

II. TRADE AND INVESTMENT REGIMES

(1) INSTITUTIONAL FRAMEWORK

1. The Republic of Mali has been independent since 22 September 1960 and, under the 1992 Constitution, is a pluralist democracy.¹ The President of Mali is the Head of State; he is elected by universal suffrage for a term of five years renewable once only. The President appoints the Prime Minister, and the other members of the Government on the proposal of the Prime Minister, who is the Head of Government. The Government determines and conducts State policy, disposes of the administration and armed forces, and enforces the laws. Parliament consists of a single chamber, the National Assembly, which exercises legislative power and controls the activities of the Government. Deputies are elected by direct universal suffrage for five years and may be re-elected. The National Assembly votes the laws, including financial laws.

2. The High Council of the Communities is responsible for studying and issuing a reasoned opinion concerning all local and regional development policies. It can propose laws to the Government concerning any question affecting protection of the environment and improvement of citizens' quality of life within the communities. The Government is then required to table a bill on the matter in the National Assembly. National Councillors (the members of the Higher Council of the Communities) are elected for five years by indirect suffrage. They may likewise be re-elected an unlimited number of times. Likewise the Economic, Social and Cultural Council draws up for the attention of the President of the Republic, the Government and the National Assembly an annual inventory of the expectations, needs and problems of civil society and submits proposals for reforms. It is required to be consulted on all finance bills, fiscal measures and economic, social and cultural projects.

3. The judiciary is independent of the Executive and Legislature. The Supreme Court is the country's highest court. It comprises three sections: the judicial section, the administrative section and the accounts section. The decisions of the Supreme Court are not subject to appeal. The Court of Appeal is the body where appeals are made against decisions issued in civil, commercial and criminal matters by the courts of first instance, the commercial courts, magistrates with extended competence and, in social matters, by the labour courts.² Mali also has an assize court, administrative courts and juvenile courts.

4. Commercial courts were established in Mali in February 1988 and placed under the authority of the Minister of Justice.³ These courts hear disputes relating to transactions between traders, to commercial acts between individuals and all matters relating to bankruptcy, judicial settlements and liquidation of assets. The court consists of a president (magistrate), two judges and two deputies (traders). When a commercial court is unable to meet, commercial matters are dealt with by a magistrates' court. Although the commercial courts are now over ten years old, they do not operate properly. For example, retail-trade, handicraft and semi-industrial activities, which are in principle governed by the Commercial Code, Crafts Code and Investment Code, are not subject to any regulation or penalty. However, 13 additional judges were appointed in 1996 and a particular effort has been made to train existing judges. Despite this, disputes are generally settled out of court, mainly because of the slowness and uncertainty of the judicial procedures.

¹The Constitution was adopted by referendum on 12 January 1992 and promulgated by Decree 2-073 P-CTSP of 25 February 1992.

²Law No. 88-39/AN-RM of 8 February 1988 on judicial reorganization.

³Law No. 88-33/AN-RM of February 1988.

(2) FORMULATION AND IMPLEMENTATION OF POLICIES

5. The Government executes policies which it draws up on the basis of its major guidelines; each Minister formulates policies in his own field and initiates the relevant preliminary bill. Proposals may also come from the High Council of the Communities (Section 1 above). The High Council may make proposals to the Government on any matter concerning environmental conservation or improving the quality of life at community level.⁴ Preliminary bills are adopted by the Council of Ministers and then become bills which are subsequently forwarded to the Assembly after, in some cases, consultation of the Economic, Social and Cultural Council (Section 1). Bills are discussed by the competent parliamentary committees, which deliver their findings to the Assembly in plenary session. Bills are passed after debate in the Assembly, are then signed by the President of the Assembly and finally are promulgated by decree by the Head of State, thus becoming law. Bills rejected by the Assembly are sent back to the Government for amendment, if necessary.

