

Trade Policy Review Body

TRADE POLICY REVIEW

Report by the Secretariat

BENIN, BURKINA FASO AND MALI

Revision

This report, prepared for the Trade Policy Review of Benin, Burkina Faso and Mali, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from Benin, Burkina Faso and Mali on its trade policies and practices.

Any technical questions arising from this report may be addressed to Mr Jacques Degbello (022 739 5583), Mrs Catherine Hennis-Pierre (022 739 5640), Mr Arne Klau (arne.klau@wto.org) and Mr Rosen Marinov (022 739 6391).

Document WT/TPR/G/236 contains the policy statements submitted by Benin, Burkina Faso and Mali.

CONTENTS

	<i>Page</i>
SUMMARY OBSERVATIONS	vii
(1) ECONOMIC ENVIRONMENT	vii
(2) TRADE AND INVESTMENT REGIME	viii
(3) TRADE POLICY INSTRUMENTS	viii
(4) TRADE POLICY BY SECTOR	ix
I. COMMON ECONOMIC ENVIRONMENT	1
(1) MAIN FEATURES	1
(2) MONETARY AND EXCHANGE POLICIES	3
(3) RECENT ECONOMIC DEVELOPMENTS	5
(4) TRADE AND INVESTMENT TRENDS	5
(5) OUTLOOK	6
II. COMMON INSTITUTIONAL TRADE POLICY FRAMEWORK	8
(1) WTO	8
(2) AFRICAN UNION	10
(3) WEST AFRICAN ECONOMIC AND MONETARY UNION (WAEMU)	11
(4) ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)	12
(5) RELATIONS WITH THE EUROPEAN UNION	14
(6) RELATIONS WITH THE UNITED STATES	15
III. COMMON TRADE MEASURES	16
(1) OVERVIEW	16
(2) MEASURES DIRECTLY AFFECTING IMPORTS	17
(i) Customs procedures	17
(ii) Customs levies	18
(iii) Rules of origin	26
(iv) Prohibitions, quantitative restrictions and licensing	28
(v) Standards, technical regulations and accreditation procedures	30
(vi) Sanitary and phytosanitary measures	32
(vii) Contingency measures	33
(3) MEASURES DIRECTLY AFFECTING EXPORTS	34
(i) Registration and customs procedures	34
(ii) Export duties and taxes	34
(iii) Goods in transit	34
(iv) Prohibitions, quantitative restrictions and licences	35
(v) Free zone regime	35
(4) OTHER MEASURES	36
(i) Competition and price control	36
(ii) Government procurement	38
(iii) Protection of intellectual property rights	39

	<i>Page</i>
IV. TRADE POLICIES AND PRACTICES BY SECTOR	41
(1) INTRODUCTION	41
(2) AGRICULTURE, LIVESTOCK AND RELATED ACTIVITIES	41
(i) Recent developments within WAEMU	42
(ii) Recent developments within ECOWAS	43
(iii) "C-4" trade policy on cotton	44
(3) MINING AND ENERGY	46
(i) Petroleum, gas and coal products	47
(ii) Electricity	49
(iii) Other mining products	50
(4) MANUFACTURING SECTOR	51
(i) Trade regulation	51
(ii) Restructuring and upgrading programme	52
(5) SERVICES	53
(i) Telecommunications and postal services	53
(ii) Transport services	56
(iii) Tourism	61
(iv) Financial services	62
(v) Professional services	66
REFERENCES	69
ANNEX 1: BENIN	71
ANNEX 2: BURKINA FASO	169
ANNEX 3: MALI	261

CHARTS

	<i>Page</i>
III. COMMON TRADE MEASURES	
III.1 Tariff protection by subsector, 2009	20
III.2 Distribution of WAEMU CET rates, 2009	23
III.3 Escalation of WAEMU CET rates, 2009	23
IV. TRADE POLICIES AND PRACTICES BY SECTOR	
IV.1 World cotton price, January 1990 - February 2010	45
IV.2 Petroleum trade in WAEMU countries, 2000-2008	48

TABLES

I. COMMON ECONOMIC ENVIRONMENT	
I.1 Main socio-economic indicators, 2004-2009	1
II. COMMON INSTITUTIONAL TRADE POLICY FRAMEWORK	
II.1 Notifications submitted to the WTO by or on behalf of Benin, Burkina Faso and Mali, January 2000 - May 2010	9
III. COMMON TRADE MEASURES	
III.1 Structure of the WAEMU CET, 2009	21
III.2 Summary of the WAEMU CET, 2009	21
III.3 Trend in approvals for the WAEMU community preferential tax, 2003-2009	28
III.4 WAEMU Regional Technical Standardization Committees, 2009	31
III.5 Subjects and terms of protection under the Bangui Agreement (1999)	39
IV. TRADE POLICIES AND PRACTICES BY SECTOR	
IV.1 Main cotton producers and exporters, 2004 and 2007	44
IV.2 WAEMU Decisions relating to the energy sector	47
IV.3 Competition on telecommunications markets in WAEMU countries, 2010	53
IV.4 WAEMU legal texts relating to the telecommunications sector	54
IV.5 Legal texts concerning air safety, 2010	57
IV.6 Number of banks complying with WAEMU prudential standards, 31 December 2008	63

SUMMARY OBSERVATIONS

1. The eight countries belonging to the West African Economic and Monetary Union (WAEMU), which include Benin, Burkina Faso and Mali, are also members of the larger group of 15 countries belonging to the Economic Community of West African States (ECOWAS). Integration within ECOWAS is largely based on that within WAEMU. Since the review of their respective trade policies in 2004, Benin, Burkina Faso and Mali have pursued their integration and economic reform efforts within WAEMU (and ECOWAS as well). Nonetheless, the continued presence of obstacles limits the potential benefits of such integration.

2. The majority of trade policy instruments, in practice import measures, have been harmonized at WAEMU level. WAEMU now also has a common framework for agricultural and mining policy, as well as for certain services categories, *inter alia*. Implementation is, however, far from complete in all areas. The effective continuation of reform, including trade liberalization, would enhance the business climate and would help to attract the capital needed to develop the many as yet unexploited assets in the three countries, not only in the area of agriculture, livestock breeding and mining, but also in certain services.

3. The challenge currently facing Benin, Burkina Faso and Mali is to provide stable financing for their budgets, for the moment essentially based on the revenue levied on international trade, while continuing their trade liberalization efforts at the unilateral, bilateral, regional and multilateral levels.

(1) ECONOMIC ENVIRONMENT

4. Since the previous review of their trade policies, Benin, Burkina Faso and Mali have maintained positive economic growth rates, despite an adverse global environment marked by a surge in oil and food prices, and appreciation of the euro, to which their common currency, the CFA franc, is pegged at

a fixed parity. There is little mechanization in agriculture, a key sector of their economies, which remain highly vulnerable to external shocks, including weather factors.

5. Despite structural problems, cotton is still one of the major export subsectors in all three countries; livestock products, shea nuts, cashew nuts and fruit are also leading exports. All three countries are, however, net importers of certain cereals, including rice; the rise in global prices has had a strong impact on their populations and has led to the realization that food production has to be increased. In Burkina Faso and Mali, gold exports have been particularly buoyant. The three countries still import all the petroleum products consumed. It is imperative to upgrade the energy infrastructure.

6. The restrictive monetary policy practised by the Central Bank of West African States (BCEAO) has enabled inflationary pressure to be kept under control, while budgets continued to show a deficit (excluding grants) in all three countries throughout the period 2003-2009. Following multilateral and bilateral initiatives, there was a marked reduction in the public debt in the three countries. Although it has been on the increase since 2008, chiefly because of the fall in international demand for their exports, external debt servicing as a percentage of exports of goods and services has remained low. Benin, Burkina Faso and Mali are net importers of services. The three countries' exports are not very diversified and mainly go to other African countries. The European Union, France in particular, is still the main source of imports for Benin and Mali; Burkina Faso chiefly imports from Togo, followed by France.

7. In general, the three economies depend on the budget support furnished by technical and financial partners for 3-6 per cent of their GDP. Official development aid (ODA) remains indispensable for implementing their social and economic programmes and finances 43 per cent of the State's total current spending in Burkina Faso.

In the main, Aid for Trade (from US\$17-21 per capita in 2008 depending on the country) as well as the total amount of ODA (US\$39-86 per capita in 2008) remain low in light of needs in the three countries (including the financing of their Growth and Poverty Reduction Strategies) and varies greatly from one year to another. In order to manage these resources to best effect, Burkina Faso and Mali have introduced a national aid policy based on the principles in the Paris Declaration.

(2) TRADE AND INVESTMENT REGIME

8. Benin, Burkina Faso and Mali are pursuing their integration efforts within WAEMU and ECOWAS. The differing pace of integration within these two groups calls for harmonization and coordination not only among the countries themselves but also at the regional level. Since the introduction of the WAEMU common external tariff (CET) in 2000, a large number of legislative texts have been adopted with a view to creating a common market; the actual implementation of these texts is under way.

9. In areas such as technical barriers to trade, measures to promote trade, and export restrictions, including taxation, there is still room for harmonization at the community level. In addition, although there is a community Customs Code, exemptions differ from one country to another and fiscal incentives often vary as well. The Investment Codes in the three economies proclaim the principle of national treatment. Legislation within WAEMU has not been harmonized, however, and sectoral coverage and the stipulated tax incentives vary from one country to another. All three countries belong to the Organization for the Harmonisation of Business Law in Africa (OHADA).

10. As Members of the WTO, Benin, Burkina Faso and Mali grant at least MFN treatment to all their trading partners. They take an active part in the WTO's technical assistance programmes and in the Integrated Framework process intended to

promote the effective integration of trade into national development plans. Diagnostic Trade Integration Studies (DTIS) were conducted for the three countries in 2004-2005 and most of the DTIS recommendations have been integrated into the respective Growth and Poverty Reduction Strategies, although levels of implementation vary among the countries and could be improved. In addition, the three countries would like to see ODA, including Aid for Trade, take the form of overall budget support rather than be earmarked for financing specific projects.

(3) TRADE POLICY INSTRUMENTS

11. Since the previous review of the trade policies of Benin, Burkina Faso and Mali, progress has been made in computerizing customs clearance procedures and putting them on line using ASYCUDA++, although the connection infrastructure remains unreliable. Burkina Faso and Mali have introduced the ECOWAS uniform model detailed declaration. The absence of a single entry point system ("free circulation") means that the risk of double taxation persists so there needs to be a transit regime for movement of goods within community territory, and this is costly. Customs networks in the three countries are being interconnected in order to facilitate the transit operations that are vital for landlocked countries. Computer fees should, however, be eliminated in order to encourage computerized declarations. If all import formalities were fully computerized, they could be made simpler and take less time. This should be one of the foremost Aid for Trade priorities.

12. It is still mandatory to use the services of an approved customs agent. Approval, when it is specific to a particular operation or customs post, is likely to restrict competition and increase trade-related costs. The three countries' authorities have, moreover, started to review the need for national shippers' councils which, in some countries such as Benin, levy a whole series of additional duties and taxes on international trade.

13. The provisions of the WTO Customs Valuation Agreement have been transposed into the community Code. A system of reference values for imports is nonetheless still in place in WAEMU, even though its member States no longer have waivers from the relevant WTO rules. The three countries still require preshipment inspection, in principle intended to verify the value of the goods and observance of the technical regulations in force. The inspection companies charge fees that range from 0.6 to 0.75 per cent of the f.o.b. value of the goods imported, to be paid either by the government or by the importer; in some cases, a lump sum is payable and this means much higher charges. In general, the system is complex to administer and subject to numerous exceptions.

14. Technical regulations and their application at the border involve overlapping regulations and administrative measures, complicating the import process. In Burkina Faso, for example, four bodies are vested with control powers, with the parallel involvement of various ministries, to inspect certain goods before they are placed on the domestic market; up to three samples can be taken from each import, with payment of the various taxes applicable.

