COUNCIL REGULATION (EEC) No 429/87

of 9 February 1987

laying down detailed rules for the implementation of Regulation (EEC) No 428/87 setting up a system of compsensation for loss of export earnings for least-developed countries not signatory to the Third ACP — EEC Convention

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 428/87 of 9 February 1987 setting up a system of compensation for loss of export earning for least-developed countries not signatory to the Third ACP — EEC Convention (1), and in particular Article 9 thereof,

Having regard to the proposal from the Commission,

Whereas for the purposes of implementing the Regulation (EEC) No 428/87 (herinafter referred to as 'the framwork 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:

TITLE I

AVAILABILITY OF FUNDS

Article 1

If, during a given financial year, the amount of the appropriations determined in accordance with Article 5 (1) of the framwork Regulation is less than the sum of justified transfer requests to be covered for that financial year, the amount of each justified transfer request shall be reduced by the percentage of the sum of justified transfer 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 untertaken by the Commission in accordance with Articles 3 to 13.

Article 3

1. The list of products covered by system appear in the Annex I hereto.

2. Upon presentation of each transfer request the applicant State shall choose meaning between the following system:

(a) each product listed in Annex I shall constitute a product within the meaning of this Regulation; or

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

Article 4

1. The system shall be implemented in respect of products which are:

(a) released for free circulation in the Community; or

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

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

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

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

Article 5

Requests for transfers shall be inadmissible in the following cases:

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

(b) if it emerges from the examination of the request that the fall in earnings from exports to the Community is the result of a trade policy of that State adversely affecting exports to the Community in particular.

Article 6

1. The system shall apply to the earning from a recipient State's exports of the products listed in the Annex I if during the year preceding the year of application,

(1) See page 1 of this Official Journal.

earning from the exports of eacht product to all destinations, re-exports excluded, represented at least 1,5 % of its total earning from exports of goods.

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

A substantial fall in production shall be taken to mean at least 50 % of the average production during the first three reference years.

Article 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. In order to implement the system, a reference level shall be worked out for each recipient State and for exports of each product.

2. The reference level shall correspond to the average of export earning in the four years preceding each year of application.

3. Where, however, a recipient State :

— begins processing a product traditionally exported in the raw state, or

— begins exporting a product which it did not traditionally produce,

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

Article 9

1. The recorded loss of earnings shall be the amount by which the reference level exceeds actual earnings from exports of the products in question to 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 paragraphs 1 and 2, plus 2 % for statistical errors and omissions, shall constitute the basis of the transfer.

Article 10

1. The export earnings for each year of the reference period and for the year of application shall be determined on the basis of the equivalent in the currency of the recipient State concerned of the earnings expressed in foreign exchange.

2. The reference level shall be calculated after the export earnings for each year of the reference period have been converted into ECU at the average annual exchange rate for the ECU against the currency of the recipient State concerned for the corresponding year.

3. The earnings for the year of application shall be converted into ECUs at the average annual exchange rate for the ECU against the currency of the recipient State concerned for the year of application.

4. If there is a fluctuation of more than 10 % in the annual average exchange rate of the year of application for the currency of the recipient State concerned against the ECU in relation to the average of the average annual exchange rates for each year of the reference period, the earnings for the year of application shall be converted into ECUs, by way of derogation from paragraph 3 and without prejudice to paragraph 2, at a rate set at a level which restricts the fluctuation to 10 % in relation to the said average.

Article 11

1. Consultations shall take place between the Commission and the applicant State 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 paragraph 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 he control of the recipient State 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 paragraph 2 and 4 of this Article. 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 State 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. In order to ensure that the compensation system functions efficiently and to facilitate the examination referred to in Article 2, appropriate statistical and customs cooperation shall be instituted between the Commission and each recipient State.

2. To this end, each recipient State shall notify the Commission, by sending monthly statistics on the volume and value of total exports, and exports to the Community and, where available, on the volume of marketed production, for each product for which the export level represents a percentage at least equal to the percentage referred to in Article 6 (1).