6. To carry out its programmes, the Government may request the National Assembly to adopt a law authorizing it to take measures normally coming within the purview of the legislature, by ordinance and for a specified period. Ordinances are adopted by the Council of Ministers after receiving the opinion of the Supreme Court. They take effect upon publication, but lapse if the ratification bill is not put before the Assembly by the date laid down in the enabling act.

7. Ministers sign international agreements and treaties in their fields of competence on the basis of the full powers conferred on them by the President of the Republic.⁵ International treaties and agreements which have been signed must be ratified by the National Assembly. Treaties which commit public funds or amend legislative measures, as well as those concerning the status of individuals, may be ratified or approved only by means of a law. The President of the Republic issues a decree promulgating the law, which is then sent to the Ministry of Foreign Affairs, which draws up the necessary instruments and informs depositories that ratification has taken place. The WTO Agreement was ratified according to this procedure. Once published, duly ratified or approved treaties and agreements take precedence over laws, subject to their implementation by the other contracting parties.

8. The Ministry of Industry, Trade and Tourism⁶ bears the main responsibility for devising, evaluating and implementing the Government's industrial and commercial policy. The Ministry is responsible for the National Investment Promotion Centre, a single window set up and in operation since 1995. The Centre helps to simplify the administrative formalities setting up enterprises in all fields except trade, education, health and communication. The National Directorate for Economic Affairs (DNAE) of the Ministry of Trade draws up the import and export programme (IMEX) and forecasts the trade balance for each year. The status of IMEX implementation is periodically assessed by comparing the Certificates of Intention to Import and Export which have been issued (Chapter III.(2)(vi) and (3)(iii)) with the actual figures. Following the trade-liberalization reforms introduced in 1989, the IMEX programme is being carried out, for guidance purposes, on the basis of forecasts by the main commercial operators regarding imports, exports, consumption and production, and of the economic outlook. The Ministry of Finance (through the fixing of tax and duty rates), the Ministry of Transport (through management of the freight generated by international trade) and the Ministry of African Integration (through the promotion of intra-community trade) also take part, among others, in the formulation and implementation of trade and investment policies. The

⁴The Government must thereupon table a bill in the National Assembly within 15 days.

⁵Full powers may be conferred on an Ambassador of Mali to sign on behalf of a Minister who has detained.

⁶Mainly the National Directorate for Economic Affairs (DNAE).

Government receives no opinions from university institutions or other research bodies in drawing up or amending its trade policy.

9. The Chamber of Commerce and Industry and the professional groupings or associations take part in the interministerial technical committees responsible for preparing government trade and investment policy. The Chamber receives a copy of bills, which it discusses with the economic operators concerned (businesses and/or professional groupings). The Chamber can put suggestions to the Government concerning bills through the DNAE of the Ministry of Trade. In the event of disagreement with the Government, the Chamber of Commerce and Industry can put the matter before the National Assembly. This happened in 1997 when the Chamber abolished customs duties on flour and the export tax on hides and skins.

(3) POLICY OBJECTIVES

10. The chief objective of Mali's economic policy is sustainable economic growth aimed at reducing poverty. Trade and investment policies will play a part in achieving this objective by promoting the production of goods for export and of consumer goods which were formerly imported and in respect of which Mali enjoys comparative advantages (e.g. livestock products, fruit and vegetables). Diversification of exports in terms both of products and of destinations is also envisaged; this will include an increase in the number of locally produced goods and the processing of raw materials prior to export. This processing should increase industry's share in the GDP.

11. To attain these objectives, Mali has been carrying out since 1998 a thoroughgoing reform of its economy, which it is continuing despite two interruptions (Chapter I.2). Trade liberalization, which is already far advanced, is aimed at providing regular supplies of consumer and capital goods for the whole country and at reducing the additional costs caused unnecessarily by distortions due, for example, to distribution, Mali being a vast land-locked territory with high transport costs. These reforms are also preparing the country for regional economic integration. Mali relies on the multilateral trading system administered by WTO and on the systems being set up at the level of regional organizations like the West African Economic and Monetary Union (in particular) and the Economic Community of West African States in order to increase its trade outlets and ensure regular disposal of its products.