15. The WAEMU CET has not undergone any major changes since the review of the three countries' respective trade policies in 2004. It comprises four *ad valorem* tariff bands (zero, 5, 10 and 20 per cent). The mixed escalation and the simple average of the rates remain unchanged (12.1 per cent) and such a structure implies costs for the economies concerned. The CET also plays an important fiscal role, with import duties and taxes providing some 16 per cent of fiscal revenue in all three countries. Other duties and taxes introduced by WAEMU and ECOWAS on MFN imports add 2.5 percentage points to the tariff, the proceeds mainly going to finance these institutions. Benin, Burkina Faso and Mali are taking part in the current negotiations on the CET in ECOWAS; a fifth band of 35 per cent is planned.

16. Harmonization of tariff bindings in the WTO is under consideration by WAEMU members. For each of the three countries, bindings currently affect around 40 per cent of tariff lines; and for over 27 per cent of the bound tariff lines, the customs duties applied exceed the bound levels, sometimes by as much as 20 percentage points.

17. The eligibility of goods for the WAEMU and ECOWAS community duty-free regimes is governed by rules of origin, whose basic principles have been harmonized since 2004. WAEMU/ECOWAS origin is conferred systematically (without prior certification) on all local or handmade products. To be eligible, goods that have been sufficiently worked or processed must be approved and be accompanied by a certificate of origin; enterprises producing such goods must also have prior approval. The conditions for approval of such products in ECOWAS differ slightly from those in WAEMU, the WAEMU conditions having been made more flexible in 2009.

18. WAEMU has adopted regulations on competition, including State aid. The legislative competence of States essentially relates to consumer protection. The national regulatory frameworks on government procurement have been harmonized by transposing the WAEMU directives, including those provisions giving a community preference; the implementing texts have not yet been adopted. The three countries have signed the Bangui Agreement establishing the African Intellectual Property Organization (OAPI), whose provisions are mostly in line with those in the WTO TRIPS Agreement; the provisions on layout-designs have not yet been implemented.

(4) TRADE POLICY BY SECTOR

19. In the agricultural sector, the major trade policy development has been the introduction of subsidies for the production of the main cereal food crops as a result of the food crisis in 2008. Cotton, whose production has fallen in the three countries, partly because

of low global prices and poor governance in the subsector, has received support linked to institutional reforms. In 2003, Benin, Burkina Faso and Mali, together with Chad, adopted a joint position that led to the Sectoral Initiative on Cotton, whose overriding objective is to achieve the elimination, by the major economies, of domestic support for production and export subsidies for cotton and to obtain duty and quota-free access for cotton exports from least developed countries.

20. Livestock farming, which accounts for over 10 per cent of GDP in the three countries, is facing a serious problem of land tenure, which also affects other agricultural subsectors, as well as mining and quarrying, water resources, roads and tracks, forests, wildlife reserves and the environment. Security of tenure would put farming on a more stable footing. Regional land-use management schemes are needed to encourage the progressive settlement of pastoralists, together with the creation of transit corridors or access to wells and pasturage. Broader access to basic veterinary services would allow production to be intensified as it does not currently cover domestic needs. Poultry breeding farms face strong competition from imports of frozen poultry. Because they did not meet the European Union's health standards, Benin had to suspend its exports of fisheries products, including shrimps, to this key market as of July 2003. Measures were taken to facilitate the resumption of exports as of February 2005. Markets lost, however, are difficult to regain and the shrimp subsector has not fully recovered from this crisis.

21. The legal framework for the mining sector has been reinforced and a large number of investors have responded favourably, especially in the area of gold mining. The energy sector, on the other hand, suffers from poor governance and the lack of long-term investment. Several State-owned companies, especially those distributing petroleum products and electricity, have felt the impact of government measures imposing a ceiling on selling prices in order to help consumers, and

are currently being reorganized in order to improve their management. The development of renewable energy is an option with considerable potential.

22. Together with trade, transport and the related logistics are the backbone of economic development in the three countries. The anti-competitive practices which allow for the allocation of cargo (such as "queuing") should, however, be abolished. In Benin, the number of shipping companies calling at the port of Cotonou rose following the end of the EWATA liner agreements in 2008 and a new container terminal is planned. Much still remains to be done, however, to make the subsector more competitive. Despite the liberalization of the air transport subsector, few new airlines have emerged and the regional market is still virtually a monopoly.

23. Since 2004, there has been remarkable growth in telecommunications. Their liberalization has led to greater competition and lower costs; nevertheless, in Benin the regulations needed to allow the market to function properly are still awaited. One of the other services that has seen strong growth is tourism, especially in Mali, where investment and jobs have shown a substantial increase since 2003.

24. Banking services have benefited from the BCEAO regulations and the prudential supervision of WAEMU's Banking Commission. The minimum capital for loan institutions has been raised. The development of microfinance is gradually making it easier for the poorest to obtain microcredit, but it needs to be better organized. Although it is governed by the CIMA Code, the insurance market is still fragmented because there is no single system of approval. Substantial progress has been made in the common regulations that henceforward allow some professionals such as public auditors to practise freely in all WAEMU countries.

I. COMMON ECONOMIC ENVIRONMENT

(1) MAIN FEATURES

1. The West African countries of Benin, Burkina Faso and Mali have made great strides in economic integration and harmonization of their national legislation. However, as founder members of the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU), the three countries belong to communities whose regimes are not developing at the same pace. While WAEMU has advanced a long way in establishing its economic space (monetary policy, many trade policy instruments, sectoral policies), ECOWAS, to which all WAEMU members also belong, has fallen somewhat behind in this respect, not least as regards its customs union.

2. Benin, Burkina Faso and Mali are at similar stages of economic development, with per capita GDP no higher than US\$780 in 2009 (Table I.1). Besides their status as least developed countries (LDCs), they have many points in common, including relatively young populations that are growing rapidly (about 3 per cent annually). Their human development indicators are among the lowest in the world, placing them in the low human development category in the UNDP 2009 ranking.¹ They also share a pressing need to develop their basic infrastructure. In addition, as landlocked countries Burkina Faso and Mali depend heavily on their neighbours for non-regional trade, while Benin's trade relations largely depend on Nigeria, to which it continues to have a substantial level of informal re-exports.

Table I.1
Main socio-economic indicators, 2004-2009

	2004	2005	2006	2007	2008	2009 ^a
Population, growth rate						
Benin	3.4	3.3	3.3	3.2	3.2	3.7
Burkina Faso	3.2	3.1	3.0	2.9	2.9	3.4
Mali	3.3	3.3	3.3	3.2	3.2	3.6
GDP per capita (US\$)						
Benin	531.8	545.0	568.8	646.7	771.2	776.3
Burkina Faso	378.2	389.5	401.9	457.9	522.6	540.8
Mali	432.3	461.0	498.2	563.2	674.7	762.2
Real GDP, growth rate						
Benin	3.1	2.9	3.8	4.6	5.0	2.7
Burkina Faso	4.6	7.1	5.5	3.6	5.2	3.2
Mali	2.3	6.1	5.3	4.3	5.0	4.2
Inflation rate						
Benin	0.9	5.4	3.8	1.3	7.9	2.2
Burkina Faso	-0.4	6.4	2.4	-0.3	10.7	2.8
Mali	-3.1	6.4	1.5	1.4	9.2	2.2
Overall fiscal balance excluding grants (% of GDP)						
Benin	-3.6	-2.9	-1.5	-8.5	-3.5	-7.2
Burkina Faso	-9.1	-9.6	-10.9	-12.1	-8.3	-9.4
Mali	-6.5	-7.1	-7.6	-8.1	-8.2	-10.4
Tax revenue (% of GDP)						
Benin	14.6	16.5	18.2	19.4	17.2	16.1
Burkina Faso	12.5	11.7	11.4	12.5	12.1	12.6
Mali	14.9	15.4	14.9	14.2	12.8	13.3

¹ UNDP online information. Viewed at: <http://hdr.undp.org/en/statistics>.

	2004	2005	2006	2007	2008	2009 ^a
Customs revenue (% of tax revenue)						
Benin	50.1	54.7	56.0	54.3	54.5	51.8
Burkina Faso	39.9	39.0	41.1	40.2	41.0	39.2
Mali	53.6	50.5	47.9	44.6	42.0	42.8
Current balance (% of GDP)						
Benin	-7.1	-5.2	-4.6	-8.9	-8.5	-10.9
Burkina Faso	-10.6	-11.7	-9.6	-8.2	-11.8	-8.9
Mali	-8.2	-8.0	-3.6	-8.1	-8.0	-7.4
Balance of trade and services (% of GDP)						
Benin	47.2	44.0	50.0	62.6	60.7	55.6
Burkina Faso	37.1	35.5	35.2	35.2	34.8	34.9
Mali	57.0	58.5	65.6	63.8	66.6	..
Intra-WAEMU trade as a percentage of total trade (goods)						
Benin	14.1	13.6	15.3	14.0	10.1	13.1
Burkina Faso	46.5	42.9	39.5	37.8	..	..
Mali	27.8	26.2	22.9	28.8	24.4	29.9
WAEMU	14.3	13.2	15.4	15.5	..	..
Intra-ECOWAS trade as a percentage of total trade (goods)^b						
Benin	24.0	23.4	26.5	20.5	18.8	25.3
Burkina Faso	53.0	50.7	36.8	65.4	61.2	..
Mali	30.1	30.3	25.3	31.4	26.0	31.7
ECOWAS	10.9	11.3	12.3	10.0	10.0	..

.. Not available.

a Estimates.

b Data for Liberia not available.

Source: WAEMU Commission; World Bank, World Development Indicators; BCEAO, Annual Reports 2008, 2007 and 2006; BCEAO Statistics Yearbook 2007; Comtrade database (SITC Rev.3) and CEDEAO-ECOSTAT. Viewed at: <http://www.ecostat.org/en/standard.php?file=sommaire>.

3. The economies of Benin, Burkina Faso and Mali are poorly diversified and depend primarily on agriculture and livestock farming (see annexes on Benin, Burkina Faso and Mali, Chapter I(1)) and especially on cotton.² Economic performance remains conditioned by agricultural harvests, which in turn depend on weather factors. Altogether, agriculture is fairly uncompetitive owing to the low level of mechanization and rudimentary cultivation methods. Governments frequently act to support production using various measures, including the provision of fertilizers at subsidized prices.

4. Services also have an appreciable share in the three countries' GDP. Service activities consist primarily of transport and trade, while telecommunications have also developed quite strongly in recent years. Nevertheless, growth is still hindered by the poor regulatory framework and the preponderance of informal activities. The manufacturing sector, including processing of local resources, remains relatively small. The completion of the large infrastructure and public works projects that are currently under way should improve the business environment and could attract investment, *inter alia*, in manufacturing. Despite its huge potential, mining remains quite limited, but is developing, particularly in Burkina Faso.

² The composition of GDP and geographical structure of trade are hard to identify owing to the large informal economies in the three countries.

(2) MONETARY AND EXCHANGE POLICIES

5. The member States of the West African Monetary Union (WAMU)/WAEMU³ have maintained common monetary and exchange policies and a monetary cooperation agreement with France since 1972, supplemented by an operations account agreement of 1973.⁴ The Central Bank of West African States (BCEAO) is the issuing institution of the common currency, the African Financial Community franc (CFA franc or CFAF) and is responsible for ensuring its stability. Initially pegged to the French franc at a fixed parity, the CFAF is currently linked to the euro at the fixed parity of CFAF 1,000 = €1.52449017 (€1 = CFAF 655,957).⁵ The BCEAO establishes the buying and selling rates for other currencies on the basis of the rate for the euro on the foreign exchange market.

6. The BCEAO is responsible for: implementing the monetary policy defined annually by the WAMU Council of Ministers; managing the operation accounts of the treasuries of the member States; and centralizing their foreign exchange reserves. It also defines the regulations applicable to the Union's banks and financial institutions and oversees their operations (Chapter IV(5)(iv)). In January 2007, the Conference of WAEMU Heads of State approved the basic principles for the institutional reform of the BCEAO, which provide, in particular, for the creation of a Monetary Policy Committee.⁶ The BCEAO's new statutes are in the process of being ratified by the member States; it is understood that they will incorporate the objective of price stability.

