

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(86) 317 final

Brussels, 10 June 1986

Proposal for a
COUNCIL REGULATION (EEC)

setting up a system of compensation for loss of export earnings
for less-developed countries not signatory to the
Lomé Convention

Proposal for a
COUNCIL REGULATION (EEC)

Laying down detailed rules for the implementation of Regulation
(EEC) No setting up a system of compensation for loss of
export earnings for least-developed countries not signatory
to the Lomé Convention

(submitted to the Council by the Commission)

COM(86) 317 final

I. INTRODUCTION

1. On 1 October last year the Council approved the conclusions set out in the report of the Working Party on Development Cooperation (doc. 9120/85) dated 30 September 1985. The Working Party recommended inter alia that at the mid-term review of the SNPA (Geneva, 30 September-11 October 1985) the Community should announce its intention to introduce a separate, autonomous system to compensate non-Lomé least-developed countries for loss of earnings on their exports to the Community of certain agricultural commodities: those listed in Article 143 of the Lomé Convention, plus jute and products of primary processing (not counting yarn and fabrics). The compensatory funds would be used for projects or programmes in the sectors in which the loss of earnings occurred or, where appropriate, for the purpose of diversifying the recipient countries' production away from those sectors.

2. The Working Party also noted in its conclusions that it would be considering the outstanding points (the legal status and budgetary implications of the new system and various other arrangements) in due course on the basis of proposals to be put forward by the Commission. Once these arrangements had been approved the Commission would contact the countries concerned to work out practical details for implementation of the scheme.

3. The Community duly announced its intention on 2 October in Geneva as agreed, to a warm welcome from the other review participants. We now have to establish the practical details of the scheme's operation so that we can contact potential recipient countries as soon as possible.

Appropriate proposals are contained in this communication - more specifically, proposals for Council framework and implementing regulations (Annexes A and B).

4. The communication does not deal with the budgetary aspects; the Commission will be putting forward separate proposals in connection with the preliminary draft 1987 budget.

5. In this connection, the committee noted the Commission's estimates for potential recipient countries (see the first two subparagraphs of paragraph 4 of the agreed conclusions) and found that the system would result in new charges on the Community budget which should not, however, exceed 50 million ECU for five years.

This expenditure would be subject to the usual budget procedure and disciplines.

Following the Council's discussion of this point on 1 October a footnote was inserted to the effect that the Council's agreement on the content of the statement to be made at Geneva was without prejudice to the financial implications, which would be dealt with in connection with the budget procedure.

¹To be reviewed by the committee should Afghanistan become eligible for the system.

II. LEGAL BASIS

6. We propose that the system be implemented in accordance with the attached draft framework regulation on the basis of Article 235, to make it clear that the development policy operations envisaged, for which no legal basis exists, are of a new, autonomous nature.

III. DESCRIPTION OF THE SYSTEM

(a) Aims and general provisions

7. The objectives of the system as approved are the same as those of the Stabex system under the third Lomé Convention: to help stabilize recipient countries' earnings from exports to the Community of agricultural commodities by means of financial transfers calculated to offset at least partially losses due to the fluctuating price or volume of exports or both.

8. As under Stabex the funds transferred will have to be used for existing or planned operations or programmes in the sectors in which the losses have occurred. However, in cases where it is inadvisable to continue support for a particular sector, transfers may be applied to other ends for the purposes of diversification.

9. Since this is an autonomous Community scheme the proposed arrangements for monitoring and ensuring compliance with the objective described in paragraph 8 are slightly different from those in Lomé III (see Chapter IV(23)-(32), below).

(b) Product and export trade coverage

10. Product coverage is as specified in Article 148 of Lomé III, plus jute products falling within Nimex Code Nos 57.03.10, 57.03.30 and 57.03.50.^{1, 2}

By contrast with Stabex, there is no formal, binding procedure whereby recipients can have requests for inclusion of other products taken into consideration. This does not mean requests may not be submitted and considered, but it was felt advisable not to provide a specific clause to that effect which would only encourage recipients to pursue an avenue offering little firm prospect of success.

11. The system will apply only to exports to the Community, and as under Stabex, the transfer entitlement will be calculated solely on the basis of quantities either released for free circulation in the Community or entered for processing under the inward processing arrangements.