12. The promotion of private national and foreign investment is among the Government's priorities. This promotion will be backed by the continued implementation of the privatization programme, particularly the privatization of major public enterprises such as the Mali Telecommunications Company (SOTELMA) now being planned. In withdrawing from productive activities, the State intends to devote its funding to improving social conditions and developing national infrastructure. It also intends to continue the tax reliefs granted to investors and the simplification of the administrative procedures for setting up businesses. These actions will also help to promote private investment by improving competitiveness.

(4) LAWS AND REGULATIONS

13. Since 1988 Mali has carried out a sweeping revision of its laws and regulations in order to back up the liberalization of its economy. Implementation of the provisions of the Treaty of the Organization for the Harmonization of Business Law in Africa (OHADA) should permit an overhaul of the Mali Commercial Code of August 1992 and standardization of the rules on: company law and the juridical status of traders; debt collection, sureties and enforcement procedures; the business-rehabilitation and judicial winding-up regime; and accounting law on arbitration, labour, selling and

transport.⁷ The introduction of the different proposed texts within the WAEMU framework should strengthen Mali's trade and investment legislation.

(i) Trade legislation

14. Mali acquired trade legislation between 1986 and 1996. The Commercial Code of August 1992⁸ comprises laws, decrees, ordinances and orders governing trade activities and investment in Mali. The Code also covers company law, the law on contracts and, more generally, the regulation of commerce and production linked occupations (commercial agent, accountant, auditor, legal officer). This legislation covers domestic and foreign trade.

15. Trade between Mali and other countries is also governed by the 1965 Customs Code and ministerial decrees and orders. The code defines, *inter alia*, the framework in which most import and export duties and taxes are fixed and levied; it also defines the functions of the Higher Tariff Committee and its membership (Chapter III(2)(ii)). Decree 89-194/P-RM of 15 June 1989 regulates external trade: it introduces Certificates of Intention to Import and Export (Chapter III(2)(vi) and (3)(iii)). Orders No. 89-182 *bis*/MFC-CAB of 15 June 1989 and No. 90-2442/MFC-CAB of 14 August 1990 lay down the list of products whose import and export are prohibited.

16. Mali has a Labour Code⁹ containing numerous provisions on prior authorization (e.g. for overtime in certain sectors). Likewise, while authorization by the Labour Inspectorate is no longer compulsory for dismissals, the administrative formalities are still cumbersome. Private employment agencies are authorized in addition to the National Labour and Employment Office; 39 have been approved but only three are in operation.

(ii) Investment Code

17. The latest Investment Code dates back to March 1991.¹⁰ Its purpose is to mobilize national savings and foreign capital, encourage transfers of technology, train skilled labour, create jobs, modernize the industrial, agricultural, forestry and animal-production infrastructure, encourage investment in the exporting industries, promote the creation of small and medium enterprises (SMEs), encourage investment in the least-developed regions of the country and promote the privatization of State enterprises. The Code guarantees commercial freedom and freedom to repatriate capital for foreign investors and expatriate wage-earners. Nevertheless, for reasons of public utility, the State reserves the right to limit foreign investment in certain sectors (defence and security).

18. The Investment Code provides for three regimes: regime A for the SMEs, regime B for large enterprises, and the free-zone regime. Depending on the regime, enterprises receive exemption: for five and eight years (regimes A and B) from the tax on industrial and commercial profits and from the business tax, property tax and tax on property in mortmain for new constructions (regime A); and for three years from registration fees on enterprise-creation and capital-increase acts (A and B regimes). Besides these advantages, enterprises which establish themselves in as yet inadequately industrialized zones qualify for exemption from the tax on industrial and commercial profits and from the business tax for two additional years in zone II (Koulikoro, Sikasso and Ségou regions) and for four additional

⁷Three uniform acts concerning the law on commercial companies and economic interest groupings, general commercial law and the organization of sureties were adopted on 17 April 1977 by the Council of Ministers of the OHADA.

