the bulk of exports is traditionally sent.

This direction cannot be established by examining reports of a single product, even if it accounts almost exclusively for total exports of the ACP State in question. The derogation covers automatically all products eligible under the Stabex system.

Hence, assessment of the direction of traditional exports, as calculated below, includes all products to which the system may apply, in other words those that exceed the dependence threshold¹.

17. The most appropriate unit for measuring the direction of the exports has been that of the value of the earnings. Pursuant to Article 165(2)(a), Stabex is applied in respect of fob values².

The currency used for such comparison is of only secondary importance given that the comparisons are made over the same periods (each calendar year). Where statistics exist in local currency, these have been used.

18. The Commission has endeavoured to find as much statistical information as possible. It has referred to the declarations made by the ACP States in their Stabex requests (transfer requests, monthly notifications), the Commission's statistical publications, the statistics available at the United Nations' Geneva office, World Bank and IMF publications and so on. Even with all these sources it is not possible to obtain data for every year, especially the most recent. Given that, generally speaking, the direction of export flows does not change suddenly, we may assume nevertheless that the data collected is sufficient for us to be able to give an opinion on the seven applications being assessed in this report.

¹Where statistics are available, the analysis of the situation of each applicant ACP State has also borne on the direction of total exports. It is interesting to note that divergences between the data recorded for both sets of circumstances are rarely significant.

²Where there are no fob statistics and cif statistics do exist, the latter have been used.

V. ASSESSMENT OF THE APPLICATIONS

19. Five of the applications are from West African ACP States - Benin, Burkina Faso, Mali, Niger and Togo. These five ACP States also belong to the CFA franc area.
20. None of these five ACP States sends the bulk of its exports to destinations other than the Community. Two of them - Benin and Togo - send between 70% and 90% of their exports of Stabex products to the Community¹. The situation is not very different in the other three West African ACP States - on average, between 50% and 65% of exports of Stabex products from Burkina Faso, Mali and Niger are sent to the Community².
21. In addition to this high rate of exports to the Community, there is the number of products covered, which is also high - 8 for Benin, 5 for Togo, 5 for Burkina Faso, 9 for Mali³ and 5 for Niger, which has enabled the ACP States concerned to derive quite substantial benefits from the Stabex system⁴.
22. There are other considerations to add to the foregoing analysis. Each of the five ACP States in question has very long frontiers, bordering on a good many neighbouring states, which are very difficult to watch. This is a serious obstacle to the drawing-up of statistics. And when the system is being applied to exports to all destinations, it is ACP statistics that are used⁵. What is more, there is some doubt about whether the practical conditions required for application of the derogation can be fulfilled satisfactorily.

¹ Benin nearly 80% on average and Togo nearly 90% on average.

² Burkina Faso 52%, Mali 60%, Niger 65%.

³ If the four headings for "hides and skins" are grouped together the figure is 6 products.

⁴ Benin - 18 transfers totalling 24 004 202 ECU)
Togo - 5 transfers totalling 24 476 029 ECU) for application
Burkina Faso - 6 transfers totalling 8 308 636 ECU) years 1975-83
Mali - 8 transfers totalling 19 735 187 ECU)
Niger - 6 transfers totalling 22 653 960 ECU)

⁵ Article 165(4) of the third Convention.