Unlike Stabex, again for the reasons set out in paragraph 10, the new system contains no formal, binding provision for waiver of this rule.

¹Heading 57.03; Jute and other textile bast fibres not elsewhere specified or included, raw or processed but not spun; tow and waste thereof (including pulled or garnetted rags or ropes):

- 57.03.10: raw or processed, but not spun
- 57.03.30: pulled or garnetted rags or ropes
- 57.03.50: tow and waste

²Corresponding SITC classification: 264.00.

(c) Recipient countries

12. Paragraph 3 of the draft declaration adopted by the Council on 1 October 1985 specified two other conditions (over and above the basic criterion of LLDC status) which determine in practice whether the system will apply to a given country.

For the time being these conditions rule out:

- i. Afghanistan;
- ii. Bhutan, the Maldives, the Yemen Arab Republic and the Democratic Republic of Yemen, whose exports of products covered by the system are not at the moment above the dependence threshold.

Bangladesh, Haiti, Laos and Nepal, on the other hand, will be eligible as soon as the system comes into force.

13. For both operational and presentational reasons we propose that the draft framework regulation at Annex A include the general condition of eligibility (i.e. that a country should feature on the UN list of least-developed countries), rather than a list of recipient countries.¹

(d) Funding and financial management

14. As noted in paragraphs 4 and 5 of the introduction, commitment and payment appropriations for the system will be detailed in the 1987 budget; the Commission will make the necessary proposals at the preliminary draft stage.

15. At its meeting on 1 October 1985 the Council agreed in principle on a five-year ceiling of 50 million ECU, and this is incorporated in the draft framework regulation at Annex A.

16. It is further proposed, by analogy with Stabex, that the overall allocation be divided into five annual tranches (to be entered in the budget as differentiated appropriations for non-compulsory expenditure); the total available would be notified at the beginning of each budget year to the various recipient countries.

¹This would have the additional advantage of making it unnecessary to amend the framework regulation in the event of a change in the criteria as they apply to the countries mentioned in paragraph 12 or an addition to the present list of LLDCs.

17. Should it turn out that the annual ceiling as notified covers only a percentage of justified transfer applications, each recipient will get only that percentage of its transfers.

Provisions to this effect are contained in the draft implementing regulation at Annex B.

18. As recipient countries by definition are LLDCs, transfers under the system will be outright grants.

IV. DETAILED RULES FOR IMPLEMENTATION OF THE SYSTEM

19. Funds allocated to the system will be administered by the Commission which, having considered transfer applications jointly with the authorities of the applicant country and consulted the Member States (see paragraph 34), will take the decisions concerning approval and use of transfers.

(a) Transfer approval decisions

20. The transfer amount is worked out in several stages: statistical cross-checks, calculation of transfer basis, consultations about possible reductions and final determination of the amount to be transferred. As with Stabex, this whole procedure is laid down in advance and known to the recipient countries.

Except for the cross-checking and consultation stages, where the Commission has a margin of discretion, the procedure will be automatic and will use the same criteria as Stabex: dependence threshold, existence of an all-destinations loss, comparison of the loss on exports to the Community with the all-destinations loss, fluctuation threshold, possible reductions etc. As with Stabex, again, all calculations will be worked out in ECU.

21. The procedures and criteria are set out in annex to the draft implementing regulation at Annex B.

The only difference between the new system and the Stabex procedure as laid down in Lomé III is that here there is no provision for ad hoc arbitration machinery to be used in the event of disagreement between the Commission and the authorities of the applicant country concerning statistical cross-checking or the consultation on reductions.

22. The processing of transfer applications will involve statistical cooperation with the authorities in the countries concerned to arrange for the choice of statistical sources, nomination of a correspondent, monthly statistical returns, method of presentation of applications and supporting information, and standard forms etc.

The Commission will be contacting the recipient countries' authorities about these points once discussions on the draft regulation are far enough advanced. It will be drawing on experience gained with Stabex and in particular with the rules recently worked out with the ACP for implementation of the system under Lomé III.

23. Once the transfer amount has been worked out and the consultation procedure (see paragraph 34) completed, the Commission's transfer approval decision will depend on the authorities of the recipient country opening a special blocked account into which the transfer money (in foreign exchange) will be paid.