⁸Law No. 92-002/AN-RM of August 1992 in place of Law No. 86-13/AN-RH of March 1986.

⁹Law No. 92-020/AN-RM of 18 August 1992.

¹⁰Law No. 91-048/AN-RM of 26 February 1991 promulgated by Decree No. 91-079 P-RM of 4 March 1991.

years in zone III (Kayes, Mopti, Timbuctoo, Gao and Kidal regions). In addition, mainly export-oriented enterprises (over 80 per cent of production exported) come under the free-zone regime (free enterprises).¹¹ These enterprises enjoy total exemption from all duties and taxes (including import duties) arising from their export activities for 30 years; fraudulent sales (on the domestic market) could give rise to unfair competition with respect to other local enterprises which produce the same goods for the domestic market and which are therefore not eligible for this regime.

19. A single window, set up under the National Industry Directorate (DNI) of the Ministry of Industry, Trade and Crafts, administers the enterprise-approval procedure. The assessment criteria for a project include: the direct value added, the contribution of external financing, establishment of the head office in Mali, the degree of the enterprise's integration with the national economy, the effect of the investment on the trade balance, and the environmental effects. On receipt of a favourable opinion, approval is granted by order of the Minister for Industry and Trade within 30 working days from the date when the dossier is received.

20. A community Investment Code is scheduled to be introduced within the WAEMU framework. Theoretically this should provide specific benefits at the investment stage (import of capital goods at the lowest rate of the Common External Tariff) as well as during operations (reduction of certain direct taxes).

(iii) Mining Code

21. Ordinance No. 91-065/P-CTSP of 19 September 1991 organizes the prospecting, exploitation, possession, transport, processing and marketing of mineral, fossil or quarry substances other than liquid or gaseous hydrocarbons on Mali territory. Mining rights are accompanied by an establishment agreement defining in particular the tax conditions and the legal, economic and financial advantages. Decree No. 91-277/PM-RM determines the procedures for implementing the Ordinance and Decree No. 91-278/PM-RM sets out the standard establishment convention for the prospecting and exploitation of mining substances. The mining legislation offers administrative, mining and real-estate guarantees as well as guarantees of non-expropriation and of transfers of mining-linked funds, including transfers of staff savings.

22. The tax allowances provided are: exemption from all taxes (including VAT and the tax on the provision of services), duties, contributions and all other direct and indirect taxes (except taxes on the issue or renewal of permits or authorizations, the additional surface fee and the social charges and contributions due from employers and employees); and the deduction from the net taxable profit of certain costs and charges such as interest paid to third parties. Unlike this latter advantage, which covers the whole production period, and the profits tax exemption, which covers the five years following initial production, most tax allowances end after the first three years of production. The same applies to customs concessions, namely: the temporary pro rata temporis import scheme which is free of charge for equipment intended for re-export after prospecting or exploitation work; exemption from import duties and taxes on raw materials, equipment, materials, machines, appliances and tools to be used in mining activities (i.e. to become a permanent part of the mine); exemption from exit duties and taxes as well as from all taxes on export turnover and all duties and taxes on export earnings; and exemption from exit duties and taxes on re-export of equipment used in carrying out prospecting and exploitation.

¹¹Decree No. 95-423/P-RM of 6 December 1995. At the end of 1997 no free enterprise had been established in Mali.

(5) TRADE AND INVESTMENT AGREEMENTS AND ARRANGEMENTS**(i) Multilateral agreements**

23. In January 1993 Mali inherited the status of contracting party in accordance with Article XXVI(5)(c) after having applied the GATT de facto from June 1967. It was neither an observer of, nor a signatory to, any agreement resulting from the Tokyo Round. Mali became a Member of WTO on 31 May 1995 after ratifying the Uruguay Round Agreements. It is not a signatory to any plurilateral agreement resulting from that Round.

