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COMMISSION COMMUNICATION TO THE COUNCIL

pursuant to Article 29 of the Internal Agreement on
the financing and administration of Community aid

REPORT

on the operation during 1978 of the system set up by
the Lomé Convention for stabilizing export earnings

COM(80) 212 final

INTRODUCTION

1. Under Article 29 of the Internal Agreement on the financing and administration of Community aid, the Commission "shall prepare an annual comprehensive report on the operation of the system (for stabilizing export earnings), indicating in particular its effect on the economic development of the recipient countries and on the development of external trade".

2. This comprehensive report is concerned with the application of the system during 1978 to the ACP States signatory to the Lomé Convention and supplements the previous report, which was for 1977. It also gives information about operations relating to former OCTs that have acceded to the Lomé Convention but which, as far as the system for the stabilization of export earnings is concerned, are still covered by the OCT allocation.

3. The cooperation machinery described in the first comprehensive reports has been functioning satisfactorily on the whole and hence does not call for any detailed remarks.

4. In this report the Commission will examine in turn:

the activities of the ACP-EEC institutions and the development of the system;
the fourth year of application of the texts and the results;
the effect of the transfers on the economic development of the recipient countries and on the trend of foreign trade.

5. However, on this last point, the information currently available to the Commission on the use made of 1977 transfers is too incomplete for any detailed study to be possible. A special report will therefore be prepared on this subject in due course.

PART ONE: ACTIVITIES OF THE ACP-EEC INSTITUTIONS AND DEVELOPMENT OF THE SYSTEM

Chapter One: Activities of the Institutions

§ 1 The ACP-EEC Subcommittee on the Stabilization of Export Earnings

6. The ACP-EEC Subcommittee which deals with the Stabex system did not meet in 1979. The two outstanding issues were dealt with by the ACP-EEC Council of Ministers.

§ 2 The ACP-EEC Committee of Ambassadors

7. At its meeting on 7 March 1979, the Committee of Ambassadors agreed to refer the following matters to the ACP-EEC Council of Ministers:

(i) the invitation to the Commission, under the "good offices" procedure, to appraise three requests for transfers relating to 1975¹,

(ii) a recommendation concerning the inclusion of sesame seeds in the Stabex list as from 1 January 1979.

As regards the other products which the ACP States had requested should be included in the list, it was agreed to recommend that a further look be taken at the problems involved with a view to achieving a solution within the framework of the negotiations.

§ 3 The ACP-EEC Council of Ministers

8. The ACP-EEC Council of Ministers, which met in Freeport (Bahamas) on 22 March 1979, approved the recommendations of the Committee of Ambassadors referred to in the preceding paragraph.

On sesame seeds (NIMEXE heading 12.01-68), the Council of Ministers, following an ACP-request for the inclusion of this product in the Stabex list as from 1 January 1978, decided to return the matter to the Committee of Ambassadors, with directions to examine the possibility of fixing this date in compliance with the ACP-States' request.

¹ See the 1977 report (COM(79)277, SS 14 and 15) for details regarding the practical implementation of this decision.

9. At its meeting in Lomé on 31 October 1979, the Council of Ministers decided, pursuant to Article 18(2) of the Lomé Convention, to authorize the advance utilization of part of the annual instalment earmarked for 1979 for 1978 transfers.

B 4 The Court of Auditors

10. In its annual report on 1978, the Court of Auditors examined the administration of the system during 1977. The Court's remarks and the Commission's replies can be found in Annex 4 to this document.

11. The Court has also prepared a special report on the system as a whole, on which the Commission has given its views.

Chapter II: Development of the system: accession of new States to the Convention

12. The scope of the system has been widened with the accession of a further State to the Lomé Convention. However, the accession of Kiribati on 30 October 1979 cannot be said to constitute an enlargement in the true sense of the term since this State was already covered by the system set up for the OCTs and will continue to come under the OCT allocation.

Prior to independence, Kiribati was recognized by the EEC Council of Ministers as one of the countries that are not required to help replenish the system's resources. This decision, taking effect on 1 January 1979, places Kiribati among the States referred to in Article 48(2) of the Lomé Convention.

PART TWO: FOURTH YEAR OF APPLICATION OF THE TEXTS AND THE RESULTS

Chapter One: Application of the texts

§ 1 Closure of the accounts for the 1977 financial year

13. In 1978 Uganda requested a transfer to offset a drop in earnings from cotton exports to the EEC in 1977. On appraisal, it was found that the bases used for cross-checking the statistics for the transfer requests for 1975 and 1976 were no longer available, mainly because the Mombasa department which had centralized the data for the three member States of the former East African Community had ceased its activities.

It was then found that the implications of this new development were sufficiently far-reaching to warrant adjusting the bases for the cross-checking of statistics, which in turn could affect the size of the transfer.

As it seemed unlikely that this matter could be settled conclusively by 31 December 1978, it was decided that funds should be put in reserve so as to avoid the amount required for the transfer to Uganda being automatically carried forward to the 1978 instalment.

Eventually, in June 1979, new bases for cross-checking were agreed on, resulting in a transfer of 1 287 985 EUA. The volume of transfers for 1977 thus totalled 33 729 731 EUA, and 154 813 887 EUA was credited to the annual instalment for 1978.

§ 2 Replenishment of the resources made available to the system

14. Regarding the replenishment of resources, the Commission, in accordance with Article 21(3) of the Lomé Convention and with the practical arrangements contained in the letters exchanged when each transfer is made, has made the necessary calculations in respect of the transfers effected for 1975, 1976

and 1977 to countries that are required to contribute to the replenishment of the system's resources and which have not made the requisite refunds. These calculations revealed that the conditions set by the Convention for triggering off the resources replenishment process had been met in none of these cases on the basis of the 1977 results. The ACP States concerned have been notified of this in writing.

15. The 13 761 EUA still owed by the Republic of Cameroon as a result of its paying agent misinterpreting a payment order issued by its authorities has since been received by the Commission¹.

§ 3 Six-monthly advances (financial 1979)

16. Four requests for advances were received from three ACP States under Article 19(6) of the Convention:

- (a) Mali (groundnuts, in shell): this request was refused on the grounds that the bulk of the country's exports of this product were made towards the end of the year, thus making it extremely difficult to assess any advance without risking the recurrence of overpayments;
- (b) Gambia (groundnut oil and oilcake): the Commission decided to pay an advance of 3 692 000 EUA;
- (c) Dominica: following the total destruction of this country's potential banana exports in the wake of Hurricane David (August 1979), the Commission allocated it an advance of 2 480 000 EUA in September 1979.

§ 4 Requests refused (financial 1978)

17. Eight transfer requests were refused, on the following grounds:

- (a) Four requests (Madagascar: coffee; Ethiopia: coffee; Ethiopia: raw hides, skins and leather; Central African Republic: wood in the rough) because 1978 export earnings from sales of the products concerned to all destinations were higher on average than export earnings to all destinations for the reference period 1974-77².

¹See 1977 report, p. 7, § 19 (COM(79)277 final of 30 May 1979).

²Idem., pp 8-9, §§ 24(c) and 25.

- (b) Three requests (Niger: groundnuts, in shell and groundnut oil and oilcake), because the 2.5% dependence threshold can be said to have been reached only if 1977 export earnings for all three products are taken together.

This practice, known as "globalization", has been applied in only two of the 107 cases dealt with during the first four years of application. It is therefore clear that, far from being automatic, globalization has been treated as an exceptional device, intrinsically difficult to implement and only to be resorted to in very special circumstances, such as the drought situation with which the Republic of the Niger had to contend in 1975.

The Lomé Convention rule here is that each product must be examined individually. Consequently the dependence threshold for each product on the list must be crossed before a transfer can be considered. This is borne out by the fact that, during the Lomé II negotiations, the Contracting Parties felt it necessary to agree on a formula whereby each ACP State would be able to choose, whenever it applied for a transfer, between the product-by-product approach and globalization. That it seemed necessary to make provision for this option demonstrates that it was not the rule under Lomé I.

- (c) One request (Gabon: wood in the rough), because the relevant thresholds had not been crossed.

§ 5 Application of Article 17(1)

18. The Commission continued to apply the rule whereby the same basis is used for cross-checking statistics for all requests from countries concerning products that have already been the subject of cross-checking for 1975, 1976 or 1977.

19. In response to an invitation by the Council, the Commission has drawn up cross-checking records for all transfer requests from countries that had not yet received a transfer or relating to products for which no transfer had previously been requested.

In the Commission's view, such records are unnecessary where use is made of bases for cross-checking that have been approved in the past or in cases where cross-checking is carried out on the basis of Community import statistics.

§ 6 Application of Article 17(4)

20. Five of the countries covered by the system for their exports irrespective of destination received a total of 6.43% of the transfers made for 1978: Cape Verde for bananas, Guinea-Bissau for groundnuts, Samoa for cocoa, Swaziland for iron ore and Tonga for bananas.