This provision features in the draft implementing regulation at Annex B;

(b) Decisions on use of transfers

24. The next stage is a Commission decision on use of the transfer, allowing the funds transferred to the special account (paragraph 23) under the transfer approval decision to be unblocked.

25. This second decision depends on agreement being reached between the Commission and the authorities of the recipient country on:

- the specific way in which the transferred funds will be used, i.e. operations or programmes either in the sector in which the losses occurred or in another sector, for the purposes of diversification;
- the arrangements for payments out of the special account referred to in paragraph 23, the special conditions with which the government and officials of the recipient countries must comply and the use of any counterpart funds generated by operations paid for by the transfer.

This provision is also incorporated in the draft implementing regulation at Annex B.

26. There is no such requirement for prior agreement in Lomé III, on the other hand; an ACP applicant merely has to provide "substantial information on the programmes and operations to which it has allocated or undertakes to allocate the funds, in accordance with the objectives of the system" (Articles 157 and 170(3)).

27. Naturally, where agreement is reached simultaneously both on the opening of the special account and the way in which transfers are to be spent - and it is hoped this will often be the case - the decisions referred to in paragraphs 23 and 24 can likewise be taken simultaneously.

28. Prior to the agreement referred to in paragraph 25,¹ the Commission will assess the projects and programmes submitted by the recipient country's authorities.

Since this is supposed to be a rapid-intervention system, priority will be given to programmes and operations classifiable as "support for sectoral policy" rather than project aid stricto sensu. In this way transfers can be used for purposes other than the financing of investment projects or recurring public expenditure, e.g. support for agriculture in the form of subsidized sales to farmers of fertilizer or pesticides, interest rates subsidies on carryover loans, or price intervention etc.

(c) Monitoring and follow-up of use of transfers

29. The recipient country's authorities will be required to send the Commission detailed implementation reports; a provision to that effect, similar to but stronger than the Stabex one, is contained in the implementing regulation at Annex B.

30. The provision allows the Commission to suspend any further transfer payments in the event of failure to submit reports on prior operations or where reports are incomplete or show that the earlier operation was not satisfactorily carried out.

(d) Promoting the welfare of the communities concerned

31. In his announcement in Geneva on 2 October the Community's spokesman made it clear, as decided by the Council the previous day, that detailed agreements would need to be concluded between the Community and representative authorities of the recipient countries to give us the firmest guarantees that the aid would be used for the benefit of the communities concerned, promotion of their welfare and respect for their fundamental rights and dignity having always been regarded by the Community as one of the key objectives of development.

32. In assessing the programme to be agreed with the applicant country (see paragraph 28) prior to the transfer use decision, the Commission will give particular weight to this specific criterion.

The same applies to monitoring and follow-up of the use of the transfer funds (see paragraph 30).

¹ See also paragraph 32 (promoting the welfare of the communities concerned).

V. IMPLEMENTATION PROCEDURE

33. Decisions concerning approval and use of transfers to be allocated to a recipient country in accordance with the rules outlined in Chapter IV (paragraphs 19-28) and the availability of funds (paragraphs 14-17) will be taken by the Commission on a case-by-case basis.

34. The Commission will be assisted in this task by an advisory committee using a prior consultation procedure laid down in the draft regulations at Annexes A and B.

35. The Commission will also be responsible for the regular, detailed follow-up referred to in paragraphs 29, 30 and 32.

36. The Commission will report annually to the Council and Parliament on administration of the system, detailing transfer approvals and the use made of previously transferred funds.

VI. CONCLUSION

37. Having regard to the above considerations we propose adoption of the draft regulations at Annexes A and B.

Proposal for a Council Regulation (EEC) No
setting up a system of compensation for loss
of export earnings for least-developed countries
not signatory to the Lomé Convention

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 235 thereof,

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the European Parliament,²

Whereas in pursuance of the Community development cooperation policy
it is desirable to give effect on certain conditions to a system
to compensate least-developed countries not signatory to the
Lomé Convention for losses of export earnings;

Whereas the importance and significance of development reside inter alia
in its objective of promoting the welfare and respecting the fundamental
rights of the communities concerned; whereas it is therefore necessary
to obtain the fullest guarantees that the system will operate to
the benefit of those communities;