24. Mali applies at least most-favoured-nation (MFN) treatment to all countries except Israel (Chapter III(2)(x)). Mali has given a number of undertakings under the Uruguay Round (Chapters III(2)(iii)(c) and IV(5)). As a developing (or, more precisely, least-advanced) country, Mali should particularly benefit from the strengthening of rules and discipline which has been effected in the multilateral trading system and in sectors like agriculture, including livestock production, which are particularly important to it. As a raw-materials producer, Mali does not experience much difficulty in gaining access to foreign markets, as these products are generally subject to zero or very low MFN duties on entering the importing countries.

25. Mali's main concern is to increase and diversify production in order better to exploit existing possibilities and those which will result from the continuation of liberalization at multilateral level. Mali's unilateral trade reforms have put it in a better position to pursue such liberalization. An integrated assistance programme in the trade field for the least-advanced countries (including Mali) was launched by WTO with other international organizations at the high-level meeting in October 1997 in Geneva; the objectives of the programme include increasing and diversifying the production of those countries. While recognizing the need to continue improving the quality of its products, Mali indicates technical barriers to trade as one of the fields requiring particular attention within the multilateral trading system.

26. Table II.1 shows the notifications given by Mali in connection with its implementation of the Uruguay Round results. In accordance with the monist system prevailing in Mali, the WTO Agreements can be directly invoked before the domestic courts since, being international, they take precedence over domestic law. However, according to the authorities, discussions are taking place in the regional bodies to which Mali belongs, in particular the WAEMU and the African Intellectual Property Organization, with a view to adapting legislation to WTO provisions.

Table II.1
Notifications by Mali within the framework of implementation of the WTO Agreements, October 1997

Agreement	Notification
Implementation of Article VII of GATT (Article 20.1)	Application deferred (WTO document WT/LET/78, 26 April 1996).
Import licensing procedures (Article 7.3))	Absence of import licences but existence of regulatory texts on similar administrative formalities, and a prohibition regime (WTO document G/LIC/N/3/MLI/1, 10 June 1997).
Pre-shipment inspection (Article 5)	Relevant national laws and regulations (WTO document G/PSI/N/1/Add.7, 8 September 1997).
Trade-linked investment measures (Article 5.1 and General Council Decision of 3/04/95)	Absence of such measures inconsistent with the provisions of Articles III and XI of GATT 1994 (WTO document G/TRIMS/N/1/MLI/1, 9 June 1997).

Source: WTO Secretariat.

27. Mali is a member of the United Nations and its agencies, as well as of several other multilateral organizations, including the International Monetary Fund and the World Bank.

(ii) Regional agreements

28. Economic and political integration with other African countries appears in the preamble to the Malian Constitution. The creation of the Ministry of Regional Integration is an expression of this desire. Mali's development level and land-locked situation justify such an option, the limits of which range from similarity between the goods offered by the countries in the same region to the (more substantial) risks of trade disputes which are not always easy to settle at regional level.

29. Mali is a founder member of the Organization of African Unity (OAU), the African Economic Community (AEC), the West African Economic Community (ECOWAS), the West African Economic and Monetary Union (WAEMU)¹², the Standing Inter-State Committee on the Control of Drought in the Sahel (CILSS)¹³, the Organization for Development of the Senegal River (OMVS)¹⁴ and the Organization for the Harmonization of Business Law in Africa (Section 4).

(a) Organization of African Unity (OAU) and African Economic Community (CEA)

30. The Charter establishing the OAU was signed on 25 May 1963.¹⁵ Like the other OAU members, Mali signed, in June 1991 at Abuja (Nigeria), the CEA Treaty provided for by the 1980 Lagos Plan of Action. This Treaty provides for the creation of a Pan-African Economic and Monetary Union (with a parliament) over a period of 34 years. The bodies and headquarters of the CEA are those of the OAU. The Community is taking some time in actually starting up its activities.