21. Cape Verde and Guinea-Bissau are covered both by Article 17(4) and by the Declaration made at the ACP-EEC Council meeting in April 1977 on the reference period. If it were not for Article 17(4), these States, which used to export almost exclusively to Portugal, could not qualify for the system. Also, a long period of drought in the case of Cape Verde and Guinea-Bissau's struggle for independence meant that any meaningful reference basis for quantities was non-existent from 1971 to 1975 and even 1976. For these reasons, the Commission, taking as a basis the Declaration adopted in Fiji on the reference period, felt that it was equitable and in accordance with the spirit of the system to extrapolate the reference quantities from the quantities exported by Cape Verde and Guinea-Bissau in the past. Hence the reference levels include the quantities for the years 1968-70 and 1977 and the unit values for the normal reference period, 1974-77.

§ 7 Article 19(4)(a) and (b)

22. (a) In its examination of the transfer requests presented, the Commission has not found that any "fall in earnings ... is the result of a trade policy measure of the ACP State concerned adversely affecting exports to the Community in particular ...". It has therefore not been necessary to apply Article 19(4)(a).

23. (b) The Commission, having found significant changes in its examination of the total exports of a number of applicant States, held consultations with eight of them, which led to a reduction in the transfer for the reasons given below:

- (i) Tanzania (raw sisal): the proportion of exports to the EEC dropped, in 1978, to 40.2% of total exports of this product compared with an average of 49.4% for the period 1974-77. However, after consultations, the transfer was cut by only 2.51% instead of the arithmetical reduction of 9.2% as
 - Community demand was low in 1978,
 - Tanzania had made notable efforts to step up its exports to the Community in 1978 compared with 1977, despite a drop in unit values owing to the aggressive trade policy being pursued by one major Latin American producer;
- (ii) Liberia (iron ore), Chad (cotton), Togo (coffee): compensation was limited to the drop in earnings from those exports to all destinations;
- (iii) Benin (palm nut and kernel oil): drop in exports in 1978 compared with the average share of production exported during the period 1974-77, resulting in a reduction of 10.4%;
- (iv) Uganda (tea): owing to the decline in the volume of traditional exports to the Community during the year of application in relation to the reference period, the basis for the transfer (5 170 730 EJA) was initially reduced to 2 953 004 EJA.

However, to take account of the lower unit values for sales to other markets, which had become necessary as a result of the shrinking of the Community market, the reduced amount was increased by 929 920 EJA, so that compensation in fact came to 3 882 924 EJA;

- (v) Sudan (groundnuts, shelled or not): the basis of the transfer of 15 279 336 EJA was reduced to 9 325 911 EJA so as to take account of

- an increase in the quantities of pressed seeds in Sudan (2 036 738 EJA),
 - the impact of the devaluation of the Sudanese pound (3 916 687 EJA);
- (vi) Swaziland (iron ore): the formula whereby foreign currency savings resulting from the closure of mining operations are deducted from the basis for the transfer was applied in this case. However, an upward adjustment was made to take account of expenditure in foreign currency occasioned by the continuation of exports of ore stocked at the mine-head.

Chapter II: The results

§ 1 Overall results

25. The fourth year of application of the Stabex system was a record year on three counts:

- (i) the number of transfer decisions (23 in respect of States benefiting from the Lomé Convention appropriation, increased to take account of accessions to the Convention) plus three transfers to ACP States that had acceded to the Convention under Article 89;
- (ii) the volume of funds transferred: 163 960 618 EJA from the "Lomé" appropriation, plus 268 323 EJA from the "OCT" appropriation, making a total of 164 228 941 EJA;
- (iii) the number of products covered: 14.

26. The overall results are as follows:

TRANSFERS FOR 1978

A. RESULTS OF THE 1979 OPERATION BY ACP STATE

<u>RECIPIENT ACP STATE</u>	<u>PRODUCT</u>	<u>AMOUNT OF TRANSFER IN EUA</u>
Benin	Palm nut and kernel oil	3 728 394
"	Cotton	880 982
Cape Verde	Bananas	429 500
Central African Republic	Cotton	3 079 660
Gambia	Groundnuts, shelled or not	2 488 664
Guinea-Bissau	Groundnuts, shelled or not	3 591 506
Upper Volta	Cotton, not carded or combed	2 340 590
"	Groundnuts, shelled or not	2 890 160
Liberia	Iron ore	7 586 943
Mali	Groundnuts, shelled or not	3 893 256
Mauritania	Iron ore	33 394 848
Uganda	Tea	3 882 924
"	Cotton*	3 125 543
Rwanda	Pyrethrum	608 802
Samoa	Cocoa	780 625
Senegal	Groundnut oil	49 882 295
"	Groundnut oilcake	15 224 094
Tanzania	Raw sisal	5 472 645
Chad	Cotton	4 671 608
Togo	Coffee	946 290
Tonga	Bananas	244 919
Swaziland	Iron ore	5 490 459
Sudan	Groundnuts, shelled or not	9 325 911

163 960 618

B. RESULTS OF THE 1979 OPERATION FOR THE ACP STATES
ACCORDING TO THE LOMÉ CONVENTION UNDER ARTICLE 89

<u>RECIPIENT ACP STATE</u>	<u>PRODUCT</u>	<u>AMOUNT OF TRANSFER IN EUA</u>
Comoros	Copra	39 253
	Cloves	180 299
Tuvalu	Copra	48 771

268 323

§ 2 Results by country

26. The sum of 91 267 286 EUA, i.e. 55.66%, was paid to least developed ACP States which are not required to contribute towards the replenishment of the resources made available for the system. For the four financial years taken together, grants account for 61.88% of payments.

27. As regards the two transfers to Senegal, it should be noted that

- (i) in the case of groundnut oil, Senegal decided to make only 75% use of its transfer right,
- (ii) for groundnut oilcake, 3 million EUA was deducted from the basis for the transfer so as to make allowance for the purchase by the Senegalese authorities of oilcake for the country's cattle with 3 million EUA allocated to Senegal under Article 59 of the Lomé Convention.

§ 3 Results by product

28. For the individual products the results are as follows (excluding the States having acceded to the Convention under Article 89 which received transfers for copra and cloves):

<u>(a) Products</u>	<u>Amounts in EUA</u>	<u>%</u>
Groundnuts	22 189 497	13.53
Groundnut oil	49 882 295	30.42
Groundnut oilcake	15 224 094	9.29
Cocoa	780 625	0.48
Coffee	946 290	0.58
Cotton	14 098 383	8.60
Palm nut and kernel oil	3 728 394	2.27
Bananas	674 419	0.41
Tea	3 882 924	2.37
Sisal	5 472 645	3.34
Iron ore	46 472 250	28.34
Pyrethrum	608 802	0.37
	<u>163 960 618</u>	<u>100.00</u>
<u>(b) Of which, products affected by:</u>		
the economic situation	40 981 791	24.99
local contingencies	122 978 827	75.01

29. Only one product was affected by the economic situation in more than one country: iron ore, exported by Liberia and Mauritania. Swaziland's problems are due to local circumstances, i.e. the difficulties involved in ensuring a smooth flow of ore from the mine-head stockpile to Maputo for shipment.

30. Among other local circumstances, particular mention should be made of:

- (i) climatic conditions (Senegal, Mali, Upper Volta, Cape Verde, Benin and Tonga),
- (ii) the stagnation of production (Benin, Central African Republic and Uganda).

31. The individual and aggregate results for the first four years of application are given in an annex to this report. These show that the system is performing its dual task efficiently, giving protection from the vagaries of the economic situation - where necessary - and from falls in earnings resulting from a drop in production due to local circumstances.

32. § 4 Financial results

By way of financial results, account should be taken of the following:

- (i) the data on the Community currencies drawn, given in Annexes 1A and 1B,
- (ii) the overall financial results for the first four years of application,
- (iii) the information given below under 3 on the funds to be carried over to 1979.

FINANCIAL RESULTS OF STABEX TRANSACTIONS WITH THE
ACP STATES AT THE END OF FINANCIAL 1978

1. Appropriations

11. 75 instalment	75 000.000	
76 instalment	75 000.000	
77 instalment	76 666.667	
78 instalment	76 666.667	
	<u> </u>	303 333 334

12. Replenishments	463 558	
Cameroon	615 140	
Fiji	1 253 399	
	<u> </u>	+ 2 332 097

13. Drawings on 1979 instalment 305 665 431

Total + 15 333 333

320 998 764

2. Expenditure

21. Financial 1975	79 985 877	
22. Financial 1976	37 135 936	
23. Financial 1977	33 729 731	
	<u> </u>	- 150 851 544

Available for Financial 1978 170 147 220

24. Financial 1978	163 960 618	
Transfers		- 163 960 618
		<u> </u>

3. Balance to be carried over
to 1979 instalment 6 186 602
=====

PART THREE: EFFECT OF TRANSFERS ON THE ECONOMIC DEVELOPMENT OF THE
RECIPIENT COUNTRIES AND ON THE PATTERN OF FOREIGN TRADE

Chapter One: Effect on the economic development of the recipient countries

§ 1 Economic impact of transfers

33. The relative size of the contribution made by transfers effected under this system in relation to the export earnings of recipient countries varies according to the extent of the losses sustained, the share of the country's overall exports accounted for by the product or products concerned and the structure of the exports (Community share of total exports).

