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FINANCIAL, BUDGETARY AND ADMINISTRATIVE MATTERS

OTHER MATTERS

Report of the Administrator

Summary

In this report, the Administrator outlines a question which has arisen between UNDP and a Government with respect to the Article in the Standard Basic Assistance Agreement which relates to the exchange rate to be used by UNDP in the country.

*policy*

1. The Administrator wishes to draw to the attention of the Governing Council that UNDP has been involved in recent years in a number of differences with Governments arising from the question of the rate of exchange to be used for receipts from international organizations. Typically, the question arises in the context of economic adjustment programmes negotiated with the International Monetary Fund (IMF) in which two or more exchange rates are officially authorized for different types of transactions in a country.
2. As a matter of law and policy the United Nations has always taken the position that it is entitled to the most favourable legal rate of exchange existing in a country and that any advantage arising from the existence of multiple rates of exchange should accrue to the Organization in the interest of the most efficient use of international funds.
3. In the case of UNDP, Article X, paragraph 1 of the Standard Basic Assistance Agreement (SBAA), which is the basic legal instrument governing development assistance in most countries, provides expressly that UNDP and its Executing Agencies shall be entitled to the most favourable legal rate of exchange (see annex I). Although problems have arisen from time to time in regard to the application of this provision, the United Nations position has in all cases in the past been finally accepted by those Governments which have established two or more legal rates of exchange.
4. A dispute has now arisen with a Government regarding the right of UNDP to use the "market-determined" rate of exchange rather than the "official" rate of exchange, both rates of exchange being legal rates of exchange authorized by the Central Bank. The Government states that the Central Bank Circular provides that the official rate shall be applicable to all foreign exchange receipts arising from official transactions and includes receipts from embassies and international organizations. All other transactions shall be at the market rate which provides more than twice the amount of local currency as the official rate. UNDP has consulted the United Nations Office of Legal Affairs on this matter, and that office has confirmed that the SBAA, which was signed by the Government in 1977, as an international agreement, overrides domestic law. It has also pointed out that in Article X, paragraph 1 of the SBAA the Government has agreed to "take any measures which may be necessary to exempt the UNDP, (and) its Executing Agencies ... from regulations or other legal provisions which may interfere with operations under this Agreement".
5. As the question arose on implementation of a dual exchange rate system established following discussions between the Government and IMF, UNDP consulted IMF to ascertain if it was the intention of IMF to have included international organizations among those to whom the official rate is applied. IMF has advised the Administrator that while the Fund may support with its resources adoption by members of an economic programme including a dual exchange rate arrangement as a transitional measure, it is the responsibility of the authorities to decide the manner in which the rates under such a régime are applied with respect to existing contracts. IMF further confirmed that the partitioning of the exchange rate programme agreed with the Government authorities does not override existing contracts for conversions at the market rate.

6. The practical effect of the Government's position is that UNDP is required to sell foreign exchange to the Central Bank at the official rate while UNDP has to buy goods imported into the country (other than fuel) which are paid for at the market rate. As is the experience in all other countries where a dual rate exists and where the market rate applies to non-official transactions, local costs increase and salary and post allowances have to be adjusted accordingly. In these circumstances, funds provided by UNDP will provide less assistance than if the market rate was available to UNDP. It should be stated that, in any event, UNDP would make no "savings" or "gains" by the application of the market rate to it. Nor will UNDP be introducing less foreign exchange into the country for its programme there. The use of the official rate results in less being done with the available funds.

7. During the past several months, UNDP has made every effort to resolve this problem by negotiation. These negotiations have not been successful. In view of the important principle and the substantial funds involved if all Governments introducing multiple exchange rate systems required UNDP to use a less advantageous rate than that applicable to others, UNDP has advised the Government that if a settlement cannot be reached by 15 July 1985, it will invoke the procedure for arbitration which is provided for in Article XII of the SBAA. In the interim, UNDP is identifying the incremental costs associated with application of the "official rate" of exchange to UNDP programme activities in the country and shall charge such costs to the IPF resources allocated to the Government, to avoid the charging of such costs to the main resources of UNDP.

8. UNDP will report to the Governing Council at its next session the results of the arbitration, should such occur, and any further difficulties encountered in this area, should such arise.

ANNEX I

Extract from the Agreement between the Government and the United Nations Development Programme concerning assistance by the UNDP to the Government, signed on 16 May 1977

Article X

Facilities for execution of UNDP assistance

1. The Government shall take any measures which may be necessary to exempt the UNDP, its Executing Agencies,\* their experts and other persons performing services on their behalf from regulations or other legal provisions which may interfere with operations\* under this Agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of UNDP assistance. It shall, in particular, grant them the following rights and facilities:

- a. Prompt clearance of experts and other persons performing services on behalf of the UNDP or an Executing Agency;
- b. Prompt issuance without cost of necessary visas, license or permits;
- c. Access to the site of work and all necessary rights of way;
- d. Free movement within or to or from the country, to the extent necessary for proper execution of UNDP assistance;
- e. The most favourable legal rate of exchange;\*
- f. Any permits necessary for the importation of equipment, materials and supplies, and for their subsequent exportation;
- g. Any permits necessary for importation of property belonging to and intended for the personal use or consumption of officials of the UNDP, its Executing Agencies, or other persons performing services on their behalf, and for the subsequent exportation of such property; and
- h. Prompt release from customs of the items mentioned in sub-paragraphs (f) and (g) above.

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\* Underlining added.

ANNEX II

Extract from the Agreement between the Government and the  
United Nations Development Programme concerning assistance  
by the UNDP to the Government, signed on 16 May 1977

Article XII

Settlement of disputes

1. Any dispute between the UNDP and the Government arising out of or relating to this Agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.
2. Any dispute between the Government and an operational expert arising out of or relating to the conditions of his service with the Government may be referred to the Executing Agency providing the operational expert by either the Government or the operational expert involved, and the Executing Agency concerned shall use its good offices to assist them in arriving at a settlement. If the dispute cannot be settled in accordance with the preceding sentence or by other agreed mode of settlement, the matter shall at the request of either Party be submitted to arbitration following the same provisions as are laid down in paragraph 1 of this Article, except that the arbitrator not appointed by either Party or by the arbitrators of the Parties shall be appointed by the Secretary-General of the Permanent Court of Arbitration.

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