(b) Economic Community of West African States (ECOWAS)

31. The ECOWAS Treaty was signed on 28 May 1975. The ECOWAS trade-liberalization scheme has two main aspects: the elimination of all non-tariff barriers, namely licences, quotas, prohibitions and other administrative barriers, in respect of all products originating within ECOWAS; and a gradual and total reduction of tariff barriers. The 1993 amendment to the Treaty provides, *inter alia*, for the free movement of services, capital and persons within the Community at the end of the five-year period following the establishment of the customs union planned for the year 2000.¹⁶ Local and handicraft products appearing on the list of goods selected by the community should already be circulating free of all import duty if they are accompanied by a certificate of origin issued by the Ministry of Industry and Trade.

32. Finished manufactured goods originating within the community are subject to tariff reductions based on such criteria as the level of industrial development of each country and its island or land-locked situation. A finished product is regarded as originating within ECOWAS if at least 60 per cent of the raw materials used in its manufacture originate in the Community or if the value

¹²The WAEMU was formerly confined to the West African Monetary Union (WAMU). The countries members of the WAEMU are Benin, Burkina Faso, Guinea-Bissau, Mali, the Niger, Senegal and Togo. The countries members of ECOWAS are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, the Niger, Nigeria, Senegal, Sierra Leone and Togo. All WAEMU countries are also members of ECOWAS.

¹³The other members of the CILSS are Burkina Faso, Cape Verde, Chad, Gambia, Guinea-Bissau, Mauritania, the Niger and Senegal.

¹⁴The other members of the OMVS are Mauritania and Senegal.

¹⁵Nearly all African countries are OAU members.

¹⁶WTO (1998) and WTO document WT/WGTI/W/22 of 26 January 1988.

added is at least equal to 35 per cent of the cost price excluding tax (ex-factory). Products must be approved under the scheme adopted by the ECOWAS Council of Ministers. The timetable for the gradual reduction of import-duty rates is not being respected.¹⁷

(c) West African Economic and Monetary Union (WAEMU)

33. The WAEMU Treaty was signed on 11 January 1994 by the countries members of the former West African Monetary Union (WAMU).¹⁸ Guinea-Bissau signed the Treaty on 1 January 1997. The aim of the treaty is to create an economic union by bringing about the convergence of macroeconomic and sectoral policies and the harmonization of fiscal legislation. Monetary integration, with a central bank (the Central Bank of West African States) and a common currency (the CFA franc), has already been achieved, the WAMU having attached importance to this (Annex I.1). The free movement of persons, goods, services and capital is one of the union's principles. The head office of the WAEMU Commission is at Ouagadougou (Burkina Faso) and that of the Central Bank is in Dakar (Senegal).

34. As a preliminary to the creation of the customs union, a preferential trade agreement¹⁹ concluded between member countries in December 1995 provides for the gradual introduction of a preferential community tariff, specifies the regime and customs procedures applicable to the movement of goods within the union and defines the regime for, and allocation of, the Community Solidarity Levy.²⁰ The structure of the common external tariff (CET) and the stages for introduction of the customs union (from July 1998 to January 2000) were indicated in November 1997 (Table II.2). The breakdown of products according to the CET structure (with four rates ranging from 1 per cent to 21 per cent, including the 1 per cent statistical fee) must be effective not later than 1 July 1998, while harmonization of the country's domestic taxation is envisaged for some time in 1998.

35. A degressive protection tax whose parameters (products covered, rates and duration) will be determined by the Council of Ministers is planned in order to give certain "particularly sensitive" products additional temporary protection which will allow the necessary adjustments to be made. The same applies to the short-term import tax which is designed to neutralize possible erratic fluctuations in world prices. Technical barriers to trade will be harmonized and new rules of origin (with the possibility of mixed origins at regional level) will be introduced; a product is currently said to be originating in a union country if at least 60 per cent of the raw materials used in its manufacture come from that country or if the value added is at least 40 per cent of the cost price excluding tax (ex-factory). A regional financial market is being created and a community investment code should be published before the end of 1998; the code will not allow exemptions. A community competition policy is also to be drawn up.