In a number of cases, the contribution reaches remarkable proportions. Thus transfers, expressed as a percentage of total export earnings (all products, all destinations, for 1977, calculated in EUA), were as follows:

Tuvalu	89.00%
Mauritania	44.39%
Guinea-Bissau	37.12%
Mali	27.61%
Benin (two transfers)	16.91%
Senegal (two transfers)	15.18%
Upper Volta (two transfers)	10.77%

34. The impact of the transfers obviously stands out far more clearly when one looks at the transfers made for a specific product and the export earnings (all destinations) corresponding to that same product (1978). The following percentages illustrate this:

Mali (groundnuts)	158.76%
Tuvalu (copra)	153.85%
Tonga (bananas)	150.1 %
Senegal (groundnut oil)	122.44%
Guinea-Bissau (groundnuts)	94.59%
Senegal (oilcake)	78.18%
Mauritania (iron ore)	46.87%
Samoa (cocoa)	28.72%
Tanzania (sisal)	23.04%

These data reveal the extent of the compensatory flows provided by the system for the sectors in question and consequently of the guarantee in respect of the ACP States' export earnings, particularly for the least developed among them.

§ 2 Utilization of transfers (financial 1977)

35. The information available to the Commission regarding this heading at the present stage is still too incomplete for a detailed study to be possible. A special report will therefore be prepared on this subject in due course.

Chapter II: Effect on the pattern of foreign trade

36. For the reasons given above, it is impossible for the time being to comment on the effects the transfers may have had on the pattern of foreign trade in 1978.

CONCLUSION

37. 1978 was a record year for the Stabex system in terms of the number of transfer decisions taken by the Commission¹, the volume of funds transferred, the number of products covered, and, as shown in §§ 34 and 35, the economic impact of the transfers.

¹For the four years of application taken together, 107 transfer decisions have been taken - 85 for ACP States among the original signatories of the Lomé Convention and 22 for ACP States that have acceded to the Convention under Article 89 and OCTs.

38. In addition, the system has continued to develop:

- (i) a further product has been included,
- (ii) a "good offices" procedure has become operative,
- (iii) recourse has been had to a provision of which no use had previously been made, viz. the possibility of drawing on the instalment for the following year of application.

39. The stage has now almost been reached when an attempt will have to be made to assess the impact of the transfers. This might be done after completion of the operations relating to the fifth year of application - 1979 - in the form of case studies of one or two countries which have received large transfers for a particular year and of two or three countries which have received transfers for one or more products throughout the life of the Lomé Convention.

40. In addition to the operations connected with implementation of the system for 1978, 1979 also saw the conclusion of the negotiations for the new Lomé Convention.

As far as the Stabex system was concerned, these negotiations were guided to a great extent by the experience derived from the four years of application of the existing system, as set out in the annual reports. Annex 5 contains a synopsis of the system as it will operate in the future, seen in relation to the system that has existed to date.

BREAKDOWN OF STABEX TRANSFERS FOR 1978 ACCORDING
TO CURRENCY REQUESTED BY ACP STATES

ANNEX 1 A

ACP State	Product	Amount of transfer in EUA (100%)	French franc	Deutsche mark	Pound sterling	Belgian franc	Dutch guilder
Benin	Palm nut and kernel oil	3 728 394	X				
	Cotton	880 982	X				
Cape Verde	Bananas	429 500		X			
Central African Republic	Cotton	3 079 660	X				
Gambia	Groundnuts, shelled or not ¹	2 488 664			X		
Guinea-Bissau	Groundnuts, shelled or not	3 591 506	X				
Upper Volta	Cotton, not carded or combed	2 340 590				X	
	Groundnuts, shelled or not	2 890 160				X	
Liberia	Iron ore	7 586 943		X			
Mali	Groundnuts, shelled or not	3 893 256	X				
Mauritania	Iron ore	33 394 848	X				
Uganda	Tea	3 882 924		X			
	Cotton	3 125 543		X			
Rwanda	Pyrethrum	608 802				X	
Samoa	Cocoa	780 625			X		
Senegal	Groundnut oil ²	49 882 295	X				
	Groundnut oilcake ³	15 224 094	X				
Sudan	Cotton	9 325 911		X			
Swaziland	Iron ore	5 490 459		X			
Tanzania	Raw sisal	5 472 645		X			
Chad	Cotton	4 671 608	X				
Togo	Coffee	946 290	X				
Tonga	Bananas ⁴	244 919			X		

¹Including a 1.51 million EJA advance, paid in November 1978.

²Including a 16 million EJA advance, paid in July 1978.

³Including a 3 million EJA advance, paid in July 1978.

⁴Including a 160 000 EJA advance, paid in November 1978.

ANNEX 1 BBREAKDOWN OF STABEX TRANSFERS FOR 1975, 1976, 1977 AND
1978 ACCORDING TO CURRENCY REQUESTED BY ACP STATES

Currency	Amounts in EUA									
	1975	%	1976	%	1977	%	1978	%	Total	%
French franc	49 828 615	62.30	17 024 472	45.84	19 699 749	58.40	119 291 933	72.76	205 870 770	65.40
Deutsche mark	26 954 587	33.70	11 972 565	32.24	6 121 168	18.15	35 313 925	21.54	80 317 245	25.51
Pound sterling	1 220 519	1.53	6 150 894	16.56	7 908 814	23.45	3 514 208	2.14	18 794 435	5.97
Belgian franc	1 982 155	2.47	848 489	2.28	-	-	5 839 552	3.56	8 690 196	2.76
Dutch guilder	-	-	1 139 516	3.07	-	-	-	-	1 139 516	0.36
TOTAL	79 985 877	100.00	37 135 936	100.00	33 729 731	100.00	163 960 618	100.00	314 812 285	100.00

ANNEX 2

CUMULATIVE TRANSFERS FOR 1975, 1976, 1977 AND 1978
(Amounts in EUA)

I. CUMULATIVE RESULTS BY ACP STATE

ACP State	Product	Amount 1975	Amount 1976	Amount 1977	Amount 1978	Total
BENIN ¹	Groundnuts	464 330				464 330
	Coffee	1 174 883				1 174 883
	Cotton	4 299 556	2 750 347	2 083 137	880 982	10 014 022
	Oilcake	1 191 079				1 191 079
	Palm oil		765 576	1 467 364		2 232 940
	Palm nut and kernel oil			1 211 826	3 728 394	4 940 220
Total		7 129 848	3 515 923	4 762 327	4 609 376	20 017 474
BURUNDI ¹	Cotton	965 602				965 602
	Raw hides and skins	520 053				520 053
	Total	1 485 655				1 485 655
CAMEROON	Wood in the rough	3 601 423				3 601 423
	Cocoa paste		463 558			463 558
	Total	3 601 423	463 558			4 064 981
CENTRAL AFRICAN REPUBLIC ¹	Cotton				3 079 660	3 079 660
	Coffee	353 108				353 108
	Sawn wood		549 807			549 807
Total		353 108	549 807		3 079 660	3 982 575

¹ ACP States referred to in Article 48 of the Lomé Convention.

ACP State	Product	Amount 1975	Amount 1976	Amount 1977	Amount 1978	Total
CONGO	Wood in the rough	7 361 677				7 361 677
IVORY COAST	Wood in the rough	15 000 000				15 000 000
ETHIOPIA ¹	Coffee	9 339 684				9 339 684
	Raw hides and skins	5 080 365				5 080 365
Total		14 420 049				14 420 049
FIJI	Coconut oil	615 140	1 499 834			2 114 974
GABON	Wood in the rough	6 703 311				6 703 311
GHANA	Wood in the rough	5 176 408				5 176 408
UPPER VOLTA ¹	Groundnuts	685 239		1 169 977	2 890 160	4 745 376
	Cotton	175 936			2 340 590	2 516 526
Total		861 175		1 169 977	5 230 750	7 261 902
MALI ¹	Cotton	1 145 004				1 145 004
	Gum arabic		848 489			848 489
	Groundnuts				3 893 256	3 893 256
Total		1 145 004	848 489		3 893 256	5 886 749
NIGER ¹	Groundnuts	5 441 294		2 412 379		7 853 673
	Raw hides and skins	507 747				507 747
	Groundnut oil		6 755 991	7 383 280		14 139 271
	Oilcake		153 269			153 269
Total		5 949 041	6 909 260	9 795 659		22 653 960

¹ ACP States referred to in Article 48 of the Lomé Convention.