Whereas for the purposes of implementation, the aims and outlines
of the system should be established in a framework regulation;

Whereas to ensure that the system attains its objectives it is
necessary to provide that recipients should benefit only if they
undertake to abide by certain conditions;

Whereas for the purposes of administering the system a procedure
for prior consultation of the Member States should be established;

¹ OJ No L
² OJ No

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation setting up a system of compensation for loss of export earnings for less-developed countries not signatory to the Lomé Convention

COM(86) 317 final

(Submitted by the Commission to the Council on 11 June 1986)

(86/C 183/03)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas in pursuance of the Community development cooperation policy it is desirable to give effect on certain conditions to a system to compensate least-developed countries not signatory to the Lomé Convention for losses of export earnings;

Whereas the importance and significance of development reside, *inter alia*, in its objective of promoting the welfare and respecting the fundamental rights of the communities concerned; whereas it is therefore necessary to obtain the fullest guarantees that the system will operate to the benefit of those communities;

Whereas for the purposes of implementation, the aims and outlines of the system should be established in a framework regulation;

Whereas to ensure that the system attains its objectives it is necessary to provide that recipients should benefit only if they undertake to abide by certain conditions;

Whereas for the purposes of administering the system a procedure for prior consultation of the Member States should be established;

Whereas the Treaty does not provide for the necessary powers,

TITLE I

OBJECTIVES AND GENERAL PROVISIONS

Article 1

1. As part of its development cooperation policy the Community shall give effect to a system to compensate for losses of export earnings those countries on the United Nations' list of least-developed countries which are not signatory to the Third ACP-EEC Convention.

2. The said system shall cover the period 1986 to 1990 and transfers shall start as from the financial year 1987.

Article 2

1. With the aim of remedying the effects of the instability of export earnings and of aiding the countries concerned in their development efforts, the system shall operate to help stabilize the said countries' earnings from exports to the Community of products on which their economies are dependent, which are affected by fluctuations in price or quantity or both, and which are included in the list referred to in Article 3.

2. The system referred to in paragraph 1 shall help stabilize export earnings by means of non-repayable transfers of financial resources, hereinafter referred to as 'transfers'.

3. Transfers must be used for projects, programmes or operations either:

(a) in the sector in which the loss of export earnings occurred, where appraisal of the transfer request indicates that the said loss was caused by circumstances which such projects, programmes or operations might remedy, or

(b) in other appropriate sectors for the purposes of diversification, provided the recipient country and the Commission so agree.

Article 3

1. The system shall apply to earnings from each of the recipient countries' exports to the Community of products listed in the Annex.

2. Each recipient country shall certify that products to which the system applies have originated in its territory.

TITLE II

FUNDING AND FINANCIAL MANAGEMENT

Article 4

The budgetary cost of the system to be put into effect pursuant to Article 1 is estimated at a maximum of 50 million ECU for the five year period from the financial year 1987 to the financial year 1991.

Article 5

The funds required for putting into effect the system established under this Regulation shall be shown in the general budget of the European Communities.

TITLE III

RULES AND PROCEDURES FOR IMPLEMENTATION

Article 6

1. The transfers referred to in Article 2 (2) shall be allocated on the basis of requests from the recipient countries.

2. In addition to the necessary statistical data, transfer requests shall include substantial information concerning the situation in the sector or sectors in which the loss of earnings has occurred and the projects, programmes and operations to which the recipient country has allocated or undertakes to allocate the funds in accordance with the objectives and provisions set out in Article 2.

Article 7

Transfer requests shall be addressed to the Commission, which shall examine them in conjunction with the recipient country concerned. Such examination shall consider the statistical data, calculation of the transfer basis and of any reduction which may be applicable, and the use to be made of the funds to be transferred.

Article 8

1. Following the examination referred to in Article 7, the Commission shall take a transfer approval decision in accordance with the procedure provided for in Article 10.

2. The conditions for use of the transferred funds shall be set out in an agreement between the Commission and the authorities of the recipient country.

Article 9

Rules for the implementation of this Regulation shall be adopted by the Council acting by a qualified majority on the basis of a proposal from the Commission.