¹⁷The 16 ECOWAS countries are classified into three groups: (1) Cape Verde, Gambia, Guinea-Bissau, Burkina Faso, Mali, Mauritania and the Niger, for which the reduction should be 10 per cent a year, i.e. abolition of customs duties over ten years; (2) Benin, Guinea, Liberia, Sierra Leone and Togo, for which the reduction should be 12.5 per cent, i.e. abolition of customs duties over eight years; (3) Côte d'Ivoire, Ghana, Nigeria and Senegal, for which the reduction should be 16.6 per cent a year, i.e. abolition of customs duties over six years.

¹⁸Mali left the franc zone and thus the Union in 1962; it rejoined them in 1984.

¹⁹This was the subject of two additional acts, the first in April 1996 and the second in January 1997.

²⁰The proceeds of the levy are to help offset any negative effects of integration.

Table II.2
Introduction of the WAEMU common external tariff

Import categories	From 01/07 to 31/12/1998	1999	From 01/01/2000
Extra WAEMU (MFN duties)			
Category 0		0	0
Category 1		maximum 5%	5%
Category 2		maximum 10%	10%
Category 3	maximum 30%	maximum 25%	20%
Community Solidarity Levy (PCS)	0.5 %	0.5 %	0.5 %
Levy on behalf of ECOWAS	(0.5 %)	(0.5 %)	(0.5 %)
Statistical Fee (SF)	Free	Free	Free
Degressive Protection Tax (DPT)	Products, rates and duration will be fixed by the Council of Ministers on a Commission proposal before end June 1998		
Short-Term Import Tax (STIT)			
Intra WAEMU (level of MFN duty abatement)			
Local products	100%	100%	100%
Approved originating products	60%	80%	100%
Non-approved originating products	5 points	5 points	100%
Other products	0	0	0

Source: WAEMU Commission.

(iii) Other trade agreements or arrangements

36. Mali is a signatory to the Fourth Lomé Convention between the European Union and 71 developing countries of sub-Saharan Africa, the Caribbean and the Pacific (ACP States). This Convention, which was signed in 1990 for ten years, was revised in 1995. Under the convention, a product is regarded as originating in a ACP country if it is wholly produced or sufficiently processed in that country. Non-originating materials are regarded as having been sufficiently finished or processed when the product obtained is classified under a code differing from that under which all the non-originating materials used in its manufacture are classified. Subject to a safeguard clause, exports of products originating in Mali, apart from those covered by the Common Agricultural Policy (CAP), are exempted from all import duties on the European market. For agricultural products covered by the CAP, the EU grants treatment at least as favourable as that accorded to countries subject to its MFN regime.

37. Mali receives EU aid through the European Development Fund (EDF) and has benefited from the system for stabilizing export earnings (STABEX).²¹ In the case of Mali, STABEX has compensated for losses of earnings on exports of cotton and its derivatives, groundnuts and its derivatives, shea nuts and gum arabic. Mali has received ECU 9.7 million under Lomé I for these products, ECU 10.7 million under Lomé II for groundnut products and shea nuts, ECU 20 million under Lomé III for cotton and around ECU 1 million under Lomé IV for the latter product. However,

²¹STABEX is designed to compensate for losses of earnings on exports destined for the EU in respect of 50 agricultural products (Articles 186 et seq. of the Convention). Mali could be eligible for the special mining products financing facility (SYSMIN) under Article 214 et seq. of the Convention.

Mali has received no compensation under STABEX since 1992 as it has not lost earnings relating to cotton exports since then.