ACP State	Product	Amount 1975	Amount 1976	Amount 1977	Amount 1978	Total
SOMALIA ¹	Bananas Raw hides and skins	1 296 907 635 238				1 296 907 635 238
Total		1 932 145				1 932 145
SUDAN ¹	Groundnuts Raw hides and skins	1 658 580		968 825	9 325 911	10 294 736 1 658 580
Total		1 658 580		968 825	9 325 911	11 953 316
TANZANIA ¹	Cotton Sisal	1 887 082	5 165 208	8 176 614	5 472 645	1 887 082 18 814 467
Total		1 887 082	5 165 208	8 176 614	5 472 645	20 701 549
TOGO ¹	Coffee	2 680 324			946 290	3 626 614
UGANDA ¹	Cotton Tea	1 748 932	2 249 791 1 399 953	1 287 985	3 125 543 3 882 924	8 412 251 5 282 877
Total		1 748 932	3 649 744	1 287 985	7 008 467	13 695 128
SAMOA ¹	Cocoa Copra Wood in the rough Bananas	276 978	1 331 544 348 993	99 313	780 625	1 057 603 1 331 544 348 993 99 313
Total		276 978	1 680 537	99 313	780 625	2 837 453

¹ ACP States referred to in Article 48 of the Lomé Convention.

ANNEX 2

ACP STATE	PRODUCT	Amount 1975	Amount 1976	Amount 1977	Amount 1978	Total
MADAGASCAR	Sisal Cloves		1 762 943 1 139 516			1 762 943 1 139 516
Total			2 902 459			2 902 459
SIERRA LEONE	Iron ore		3 977 274			3 977 274
GUINEA-BISSAU ¹	Groundnuts Palm nuts and kernels Sawn wood		4 442 437 626 966		3 591 506	8 033 943 626 966 146 839
Total			5 069 403	146 839	3 591 506	8 807 748
TONGA ¹	Copra Bananas		831 720 72 719		244 919	831 720 317 638
Total			904 439		244 919	1 149 358
CAPE VERDE ¹	Bananas			347 712	429 500	777 212
MAURITANIA ¹	Iron ore			3 605 602	33 394 848	37 000 450
SWAZILAND ¹	Iron ore			3 368 878	5 490 459	8 859 337
CHAD ¹	Cotton				4 671 608	4 671 608
LIBERIA	Iron ore				7 586 943	7 586 943

¹ ACP States referred to in Article 48 of the Lomé Convention.

ANNEX 2

ACP STATE	PRODUCT	Amount 1975	Amount 1976	Amount 1977	Amount 1978	Total
RWANDA ¹	Pyrethrum				608 802	608 802
GAMBIA ¹	Groundnuts				2 488 664	2 488 664
SENEGAL	Groundnut oil Oilcake				49 882 295 15 224 094	
Total					65 106 389	65 106 389
GRAND TOTAL		79 985 880	37 135 935	33 729 731	63 960 618	314 812 164

¹ ACP States referred to in Article 48 of the Lomé Convention.

I. CUMULATIVE RESULTS BY PRODUCT

Product	1975		1976		1977		1978		Total	
	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Groundnuts	6 590 863	8.24	4 442 437	11.96	4 551 181	13.49	22 189 497	13.53	37 773 978	12.00
Groundnut oil			6 755 921	18.19	7 383 280	21.89	49 882 295	30.42	64 021 566	20.34
Oilcake	1 191 079	1.49	153 269	0.41			15 224 094	9.29	16 568 442	5.26
Cocoa	276 978	0.35					780 625	0.48	1 057 603	0.34
Cocoa paste			463 558	1.25				463 558	0.15	
Coffee	13 547 999	16.94					946 290	0.58	14 494 289	4.60
Cotton	10 222 112	12.78	5 000 138	13.46	3 371 122	9.99	14 098 383	8.60	32 691 755	10.38
Copra			2 163 264	5.82					2 163 264	0.69
Coconut oil	615 140	0.77	1 499 834	4.04					2 114 974	0.67
Palm oil			765 576	2.06	1 467 364	4.35			2 232 940	0.71
Palm nut and kernel oil			626 966	1.69	1 211 826	3.59	3 728 394	2.27	5 567 186	0.77
Raw hides and skins	8 401 983	10.50							8 401 983	2.67
Wood in the rough	37 842 819	47.31	348 993	0.94					38 191 812	12.13
Sawn wood			549 807	1.48	146 839	0.44			696 646	0.22
Bananas	1 296 907	1.62	72 719	0.20	447 025	1.33	674 419	0.41	2 491 070	0.79
Tea			1 399 953	3.77			3 882 924	2.37	5 282 877	1.68
Sisal			6 928 151	18.66	8 176 614	24.74	5 472 645	3.34	20 577 410	6.54
Iron ore			3 977 274	10.71	6 974 480	20.68	46 472 250	28.34	57 424 004	18.24
Cloves			1 139 516	3.07					1 139 516	0.36
Gum arabic			848 489	2.28					848 489	0.27
Pyrethrum							608 802	0.37	608 802	0.19
Total	79 985 880	100.00	37 135 935	100.00	33 729 731	100.00	163 960 618	100.00	314 812 164	100.00

B.

Products	1975	%	1976	%	1977	%	1978	%	Total	%
affected by the economic situation ¹ , 2, 3, 4	56 466 914	70.60	7 477 958	20.14	11 782 216	34.93	40 981 791	24.99	116 708 877	37.07
affected by local contingencies	23 518 966	29.40	29 657 977	79.86	21 947 515	65.07	122 978 827	75.01	198 103 285	62.93
	79 985 880	100.00	37 135 935	100.00	33 729 731	100.00	163 960 618	100.00	314 812 164	100.00

¹Wood in the rough, raw hides, skins and leather, cotton in 1975.

²Sisal, sawn wood in 1976.

³Sisal, iron ore in 1977.

⁴Iron ore in 1978 (with the exception of Swaziland).

III. NATURE OF TRANSFERS

	1975	%	1976	%	1977	%	1978	%	Total	%
Grants	41 527 921	51.92	28 292 810	76.19	33 729 731	100.00	91 267 286	55.66	194 817 748	61.88
Loans	38 457 959	48.08	8 843 125	23.81	-	0	72 693 332	44.34	119 994 406	38.12
	79 985 880	100.00	37 135 935	100.00	33 729 731	100.00	163 960 618	100.00	314 812 164	100.00

IV. REPLENISHMENT (1979)

None.

ANNEX 3

List of drawings under the International Monetary Funds' compensatory payments system in 1979¹

Country	Million SDRs	Last month of relevant 12-month period	Month of drawing
Zambia	48.75	3/78	5/78
Jamaica	15.75	6/78	6/78
Guyana	8.75	12/77	7/78
x Sudan ^{2, 3}	21.30	12/78	9/78
xx Senegal ²	21.00	12/78	11/78
x Gambia ^{2, 3}	4.50	9/78	11/78
x Guinea-Bissau ^{2, 3}	1.10	12/78	4/79
x Tanzania ^{2, 3}	20.25	12/78	5/79
Ethiopia ³	18.00	12/78	8/79
Malawi ³	9.50	2/79	8/79
Kenya	69.00	3/79	8/79
xx Uganda ^{2, 3}	5.00	3/79	8/79
xx Uganda ^{2, 3}	25.00	10/79	9/79
Jamaica	31.75	10/79	9/79
Burundi ³	9.50	6/79	10/79
Malawi ³	9.50	5/79	11/79
x Sudan ^{2, 3}	36.00	12/79	11/79
x Liberia ²	20.50	6/79	12/79

¹List requested by the European Parliament's Committee on Development and Cooperation.

²The "x" denote the number of transfers received by the ACP State concerned in 1978.

³ACP States not required to contribute to the replenishment of resources.

In the case of the ACP States, there were 55 non-repayable transfers for a total of 102 817 029 EUA and 10 repayable transfers totalling 40 597 773 EUA.

In the case of the OCT, there were two non-repayable transfers for a sum of 1 338 057 EUA and five repayable transfers for a sum of 2 856 325 EUA.

8.3. The balance of the total allocation available at 31 December 1978 for the last two years of application (1978 and 1979) was 241 284 885 EUA for the ACP States, 2 332 097 EUA of which represents the reimbursements requested. For the OCT, this balance amounts to 13 499 161 EUA, taking account of a repayment of 61 133 EUA.

8.4. For the first three years of application, five ACP States shared 82 711 011 EUA, i.e. almost 60 % of the transfers. In all, 26 ACP States received one or more transfers and six received one or more transfers each year.