23. For the aforementioned reasons and notably because the bulk of exports is sent to the Community, it is the Commission's opinion that the derogation referred to in Article 150(3) of the third Lomé Convention should not be granted to Benin, Burkina Faso, Mali, Niger or Togo.
24. The situation of Sao Tomé and Príncipe resembles that of two ACP States which have been accorded the "all destinations" derogation - Cape Verde and Guinea-Bissau. These two states, former dependencies of a state that is not a member of the Community, have by tradition sent their exports to destinations other than the Community. This situation has remained essentially unchanged; the two ACP States send less than 5% of their Stabex products - and of their exports as a whole - to the Community. Hence it is only because of this derogation referred to in Article 46(3) of the second Convention that Cape Verde and Guinea-Bissau are actually able to benefit from Stabex.
25. However, Sao Tomé and Príncipe's situation is not altogether comparable. This ACP State, which exports almost exclusively a single Stabex product - cocoa - sends on average 75% to the Community. The bulk of this country's exports is thus covered by the system. Moreover, Sao Tomé and Príncipe has received several Stabex transfers¹.
26. Since the conditions laid down in Article 150(3) of the third Lomé Convention have not been fulfilled in the case of Sao Tomé and Príncipe, the Commission feels that this state's application should be turned down.
27. On 31 March 1982, Fiji presented a similar request under Article 46(3) of the second Lomé Convention. The Community stated at the meeting of the Committee of ACP-EEC Ambassadors on 30 March 1984 that it could not agree to that request.

¹Sao Tomé and Príncipe - 3 transfers totalling 7 071 416 ECU for application years 1975-83.

28. The reasons for this refusal are essentially the same. Fiji has for some years now been sending most of its exports of a single Stabex product, coconut oil, to destinations other than the Community¹ but this was not because of any major constraint whatsoever; it was simply for reasons of profitability. Although it is perfectly legitimate, this situation can hardly be seen now as grounds for the requested derogation any more than it could be at the time of the initial request².

VI. CONCLUSION

29. The Commission has been able to complete examination of seven of the twelve "all destinations" derogation applications presented during the negotiations for the third Lomé Convention.

The Commission is of the opinion that none of the seven applications is acceptable.

The Commission will give its opinion on the five remaining applications as soon as the information required to complete their appraisal is available.

¹See figures in the annex.

²Fiji has benefited from the system as follows : 5 transfers totalling 4 399 142 ECU for applications years from 1975 to 1983.

COUNTRY : BENIN

RELEVANT PRODUCTS : Cashew nuts, cocoa beans, coffee, cotton, cotton seeds,
Oil cake, palm oil, Palm nut and kernel oil

SOURCE : Various

CURRENCY : CFA franc

	<u>1. EXPORTS TO ALL DESTINATIONS</u>	<u>2. EXPORTS TO THE EEC</u>	<u>3. 2 AS A % OF 1</u>
1977	6 767 319 000	4 974 780 000	73.5
1978	3 972 192 000	3 149 237 000	79.3
1979	7 255 111 000	6 711 625 000	92.5
1980	8 932 559 000	7 535 732 000	84.4
1981	4 887 154 000	3 745 436 000	76.6
1982	4 516 343 000	3 312 466 000	73.3
1983	12 128 822 000	8 151 496 000	67.2
TOTAL	<u>48 459 500 000</u>	<u>37 580 772 000</u>	<u>77.55</u>

COUNTRY : BURKINA FASO

RELEVANT PRODUCTS : Sesame seeds, Sheanuts, Raw hides and skins,
Cotton, Oil-cake

SOURCE : National statistics

CURRENCY : CFA franc

	<u>1. EXPORTS TO ALL DESTINATIONS</u>	<u>2. EXPORTS TO THE EEC</u>	<u>3. 2 AS A % OF 1</u>
1977	n.a.	n.a.	
1978	5 800 127 216	4 031 445 145	69.5
1979	8 465 498 063	4 606 424 266	54.4
1980	11 498 836 503	5 488 800 830	47.7
1981	13 418 912 756	6 114 851 752	45.6
1982	10 193 302 132	5 354 003 404	52.5
1983	n.a.	n.a.	
TOTAL	<u>49 376 676 670</u>	<u>25 595 525 397</u>	<u>51.8</u>

