

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (78) 707 final

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REQUESTS FOR TRANSFERS FOR 1975 SUBMITTED BY CERTAIN OCTs UNDER THE EXPORT EARNINGS STABILIZATION SYSTEM

(Commission Communication to the Council)

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1. Background

Three OCTs addressed to the Commission four late 1975 transfer requests under the export earnings stabilization system. The request came from the Solomon Islands (on 1 July 1977 and 15 July 1977), Tuvalu (2 October 1977) and the Gilbert Islands (2 October 1977).

The Commission was unable to accept these requests for legal reasons since it considered that the appraisal of requests submitted after the end of the financial year following the year of application was contrary to Articles 20 (2) and (3) and 21 (3) of the Council Decision of 29 June 1976 on the association of the overseas countries and territories with the European Economic Community.

In July 1977 the United Kingdom presented to the Council's ACP and ACP/FIN Working Parties a request for approval of transfers under the export earnings stabilization system to certain British overseas countries and territories. No agreement was reached on this matter in the Working Parties nor in the Permanent Representatives Committee. These bodies considered that since there were legal obstacles which could be overcome only by a Council Decision amending the Decision of 29 June 1976, a favourable response to the United Kingdom's request could have constituted a precedent for those ACP States that had also presented late requests for 1975 transfers.

In view of the fact that the Decision of 29 June 1976 reflects the provisions of the Lomé Convention, it was agreed to await the outcome of the good offices procedure initiated by the two Presidents of the ACP/EEC Council before deciding whether or not to accept the late applications received for 1975 from the three OCTs.

2. The recommendation resulting from the good offices procedure

The good offices procedure provided for in Article 81 (2) of the Lomé Convention was initiated to deal with three late applications for 1975 presented by ACP States.

The procedure resulted in a recommendation that the Council of Ministers request the Commission to appraise the three applications.

Together with this recommendation there were observations which will be particularly important for the future implementation of the system :

- "They considered, however, that the administration of the Stabex system may have caused difficulties in relation to the first year of application." ...

"Under these circumstances, they are of the opinion that the delay which has occurred in the presentation of the above-mentioned requests should not prevent their examination."

- "It was recognized that the need for speedy transfers - as stipulated in Article 19 (6) of the Convention - and the implementation of the Convention's provisions relating to the Stabex system imply that transfer requests should be presented before the end of the year following the year of application."...

"They considered that some support for this view could be found in the fact that it was decided at the meeting of the ACP/EEC Committee of Ambassadors on 28 March 1977 to introduce a specific time limit for the submission of requests for Stabex transfers." ...

The recommendation was based "on the understanding that no further claims may be accepted in respect of years where the time limit referred to above has expired."

- "They also took account of the fact that justice requires that these three requests should not be placed in a preferred position over other requests, submitted within the specified time limit, with regard to the availability of funds. They therefore further recommend that if the examination by the Commission of these requests results in proposals to make financial transfers, the relevant payments shall be made when the Commission is able to certify that the necessary funds will be available."

3. The Commission's position

In view of the recommendation resulting from the good offices procedure referred to above and the fact that the Decision of 29 June 1976 reflects the provisions of the Lomé Convention, the Commission is of the opinion that

the Council should agree to consider the United Kingdom's request to the extent of asking the Commission to appraise the four late applications for 1975 presented by three British OCTs.

The Commission would emphasize, however, that such acceptance must take account of the fact that the late applications submitted by the OCTs must not be treated any differently from those submitted by the ACP States. The request can be considered only in the context of the observations cited at point 2 above, which are inseparable from the recommendation resulting from the good offices procedure. In addition, the recommendation must be implemented in accordance with the rules governing the system.

In practical terms, the above considerations mean that :

- The recommendation constitutes a request that the applications be examined. It in no way prejudices the outcome of the appraisal, which will be conducted in accordance with the usual rules and may or may not lead to proposals for financial transfers.
- The aim of the recommendation is to ensure that the delay which has occurred in the presentation of the four requests caused in the exceptional circumstances of the system's teething troubles, does not prevent their examination. This, then, can be only an exceptional measure and can in no way constitute a precedent, and the authors of the note drawn up under the good offices procedure state this very clearly.
- Should the appraisal of the requests result in one or more transfer proposals, the rules of the system require that any payments made should come out of the 1975 annual instalment. This is confirmed, moreover, by the authors of the note resulting from the good offices procedure when they state that the four requests concerned should not be placed in a preferential position over other requests that were presented within the specified time limit. The funds would have to be made available from the balance remaining from the 1975 annual instalment; should this balance prove inadequate, the ACP/EEC Council of Ministers would have to authorize a backdated advance payment from the 1976 instalment to cover the difference, subject, however, to a limit of 20% of that instalment. The balance remaining after the payments made for 1976 are perfectly adequate for such an operation, which represents the only way

of maintaining the straightforward system of payment by annual instalment set up by the Lomé Convention.

4. The Commission proposes that the Council authorize the Commission to appraise the late applications presented for 1975 by the OCTs, on the terms set out at point 3 above.