7. The aim of monetary policy is "to safeguard the common currency and provide for the financing of the economic activity and development of the member States".⁷ A statutory intermediate objective is to maintain a coverage ratio⁸ of more than 20 per cent for each quarter. Mandatory reserve ratios are another of the monetary policy tools available to the BCEAO, which resumed its open market operations in February 2007.⁹ It is also committed to strengthening the stability and

³ The Treaty establishing WAMU is complemented by the WAEMU Treaty, which provides for the fusion of the two agreements in due course within a new treaty. This fusion has not yet taken place.

⁴ The member States of WAEMU, the Comoros and the member States of the Central African Economic and Monetary Community (CEMAC) belong, together with France, to the franc zone. Monetary cooperation between France and the African countries of the franc zone is governed by four basic principles: the French Treasury guarantee of unlimited convertibility, fixed parities, freedom of transfer, and the pooling of foreign exchange reserves. In return for this guarantee, the BCEAO, the Central Bank of Central African States (BEAC) and the Central Bank of the Comoros, are required to deposit part of their foreign exchange reserves with the French Treasury in their operations accounts. In 2005, the proportion of foreign exchange assets that the BCEAO must deposit in the operations account under the agreement was reduced from 65 to 50 per cent (Banque de France, 2008).

⁵ The introduction of the euro did not lead to any substantial changes as far as the arrangements governing the franc zone are concerned (Decision of the Council of the European Union of 23 November 1998 concerning exchange rate matters relating to the CFA franc and the Comorian franc (98/683/EC)). Following the 50 per cent devaluation of the CFA franc in 1994, the fixed parity between the CFA franc and the French franc had become 1,000 CFA francs = 10 French francs.

⁶ BCEAO online information, "Final communiqué, 11th Ordinary Session of the Conference of Heads of State and Government". Viewed at: <http://www.bceao.int/internet/bcweb.nsf/pages/cpr460> [13 May 2007].

⁷ Article 12 of the WAMU Treaty.

⁸ Ratio of the average amount of the Bank's external assets to the average amount of its sight liabilities.

⁹ The minimum subscription rate for BCEAO open-market transactions is 3.25 per cent. The mandatory reserve ratios are: 9 per cent for Benin; 7 per cent for Burkina Faso; 5 per cent for Côte d'Ivoire; 3 per cent for Guinea-Bissau; 7 per cent for Mali, Niger and Senegal; and 3 per cent for Togo. The coefficient is fixed at 5 per cent for all credit-distributing financial institutions. BCEAO online information, "Press release of 9 June 2009". Viewed at: [http://www.bceao.int/internet/bcweb.nsf/files/interb11062009.pdf/\\$FILE/interb11062009.pdf](http://www.bceao.int/internet/bcweb.nsf/files/interb11062009.pdf/$FILE/interb11062009.pdf).

efficiency of the WAEMU financial system by modernizing the payment infrastructure and promoting electronic transactions.

8. The WAEMU common monetary policy is backed up by a Convergence, Stability, Growth and Solidarity Pact¹⁰ aimed at ensuring financial discipline on the part of each member State. The Pact lays down eight convergence criteria, four of which are primary criteria and four secondary, as well as a regular multilateral surveillance mechanism. In the event of failure to comply with the primary criteria, the Council of Ministers of WAEMU member States may request the national authorities concerned to draw up and implement a programme of corrective measures; the secondary criteria are structural indicators which may serve for the formulation of economic policy recommendations.¹¹ In 2009, Benin, Burkina Faso and Mali fulfilled three of the four primary criteria, only failing to meet the basic fiscal balance criterion.¹² The performance shortfalls of all the member States led to a further adjustment of the convergence timeline, which has now been extended to 31 December 2013.¹³

9. According to the common exchange regulations, all capital movements in CFA francs between WAEMU member States are free and unrestricted; capital inflows from any other (non-WAEMU) country are free in principle, with the exception of gold imports; and capital outflows to countries that are not members of WAEMU are subject to control on the basis of submission of supporting documents.¹⁴ Transfers of funds to cover operations linked with current transactions are free on submission of supporting documents (this requirement applies only to transfers in excess of CFAF 300,000). However, import and export operations must be domiciled with a local bank; export earnings must be repatriated within one month of the date on which payment is due, converted into CFA francs and deposited with an approved local intermediary.¹⁵ The Finance Ministry checks exchange operations relating to exports and imports *ex post facto* on the basis of the documents produced to Customs.

10. Any bank transfer to a non-WAEMU country is subject to an exchange tax of 0.25 per cent, paid to the Finance Ministry. At entry, non-resident travellers must declare in writing all amounts in excess of CFAF 1 million; on departure, amounts in excess of CFAF 500,000 may be exported only on proof of currency having been brought in or by bank transfer through an approved intermediary. There is a special regime for pilgrims.¹⁶

¹⁰ Additional Act No. 04/99 of 8 December 1999.

¹¹ The sustainability of member States' convergence performance is assessed on the basis of the indicators observed over the past three years and projections for the next three years.

¹² The primary criteria concern: inflation (maximum average annual rate of 3 per cent); maintenance of a non-negative basic budget balance; ratio of domestic and external debt to nominal GDP (70 per cent or less); and non-accumulation of payment arrears (domestic or external).

¹³ Additional Act No. 05/2009/CCEG/WAEMU amending Additional Act No. 04/99. Initially set for 2003, the convergence horizon was deferred to 2006 and then 2008.

¹⁴ Investments made by a resident in a non-WAEMU country are subject to prior authorization by the Finance Ministry and must be at least 75 per cent-financed from extra-WAEMU loans; when they are settled the proceeds must be repatriated to the country of origin unless prior authorization is obtained to reinvest them. This requirement does not apply to purchases of foreign securities for which the issuance or sale in WAEMU member States has been authorized by the Regional Council for Government Savings and Financial Markets.

¹⁵ Regulation No. 09/98/CM/UEMOA of 20 December 1998.

¹⁶ Senegalese Customs, online information. Viewed at: http://www.douanes.sn/detailinfo.php?Id_Inf=19.

(3) RECENT ECONOMIC DEVELOPMENTS

11. Benin, Burkina Faso and Mali maintained positive economic growth rates during the period 2004-2009, despite an adverse world environment marked by a surge in oil and food prices, worldwide financial turmoil and the appreciation of the euro (to which the CFAF is pegged at a fixed parity). Like other WAEMU countries, the three economies were not directly hit by the international financial crisis but began to feel its fallout as of 2009. This is attributable above all to the fact that they are not deeply integrated into the world economy, the restrictions on specific financial operations with non-WAEMU countries, and the favourable weather conditions for their agricultural sector. Nevertheless, their economies remain vulnerable to external shocks, especially commodity price fluctuations. Furthermore, the drop in external demand in 2009 appears to have led to a general decline in exports, and inflows of resources in the form of private transfers and foreign investment could also decrease.¹⁷

12. Inflation was successfully curbed after a spike in 2005, but accelerated rapidly in 2008 following the surge in world food and oil prices. Benin, Burkina Faso and Mali each responded individually with emergency measures covering various staple goods; this action included temporarily suspending customs duties and VAT, as well as setting and subsidizing prices (see annexes on Benin, Burkina Faso and Mali, Chapter I(2)). Some of these measures took the form of unauthorized waiving of the community rules, in particular those relating to the management of the Common External Tariff and its uniform application throughout WAEMU (Chapter III(2)(ii)).¹⁸ Continuing inflationary pressure led the three countries' governments to remove these temporary exemptions before the end of 2008. Various support measures, such as the provision of seeds and fertilizers free or at subsidized prices were instead introduced for food security purposes. WAEMU resources were also freed up to provide financial support for national food production programmes. Although prices began to fall in 2009, inflation has not yet been definitely brought under control.

13. The three countries' public finance difficulties continued during the period 2004-2009. The reforms carried out to rationalize the tax systems and improve tax collection have not yet produced significant results, apart from a slight increase in the ratio of tax revenue to GDP in Benin. In addition, the share of import taxes and duties and VAT collected at the customs border remains very high. Given the persisting non-grant budget deficits, implementation of socio economic programmes continues to depend on the availability of external financing, and in particular development aid.

(4) TRADE AND INVESTMENT TRENDS

14. During the period 2004-2009, the ratio of the total value of goods and services trade to GDP did not move in the same way in Benin, Burkina Faso and Mali (Table I.1), but all three countries recorded current account deficits throughout this period, partly owing to their chronic trade deficits.

15. Despite the progress made, albeit at differing speeds, in economic integration within the two regional groupings to which Benin, Burkina Faso and Mali belong, in general intra-community trade remains limited. The share of intra-trade within total WAEMU trade remains at a very similar level to that in ECOWAS (Table I.1). This similarity is partly explained by the continued presence of

¹⁷ A regional commission set up in March 2009 in response to these concerns is to propose measures, to be coordinated by the BCEAO, to forestall erosion of economic growth within WAEMU. The BCEAO has also reoriented its policy with a view to avoiding a credit drought in the Union.

¹⁸ The WAEMU Commission was notified of the exceptional measures taken by each member State and is monitoring the legislative action for removing them. However, an intergovernmental coordination mechanism would have ensured an optimal response to the crisis and avoided possible distortions of the Union's internal market.

obstacles to trade which need to be addressed by measures that go beyond the dismantling of tariff barriers (Chapter III(2)(iii)). At the national level, intra-community (WAEMU and ECOWAS) trade flows are exceptionally robust in Burkina Faso, representing a much higher share in the country's foreign trade than in the case of Mali, another landlocked country. According to the Burkina Faso authorities, this difference reflects the general orientation of the country's economy rather than a difference in methodology for the collection of trade statistics.¹⁹

16. Foreign direct investment (FDI) in Benin, Burkina Faso and Mali essentially shadows developments in privatization and the opening up of sectors to competition, and its fluctuations reflect the shaky implementation of the national programmes for State withdrawal from the economy. FDI goes primarily to the banking and telecommunications sectors and the extractive industries. In all three countries, this fluctuating level of investment and its concentration in a few economic activities highlights the need to further improve the business environment.

17. In the absence of a community investment code, still under preparation within WAEMU, the advantages (tax and/or duty exemptions) granted by member States are only partially regulated. For example, the framework for the harmonization of VAT rules in the Union (Chapter III(2)(ii)(d)) lays down the list of related exemptions. The community legislation on public aids (Chapter III(4)(i)) should in principle also limit the race to the bottom in tax exemptions in order to attract FDI. According to the WAEMU Commission, boosting investment in member States depends on improving the business climate, which among other things means resolving the recurrent problem of load-shedding as well as eliminating the legal uncertainties, rather than on the various incentives that are granted.

(5) OUTLOOK

18. Although the economies of Benin, Burkina Faso and Mali have so far not been badly affected by the international financial crisis, they remain vulnerable to exogenous shocks and the various knock-on effects accompanying the crisis. Their exposure to climatic vagaries is an additional risk, given the predominant position of agricultural products in their poorly diversified domestic supply. If the international context remains shaky for an extended length of time, it could worsen the slackening of demand for the three countries' main exports. Beyond the adverse effects on foreign trade, the poor performance of foreign economies would probably lead to a significant downturn in private transfers by migrant workers and in foreign investment.

19. In this difficult context, the WAEMU Commission has lowered its forecasts for economic activity in all the WAEMU member States. However, it estimates that the slowdown observed in 2009 in the three economies should be short-lived, and real growth should resume in 2010.²⁰ Nevertheless, inflation remains a danger and the three countries might again be unable to comply with the 3 per cent community ceiling, while a prolonged economic slowdown would worsen budget deficits, adversely affecting the funding of socio-economic programmes. All in all, there is still a real danger of an overall macroeconomic deterioration.

20. Besides pursuing prudent macroeconomic policies, the ability of Benin, Burkina Faso and Mali to achieve sustainable medium-term growth would depend on reforming the business

¹⁹ Regulation No. 03/2004/CM/UEMOA, in force since 1 January 2005, sets out the procedures of the preparation of the WAEMU member States' foreign trade statistics. The reliability and coherence of data should be ensured by national committees, but these do not appear to be operational. The WAEMU Commission intends to strengthen the institutional arrangements in order to improve the collection of trade statistics by seeking to include informal trade flows.