Article 10

1. An Advisory Committee on the System of Compensation for Loss of Export Earnings for Non-ACP Least-Developed Countries, hereinafter referred to as the 'Committee', chaired by a representative of the Commission and composed of representatives of the Member States, is hereby established under the auspices of the Commission. The secretariat of the Committee shall be provided by the Commission.

2. The Committee shall examine matters on which the Commission has requested an opinion. In requesting such opinion, the Commission may set a time-limit by which it must be delivered. The Committee shall not vote on opinions, but each member of the Committee may require that his views be entered in the minutes.

Article 11

The Commission shall report annually to the European Parliament and the Council on the administration of the system during the preceding year.

Article 12

This Regulation shall enter into force on . . .

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

Product coverage (see Article 3)

	NIMEXE Code
1. Groundnuts, shelled or not	12.01-31 to 12.01-35
2. Groundnut oil	15.07-74 and 15.07-87
3. Cocoa beans	18.81-00
4. Cocoa paste	18.03-10 to 18.03-30
5. Cocoa butter	18.04-00
6. Raw or roasted coffee	09.01-11 to 09.01-17
7. Extracts, essences or concentrates of coffee	21.02-11 to 21.02-15
8. Cotton, not carded or combed	55.01-10 to 55.01-90
9. Cotton linters	55.02-10 to 55.02-90
10. Coconuts	08.01-71 to 08.01-75
11. Copra	12.01-42
12. Coconut oil	15.07-29, 15.07-77 and 15.07-92
13. Palm oil	15.07-19, 15.07-61 and 15.07-63
14. Palm nut and kernel oil	15.07-31, 15.07-78 and 15.07-93
15. Palm nuts and kernels	12.01-44
16. Raw hides and skins	41.01-11 to 41.01-95
17. Bovine cattle leather	41.02-05 to 41.02-98
18. Sheep and lamb skin leather	41.03-10 to 41.03-99
19. Goat and kid skin leather	41.04-10 to 41.04-99
20. Wood in the rough	44.03-20 to 44.03-99
21. Wood roughly squared or half-squared, but not further manufactured	44.04-20 to 44.04-98
22. Wood sawn lengthwise, but not further prepared	44.05-10 to 44.05-79
23. Fresh bananas	08.01-31
24. Tea	09.02-10 to 09.02-90
25. Raw sisal	57.04-10
26. Vanilla	09.05-00
27. Cloves — whole fruit, cloves and stems	09.07-00
28. Sheep's or lambs' wool, not carded or combed	53.01-10 to 53.01-40
29. Fine animal hair of Angora goats — mohair	53.02-95
30. Gum arabic	13.02-91
31. Pyrethrum — flowers, leaves, stems, peel and roots; saps and extracts from pyrethrum	12.07-10 and 13.03-15
32. Essential oils, not terpenecless, of cloves, of niaouli and of ylang-ylang	33.01-23
33. Sesame seed	12.01-68
34. Cashew nuts and kernels	08.01-77
35. Pepper	09.04-11 and 09.04-70
36. Shrimps and prawns	03.03-43
37. Squid	03.03-68
38. Cotton seeds	12.01-66
39. Oil-cake	23.04-01 to 23.04-99
40. Rubber	40.01-20 to 40.01-60
41. Peas	07.01-41 to 07.01-43 07.05-21 and 07.05-61
42. Beans	07.01-45 and 07.01-47 07.05-25, 07.05-65 and ex 07.05-99
43. Lentils	07.05-30 and 07.05-70
44. Nutmeg	09.08-13, 09.08-60
45. Shea nuts	12.01-70
46. Shea nut oil	ex 15.07-82 and ex 15.07-98
47. Mangoes	ex 08.01-99
48. Dried bananas	08.01-35-11
49. Mace	09.08-16 and 09.08-70
50. Jute	57.03-10 to 57.03-50

Proposal for a Council Directive amending Directive 83/181/EEC determining the scope of Article 14 (1) (d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods

COM(86) 383 final

(Submitted by the Commission to the Council on 10 July 1986)

(86/C 183/04)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Council Directive 83/181/EEC ⁽¹⁾ laid down the minimum quantity of fuel contained in the fuel tanks of commercial motor vehicles which must be exempted from value added tax on admission;

Whereas Council Directive 85/346/EEC ⁽²⁾ increased to 600 litres the minimum quantity of fuel in the fuel tanks of vehicles designed for, and capable of, the transport of persons and travelling between Member States, which must be exempted from value added tax on admission;

Whereas in order to reduce the number of checks applied at the internal frontiers of the Community the

⁽¹⁾ OJ No L 105, 23. 4. 1983, p. 38.