COUNTRY : FIJI

RELEVANT PRODUCTS : Coconut oil

SOURCE : Various

CURRENCY : Fiji Dollar

	<u>1. EXPORTS TO ALL DESTINATIONS</u>	<u>2. EXPORTS TO THE EEC</u>	<u>3. 2 AS A % OF 1</u>
1977	9 468 000	7 538 000	79.6
1978	8 129 000	5 046 000	62.1
1979	11 791 000	7 574 000	67.6
1980	6 578 000	3 316 000	50.4
1981	6 260 116	361 000	5.8
1982	6 175 023	221 000	3.6
1983	10 424 780	545 443	5.2
TOTAL	<u>58 825 919</u>	<u>24 601 443</u>	<u>41.8</u>

COUNTRY : MALI

RELEVANT PRODUCTS : Groundnuts, Groundnut oil, Oil-cake, Cotton, Sheanuts,
Raw hides and skins, Goat and kid skin leather,
Sheep and lamb skin leather, Bovine cattle leather

SOURCE : Various

CURRENCY : Million Mali francs

	<u>1. EXPORTS TO ALL DESTINATIONS</u>	<u>2. EXPORTS TO THE EEC</u>	<u>3. 2 AS A % OF 1</u>
1977	n.a.	n.a.	
1978	n.a.	n.a.	
1979	38 468.290	25 043.148	65.1
1980	37 708.985	25 436.051	67.4
1981	38 883.335	25 532.254	60.5
1982	32 158.922	19 460.915	60.5
1983	50 092.202	24 543.386	49.0
TOTAL	<u>197 311.734</u>	<u>118 015.754</u>	<u>59.8</u>

COUNTRY : NIGER

RELEVANT PRODUCTS : Groundnuts, Groundnut oil, Oil-cake, Cotton
Bovine cattle leather

SOURCE : Niger Statistics

CURRENCY : CFA francs

	1. EXPORTS TO ALL DESTINATIONS	2. EXPORTS TO THE EEC	3. 2 AS A % OF 1
1977	n.a.	n.a.	
1978	2 524 000 000	1 359 000 000	53.8
1979	3 272 000 000	2 113 000 000	64.6
1980	1 305 000 000	1 094 000 000	83.8
1981	1 179 000 000	621 000 000	52.7
1982	1 344 000 000	751 000 000	55.9
1983	1 352 000 000	1 180 000 000	87.3
TOTAL	<u>10 976 000 000</u>	<u>7 118 000 000</u>	<u>64.9</u>

COUNTRY : SAO TOME AND PRINCIPE

RELEVANT PRODUCTS : Cocoa

SOURCE : Transfer requests

CURRENCY : Dobra

	<u>1. EXPORTS TO ALL DESTINATIONS</u>	<u>2. EXPORTS TO THE EEC</u>	<u>3. 2 AS A % OF 1</u>
1977	81 158 000	797 503 000	92.61
1978	716 549 000	482 403 000	67.32
1979	801 107 000	567 284 000	70.81
1980	569 847 000	551 399 000	96.76
1981	278 213 000	199 799 000	71.81
1982	401 604 000	213 144 000	53.07
1983	297 399 000	145 809 000	49.02
TOTAL	<u>3 925 877 000</u>	<u>2 957 341 000</u>	<u>75.33</u>

COUNTRY : TOGO

RELEVANT PRODUCTS : Palm nuts and kernels, Cotton seeds, Cotton, Cocoa,
Coffee

SOURCE : EUROSTAT

CURRENCY : US Dollars

	<u>1. EXPORTS TO ALL DESTINATIONS</u>	<u>2. EXPORTS TO THE EEC</u>	<u>3. 2 AS A % OF 1</u>
1977	66 851 000	60 660 000	90.7
1978	95 145 000	77 004 000	80.9
1979	69 139 000	63 102 000	91.3
1980	73 115 000	67 640 000	92.5
1981	63 555 000	50 165 000	78.9
1982	n.a.	n.a.	
1983	n.a.	n.a.	
TOTAL	<u>367 805 000</u>	<u>318 571 000</u>	<u>86.6</u>