²⁰ WAEMU (2009).

environment. In this context, intensive efforts would be required both nationally and regionally to strengthen the legal framework and public administration, eliminate the energy deficit and deepen the financial system. Speedier harmonization of the WAEMU and ECOWAS regulatory frameworks could also serve as a catalyst for the reform process.

II. COMMON INSTITUTIONAL TRADE POLICY FRAMEWORK

21. Attempts to bring about the economic integration of French-speaking West Africa go back to the colonial period. The first step was monetary integration (Chapter I(1)), which was followed in 1994 by the creation of the West African Economic and Monetary Union (WAEMU), of which Benin, Burkina Faso and Mali are among the founder members. Since the previous review of the respective trade policies of Benin, Burkina Faso and Mali in 2004, WAEMU has made significant progress towards establishing its customs union and harmonizing members' trade regulations (Chapter III(2)); extensive legislation has also been adopted with a view to the establishment of a common market for several categories of services (Chapter IV(5)). One of its current objectives is to see to the effective implementation of this legislation, through such measures as the setting up of an Irregular Practices Observation Centre (OPA), in order to speed up the bringing of trade practices into conformity with the community rules.

22. The three countries have also pursued their integration efforts within the Economic Community of West African States (ECOWAS), to which all the WAEMU members belong. Since the previous TPR, ECOWAS (together with WAEMU) has participated in the negotiations with the European Union for an Economic Partnership Agreement between the EU and West Africa. In this connection, negotiations are under way among members to introduce an ECOWAS common external tariff, as already exists for WAEMU, but with a fifth tariff band of 35 per cent. Although ECOWAS and WAEMU have similar objectives, their pace of integration is quite different, which means that harmonization and coordination efforts are called for not merely among the countries themselves but also between the two regional economic groupings.

23. In the WTO, the three countries' major concern has remained the cotton issue, as described in Chapter IV. They have also participated in the Aid-for-Trade programme described in Chapter V of the annexes for Benin, Burkina Faso and Mali. On the organizational side, better coordination among WAEMU members in the WTO, in particular as regards notifications, would be cost effective as well as more efficient.

(1) WTO

24. As former contracting parties to the GATT 1947, Benin, Burkina Faso and Mali became original Members of the WTO in 1995. Within the WTO they are accorded the status of "Least Developed Country" (LDC). They are not members of any of the plurilateral agreements concluded under the aegis of the WTO. They grant at least MFN treatment to all their trading partners. The three countries are still encountering difficulties in implementing certain WTO Agreements, including that on customs valuation (annexes on Benin, Burkina Faso and Mali, Chapter III(2)).

25. The information available to the WTO concerning the trade policies of Benin, Burkina Faso and Mali remains partial or needs updating since the authorities are still experiencing certain difficulties in bringing their WTO notifications up to date, in particular the notifications for the Integrated Database (Table II.1). This information has sometimes been supplemented by notifications made by other WTO Members which are members of the same regional agreements, particularly WAEMU and ECOWAS. It would be sensible to generalize this practice and establish a systematic joint notification procedure for the WTO wherever possible, for example by the Member acting as WAEMU president, which would be responsible for submitting notifications on behalf of all members.

Table II.1

Notifications submitted to the WTO by or on behalf of Benin, Burkina Faso and Mali, January 2000 - May 2010

Agreement and subject	Country/Entity	Reference	Date
GATT 1994 - Regional Agreements			
WAEMU Treaty (Enabling Clause)	Senegal	WT/COMTD/N/11	03/02/2000
ECOWAS Treaty (Enabling Clause)	Ghana	WT/COMTD/N/21	26/09/2005
Agreement on Agriculture			
Article 18.2 - absence of export subsidies	Burkina Faso	G/AG/N/BFA/3 G/AG/N/BFA/4	11/01/2001 14/12/2009
Article 18.2 - absence of export subsidies	Burkina Faso		
Agreement on the Application of Sanitary and Phytosanitary Measures			
Import prohibition on poultry	Benin	G/SPS/N/BEN/5	28/07/2006
Agreement on Implementation of Article VI of the GATT 1994 - notified measures (Article 16.4)			
1996: no measures	Benin	G/ADP/N/22/Add.1/Rev.9 G/ADP/N/16/Add.1/Rev.12	27/04/2009
1997: no measures	Benin, Burkina Faso	G/ADP/N/29/Add.1/Rev.9 G/ADP/N/35/Add.1/Rev.2	27/04/2009
1998: no measures	Burkina Faso	G/ADP/N/41/Add.1/Rev.9 G/ADP/N/47/Add.1/Rev.6	27/04/2009
1999: no measures	Burkina Faso	G/ADP/N/53/Add.1/Rev.7 G/ADP/N/59/Add.1/Rev.7	27/04/2009
2000: no measures	Burkina Faso	G/ADP/N/65/Add.1/Rev.7 G/ADP/N/72/Add.1/Rev.7	27/04/2009
Agreement on Customs Valuation (Article VII of the GATT 1994)			
WAEMU regulations	Burkina Faso	G/VAL/N/1/BFA/1	30/10/2002
	Burkina Faso	G/VAL/N/1/BFA/1/Rev.1	21/01/2004
Deferred application	Benin	WT/Let/331	24/02/2000
Agreement on Rules of Origin			
Preferential rules of origin	Mali	G/RO/N/35	24/09/2001
Agreement on Import Licensing Procedures			
Notification under Article 7.3 - regulation	Burkina Faso	G/LIC/N/3/BFA/1/Add.1	18/12/2000
Notification under Article 7.3 - regulation	Burkina Faso	G/LIC/N/3/BFA/2	16/11/2009
Legislation under Articles 1.4(a), 8.2(b) and 7.3	Mali	G/LIC/N/1/MLI/1	27/08/2001
Agreement on Safeguards			
Article 12.6: no measures	Burkina Faso	G/SG/N/1/BFA/1	14/12/2009
Agreement on Subsidies and Countervailing Measures			
Notification for 2001 (absence of measures)	Mali	G/SCM/N/71/MLI	02/08/2001
Notification (absence of measures)	Burkina Faso	G/SCM/N/186/BFA	14/12/2009
Agreement on Technical Barriers to Trade			
Annex 3C (Code of conduct)	Benin	G/TBT/CS/N/142	14/05/2002
Annex 3C (Code of conduct)	Burkina Faso	G/TBT/CS/N/158	10/11/2004
Agreement on Trade-Related Aspects of Intellectual Property Rights			
Laws and regulations (Article 63.2)	Burkina Faso	IP/N/1/BFA/C/1 IP/N/1/BFA/C/2 IP/N/1/BFA/C/3 IP/N/1/BFA/C/4 IP/N/1/BFA/C/5	08/07/2004
Contact point (Article 69)	Burkina Faso	IP/N/3/Rev.10/Add.12	11/12/2009
Absence of incompatible measures	Mali	G/TRIMS/N/2/Rev.9	28/09/2001
Contact point (Article 69)	Mali	IP/N/3/Rev.6	01/03/2002
Integrated Data Base (IDB)			
Applied tariffs, 2003	Benin, Burkina Faso	G/MA/IDB/2/Rev.30	30/09/2009
Applied tariffs, 2003-2008	Benin, Burkina Faso, Mali	Data supplied by WAEMU	2010
Imports, 2000-2003	Burkina Faso	G/MA/IDB/2/Rev.30	30/09/2009
Imports, 2003-2007	Benin	Data supplied by WAEMU	2010

Agreement and subject	Country/Entity	Reference	Date
Imports, 2003-2006	Burkina Faso		
Imports, 2006-2009	Mali		

Source: WTO documents.

26. The three countries each have a mission in Geneva. They coordinate their positions in the WTO, in particular with regard to the Doha Round, with the positions of the other WAEMU countries. In principle the Member chairing the WAEMU Council of Ministers is also responsible for coordinating members' positions in the WTO. In 2009 the president was Côte d'Ivoire, followed by Guinea-Bissau in 2010, which does not have a mission in Geneva. The WAEMU Commission therefore envisaged giving this role to Côte d'Ivoire once again. Generally speaking, coordinating the notification process by a single member of the Union would make it possible to submit most notifications to the central registry of notifications and to the integrated database once only on behalf of the seven other Union members and also ensure that the notifications are up to date for all members. WTO technical assistance could be requested for this purpose.

27. The three countries participated actively in the discussions on the cotton issue (Chapter IV); they also support the request for observer status for WAEMU and generally the positions of the LDCs, the African Group, the ACP countries and the developing countries on matters relating to multilateral obligations and to the strengthening of technical cooperation activities. All in all, however, the lack of human and financial resources hinders their effective participation in the work of the WTO.

(2) AFRICAN UNION²¹

28. Benin, Burkina Faso and Mali are all three founding members of the African Union (AU), the successor to the Organization of African Unity (OAU).²² The AU's current institutions are the Conference of Heads of State and Government; the Council of Ministers; the Peace and Security Council; the Commission; the Pan-African Parliament; the Economic Social and Cultural Council (ECOSOCC); and, in the planning stage, institutions such as a Central Bank, a Monetary Fund, the African Investment Bank, a Court of Justice, and technical commissions. Instituted by the Treaty of Abuja, the African Economic Community (AEC), created in 1994, envisages the establishment of a monetary and economic union on a continental scale by 2034, with the ultimate objective of establishing the United States of Africa.²³ The process is based on the consolidation of the principal regional economic communities (RECs)²⁴, followed by their integration. This presupposes a rationalization of the existing 14 regional economic groupings on the African Continent. In several instances their geographical coverage overlaps, and the pace of their integration differs substantially.

29. The New Partnership for Africa's Development (NEPAD), adopted in 2001 at the Lusaka (Zambia) Summit, is an AU programme that envisages a new partnership between Africa and

²¹ African Union, online information. Viewed at: <http://www.africa-union.org>

²² The OAU Charter was signed on 25 May 1963. The Constitutive Act of the African Union was adopted at the summit held in July 2000 in Lomé (Togo). The African Union, which succeeded the OAU, was proclaimed on 11 July 2001 at Lusaka in Zambia, after ratification of the Constitutive Act by more than 44 of the 53 member States of the OAU. The African Union was launched at the Durban Summit of 9 July 2002.

²³ African Union, online information, "Declaration of Accra". Viewed at: <http://www.africa-union.org>

²⁴ Community of Sahel-Saharan States (CEN-SAD), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Inter-Governmental Authority on Development (IGAD), Southern African Development Community (SADC), and Union of the Arab Maghreb (UMA).

the international community.²⁵ With the support of its development partners, NEPAD has undertaken various activities and projects that encourage regional integration, in particular through the development of transport, energy, water and sanitation infrastructure, and the new communication and information technologies. Trade, including market access, is one of NEPAD's declared priority objectives.

(3) WEST AFRICAN ECONOMIC AND MONETARY UNION (WAEMU)

30. Benin, Burkina Faso and Mali are among the founding members of WAEMU²⁶, which complements, through an economic Chapter, the West African Monetary Union (WAMU) (Chapter I(2)). The WAEMU Treaty provides for the creation among the member States of a common market based on free movement of persons, goods, services and capital and the right of establishment and of residence of self-employed persons or of employees, as well as a common external tariff and a common trade policy. It also provides for the coordination of national sectoral policies through the implementation of common actions, in particular in the following areas: human resources, urban and regional planning, transport and telecommunications, the environment, agriculture, energy, industry and mines. It also calls for the harmonization of legislation in member States, particularly tax regimes, to the extent necessary to ensure the proper functioning of the common market.

31. The WAEMU institutional framework has not changed since the previous TPR. It consists of the Conference of Heads of State and Government, which adopts acts additional to the Union Treaty; the Council of Ministers, WAEMU's decision-making body; and the WAEMU Commission, the monitoring and implementing organ.