⁽²⁾ OJ No L 183, 26. 7. 1985, p. 21.

same minimum quantity should be adopted for vehicles travelling between Member States and designed for, and capable of, the transport of goods,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 83 of Directive 83/181/EEC is hereby replaced by the following:

'Article 83

Member States may limit application of the exemption for fuel contained in the standard fuel tanks of commercial motor vehicles:

- (a) when the vehicle arrives from a third country, to 200 litres per vehicle and per journey;
- (b) when the vehicle arrives from another Member State, to 600 litres per vehicle and per journey.'

Article 2

Member States shall take the measures necessary to comply with this Directive by 1 October 1986 at the latest. They shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Proposal for a Council Directive amending Directive 68/297/EEC on the standardization of provisions regarding the duty-free admission of fuel contained in the fuel tanks of commercial motor vehicles

COM(86) 383 final

(Submitted by the Commission to the Council on 10 July 1986)

(86/C 183/05)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75 and 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Proposal for a Council Regulation (EEC) No
laying down detailed rules for the implementation of
Regulation (EEC) No setting up a system of
compensation for loss of export earnings for
least-developed countries not signatory to the
Lomé Convention

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No of setting up a system of compensation for loss of export earnings for least-developed countries not signatory to the Lomé Convention ,

Having regard to the proposal from the Commission²,

Whereas for the purposes of implementing the Regulation (EEC) No (hereinafter referred to as "the framework Regulation") it is necessary to lay down precise rules and procedures for calculation, approval and payment of transfers to recipient countries and for monitoring the use of such transfers,

HAS ADOPTED THIS REGULATION:

¹ OJ No
²

- ~~45. Shea nuts~~
- ~~46. Shea nut oil~~
- ~~47. Mangoes~~
- ~~48. Dried bananas~~
- ~~49. Mace~~
- ~~50. Jute~~

- 2 -

TITLE I

AVAILABILITY OF FUNDS

Article 1

1. At the start of each budget year the Commission shall notify recipient countries of the amount available for the year in question pursuant to Articles 4 and 5 of the framework Regulation.
2. Should the amount referred to in paragraph 1 be less than the sum of justified transfer requests for the application year concerned, the amount of each justified transfer request shall be reduced by the percentage of the sum of justified requests corresponding to the difference between such sum and the total funds available to the system for the year in question.

TITLE II

CALCULATION OF TRANSFER BASIS AND REDUCTIONS

Article 2

The part of the examination referred to in Article 7 of the framework Regulation which relates to statistical data and calculation of the transfer bases and any reductions which may be applicable shall be undertaken by the Commission in accordance with Articles 3 to 13 of this Regulation.

Article 3

In presenting transfer requests the applicant country shall choose between the following methods:

- (a) either each product listed in the Annex to the framework Regulation shall constitute a product within the meaning of this Regulation,
- (b) or product groups 1 and 2, 3 to 5, 6 and 7, 8 and 9, 10 to 12, 13 to 15, 16 to 19, 20 to 22, 23 and 48, 45 and 46, and 44 and 49 shall each constitute a product within the meaning of this Regulation.

Article 4

1. The system shall apply to products which are:
 - (a) released for free circulation in the Community, or
 - (b) entered for processing there under the inward processing relief arrangements.

2. The statistics used for implementation of the system shall be:
- (a) either those obtained by cross-checking the statistics of the Community and the recipient country, using fob values,
 - (b) or those obtained by multiplying the unit values of the recipient country's exports, as recorded in that country's statistics, by the quantities imported into the Community, as recorded in Community statistics.

Article 5

Transfer requests shall be inadmissible:

- (a) if the request is submitted later than 31 March of the year following the application year;
- (b) if the Commission's examination of the request in conjunction with the recipient country reveals that the fall in earnings from exports to the Community is the result of a policy of that country adversely affecting exports to the Community in particular.