During this same period, five products (wood, groundnuts, cotton, sisal and coffee) were the cause of 75 % of the amounts transferred.

8.5. From the first transfer relating to iron ore, the only non-agricultural product of the Stabex system, it has been clear that the provisions of Title II of the Lomé Convention did not take into account the special characteristics of a mining product.

SECTION 8: STABILIZATION OF EXPORT EARNINGS

8.1. Title II of the Lomé Convention deals with the stabilization of earnings arising from the export of certain basic products for which a maximum intervention of 375 MEUA was laid down for the years 1975 to 1979, subsequently increased to 380 MEUA on the accession of the new ACP States.

Again, the OCT benefit from a system which operates alongside Stabex and which is allocated a sum of 20 MEUA.

Observations on the transfers and their method of calculation

8.2. At 31 December 1978, 31 ACP States and OCT had benefited in the three years of application 1975, 1976 and 1977 from 72 transfer decisions relating to 15 categories of product for a total of 147 609 184 EUA.

For the first three years of application three ACP States received Stabex transfers for this product for a total of 10 951 753 EUA. In addition, one advance of 7 000 000 EUA was paid for the year 1978.

In one of the three ACP States concerned, the fall in exports was due to the stoppage of work in the mine following the insolvency of the mining company and in a second ACP country it was due to termination of activities by reason of the mineral resources being exhausted.

In reliance on Article 16 of the Convention, the Commission, in these cases, deducted from the calculation basis of the transfer, the amount in currency which should have been spent for the normal activity of the mining company (dividends, capital outflow, machinery, etc.). Since these factors are not easily calculable, the result could only be an approximation.

Reply of the Commission to paragraph 8.5

It is true that iron ore is an unusual item to be covered by the Stabex system, which was developed solely to offset fluctuations in the production and marketing of agricultural products.

The Community has always been aware of the difficulties arising from the inclusion of a mining product in the system, and indeed this is expressed in the Community declaration appended to Article 17 of the Lomé Convention. Furthermore, the arrangements in the new Convention for the other mining products are totally different from those in the Stabex system.

Advances

8.6. Although Article 19 (6) of the Lomé Convention prescribes that transfers should be made rapidly, in particular by means of six-monthly advances, the first five advances to four ACP States, representing a total sum of 27 670 000 EUA were not made until 1978.

8.7. During the first three years of application, the facility for obtaining advances not having been used, the ACP States only received their transfers between 6 and 18 months after the loss had been recorded.

Reply of the Commission to paragraph 8.7

The Commission understands this comment to be referring to the retrospective nature of the system. Because of this, it is quite possible that such delays should occur. They may even be longer and the brackets wider.

The most important aspect of the overall management is the time between the submission of the transfer request and actual payment. The following information on this time-lag may be of use:

Implementation year (1)	Average time in months —straight-forward cases (2)	Cases of type (2) as a percentage of all the year's transfers (3)	Average time lag for all transfers ^(*) (4)
1975	3	89.5	4
1976	2.5	44.0	3
1977	4	49.0	8
1978 (estimate)	2.5	75.0	4.5

^(*) Clearly, if a transfer request requires statistical research or consultations under Article 19 (4), the requesting ACP State and the Commission will require further time for investigation if the system is to work efficiently

Reference period

8.8. In order to implement the Stabex system a reference level is calculated for each ACP State and for each product. This reference level corresponds to the component of export earnings during the four years preceding each year of application (Article 19 (1) of the Lomé Convention).

Departing from the provisions of the Convention on the basis of the statement made by the Community at the second session of the ACP-EEC Council of Ministers at Fiji, the Commission, in calculating the reference level for two Stabex transfers, considered reference years other than the four preceding the year of application.

Calculation basis for transfers

8.9. When an ACP State considers that it fulfils the conditions for benefiting from a Stabex transfer, it forwards its request, together with supporting documents, to the Commission. The Commission examines the request.

The statistics applied for the implementation of the system are those obtained by cross-checking the statistics of the ACP States and of the Community, account being taken of the fob values.

8.10. The Commission calculates the amount to be transferred and draws up a transfer agreement, which is signed by the beneficiary and by the Commission. The sum is paid to the beneficiary State.

In the absence of well-defined rules for arriving at the statistics which should serve as the basis for the calculation of the transfer, the figures finally adopted owe more to negotiations than to mathematical analysis, with the result that in certain cases the actual amount of the transfer exceeds that of the initial request; in other cases, it is equal or lower.

The difference between the transfer requested by the ACP State and the actual transfer arises mainly from the cross-checking and the determination of the cif/fob factor. There is also the influence of currency conversions needed for the calculation of the transfer.

During a transfer for a subsequent implementation year to the benefit of one ACP State and for the same

product, the Commission automatically calculates these new transfers on the basis of the same statistical sources used on the calculation of the first transfer. There was thus no new cross-checking of statistics relating to the new implementation year, contrary to the provisions of the Lomé Convention.

Reply of the Commission to paragraph 8.10

On the subject of cross-checking, the Commission refers to the answers it gave to point 74 in Chapter 7 of the Court's report for 1977.

When negotiating the new Convention, the Commission was anxious to introduce an automatic cross-checking system by ensuring that the statistics used for the implementation of the system were those given by multiplying the unit values of the exports of the ACP State concerned, as given in the statistics of that ACP State, by the quantities imported by the Community, as given in community statistics.

However, it resulted from negotiations that this formula could not be accepted as the only solution to the problem.

Thus, throughout the period of validity of the new Convention, the requesting ACP State, when it submits its request, will choose between the system provided for by the Lomé Convention and the abovementioned formula.

It is true that the actual amount of the transfer may be higher than, equal to or lower than the amount originally requested by the ACP State once it has been converted from EUA into the State's local currency. However, as all the elements of the system affect the calculation of a transfer, it is impossible to identify the precise effect on the final amount of each one of these elements.

If, for example, figures from the ACP State are used as the basis for calculating the transfer, the cross-checking and the cif/fob factor are immaterial and any discrepancy in amounts is due entirely to the effect of monetary operations and — where applicable — a reduction under Article 19 (4) (b). The situation is more complicated if figures agreed with the ACP State during cross-checking partially or completely reflect the EEC import figures. In such a case, the solution to the problem of cross-checking and cif/fob factors would

have more impact and produce the result mentioned by the Court (1).

In any event, there is no indication that cross-checking and the determination of the cif/fob factor have any more impact than currency conversion.

Lastly, as Stabex operations are expressed in EUA, as laid down in the Convention, the amounts in the national currencies of the ACP States shown on transfer request forms are of value only in showing whether the thresholds of dependence and fluctuation have been crossed.

It is essential to use national currency for this, in fact, because — apart from those countries benefiting from the derogation in Article 17 (4) — the EUA concept is inapplicable for an ACP State as a means of measuring its exports to non-Community countries.

In the second subparagraph of this point, the Court is referring to a practice followed by the Commission's departments in the case of successive transfers for the same product, namely keeping to the cross-checking formula adopted for the first transfer. This means that if, for example, it was decided to use the straight EEC figures (or the straight ACP figures, or any other formula) for cross-checking the first transfer, figures for a subsequent implementation year will be cross-checked in the same way, without amending the formula originally adopted. The Commission considers that this continuity arrangement is in keeping with the Stabex system which requires rapid transfers carried out as automatically as possible.

There is one exception to this procedure, however: so as to avoid following it blindly, it only applies 'if no new information comes to light'. If, for example, the Commission's departments discover that the operation of the statistical departments of an ACP State gives serious cause for concern, the Commission will not accept the export figure returned by that Member State at its face value if the method used for the initial cross-checking was to base calculations on the ACP figures.

To conclude, therefore, the Commission considers that it is wrong to say that there is no cross-checking in the case of successive transfers. The Commission fulfils all

(1) See the Commission's answer to the Court's 1977 report regarding cross-checking and the cif/fob factor.

its cross-checking obligations: however, to date, there have only been rare cases where 'new information' was felt to be sufficiently important to justify the use of a different cross-checking arrangement to that originally adopted. Any disagreement between the Court and the Commission on this matter can only be due to slightly different interpretations of the meaning of 'new information'.

8.11. Following the observations of the Audit Board for the financial year 1976, on 30 October 1978 the Council advised the Commission to draw up 'cross-checking reports' for all cases in which cross-checking takes place.

Reply of the Commission to paragraph 8.11

With regard to the Council's recommendation to the Commission of 30 October 1978, the Commission stated that it was willing, as far as its capabilities and resources allowed, 'to draw up cross-checking reports:

- (i) for all cases in which, for the implementation years 1978 and 1979, there are grounds for cross-checking, i.e. when the transfer requests in question concern situations for which the Commission does not yet have cross-checked figures;
- (ii) and for cases in which the bases for cross-checking are not Community import statistics⁽¹⁾.

8.12. The Court had established on the spot that significant disparities existed between the statistics communicated by one country to the Commission and those originating from other official statistical sources of the same country.