32. The Conference of Heads of State and Government adopts treaties and agreements, which take precedence over the acts and protocols, which it also adopts. The Council of Ministers issues regulations, directives and decisions: regulations are binding and directly applicable in each member State; directives must be transposed into the law and practice of member States to have force of law; and decisions are binding on the persons or member States to which they are addressed.

33. The other WAEMU institutions are the Court of Justice; the Court of Auditors; the Interparliamentary Committee, which will be replaced by the Parliament (in process of being established); the West African Development Bank (BOAD); and the BCEAO, the Central Bank of West African States. The WAEMU Commission has prepared for the advent of the Union Parliament in consultation with the WAEMU Inter Parliamentary Committee. The Treaty establishing the Parliament²⁷ was adopted in 2003 and will enter into force once it has been ratified by each of the WAEMU member States. At the end of May 2010, only ratification by Côte d'Ivoire was lacking.

34. The WAEMU customs union has been in effect since 1 January 2000, including the Common External Tariff, and harmonization of VAT and excise duty regulations. With regard to intra-community trade, total exemption from import duties and taxes is supposed to be applied to

²⁵ NEPAD online information. Viewed at: <http://www.nepad.org/home/lang/en>.

²⁶ WAEMU online information. Viewed at: <http://www.uemoa.int/>. The WAEMU Treaty was signed on 11 January 1994 by Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal and Togo; Guinea-Bissau acceded to the treaty on 1 January 1997. It was notified to the WTO in documents WT/COMTD/N/11 of 3 February 2000, WT/COMTD/N/11/Add.1 of 2 March 2001, WT/COMTD/N/11/Add.2 of 22 August 2001 and Corr. 1 of 26 March 2002.

²⁷ WAEMU online information. "Traité portant création du Parlement de l'Union économique et monétaire de l'Afrique de l'Ouest". Viewed at: <http://www.uemoa.int/actes/2003/TraitParlement.pdf>.

trade in goods involving unprocessed local products and approved originating products, but in practice this is not always the case (Chapter III(2)(c)) and Table III.3).²⁸

35. Since 2000, these efforts have resulted in only a small increase in intra-WAEMU trade, essentially relating to exports (Chapter I(4)). This is partly due to the fact that major tariff and non-tariff barriers continue to hinder intra-community trade. One of the Union's priority objectives is therefore to eliminate these barriers. To that end, recent initiatives include the building of juxtaposed control posts at the borders of member countries, as well as the establishment of the OPA, on the main inter-state road corridors, a joint initiative between WAEMU and ECOWAS in 2007. The objective of the OPA is to report on abnormal practices in the selected pilot corridors in terms of checkpoints, unnecessary delays and illicit charges.²⁹

36. Nevertheless, in the absence of a single WAEMU entry point regime, when a third country product, already cleared through customs in a first WAEMU country of entry, is re-exported to another member State, it is subject to a second collection of duties and taxes, thus increasing its cost. In the context of the establishment of a common market for all member States, the WAEMU Commission included in its work programme for 2010 the preparation of terms of reference for a study on the free circulation of non-WAEMU goods within the territory of the Union once they have entered the community customs territory.³⁰

37. The member States have given the WAEMU Commission exclusive authority over their common third-country trade policy. In principle, the bilateral trade agreements of WAEMU members will be progressively replaced by agreements between WAEMU and third countries. On 24 April 2002, the Commission concluded a non-preferential agreement on the development of trade and investment with the United States.³¹ A preferential trade agreement with Morocco was initialled at the end of 2008, but has not yet been signed; it provides for reciprocal tariff concessions and includes several provisions concerning the removal of non-tariff barriers to bilateral trade, on which negotiations are continuing. Other trade agreements are being negotiated with Algeria, Egypt and Tunisia. The WAEMU Commission is participating in the ECOWAS negotiations with the European Union (EU) for the conclusion of an Economic Partnership Agreement (EPA) (see sections (4) and (5) below).

(4) ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

38. Benin, Burkina Faso and Mali, like all members of WAEMU, are founding members of ECOWAS³² established by the Lagos Treaty in 1975. ECOWAS is one of the Regional Economic Communities (RECs) responsible for realizing the objectives of the African Union (see

²⁸ Additional Protocol No. III/2001 establishing the WAEMU rules of origin (viewed at: http://www.uemoa.int/actes/2001/protocole_additionnel_03.htm) replaces Additional Act No. 4/96 of 10 May 1996 establishing a preferential tariff regime for trade within WAEMU, as amended by Additional Act No. 4/98. Additional Protocol No. III/2001 was amended by Additional Protocol No. 01/2009/CCEG/UEMOA.

²⁹ According to the OPA's tenth report, the number of unwarranted controls is falling and is now not more than 4 per 100 km., while the level of bribes extorted has also declined to not more than CFAF 5,843 (about 9 Euros) per 100 km.

³⁰ WAEMU Commission, online information. Viewed at: http://www.uemoa.int/opportunités/AO/2010/18032010/manif_libre_pratique.pdf.

³¹ Online information from the Office of the United States Trade Representative. Viewed at: <http://www.ustr.gov>.

³² ECOWAS online information. Viewed at: <http://www.ecowas.int>.

section 2 above).³³ A joint WAEMU-ECOWAS secretariat meets twice a year to coordinate the activities of the two institutions.

39. The ECOWAS institutional framework consists of the Conference of Heads of State and Government, its decision-making authority; the Commission, with broader powers, which replaced the former Executive Secretariat in 2007; and the Parliament, the Court of Justice and the West African Investment and Development Bank. Each member applies an ECOWAS community levy of 0.5 per cent and a statistical tax of 1 per cent on imports from third countries; the proceeds are passed on to ECOWAS.

40. The ECOWAS Treaty was revised in 1993 to give new impetus to the Community's economic integration projects³⁴, which did not really take off until 2003. Its rules of origin were harmonized with those of WAEMU in 2003 (Chapter III(2)(ii)).³⁵ The Treaty provides that unprocessed local and handicraft products are in free circulation within the Community, as are approved originating manufactured goods (Chapter III(2) concerning tariff preferences). In practice, however, MFN duties are applied to intra-ECOWAS trade for many products, as are many other illicit charges.

41. With a view to the creation of a custom union, a prerequisite for the conclusion of an EPA with the EU, ECOWAS decided to equip itself with a Common External Tariff (CET). At the Niamey (Niger) Summit on 12 January 2006, ECOWAS chose to extend the coverage of the WAEMU CET to all its members as from 1 January 2008. Ghana has introduced the CET, along with the WAEMU member countries, Nigeria has reduced the number of its tariff categories from 19 to five and lowered the rates of its customs duties; nevertheless, 10 per cent of its tariff lines are in a fifth category and hence not in conformity with the WAEMU CET.

42. In October 2008, the Monitoring Committee for the negotiations on the EPA with the European Union recommended to the Banjul Summit the creation of a fifth band, at 35 per cent, essentially for agrifood products, on which negotiations are also continuing. The process of adoption of the ECOWAS CET and its accompanying measures coincided with the preparation of accompanying measures for the implementation of the ECOWAP, the ECOWAS common agricultural policy. Following the example of the WAEMU scheme, ECOWAS is envisaging three new accompanying measures: a degressive protection tax (TDB) of limited duration to protect local West African manufacturing industries; an import safeguard tax (TSI) to combat import surges; and a countervailing duty to combat "unfair competition".³⁶

43. In addition to a common certificate of origin, ECOWAS has undertaken several projects to facilitate the movement of goods, services and persons, including the development of the road network and the telecommunications infrastructure; the creation of a regional third-party motor vehicle insurance regime; the establishment of an Inter-State Road Transit (TRIE) regime; and the abolition of the visa requirement for travel between all the countries of the subregion, together with

³³ The ECOWAS members are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

³⁴ The revised 1993 Treaty was notified to the WTO in 2005 by Ghana on behalf of the ECOWAS member States (WTO document WT/COMTD/N/21 of 26 September 2005). The text of the Treaty is available under reference WT/COMTD/54.

³⁵ Protocol A/P1/1/03 of 31 January 2003 on the concept of originating products of ECOWAS member States. See also NEPAD (undated).

³⁶ AIRD online information, "ECOWAS Common External Tariff and Common Market". Viewed at: <http://www.aird.com>.

the creation of a single passport (Chapter IV).³⁷ Another important ECOWAS initiative is the West African Power Pool (WAPP)³⁸, the purpose of which is to expand trade in electricity among the 15 member countries (energy being one of the main constraints on subregional supply), among other things by coordinating the investment projects submitted to donors. ECOWAS is also actively involved in efforts to maintain political stability in the subregion and resolve conflicts.³⁹

44. Efforts to achieve ECOWAS monetary integration began in 1987, but monetary union, which was supposed to come into existence before the year 2000, did not materialize. The West African Monetary Institute (WAMI) was established in 2000 in Accra (Ghana) to integrate ECOWAS countries that did not yet belong to a monetary union (see Chapter I with respect to WAEMU countries) into a second monetary zone, the West African Monetary Zone (WAMZ).⁴⁰ The prerequisites for the introduction of a common currency for WAMZ members are: free convertibility of national currencies, complete liberalization of capital account transactions, and full compliance with the ECOWAS customs union regulations.

(5) RELATIONS WITH THE EUROPEAN UNION

45. Benin, Burkina Faso and Mali are among the 79 ACP countries with which the European Union concluded the Agreement signed on 23 June 2000 at Cotonou (Benin)⁴¹, to replace the Lomé Convention. The Cotonou Agreement covers the period up to 2020. Its trade provisions constitute one of the mechanisms of cooperation between the ACP countries and the EU. Until 31 December 2007⁴², the latter admitted under the duty-free regime non-agricultural products and most processed agricultural products originating in 78 ACP countries (excluding South Africa) on a non-reciprocal basis. Development aid is provided by the European Development Fund (EDF), supplementing the bilateral initiatives of the EU member countries.

46. The Cotonou Agreement provides for the negotiation of regional EPAs, which were to take over from its trade provisions as from 1 January 2008; Benin, Burkina Faso and Mali form part of the West Africa Group. In December 2007, two countries of this group, Côte d'Ivoire and Ghana, which are not LDCs, each initialled an EPA with the EU which allows them to continue to enjoy duty-free access to EU markets for their products.⁴³ The EU plans to conclude a global EPA with all the West African countries, which would in principle replace the agreements concluded individually with the countries of the subregion, with global settlement of the issues relating to compensation for loss of tax revenue⁴⁴, development aid to support the upgrading of productive capacity, and the

³⁷ ECOWAS online information, "ECOWAS achievements: market integration". Viewed at: <http://www.sec.ecowas.int/sitecedea0/english/achievements-1.htm>.

³⁸ ECOWAS online information: "How the Power Pool works". Viewed at: <http://www.ecowas.int/ips/ii/energy/enr/page.php?file=how>.

³⁹ Documentation française, online information, "Maintien de la paix dans le monde: l'ONU et les acteurs régionaux". Viewed at: <http://www.ladocumentationfrancaise.fr/dossiers/maintien-paix/cedea0.shtml>.

⁴⁰ WAMI online information. Viewed at: <http://www.wami-ima0.org>. For more details, see WTO (2009).

⁴¹ Europa online information, "Cotonou Agreement". Viewed at: http://europa.eu/legislation_summaries/development/african_caribbean_pacific_states/r12101_en.htm.

⁴² WTO Members had agreed to a derogation from the EU's obligations under Article I:1 of the GATT 1994 (on MFN treatment) for the period from 1 March 2000 to 31 December 2007 (WTO document WT/MIN(01)/15 of 14 November 2001).

⁴³ Cape Verde, which ceased to be an LDC on 1 January 2008, is benefiting from the EU's "Everything but Arms" initiative for a transitional three-year period. Nigeria, which is not an LDC, benefits from the Generalized System of Preferences (GSP).