Article 6

1. The system shall apply to a recipient country's earnings from exports of a product listed in the Annex to the framework Regulation provided that during the year preceding the application year earnings from exports of that product to all destinations, less re-exports, accounted for at least 1.5% of its total earnings from goods exports.

2. Where production of the product in question suffered a substantial fall in the year preceding the application year as a result of a natural disaster, the percentage referred to in paragraph 1 shall be calculated on the basis of the average export earnings during the first three reference years instead of the year preceding the application year.

A substantial fall in production means a fall equal to at least 50% of average production during the first three reference years.

Article 7

The system shall apply where the loss of earnings referred to in Article 9(3) represents at least 1.5% of the corresponding reference level as defined in Article 8.

Article 8

1. For the purposes of implementing the system a reference level shall be worked out for each recipient country's exports of each product.
2. The reference level shall be the average of export earnings for the four calendar years preceding each application year.
3. However, where a recipient country:
 - begins processing a product traditionally exported unprocessed, or
 - begins exporting a product which it has not traditionally produced,the system may be implemented using a reference level based on the three years preceding the application year.

Article 9

1. The recorded loss of earnings shall be the amount by which the reference level exceeds actual earnings from exports of the product in question to the Community during the application year.
2. If the recorded loss as defined in paragraph 1 exceeds the loss of earnings on exports of the product to all destinations the system shall apply on the basis of the latter amount.
3. The loss as ascertained in accordance with the preceding paragraphs, plus 2% for statistical errors and omissions, shall constitute the transfer basis.

Article 10

1. The export earnings for each year of the reference period and for the application year shall be determined on the basis of the equivalent in the recipient country's currency of the earnings expressed in foreign exchange.
2. The reference level shall be calculated after the export earnings for each year of the reference period have been converted into ECU at the average annual exchange rate for the ECU against the currency of the recipient country concerned for the corresponding year.
3. The earnings for the application year shall be converted into ECU at the average annual exchange rate for the ECU against the currency of the recipient country for the application year.
4. If the annual average exchange rate for the recipient country's currency against the ECU for the application year has varied by more than 10% against the average of the average annual exchange rates for each year of the reference period, the earnings for the application year shall, by way of derogation from paragraph 3 and without prejudice to paragraph 2, be converted into ECU at a rate restricting the fluctuation to 10% of the said average.

Article 11

1. Consultations shall take place between the Commission and the applicant country if:
 - (a) the volume of marketed production of the product concerned in the application year is 15% or more below the average for the reference period;
 - (b) exports of the product to all destinations as a percentage of marketed production for the application year are fifteen percentage points or more below the average percentage for the reference period;
 - (c) exports of the product to the Community as a percentage of exports to all destinations during the application year are fifteen percentage points or more below the average percentage for the reference period;
 - (d) the sum of the percentage points referred to in paragraphs (b) and (c) is fifteen or more.

2. Consultations shall not be held on the grounds set out in paragraphs 1(c) where the transfer basis has been calculated under Article 9(2).

3. The purpose of the consultations is:

- (a) to identify the causes of the major changes referred to in paragraph 1;
- (b) to decide whether the transfer basis referred to in Article 9(3) should be reduced, and if so by how much.

4. The transfer basis must be reduced if the causes of the change are attributable to circumstances within the control of the recipient country or of operators concerned with the production or export of the product in question.

Article 12

1. If the consultations show that the transfer basis should be reduced the reduction shall be calculated in accordance with paragraphs 2 and 4. If there is only partial justification for a reduction, the reduction will be proportionally smaller.

2. Where real earnings for the application year from exports of a product which, under Article 3(b), can be grouped with a product for which a transfer has been requested exceed the corresponding reference level the transfer basis will be reduced by a sum equivalent to the value of the excess.

3. Where at the end of the application year an applicant country has exportable quantities of the product in question which are not subject to quota under an international commodity agreement and for which there is a demand, the transfer basis shall be reduced by a sum equivalent to the value of the said quantities.

4. Where paragraphs 2 and 3 do not apply the reduction shall be calculated as a percentage of the transfer basis, which shall be equal:

- (a) to the percentage referred to in Article 11(1)(a) if the transfer basis has been reduced because of a change as referred to in that provision;
- (b) to the difference in percentage points between the two percentages referred to in Article 11(1)(b), (c) or (d) if the transfer basis has been reduced because of a change referred to in one of those provisions.