Reply of the Commission to paragraph 8.12

The departments responsible for managing the system are well aware that in almost all ACP States, there are at least two different sources drawing up different figures which at first sight seem to refer to the same trade flows. However, these sources are always found to be using very different methods, a fact which explains the Court's findings⁽¹⁾.

⁽¹⁾ In theory, there are two main methods: one is based on information provided by the exporters and records exports as products physically leave the country, the other records exports when payments for past exports arrive in the country.

The Commission's departments have investigated the available sources on the spot and in each case have selected on its relative merits the source which seemed the most suitable and reliable.

8.13. A transfer was calculated by the Commission on the basis of provisional figures communicated by the ACP State. Although the ACP State had forwarded the revised and final figures before the transfer was paid, which should have led to a reduction in the transfer, the Commission did not take this official communication into account.

If provisional figures are used in the calculation of Stabex transfers, such transfers should be considered as advances or provisional transfers, to be confirmed within a set period.

Reply of the Commission to paragraph 8.13

The Agreement relating to the transfer mentioned ran as follows:

— date of transfer proposal:	21 April 1976,
— date of Commission decision:	6 July 1976,
— date of signature of Agreements:	8 July 1976,
— date of payment order:	28 July 1976,
— date of payment:	9 August 1976.

The revised figures for 1975 were sent on 15 July 1976 and received by the Commission's departments on 23 July 1976.

However, by this time the Commission had already made its decision and the Transfer Agreement had been signed. The Commission's departments have already explained why it did not seem worth revoking the transfers already decided upon (cases would have had to be reopened every time the statistics used were revised, since they were considered to be the best available at the time the decision was taken).

The Commission would refer to its answer to point 80 of Chapter 7 of the Court's report for 1977.

The Lomé Convention does, however, clearly state that 'the Commission shall, in conjunction with the requesting ACP State, draw up a draft Decision to make a transfer' (Article 19 (5)), and 'for each transfer a "Transfer Agreement" shall be drawn up and concluded between the Commission and the ACP State concerned'

(Article 22). In the Commission's opinion, it is quite clear that each transfer request should result in one single, properly-agreed, fixed amount. Any other approach would cause delays which would contravene Article 19 (6) of the Convention and the spirit of the Court's remark on point 8.7.

8.14. The Stabex system only applies to the exports of products originating in the ACP States concerned. Certification by the ACP State that the products originate from that country, is at present performed automatically because the transfer request form to be completed by the ACP State contains a printed clause 'To be completed on the basis of the certificates of origin issued by the national authorities'.

The Court, having established on the spot the absence of such certificates of origin in an ACP State receiving Stabex transfers, wonders what guarantees the Commission has to satisfy itself that the transfer is merited.

Reply of the Commission to paragraph 8.14

The Commission's departments do not normally require certificates of origin to be submitted when investigating a transfer request⁽¹⁾.

The guarantees the Commission has are:

- (i) the signature of a high official or a minister in the ACP State on the transfer request form which contains the clause referred to by the Court. By signing this form, the signatory assumes responsibility not only for the accuracy of the figures but also for ensuring that Article 17 (5) of the Convention is complied with;
- (ii) knowledge of the economy and production capacity of the requesting ACP State.

8.15. The Court again established that the wrong exchange rate was used to calculate two transfers, which resulted in a reduction by 1 807 EUA of the sum transferred.

⁽¹⁾ However, in one case where the Commission's departments had some doubts as to whether Article 17 (5) of the Convention was being respected, they asked for certificates to be submitted. The ACP State complied with this request to their complete satisfaction.

Reply of the Commission to paragraph 8.15

It is true that a rate of 97.3980271 was used instead of the rate of 97.7083. The reason for this error, which had very little effect, is that the programmes intended to process the transfers of countries covered by the provisions of Article 17 (4) had still not been drawn up and that the rate used was obtained by combining several other rates.

Disputes

8.16. In 1977, three countries submitted late requests for transfers for the year 1975 and the Commission considered these requests inadmissible.

The ACP-EEC Council of Ministers therefore agreed to initiate the good offices procedure provided for by Article 81 (2) of the Lomé Convention. As a result of this procedure, the Commission was invited to re-examine the three requests.

The question may be raised what manner of stabilization these transfers, which at best will be effected in 1979, will achieve of export earnings for the year 1975.

Reply of the Commission to paragraph 8.16

The answer to the Court's question in the third subparagraph is given by the correct statement of the facts in the second subparagraph of the same point.

Observations on the reconstitution of Stabex resources

8.17. In practice, most of the transfers to the least-favoured countries need not be repaid, by virtue of Article 21 (5) of the Convention.

For other more favoured countries, the sums transferred, not bearing interest, are reimbursable under two conditions.

To this effect, the Commission determines, for each year and for each product of the countries concerned, whether the unit value of the exports is higher than the reference unit value and whether the quantity actually exported to the Community is at least equal to the reference quantity.

If these two conditions are met at the same time, the recipient State makes a repayment to the system, within the limit of the transfers it has received.

During an audit, the Court established that the Commission department responsible has a programme for calculating the reconstitution of funds, but that there is no guarantee of its uniform application.

8.18. If, on expiry of the five-year period after the transfer, the resources have not been fully reconstituted, the Council of Ministers may decide that the sums outstanding are to be reconstituted wholly or partially, in one or more instalments, or that the right to repayment be waived (Article 21 of the Lomé Convention).

8.19. At 31 December 1978, 10 repayable transfers for a total of 40 597 773 EUA were effected for the benefit of the ACP States, as against 55 non-repayable transfers.

In the case of the OCT there were five repayable transfers for a total of 2 856 325 EUA as against two non-payable transfers.

Repayments made up until 31 December 1978 involve three countries and four transfers and total 2 379 469 EUA, including 61 133 EUA emanating from an OCT.

8.20. In order to determine each year if the conditions for repayment by an ACP State or OCT exist, the Commission in every case bases itself on the figures originating from the same statistical source as that which itself served as a basis. That is to say, for all the transfers for which the ACP statistics have been used in the calculation of the transfer, the conditions for reconstitution are examined solely on the basis of the ACP statistics, whereas by Article 21 (3) the Commission should also cross-check the statistics of the Community and of the ACP States, before using, where necessary, the ACP statistics.

Reply of the Commission to paragraph 8.20

It is clear that the amounts to be repaid to this system for the reconstitution of each transfer can only be determined from the statistical information on the basis of which the transfer was calculated as in the case of successive transfers (see paragraph 8.10).

Any other procedure would be bound to create distortions since a debt can only be calculated on the basis of the facts which gave rise to that debt.

Consequently, the reference in Article 21 (3) to the rules laid down in Article 17 (1) can only refer to the result of the cross-checking which was carried out before the transfer and not the cross-checking on which any repayment has to be based.

8.21. The Court found that in the annual calculation for possible reconstitution of Stabex transfers:

- the unit value of the exports in the statistics applied was nearly always higher than the reference unit value (first condition for repayment),
- the quantity actually exported to the EEC on the other hand was not at least equal to the reference quantity (second condition) except for three ACP States and OCT having actually reimbursed 2 379 469 EUA.

8.22. When total exports to all destinations of the product which occasioned the transfer show a significant increase, but their share to the EEC does not exceed the quantity which served as a reference for the transfer, the Commission might usefully analyze the phenomenon within the spirit of Article 19 (4) of the Convention. In this way it could satisfy itself that the change in the trend of exports is not due to a policy chosen by the beneficiary State in order to avoid repayment.

Reply of the Commission to paragraph 8.22

It is true that in almost all cases where a transfer which should have been reconstituted is not, that is due to the fact that the second condition in Article 21 (3) is not met. In fact, world inflation inflates unit values to a level which is always higher than the average unit values during the reference period while the economies of the EEC Member States may not always be strong enough to absorb extra quantities in those same years.

However, if in these circumstances the Commission's departments notice a considerable increase in exports of the product concerned to all other destinations — which would have enabled the ACP State to export greater quantities to the EEC and thus to fulfil the second conditions of reconstitution — the Commission does not feel that it can accuse the ACP State of fabrication in order to obtain reconstitution as it has no control over the situation.

It is a different matter in the case mentioned by the Court where the ACP State tries to avoid meeting the conditions for reconstitution by a deliberate policy. Firstly, it should be made clear that the Commission does not have sufficient information to prove that these

policies exist, and secondly, even if it were possible to prove such conduct, the Commission would not feel it could apply Article 19 (4) (b) as this only covers transfers. This omission from the Lomé Convention was remedied in negotiations for the new Convention by stipulating that the same rules apply to reconstitution as to transfer requests.

Article 2 (2) of the various Transfer Agreements, signed by the Commission and the beneficiary States, lays down that the rates of exchange to be used are those in force on the day prior to the day on which the operation is carried out.