⁴⁴ The negotiation of this EPA concerned trade in goods and services and investment, among other chapters. An overview is available on the European Centre for Development Policy Management (ECDPM)

supplementary resources to be allocated by the European Development Fund (EDF). The negotiations on the EPA with West Africa are continuing.⁴⁵

47. The EPAs signed with Côte d'Ivoire and Ghana provide that at the end of a transition period the EU's regional partners will have eliminated customs duties on most imports from the EU. The major concerns of the ECOWAS countries include both the loss of government revenue and the competitiveness of domestic enterprises in the face of competition from EU-originating products. Customs duties on imports from the EU account for about 10-15 per cent of government revenue in Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Nigeria and Senegal; 15-20 per cent of government revenue in Benin, Ghana, Guinea and Mali; 25-30 per cent of government revenue in Cape Verde, Gambia, Niger and Sierra Leone; and more than 30 per cent in the case of Togo.

48. Benin, Burkina Faso and Mali benefit from the EU's "Everything but Arms" initiative, which has formed the basis for their preferential access to EU markets since 1 January 2008, in place of the non-reciprocal preferences accorded under the Cotonou Agreement. This initiative provides for the duty-free admission of all products (including bananas from 2006 and sugar and rice from September 2009) with the exception of arms and ammunition, of LDC origin. For the year 2008, about one third (36.4 per cent) of EU imports from Benin (which totalled €77.9 million) entered duty-free under these preferences, while 46 per cent were admitted under MFN conditions (the remainder could not be allocated owing to statistical problems⁴⁶). More than 73 per cent of EU imports from Burkina Faso entered with MFN treatment, and only 5.4 per cent were admitted under these preferences. The proportion in the case of Mali was even smaller, with 4 per cent entering duty-free under these preferences; 60.6 per cent entered with MFN treatment, while the remainder (32.6 per cent) could not be allocated to any specific tariff regime.

(6) RELATIONS WITH THE UNITED STATES

49. Benin, Burkina Faso and Mali are among the 40 countries eligible for the programme established by the United States under the African Growth and Opportunity Act (AGOA).⁴⁷ The countries accepted under the AGOA benefit, until 2015, from duty-free and quota-free access to the United States market for various goods, including certain agricultural and textile products (except apparel). With regard to the latter, Benin, Burkina Faso and Mali are eligible for the special provision relating to the incorporation of third-country fabrics in apparel, which remains in force until 30 September 2012, as well as for the provision concerning handmade (so-called "Category 9") products and the provision concerning articles made from ethnic fabrics. However, national economic operators are failing to take advantage of these provisions. US imports from Benin in their entirety, amounting to some US\$31 million in 2008, failed to benefit from the AGOA preferences⁴⁸; about 10 per cent of total US imports from Burkina Faso benefited from them, for an amount of US\$59,000; while the share in the case of Mali was even smaller, at US\$261,000 as against total imports of US\$5.1 million, consisting primarily of gold and antiquities.

website. ECDPM online information, "Overview of the Regional EPA Negotiations: West Africa-EU Economic Partnership Agreement". Viewed at: www.ecdpm.org.

⁴⁵ Viewed at: <http://www.acp-eu-trade.org/index.php?loc=tni/>; <http://ictsd.org/>; <http://www.ecdpm.org/> (<http://www.ecdpm.org/>); and <http://ec.europa.eu/trade/wider-agenda/development/economic-partnerships/>.

⁴⁶ A methodological explanation (Note TRADE/H3/SLG/D(2006)) was viewed at <http://nui.epp.eurostat.ec.europa.eu>.

⁴⁷ AGOA online information. Viewed at: <http://agoa.gov>.

⁴⁸ Online information from the US Trade and Investment Commission, "Sub-Saharan Africa: U.S. imports, total, and under the African Growth and Opportunity Act, year-to-date from Jan-Nov". Viewed at: http://reportweb.usitc.gov/africa/total_gsp_agoa_import_suppliers.jsp.

III. COMMON TRADE MEASURES

(1) OVERVIEW

50. In the context of regional integration, which has advanced a long way in WAEMU, Benin, Burkina Faso and Mali have harmonized several trade policy instruments. The instruments harmonized within WAEMU include, among others, the CET; customs valuation (guiding principles); contingency measures; other import duties and taxes (statistical fee (RS), community solidarity levy (PCS)); bank domiciliation of trade transactions; rules of origin; competition policy; and control of veterinary medicines. Community frameworks also exist to ensure convergence of national regimes on: internal taxation (value-added tax (VAT), excise duties, tax on petroleum products, advance payment of profits tax); prohibitions and licensing (*inter alia* for ozone-depleting substances); standards, technical regulations and accreditation procedures (control of pesticides); sanitary and phytosanitary safety; and government procurement. Some trade policy instruments are also harmonized within ECOWAS, namely the ECOWAS community levy, rules of origin (similar to those of WAEMU) and the TRIE, which is still unevenly implemented. Intellectual property rights are protected under a regional structure grouping 16 member countries including Benin, Burkina Faso and Mali.

51. The WAEMU CET has not undergone any major changes since the latest review of the respective trade policies of the three countries in 2004. The CET currently applied is based on the 2007 version of the Harmonized Commodity Description and Coding System (HS). All the lines are distributed in four *ad valorem* tariff bands (at 0, 5, 10 and 20 per cent). The simple average rate remains unchanged (12.1 per cent), as do nominal protection for agricultural products and the mixed tariff escalation. Benin, Burkina Faso and Mali are taking part in the ongoing negotiations concerning the ECOWAS CET, which are expected to lead to the introduction of a fifth rate of 35 per cent.

52. The eligibility of goods for the WAEMU and ECOWAS community tariff preference regimes is governed by rules of origin whose basic principles have been harmonized since 2004. WAEMU/ECOWAS origin is conferred systematically on unprocessed local or handmade products and recognized in the country of destination without prior certification; goods that have been sufficiently worked or processed must be approved and accompanied by a certificate of origin. The conditions for approval of products in ECOWAS and WAEMU are not identical; the WAEMU rules were made more flexible in 2009.

53. WAEMU has adopted regulations on competition, including State aid, which are administered by the Commission. The legislative competence of member States essentially relates to consumer protection; national bodies play a marginal role in implementing competition law. WAEMU has also adopted directives on government procurement, which specify the provisions that must be included in the national implementing regulatory frameworks, as well as providing for a community rather than national preference.

54. Like all the other WAEMU countries, Benin, Burkina Faso and Mali are signatories to the Bangui Agreement (1977) creating the African Intellectual Property Organization (OAPI). The revised Bangui Agreement (1999) entered into force in 2002. This revision allowed OAPI member States to align the objects and terms of protection on the provisions of the WTO TRIPS Agreement, with the exception of those relating to topographies, whose implementation has been deferred for lack of the necessary skills.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

55. The WAEMU customs regulations deal with the harmonization of the national provisions on organizational frameworks and customs procedures and regimes.⁴⁹ The WAEMU Customs Code applies to all goods, including those of community origin (see below). The trade regulations are supplemented by legislation on the external financial relations of the WAEMU member States applicable to importers, exporters and travellers. The community Code provides for the following customs regimes: release for consumption, export, transit, customs warehousing, temporary admission, in-bond manufacturing, prior exportation, drawback, temporary importation and exportation, re-exportation and any other authorized procedure. A "clearance credit" option, allowing speedier removal of goods, is also provided.⁵⁰

56. A customs declaration is mandatory under every customs regime and must indicate, among other things, the tariff heading, the product description and the purchase price.⁵¹ Member States may authorize the submission of simplified declarations (either in final form or to be regularized by supplementary declarations) against the presentation of a general security.⁵² The basic elements of these declarations are laid down by the community rules.⁵³ Border trade goods of a value not exceeding CFAF 250,000 as well as travellers' baggage are eligible for the final simplified declaration. Simplified declarations that need to be regularized subsequently, which are admissible for both importation and exportation, are provided for in the case of goods requiring urgent or emergency treatment or split shipments (over a period not exceeding three months). WAEMU has not yet introduced common uniform customs documentation.⁵⁴

57. According to the ECOWAS foreign exchange regulations⁵⁵ trade transactions with non-franc zone countries must be domiciled with an approved intermediary bank, with the exception of transactions valued at less than CFAF 5 million. The bank opens a file on the basis of the following documents: the pro forma invoice; the foreign-exchange permit certified by the Currency and Credit Directorate (DMC); the certificate confirming that importation took place; and proof of possession of an importer-exporter permit (see annexes on Benin, Burkina Faso and Mali, Chapter III(2)(i)). The

⁴⁹ Regulation No. 09/2001/CM/UEMOA on the adoption of the WAEMU Customs Code.

⁵⁰ To make use of this option, the person concerned must deposit an annual sum to guarantee payment of his duty and tax liabilities within 15 days after the "clearance voucher" is issued. The total amount payable to Customs is also increased, at a rate set by the authorities in each member State.

⁵¹ According to Regulation No. 05/1999/CM/UEMOA of 6 August 1999, the customs value of imported goods includes transport costs up to the point of import and the cost of insurance. This definition appears to be interpreted as giving rise to mandatory insurance of freight and imported goods.

⁵² Regulation No. 09/2008/CM/UEMOA of 26 September 2008. Member States may also grant simplified procedures for certain goods for reasons of perishability, emergency or on any other duly justified ground.

⁵³ The details that must be provided are: name or company name of the importer; full address of the importer; tax identification number; total number in figures and words of the articles covered by the declaration; total number in figures and words of packages in a shipment; description of the goods; name and code of country of provenance; name and code of country of origin; identification of the means of transport; indication of the attached documents; gross and net weight of the goods; customs value of the goods in figures and words; rate and amount of import duties to be levied; rate and amount of import duties to be collected; name, address, corporate name, and approval number of declarer, date and signature. Regulation No. 09/2008/CM/UEMOA of 26 September 2008.

⁵⁴ A Single Customs Declaration (DDU) was adopted by ECOWAS under Regulation C/REG/.4/08/99 of 20 August 1999 but is still not yet being actually implemented by all member States.

⁵⁵ Regulation No. 09/98/CM/UEMOA of 20 December 1998.

bank returns the import certificate, which must be countersigned by Customs, and the file is cleared upon receipt of the latter, the bank settlement advices and a copy of the waybill. Imports not involving financial consideration are subject not to bank domiciliation but to prior countersignature by the Directorate responsible for external finance at the BCEAO. The bank domiciliation of exports follows the same principles, with the obligation to repatriate the earnings and convert them into CFA francs (Chapter I(2)).⁵⁶

58. The community framework for customs valuation dates from 1999.⁵⁷ The WAEMU Regulation reproduces the relevant provisions of the WTO Agreement in full as the basis for customs valuation. Where there are objections relating to the value of goods, they must be brought, in the first instance, before the national administrative body responsible for settling customs disputes, and may subsequently be brought before the courts. The WAEMU Customs Code adds that classification matters are dealt with by the WAEMU Commission in order to ensure uniformity in this respect within the Union. The community regulations incorporate the substance of the "Decision regarding cases where customs administrations have reasons to doubt the accuracy of the declared value", which forms part of the Marrakesh Agreement.⁵⁸

59. WAEMU still has a system of reference values⁵⁹ which is implemented nationally on an optional basis, although its member States no longer benefit from waivers of the WTO rules in this respect.⁶⁰ The community framework establishes a list of products (not originating in the Union) from which the national lists are drawn up if required; the special import tax (see below) cannot be applied to products subject to reference values. In principle, the WAEMU Commission is responsible for determining minimum values for these products and updating them every six months (Article 6); in practice this is done nationally. Some WAEMU member States, including Burkina Faso and Mali, justify their non-compliance with their obligations regarding minimum values under the WTO by the existence of this community system.

60. Benin, Burkina Faso and Mali have opted to computerize customs clearance procedures using the ASYCUDA automated customs system developed by UNCTAD. This global management tool for customs operations and the related databases is well suited to an environment where telecommunications networks are not highly developed. The choice of a common platform should facilitate the introduction (already implemented in Burkina Faso and Mali) of the uniform model detailed declaration adopted by ECOWAS as well as the eventual interconnection of the national customs administrations with a view to rationalizing cross-border transit procedures. The electronic monitoring of transit in WAEMU is already being introduced; a wider interconnection project under ECOWAS auspices has been suspended for lack of finance.