Article 13

1. To ensure that the stabilization system functions rapidly and efficiently and to facilitate the examination referred to in Article 2, statistical and customs cooperation shall be instituted between the Commission and each recipient country.

2. To that end each recipient country shall send the Commission monthly, for each product, statistics on the volume and value of total exports and exports to the Community and, where available, on the volume of marketed production.

3. The recipient countries and the Commission shall adopt by agreement any practical measures to facilitate inter alia the exchange of necessary information, the submission of transfer requests, the provision of information on the use of transfers, or any other aspect of the system, by means of the widest possible use of standard forms.

TITLE III
USE OF TRANSFERS

Article 14

1. The part of the examination referred to in Article 7 of the framework Regulation which relates to the use of funds to be transferred shall bear on:

- whether the proposed use is in accordance with Article 2(3) of the framework Regulation;
- the likely economic and social effects on the sectors concerned of the proposed projects, programmes or operations;
- the contribution which such projects, programmes or operations will make to promoting the welfare of the communities concerned.

2. Funds may be used for the projects, programmes or operations referred to in paragraph 1 to finance not only investment costs but also, inter alia, local and maintenance costs, the supply and subsidization of inputs necessary for production, interest rate subsidies on carryover loans, and price intervention.

Article 15

1. The transfer approval decision referred to in Article 8(1) of the framework Regulation shall be subject to agreement between the authorities of the applicant country and the Commission on the opening of a special blocked account into which the transfer will be paid, and on arrangements for repayment in the event of its not being used.

2. An agreement as provided for in Article 8(2) of the framework Regulation shall be concluded in respect of every transfer.

3. The agreement shall specify:

- (a) the exact way in which transferred funds are to be used, i.e. the projects, programmes or operations to be undertaken in the sectors referred to in Article 2(3) of the framework Regulation;
- (b) arrangements for payments out of the special account referred to in paragraph 1 and special conditions which the government and administration of the recipient country must comply with in implementing the above-mentioned projects, programmes or operations;
- (c) arrangements for use of any counterpart funds generated when transferred foreign exchange is used in whole or in part to purchase goods or services which are then resold by the authorities of the recipient country against payment in the national currency.

TITLE IV
CONSULTATION OF THE COMMITTEE SET UP
UNDER ARTICLE 10 OF THE FRAMEWORK REGULATION

Article 16

1. When consulting the Committee provided for in Article 10 of the framework Regulation the Commission shall supply the following statistical information in respect of each decision to be taken:

- (a) total production of the product under consideration during the reference period and the application year concerned, where such figures are available;
- (b) volume and unit values of the recipient country's exports of the product to the Community and to non-Community destinations for the same years;
- (c) the results of the cross-checking of import and export statistics.

2. In addition, the Commission shall provide details of the following where applicable:

- (a) the result of any consultations held under Article 11;
- (b) the amount of any reductions applied under Article 12.

3. The Commission shall also report on the progress of its talks with the authorities of the recipient country in connection with the examination referred to in Article 14 and the agreement referred to in Article 15(1).

4. The Commission shall accompany each referral to the Committee with a full up-to-date statement of the financial situation of the system and particulars of requests pending or under examination.

TITLE V
FOLLOW-UP OF USE OF TRANSFERS

Article 17

1. Except where the recipient country and the Commission have agreed otherwise, the said country shall send the Commission within twelve months of the signing of the agreement referred to in Article and (3) a report on the way in which it has used the transferred funds. The report shall contain all the information specified on the form drawn up for that purpose pursuant to Article 13(3).

2. Should the report referred to in paragraph 1 not be sent by the time specified or should it call for comment, the Commission may postpone the adoption or implementation of any decision relating to a fresh transfer until such time as the country concerned has supplied the required information.

3. The Commission may also postpone the adoption or implementation of any decision relating to a fresh transfer should it appear from the report that:

- (a) an approved operation has been implemented in an unsatisfactory manner and the recipient country has taken no steps to improve the situation;
- (b) the agreed implementation has been undertaken in such a way as to compromise the objective referred to in the third indent of Article 14(1) of promoting the welfare of the communities concerned.

Article 18

This Regulation shall enter into force on

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the Council

The President