Reply of the Commission to paragraph 8.23

8.23. Article 53 (3) of the Financial Regulation of 27 July 1976 specifies that, for payments relating to the contributions towards the reconstitution of Stabex resources, the conversion rates to be used between ECU and the currency or currencies used for payment shall be those in force on the 10th day preceding payment.

This is correct. Even though in practice this detail is not particularly important, the Commission does try to harmonize deadlines in the different documents when drafting new Agreements, since the new Convention came into force.

Table 78. Breakdown of Stabex transfers by ACP State and by year of application as at 31 December 1978

ACP State	1975		1976		1977		Total	
	Amount	%	Amount	%	Amount	%	Amount	%
Niger	5 949 041	8.1	6 909 260	18.3	9 795 659	30.3	22 653 960	15.8
Benin	7 129 848	9.7	3 515 923	9.3	4 762 327	14.7	15 408 098	10.7
Tanzania	1 887 082	2.6	5 165 208	13.7	8 176 614	25.2	15 228 904	10.6
Ivory Coast	15 000 000	20.5	—	—	—	—	15 000 000	10.5
Ethiopia	14 420 049	19.6	—	—	—	—	14 420 049	10.0
Congo	7 361 677	10.0	—	—	—	—	7 361 677	5.1
Uganda	1 748 932	2.4	3 649 744	9.7	—	—	5 398 676	3.8
Guinea Bissau	—	—	5 069 403	13.5	146 839	0.5	5 216 242	3.6
Ghana	5 176 408	7.1	—	—	—	—	5 176 408	3.6
Cameroon	3 601 423	4.9	463 558	1.2	—	—	4 064 981	2.8
Sierra Leone	—	—	3 977 274	10.6	—	—	3 977 274	2.8
Mauritania	—	—	—	—	3 605 602	11.1	3 605 602	2.6
Swaziland	—	—	—	—	3 368 878	10.4	3 368 878	2.4
Madagascar	—	—	2 902 453	7.7	—	—	2 902 459	2.0
Togo	2 680 324	3.7	—	—	—	—	2 680 324	1.9
Fiji	615 140	0.8	1 499 839	4.0	—	—	2 114 974	1.5
Western Samoa	276 978	0.4	1 680 537	4.4	99 313	0.3	2 056 828	1.4
Upper Volta	861 175	1.1	—	—	1 169 977	3.6	2 031 152	1.4
Somalia	1 932 145	2.6	—	—	—	—	1 932 145	1.4
Comoros	298 304	0.4	286 508	0.8	1 090 927	3.4	1 675 739	1.2
Sudan	1 658 580	2.3	—	—	—	—	1 658 580	1.2
Mali	648 503	0.9	848 489	2.2	—	—	1 496 992	1.0
Burundi	1 485 655	2.0	—	—	—	—	1 485 655	1.0
Tonga	—	—	904 439	2.4	—	—	904 439	0.6
Central African Empire	353 108	0.5	549 807	1.5	—	—	902 915	0.6
Jibuti	256 894	0.4	265 328	0.7	169 629	0.5	691 851	0.5
Total	73 341 263	100.0	37 687 772	100.0	32 385 064	100.0	143 414 802	100.0

(EUA)

Table 79. Breakdown of Stabex transfers by overseas country and territory and year of application as at 31 December 1978

(EUA)

OCT		Sawn wood	Copra	Total
Belize	1975	139 650	—	139 650
	1976	—	—	—
	1977	202 714	—	202 714
	Total	342 364		342 364
Gilbert Islands	1975	—	—	—
	1976	—	1 083 098	1 083 098
	1977	—	—	—
	Total		1 083 098	1 083 098
New Hebrides	1975	—	1 103 499	1 103 499
	1976	—	327 364	327 364
	1977	—	—	—
	Total		1 430 863	1 430 863
Solomon Islands	1975	—	—	—
	1976	—	1 273 640	1 273 640
	1977	—	—	—
	Total		1 273 640	1 273 640
Tuvalu	1975	—	—	—
	1976	—	64 417	64 417
	1977	—	—	—
	Total		64 417	64 417
Total	1975	139 650	1 103 499	1 243 149
	1976	—	2 748 519	2 748 519
	1977	202 714	—	202 714
	Grand total	342 364	3 852 018	4 194 382

System of Stabilization of Export Earnings (Stabex)

Innovations and major changes in the new Convention ACP/EEC compared with the Convention of Lomé

Subject	Provisions in the new Convention	Legal basis	N.B. : provisions Lomé I
<p>1. <u>Innovations and major changes with respect to the political options of the system</u></p> <p>1.1 Aims</p> <p>1.2 Use</p>	<p>The aims have been clarified. Stabex shall support the development efforts of the ACP-States and enable them in this way to ensure economic and social progress for their peoples.</p> <p>The recipient ACP State shall decide how the resources will be used, subject to compliance with the objectives.</p> <p>In order to attain these objectives, transfers 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.</p> <p>During appraisal of the dossier, and in any case before the transfer agreement is signed, the requesting ACP State shall give the Commission some indication of the probable use to which the transfer will be put.</p> <p>However, the implementation of the transfer shall not be made conditional on the indication of probable use.</p>	<p>art. 23 § 1</p> <p>art. 41 § 1</p> <p>art. 23 § 2</p> <p>art. 41 § 2</p> <p>ACP/EEC common Declaration</p>	<p>art. 16</p> <p>The recipient ACP State decides how the resources will be used; no link to aims (art. 20)</p> <p>Nothing</p> <p>Nothing</p> <p>Nothing</p>

Subject	Provisions in the new Convention	Legal basis	N.B. : provisions Lomé I
1.3 Products covered	The following products have been added to the list of products under Lomé I (1) : essential oils of cloves, of niaouli and of ylang-ylang (2); cashew nuts and kernels; pepper; shrimps and prawns; squid; cotton seeds; oil-cake (3); rubber; peas; beans; lentils.	art. 25 § 1	Groundnuts, groundnut oil, groundnut oilcake, cocoa beans, cocoa paste, cocoa butter, raw or roasted coffee, extracts, essences or concentrates of coffee, cotton, cotton linters, coconuts, copra, coconut oil, coconut oil-cake, palm oil, palm nut and kernel oil, palm nut and kernel oil-cake, palm nuts and kernels, raw hides and skins, bovine cattle leather, sheep and lamb skin leather, goat and kid skin leather, wood in the rough, wood roughly squared, wood sawn lengthwise, fresh bananas, tea, raw sisal, iron ore (4), vanilla, cloves, pyrethrum, ylang-ylang, arabic gum, wool, mohair, sesame seeds (1) (art. 17 § 1)

- (1) In this context, it might be recalled that the inclusion of sesame seed has been decided by the Council of Ministers ACP/EEC at Freeport, March 1979.
- (2) This new and larger product package replaces the product "ylang-ylang", the inclusion of which was decided by the Council of Ministers ACP/EEC in Fiji, April 1977.
- (3) This global position includes and replaces the oilcakes already included in Lomé I : groundnut oilcake; coconut oilcake; palm nut and kernel oilcake.
- (4) As far as iron ore is concerned, exports of iron ores from sites being worked when this Convention is signed shall continue to be covered by Stabex for a period limited to the first five financial years of this system. All other exports of iron ore will fall under the application of the provisions regarding project and programme aids for mineral products. Upon expiry of that period, iron ore shall be wholly covered by the latter system.

Subject	Provisions in the new Convention	Legal basis	N.B. : provisions Lomé I
1.4 Products groups	<p>With regard to tobacco, citrus fruits and sisal products, the inclusion of these products will be examined in the course of implementation of the new Convention.</p> <p>Upon presentation of each transfer request, the ACP State may choose between a strictly "product by product" approach and an approach which allows for product groups, by taking the raw material and the processed product together (e.g. groundnuts and groundnut oil, or wood in the rough and wood roughly squared and wood sawn lengthwise, etc.).</p> <p>The chosen form remains valid for all operations which apply to the particular case; e.g. for passing the thresholds, the calculation of the amount to be replenished, etc.</p>	<p>Declarations of the Community</p> <p>art. 25 § 3</p> <p>art. 25 § 3</p>	<p>Approach by groups not provided; ambiguity in art. 17 § 2.</p>
1.5 Covered exports	<p>If so requested by an ACP State, the Council of Ministers ACP/EEC may decide upon the application of the system to exports of a product covered by the list from the requesting ACP State to other ACP States.</p>	<p>art. 27</p>	<p>Nothing</p>
1.6 Thresholds	<p>Dependence threshold : - 6,5 % in the normal case (1) - 2 % for least developed countries - 2 % for land-locked and insular countries</p> <p>Threshold of fluctuation : - 6,5 % in the normal case - 2 % for least developed countries - 2 % for land-locked and insular countries</p>	<p>art. 29</p> <p>art. 46 § 1</p> <p>art. 47 § 1</p> <p>art. 37</p> <p>art. 46 § 1</p> <p>art. 47 § 1</p>	<p>7,5 % (art. 17 § 2)</p> <p>2,5 % (art. 17 § 2)</p> <p>2,5 % (art. 17 § 2)</p> <p>7,5 % (art. 19 § 2)</p> <p>2,5 % (art. 19 § 2)</p> <p>2,5 % (art. 19 § 2)</p>

(1) The threshold of 5 % for raw sisal has been maintained.