38. Other developed countries (other than EU countries) grant trade preferences to Mali under the Generalized System of Preferences. Preferences granted by developed countries, including EU countries, are non-reciprocal. Mali is a signatory to the Agreement on the Global System of Trade Preferences (GSTP) concluded between the developing countries. However, owing to the lack of information on the benefits granted by different countries under the system, its small range of export products and the absence of market problems for its exports (specifically cotton and gold) Mali has not yet benefited from the GSTP.

39. Mali has signed several bilateral trade agreements. The one signed with Algeria in July 1996 contains provisions relating to payment and credit facilities, the organization of, or participation in, trade fairs and exhibitions and respect for intellectual property rights.

(iv) Trade disputes and consultations

40. As of July 1998, Mali had not been directly involved, either as a plaintiff or as a defendant, in any dispute settlement procedure within GATT, WTO or any other trade agreement to which it is a signatory.

41. The ECOWAS and WAEMU Treaties each provide for a Court of Justice and for dispute settlement bodies. Within ECOWAS, disputes may be settled amicably, subject to approval by the Conference of Heads of State. In the absence of such a settlement, the dispute may be brought before the Executive Secretariat of ECOWAS by any of the parties, by any member State or by the Conference. The dispute is then submitted to the Trade, Customs, Immigration, Monetary and Payments Commission, which issues recommendations to the Council of Ministers. Failing a settlement, the dispute is brought by one of the parties before the Community Court, whose decisions are final. However, the Court of Justice provided for under the ECOWAS Treaty is still not operating.

42. Within the WAEMU framework, the Commission, as well as any member State, can lodge an appeal when it considers that a State has failed to respect its obligations under the Treaty. Under the arrangements for reviewing the legality of bodies in regard to regulations, directives or decisions, an appeal²² can be lodged by the Council of Ministers of the WAEMU, the Commission, a member State or a private party (natural or legal person).²³ A possible penalty is total or partial nullity of the act. The Court can also rule on disputes between the WAEMU and its agents and on disputes relating to the extra-contractual responsibility of the union for acts committed by its bodies or agents. Via an appeal for arbitration, the Court can deal with disputes between member States with respect to the treaty, as soon as those States have concluded a compromise to that end. The Council of Ministers, the Commission or a member State can also obtain the Court's opinion on the compatibility of an international agreement, or an agreement which is being negotiated, with the provisions of the WAEMU Treaty. The Court can also be requested by the same institutions and by the Conference of Heads of State and of Government to deliver an opinion on any difficulty encountered in applying or interpreting acts coming under community law.²⁴

²²The appeal must be lodged within two months after publication of the act, its notification to the person concerned or the moment when the latter was made aware of it. Nevertheless, even after the two-month period has expired, any party may claim that a Council or Commission act is illegal as a means of defence.

²³The private party concerned must show that the act in question has done him personal harm.

²⁴Articles 38 and 39 of the Treaty and Additional Protocol No. 1 concerning the supervising bodies of the WAEMU (Articles 1 to 22) of 10 January 1994.

43. Any State which is a member of the Organization can appeal to the common Court of Justice and Arbitration of the OHADA. The Court rules on decisions handed down by the national courts.²⁵ The judgements of the Court are final and enforceable. The Court can also be requested to settle a dispute on the basis of an arbitration procedure. The Court does not settle disputes itself; it appoints or confirms the arbitrator or arbitrators (not more than three) and examines the draft awards. Awards are final and enforceable. Disputes concerning the interpretation or application of the Lomé Convention can be submitted to the Council of Ministers set up under the Convention. If the Council reaches no solution, it can initiate an arbitration procedure at the request of either party.

44. Despite the existence of these provisions, Mali prefers, according to the authorities, to settle disputes out of court.

(v) Investment agreements or arrangements

45. Mali ratified the Convention Establishing the Multilateral Investment Guarantee Agency in October 1990. The Lomé Convention between the ACP States and the European Union embodies principles for protecting European investments in the ACP countries (Articles 260, 261 and 262 of the Convention).

²⁵The national courts have been responsible up to now for applying company and contract law.