(ii) Customs levies

61. The WAEMU CET, which applies to goods not originating in the Union, entered into force in 2000.⁶¹ The CET is currently based on the 2007 version of the Harmonized Commodity Description

⁵⁶ Instructions No. 01/99/RC, No. 02/99/RC and No. 03/99/RC of the BCEAO.

⁵⁷ Regulation No. 05/99/CM/UEMOA.

⁵⁸ Article 16 of Regulation No. 5/99/CM/UEMOA.

⁵⁹ Regulation No. 4/99/CM/UEMOA.

⁶⁰ Annex III, paragraph 2, of the WTO Agreement on Customs Valuation allows developing country Members to make a reservation in order to retain their existing minimum values, on a limited and transitional basis. The reservation granted in the case of Senegal (WT/L/571) expired on 30 June 2005.

⁶¹ Regulation No. 2/97/CM/UEMOA.

and Coding System (HS); it is *ad valorem* on all lines.⁶² There are four tariff rates: 0, 5, 10 and 20 per cent. The allocation of tariff lines to one of these four bands may be revised at the proposal of a member State addressed to the CET Management Committee. Proposals are studied semi-annually and, if accepted, approved by the WAEMU Commission which forwards them to the Council of Ministers of the Union. Amendments that are approved and adopted by way of regulation are applicable immediately.

62. Benin, Burkina Faso and Mali each have their own national schedule of bindings. For about 27 per cent of bound tariff lines, in particular those bound in the countries' names when they were colonies, the CET rates are higher than the rates bound by each of the three countries in the WTO.

63. Imports other than those coming from the WAEMU/ECOWAS area are also subject to additional duties and taxes (see below) which increase the overall level of border protection. With regard to internal taxes, the value-added tax (VAT) regimes (but not the rates) and excise duty regimes have been harmonized in WAEMU. However, the WAEMU member States have not harmonized tariff exemptions and concessions, in particular those primarily designed to promote investment.

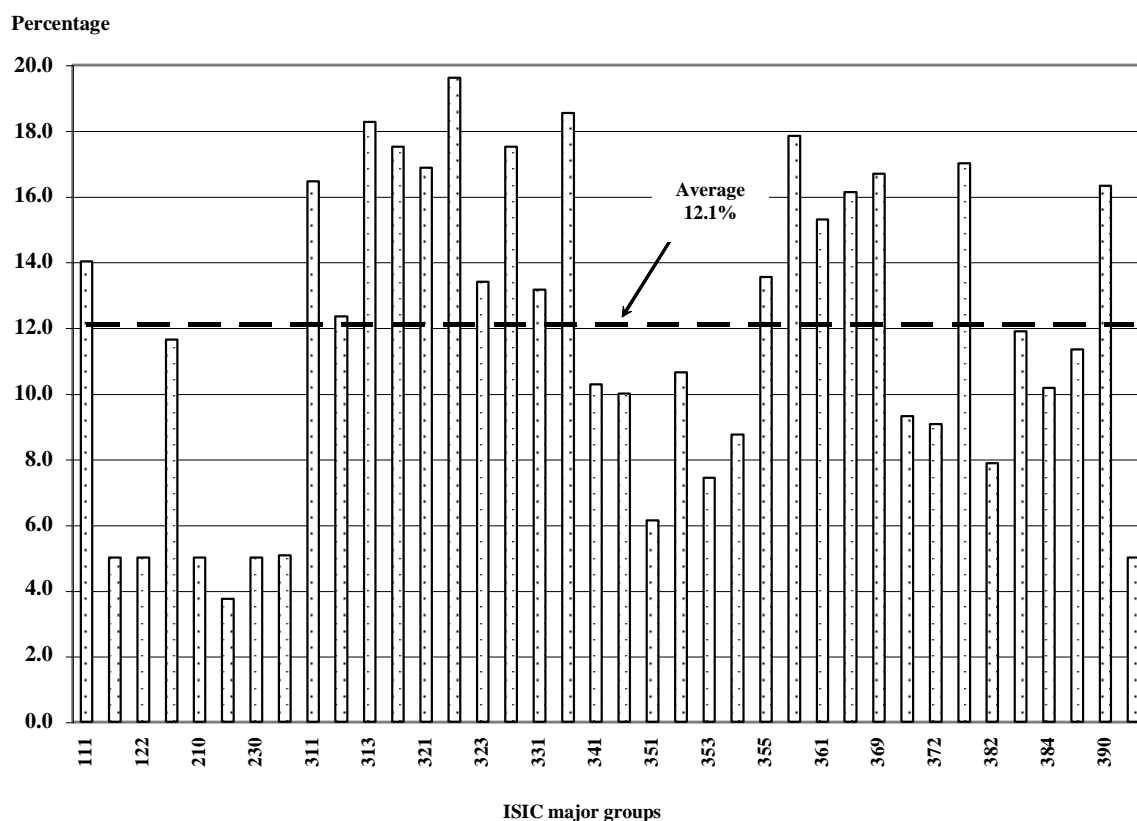
(a) Applied MFN tariff

64. The WAEMU CET contains 5,544 ten digit tariff lines of the 2007 version of the HS; it is *ad valorem* on all lines. The simple average of the CET rates, unchanged since 2003, is 12.1 per cent. The simple average of 14.6 per cent on agricultural products (WTO definition) is slightly higher than that on non-agricultural products excluding petroleum products (11.7 per cent). If the ISIC (Rev. 2) definition is used, agriculture remains the most protected sector with an average tariff of 13.1 per cent, followed by the manufacturing sector (12.2 per cent) and the mining sector (5 per cent) (Table III.1). The coefficient of variation of 0.6 (Table III.1) indicates moderate tariff rate dispersion (0, 5, 10 or 20 per cent) with about 40.7 per cent of tariff lines carrying the rate of 20 per cent (Chart III.2). A breakdown of the rates by HS Chapter reveals a relatively high level of nominal protection for basic or processed foods; fabrics, clothing and other textile articles; and footwear and articles of animal gut, basketware, wickerwork, iron, steel or base metal (Table III.2 and Chart III.1).

65. In general, the tariff is characterized by mixed escalation (Chart III.3), slightly negative for raw materials (average tariff protection rate of 10.6 per cent) to semi-finished products (average tariff protection rate of 10.1 per cent), then positive on finished products (average tariff protection rate of 13.6 per cent). By industry, however, the escalation is everywhere positive, with the exception of the "metal articles, machinery and equipment" industries; non-metallic mineral products; and chemical products. The tariff escalation from raw materials to finished goods is very pronounced in the wood and wood products industries (13.1 percentage points); textiles and clothing (12.4); and paper, printing and publishing (8.8). However, it should be noted that in the absence of harmonization of the import duty exemptions granted by member States (see annexes on Benin, Burkina Faso and Mali, Chapter III(2)(iv)), the tariff protection levels actually granted may vary considerably from one country to another.

⁶² Regulation No. 08/2007/CM/2007 and the annex thereto of 6 April 2007, as amended by Regulation No. 05/2008/CM/UEMOA and the annex thereto of 28 March 2008.

Chart III.1
Tariff protection by subsector, 2009



Description	Description
111 Agricultural livestock production	351 Industrial chemicals
121 Forestry	352 Other chemical products, including pharmaceuticals
122 Logging	353 Petroleum refineries
130 Fishing	354 Manufacture of products of petroleum and coal
210 Coal mining	355 Manufacture of rubber products n.e.c.
220 Crude petroleum and natural gas production	356 Manufacture of plastic products n.e.c.
230 Metal ore mining	361 Pottery, china and earthenware
290 Other mining	362 Manufacture of glass and glass products
311 Food manufacturing	369 Other non-metallic mineral products
312 Other food products and animal feed	371 Iron and steel basic industries
313 Beverages	372 Non-ferrous metal basic industries
314 Tobacco manufactures	381 Fabricated metal products, except machinery and
321 Textiles	382 Non-electrical machinery, including computers
322 Manufacture of wearing apparel, except footwear	383 Electrical machinery, apparatus, appliances
323 Leather products, except footwear and wearing apparel	and supplies
324 Footwear, except vulcanized rubber and plastic footwear	384 Transport equipment
331 Wood and wood products, except furniture	385 Professional and scientific equipment
332 Fabrication of furniture and fixtures, except primarily of metal	390 Other manufacturing industries
341 Paper and paper products	410 Electricity
342 Printing, publishing and allied industries	

Source: WTO Secretariat estimates based on data provided by WAEMU.

Table III.1
Structure of the WAEMU CET, 2009

	2009	Uruguay Round	
1	Tariff lines eligible for duty-free entry (% of all tariff lines)	1.3	0.0
2	Duties other than <i>ad valorem</i> (% of all tariff lines)	0.0	0.0
3	Tariff quotas (% of all tariff lines)	0.0	0.0
4	Duties other than <i>ad valorem</i> without AVEs (% of all tariff lines)	0.0	0.0
5	Simple average applied MFN rate	12.1	30.0
	Agricultural products (WTO definition) ^a	14.6	29.8
	Non-agricultural products (WTO definition) ^b	11.7	30.0
	Agriculture, hunting and forestry (ISIC 1)	13.1	29.9
	Mining and quarrying (ISIC 2)	5.0	30.0
	Manufacturing (ISIC 3)	12.2	30.0
6	National tariff peaks (% of all tariff lines) ^c	0.0	0.0
7	International tariff peaks (% of all tariff lines) ^d	40.7	99.8
8	Overall standard deviation of rates applied	6.9	0.7
9	Nuisance duties (% of all tariff lines) ^e	0.0	0.0
	<i>Memorandum items:</i>		
	Tariff lines bound (% of all tariff lines):		
	Benin	40.4	40.4
	Burkina Faso	40.2	40.2
	Mali	41.5	41.5

a WTO Agreement on Agriculture.

b Excludes petroleum.

c National tariff peaks are duties that are higher than three times the simple average of all the rates applied (indicator 5).

d International tariff peaks are duties that exceed 15 per cent.

e Nuisance duties are rates that are not 0 but less than or equal to 2 per cent.

Note: Indicator 1 is based on all the tariff lines (including in-quota lines, where appropriate); the other indicators exclude in-quota lines. Indicators 5 to 9 are calculated on the basis of the lines for which an *ad valorem* rate could be taken into account.

Source: WTO Secretariat calculations based on data provided by the WAEMU Commission.

Table III.2
Summary of the WAEMU CET, 2009

Description	Number of lines	Rates applied in 2009				CV
		Number of lines used	Simple average duty	Range of duty (%)	Standard deviation	
Total	5,544	5,544	12.1	0-20	6.9	0.6
WTO definition^a						
Agricultural products	783	783	14.6	5-20	6.7	0.5
Live animals and animal products	96	96	18.8	5-20	4.0	0.2
Dairy products	31	31	14.2	5-20	7.4	0.5
Coffee, tea, cocoa, sugar, etc.	177	177	16.1	5-20	5.8	0.4
Cut flowers and plants	35	35	7.6	5-20	5.7	0.8
Fruit and vegetables	169	169	19.3	5-20	3.1	0.2
Cereals	18	18	6.1	5-10	2.1	0.4
Oilseeds, fats and oils	88	88	10.7	5-20	5.6	0.5
Beverages and alcohol	45	45	19.8	10-20	1.5	0.1
Tobacco	9	9	13.3	5-20	7.9	0.6
Other agricultural products	115	115	6.7	5-20	3.1	0.5
Non-agricultural products (excluding petroleum)	4,738	4,738	11.7	0-20	6.8	0.6
Fish and fish products	130	130	14.5	5-20	5.1	0.4
Minerals, precious stones and metals	343	343	11.6	0-20	6.9	0.6