3. The recipient States and the Commission shall adopt by agreement any measures facilitating *inter alia* the exchange of necessary information, the submission of requests for transfers, the provision of information concerning the use of transfers, the implementation of 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 pargraph 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

Payment of the transfer decided on in accordance with Article 8 of the framework Regulation shall be subject to an undertaking from the recipient State regarding :

(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) special conditions which the government and administration fo the recipient State must comply with in implementing the abovementioned 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 autorities of the recipient State against payment in the national currency.

TITLE IV

FOLLOW-UP OF USE OF TRANSFERS

Article 16

1. The recipient State shall, within twelve months of the signing of the transfer agreement send the Commission a report on the use which it has made of the funds

transferred. The report shall contain all the information specified on the form drawn up jointly in accordance with Article 13 (3).

2. Should the report referred to in paragraph 1 not be presented within the time-limit set or should it call for comment, the Commission may suspend the adoption or application of any decision on subsequent transfer requests until that State has provided the required information.

3. The Commission may also suspend the adoption or implementation of any decision on subsequent transfer requests should it appear from the report that :

(a) an approved operation has been implemented in an unsatisfactory manner and the recipient State 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 17

The list of countries eligible for the system is given in the Annex hereto.

Article 18

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

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

Done at Brussels, 9 February 1987.

For the Council

The President

M. EYSKENS

ANNEX I

List of products covered referred to in 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	18.01-00
4. Cocoa paste	18.03-10 to 18.03-30
5. Cocoa butter	18.04-00
6. Raw or roasted coffee	09.01-11 to 09.01-17
7. Extracts, essences or concentrates of coffee	21.02-11 to 21.02-15
8. Cotton, not carded or combed	55.01-10 to 55.01-90
9. Cotton linters	55.02-10 to 55.02-90
10. Coconuts	08.01-71 to 08.01-75
11. Copra	12.01-42
12. Coconut oil	15.07-29, 15.07-77 and 15.07-92
13. Palm oil	15.07-19, 15.07-61 and 15.07-63
14. Palm nut and kernel oil	15.07-31, 15.07-78 and 15.07-93
15. Palm nuts and kernels	12.01-44
16. Raw hides and skins	41.01-11 to 41.01-95
17. Bovine cattle leather	41.02-05 to 41.02-98
18. Sheep and lamb skin leather	41.03-10 to 41.03-99
19. Goat and kid skin leather	41.04-10 to 41.04-99
20. Wood in the rough	44.03-20 to 44.03-99
21. Wood roughly squared or half-squared, but not further manufactured	44.04-20 to 44.04-98
22. Wood sawn lengthwise, but not further prepared	44.05-10 to 44.05-79
23. Fresh bananas	08.01-31
24. Tea	09.02-10 to 09.02-90
25. Raw sisal	57.04-10
26. Vanilla	09.05-00
27. Cloves — whole fruit, cloves and stems	09.07-00
28. Sheep's or lambs' wool, not carded or combed	53.01-10 to 53.01-40
29. Fine animal hair of Angora goats — mohair	53.02-95
30. Gum arabic	13.02-91
31. Pyrethrum — flowers, leaves, stems, peel and roots ; saps and extracts from pyrethrum	12.07-10 and 13.03-15
32. Essential oils, not terpeneless, of cloves of niaouli and ylang-ylang	33.01-23
33. Sesame seed	12.01-68
34. Cashew Nuts und kernels	08.01-77
35. Pepper	09.04-11 and 09.04-70
36. Shrimps dnd prawns	03.03-43
37. Squid	03.03-68
38. Coton seeds	12.01-66
39. Oil-cake	23.04-01 to 23.04-99
40. Rubber	40.01-20 to 40.01-60
41. Peas	07.01-41 to 07.01-43 07.05-21 and 07.05-61
42. Beans	07.01-45 to 07.01-47 07.05-25, 07.05-65 and ex 07.05-99
43. Lentils	07.05-30 and 07.05-70
44. Nutmeg	09.08-13 and 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
49. Mace	09.08-16 and 09.08-70
50. Jute	57.03-10 to 57.03-50

ANNEX II

List of eligible countries referred to in Article 17

People's Republic of Bangladesh
Kingdom of Bhutan
People's Democratic Republic of Yemen
Republic of Haiti
Lao People's Democratic Republic
Republic of Maldives
Kingdom of Nepal
Yemen-Arab Republic