Subject	Provisions in the new Convention	Legal basis	N.B. : provisions Lomé I
1.7 Relation to other compensating systems	The contracting parties agree to concert action in order to avoid any double compensation in the event of a world system for the stabilization of export earnings being established.	ACP/EEC common Declaration	Nothing
2. Major changes referring to the financial provisions of the system			
2.1 Funding	550 million EUA for the duration of the new Convention.	art. 31	375 MEUA (art. 18 § 1) + 5 MEUA for 3 ACP States having adhered to the Convention
2.2 Replenishment of the resources			
2.2.1 Third condition	A third condition to trigger off the replenishment has been added to the two already existing in the Convention of Lomé : the earnings for the year and the product in question have to amount to at least 106,5 % of the average of earnings during the reference period (1) (threshold of fluctuation reversed); the three conditions must be fulfilled simultaneously.	art. 43 § 2 a, b art. 43 § 2 c	Two conditions : - the unit value of the exports is higher than the reference unit value; - the quantity actually exported to the Community is at least equal to the reference quantity. (art. 21 § 3).
2.2.2 New formula	The amount to be made available to the system is equal to the difference between the actual earnings and the average of earnings during the four years prior to the year under consideration.	art. 43 § 1 art. 43 § 3	The amount is equal to the reference quantity multiplied by the difference between the reference unit value and the actual unit value. (art. 21 § 3).

(1) Art. 43 § 2 and 3 make clear that the reference period of replenishment is too a moving average of 4 years.

Subject	Provisions in the new Convention	Legal basis	N.B. : provisions Lomé I
2.2.3 Consultations	Should the examination of the trend of export to all destinations and of production of the product in question as well as of demand reveal significant changes, consultations shall be held between the Commission and the ACP State concerned in order to establish whether these changes are such as to justify a contribution to the replenishment and if so, to what extent.	art. 43 § 5	Nothing
2.2.4 Period of observation	At the beginning of each year during the period of seven years following the year in which the transfer was paid, the Commission examines if the conditions for replenishment are fulfilled.	art. 42 ; art. 43 § 2	Period of five years following the allocation of the transfer, without clarification (art. 21 § 2).
2.2.5 Period of replenishment	The amount shall be made available to the system at the rate of one fifth per year after a period of deferment of two years beginning in the year during which the obligation of replenishment was established.	art. 43 § 4	Period of five years following the allocation of the transfer, without deferment. (art. 21 § 2).
2.2.6 Replenishment in currency of the ACP State	If the ACP State requires, the Commission will examine with it the possibility of replenishment in local currency of all or part of the amounts owing to the system.	ACP/EEC common Declaration	Nothing
3. Innovations and major changes with respect to implementation and administration of the system			
3.1 Inclusion of a new product in the list	If the inclusion of a new product into the list is requested, the Council of Ministers shall decide on this request not later than 6 months after the presentation of the request.	art. 26	Nothing
3.2 Crosschecking	When submitting the transfer request for each product, the ACP State shall choose if the statistics used to implement its request shall be those crosschecked in accordance with the procedure of the Lomé Convention or those obtained by multiplying the unit values of the exports of the ACP State by the quantities imported by the Community.	art. 30 § 2 & 3	Crosschecking of statistics of the ACP State and of the Community, account being taken of the fob values (art. 17 § 1).

Subject	Provisions in the new Convention	Legal basis	N.B. : provisions Lomé I
3.3 Statistical errors and omissions	In order to take account of statistical errors and omissions, the basis of transfer will be increased by 1 % of this figure.	art. 39 § 2	Nothing
3.4 "Short" period of reference	Where an ACP State starts processing a product traditionally exported in the raw state or begins exporting a product which it did not traditionally produce, the system may be based on a reference period of three years.	art. 36 § 3	Nothing
3.5 Inadmissible requests	Apart from the reason for an inadmissible request provided by the Lomé Convention, two other reasons rendering a request inadmissible have been made explicit : if the request is presented after 31 March of the year following the year of application and if it emerges from the dossier, after consultations, that the requesting ACP State has recorded an excess in export earnings of the product in question to all destinations.	art. 38 § 1 b art. 38 § 1 a art. 38 § 2	The request shall not be admissible if examination of the request, to be undertaken by the Commission in conjunction with the ACP State concerned, shows that the fall in earnings from exports to the Community of the products in question is the result of a trade policy measure of the ACP State concerned adversely affecting exports to the Community in particular (art. 19 § 4 a). The 1st of the two other reasons (deadline) results from a decision of the ACP/EEC Committee of Ambassadors, the other one from the logic of art. 17 § 4.

Subject	Provisions in the new Convention	Legal basis	N.B. : provisions Lomé I
3.6 Interpretation of inadmissible requests	The provisions on inadmissible requests shall be applied in the most favourable way possible in order to take account of particular situations which could occur.	ACP/EEC common Declaration	Nothing
3.7 Consultations	It has been made clear that the significant changes requiring consultations on the amount to be transferred do not refer solely to the trend of the requesting ACP State's exports to all destinations, but also to the production of the product in question and its level of demand in the Community.	art. 39 § 3	Consultations are triggered by significant changes in the trend of total exports of the ACP State (art. 19 § 4 b).
3.8 Definition of available financial resources	In order to contribute to the clarity of the system, the resources available for each year of application have been defined. They are made up of the sum of the following elements : <ul style="list-style-type: none"> - the annual instalment, possibly reduced by an advance drawing of a maximum of 20 % in the preceding year, - any amount not used in the preceding years and carried forward to the next year's instalment, - the amounts contributed to the replenishment of the system, - any amount drawn in advance of the next year's instalment. 	art. 33	Nothing

Subject	New Convention	Convention of Lomé
4. <u>N.B. : provisions slightly modified or unchanged</u>		
4.1 Limitation of the system to ACP States and their exports to the EEC	art. 23 § 1	art. 16
4.2 Extent and listing of least developed, landlocked and insular ACP States	art. 155 § 3 a art. 155 § 3 b and c	} art. 24 art. 48 § 2
4.3 Preference for some least developed ACP States with regard to the application of the system to exports of a product to all destinations Listing of these ACP States	art. 46 § 3 ACP/EEC common Declar.	art. 17 § 4 ACP/EEC common Declar.
4.4 Financial provisions - Division of the total funding into five equal annual instalments - Automatic carry forward of remaining balances at the end of each year - In case of insufficiency of funds . authorization to use in advance a maximum of 20 % of the following years's instalment . reduction of the transfers to be made on the basis of a decision on the Council of Ministers ACP/EEC	art. 32 § 1 art. 32 § 2 art. 34 art. 34	art. 18 § 2 art. 18 § 3 art. 18 § 2 art. 18 § 4
4.5 Principle of the replenishment of the resources made available for the system	art. 42	art. 21 § 1
4.6 Decision of the Council of Ministers ACP/EEC concerning - the allocation of any balance remaining of the funding after the expiry of the Convention - the amounts not yet fully replenished after the observation period of seven years	art. 35 art. 44	art. 18 § 5 art. 21 § 4
4.7 Upon decision of the Council of Ministers ACP/EEC : possibility to include new products into the list and the criteria to be applied in this case	art. 26	art. 17 § 3

Subject	New Convention	Convention of Lomé
4.8 Management by the Commission	art. 31	art. 18 § 1
4.9 statistical and customs co-operation, practical measures in this field	art. 45	art. 23
4.10 Certificate of origin	art. 28	art. 17 § 5
4.11 Definition of definitive import into the EEC	art. 30 § 1	art. 17 § 1
4.12 Transfer request examined by the Commission in conjunction with the ACP State concerned	art. 39 § 1	art. 19 § 4 a
4.13 Calculation of the transfer - formula for the dependence threshold - formula for the fluctuation threshold - formula for the reference level	art. 29 art. 37 art. 36 § 2	art. 17 § 2 art. 19 § 2 art. 19 § 1
4.14 Transfer decision drawn up by the Commission ; transfer agreement	art. 40 § 1 and 2	art. 19 § 5 and art. 22
4.15 Rapid transfers ; payment of advances	art. 40 § 3	art. 19 § 6
4.16 Transfers shall bear no interest	art. 40 § 4	art. 21 § 1
4.17 Report on use within twelve months following signature of the transfer agreement	art. 41 § 3	art. 20