Description	Number of lines	Number of lines used	Rates applied in 2009			CV
			Simple average duty	Range of duty	Standard deviation	
(%)						
Metals	637	637	12.0	5-20	6.9	0.6
Chemicals and photographic products	917	917	7.6	0-20	5.4	0.7
Leather, rubber, footwear and travel articles	167	167	13.1	0-20	6.0	0.5
Wood, wood pulp, paper and furniture	267	267	11.3	0-20	6.6	0.6
Textiles and clothing	828	828	17.3	0-20	4.6	0.3
Transport equipment	208	208	10.5	0-20	6.3	0.6
Non-electrical machinery	551	551	7.3	5-20	4.8	0.7
Electrical machinery	259	259	11.2	0-20	6.4	0.6
Non-agricultural products n.e.s.	431	431	14.3	0-20	6.6	0.5
By ISIC^b sector						
Agriculture, hunting, forestry and fishing	337	337	13.1	5-20	7.1	0.5
Mining and quarrying	104	104	5.0	0-10	0.7	0.1
Manufacturing	5,102	5,102	12.2	0-20	6.8	0.6
By stage of processing						
Raw materials	691	691	10.6	0-20	6.7	0.6
Semi-finished products	1,778	1,778	10.1	0-20	6.1	0.6
Finished products	3,075	3,075	13.6	0-20	6.9	0.5

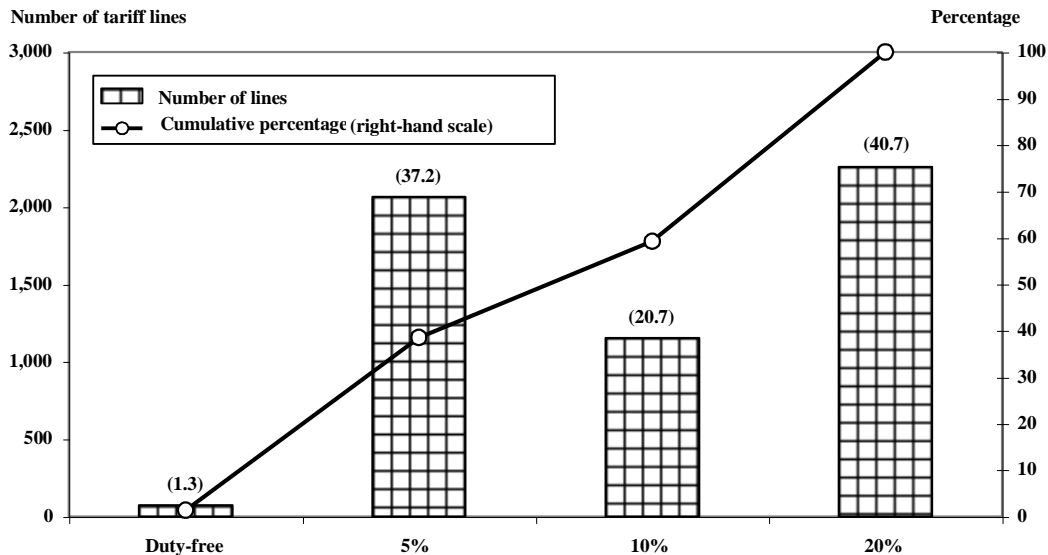
- a International Standard Industrial Classification of All Economic Activities (Rev.2). Excluding electricity, gas and water (one tariff line).
- b Total imports exceed the sum of the sub-lines because some imports, with a value of US\$3.7 million, are not classified in the Harmonized System and therefore cannot be classified in the ISIC.

Note: CV = coefficient of variation.

Source: WTO Secretariat estimates based on data provided by the WAEMU Commission.

66. The steep tariff escalation reflects much higher effective protection in the industries concerned. The various exemptions heighten the escalation and thus raise the level of effective protection. This kind of tariff structure does nothing to promote export of processed goods. Furthermore, the negative escalation raises processing costs in the industries where raw materials or semi-finished products are more heavily taxed than the goods resulting from their processing.

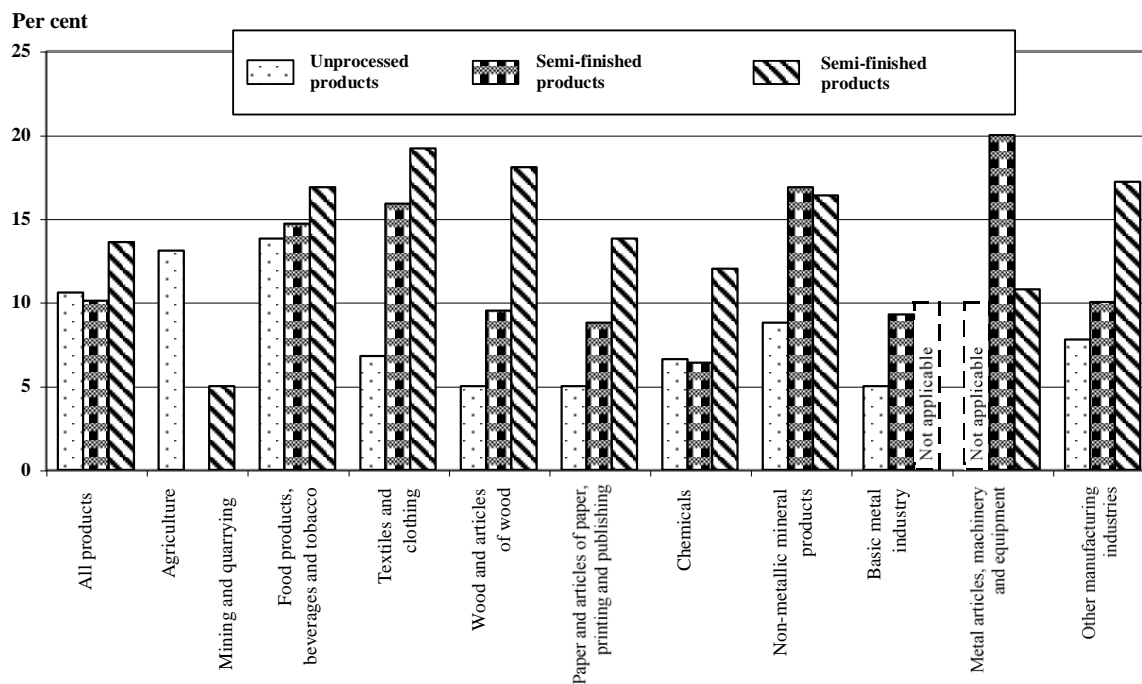
Chart III.2
Distribution of WAEMU CET rates, 2009



Note: The figures in parentheses correspond to the percentage of all tariff lines.

Source: WTO Secretariat calculations based on data provided by the WAEMU Commission.

Chart III.3
Escalation of WAEMU CET rates, 2009



Note: The product groups are defined by the two-digit ISIC.

Source: WTO Secretariat calculations based on data provided by WAEMU.

(b) Other duties and taxes

67. Apart from the WAEMU CET, some duties and taxes are levied at the customs frontier. The statistical fee (RS) of 1 per cent, applicable even to imports exempted from customs duties is intended for the modernization of the national customs IT services. The proceeds of the community solidarity levy (PCS) of 1 per cent go to the WAEMU Commission, while the proceeds of the 0.5 per cent ECOWAS community levy (PCC) go to the ECOWAS Commission. The RS, the PCS and the PCC are calculated on the basis of the c.i.f. value.

68. A special import tax (TCI) of 10 per cent may be applied to certain non-WAEMU originating products if their c.i.f. value is below the trigger price.⁶³ The TCI is a community mechanism implemented at national level, and applies to agricultural, agro-industrial, livestock or fishery products with the exception of fish and fish-based products. Its purpose is to cushion the impact of any sharp fall in world prices on community production and/or offset non-community unfair practices (section (2)(vii)). The WAEMU Commission, by decision, approves⁶⁴ products for the TCI and sets the trigger prices on the basis of world prices and average production costs in the member State. In the case of products benefiting from guaranteed prices on the United States and European Union markets, a different formula that takes into account these two prices instead of local production costs is applied.⁶⁵ The trigger prices are adjusted every six months and serve as the basis for calculating the taxable value.⁶⁶ The degressive protection tax (TDP), a protective mechanism established by WAEMU⁶⁷ and applied nationally, expired on 31 December 2006 after having been extended three times.⁶⁸

(c) Tariff preferences

69. In principle, tariff preference schemes apply to products originating in WAEMU countries and to ECOWAS countries that are not WAEMU members. Total exemption from import duties and taxes, with the exception of internal taxes, is granted to these products within the WAEMU/ECOWAS area.⁶⁹ The relevant rules of origin have mostly been harmonized (see below).

70. A system of financial compensation was established for the period 2000-2005 in WAEMU in order to offset the loss of customs revenue suffered by States that are importers of originating industrial goods; Benin, Burkina Faso and Mali were beneficiaries. A mechanism for the same purpose was also envisaged within ECOWAS but never became operational. According to their authorities, Benin, Burkina Faso and Mali grant the preferential treatment provided for under the ECOWAS regime.

⁶³ Regulation No. 6/99/CM/UEMOA of 17 September 1999.

⁶⁴ The community framework establishes a list of products that are automatically approved: bovine meat; poultry meat and edible offal (HS 01.05); condensed milk; potatoes; onions; bananas; maize (corn); rice; sorghum; millet; wheat flour; raw vegetable oils; refined vegetable oils; sugar; tomato concentrate; and cigarettes and cigarillos. In the case of these products, the request (in particular the trigger price) must be approved by the WAEMU Commission. Other agricultural and agrifood products may also be approved for the TCI, in which case the request must be approved by the CET Management Committee.

⁶⁵ In the case of products with guaranteed prices, member States may replace the 10 per cent surcharge by an equalization tax.

⁶⁶ Online information from the Observatory of Industry of Senegal. Viewed at: <http://www.obs-industrie.sn/TEC1.htm>.

⁶⁷ Regulation No. 3/99/CM/UEMOA.

⁶⁸ Regulations No. 25/2002/CM/UEMOA, No. 19/2003/CM/UEMOA and No. 16/2005/CM/UEMOA.

⁶⁹ The ECOWAS Trade Liberalization Scheme has in principle been fully applicable since 1 January 2004. Viewed at: <http://unpan1.un.org/intradoc/groups/public/documents/IDEP/UNPAN012953.pdf>.

(d) Internal taxes

71. The WAEMU member States have adopted regulations aimed at harmonizing the imposition of VAT and excise duties, as well as the levying of flat-rate advance payments for profits tax, following the principle of convergence of the tax base and rates.

72. In the case of VAT, the community framework provides for a single national rate of between 15 and 20 per cent for all taxable transactions, with the option of a reduced rate of between 5 and 10 per cent on a maximum of ten goods and services chosen from a limitative list.⁷⁰ VAT applies to corporations and to one-person businesses engaged in the production, trade or provision of services. VAT applies to all economic operators, outside the exempted sectors, with an annual turnover, excluding taxes, that exceeds the threshold established at national level. The community framework provides for a threshold of between CFAF 30 and 100 million for operations involving the provision of goods and between CFAF 15 and 50 million for the provision of services.

73. The tax base is the c.i.f. value plus any duties and taxes (including excise duty, if any), with the exception of the VAT itself. VAT is applied to locally manufactured products, when first sold or released for consumption. In that case, the tax base is the selling price plus any excise duty.⁷¹ The rate is the same for both local products and imports.

74. In principle, agriculture is excluded from the scope of VAT.⁷² However, the modalities for its exclusion remain to be determined, and each member State may choose the VAT regime applicable to the agricultural sector. The common VAT exemptions concern the sale or delivery of: medical care; medicines and pharmaceutical products, specialized equipment and products for medical use⁷³; unprocessed and basic staple foods⁷⁴; services provided in the field of school or university education; social tranche of the consumption of water and electricity supplies; bank transactions and insurance and re-insurance services subject to specific taxation (Chapter IV(5)(iv)); real estate sales; postage stamps, revenue stamps and the like; sales of books, newspapers and news magazines, with the exception of advertising revenue; sales, by the author, of original works of art; and the leasing of unfurnished buildings for residential purposes. The delivery, conversion, repair, maintenance, chartering and leasing of vessels to be used for activities exercised on the high seas are exempt from VAT, as are aircraft engaged essentially in international traffic.

75. The list of common exemptions is limitative. Member States undertake not to grant exemptions or relief from VAT within the context of measures to encourage enterprise and investment, within the context of measures or provisions targeted at particular sectors, or under particular agreements.⁷⁵ However, this Directive does not exclude the application of national customs regimes that defer or suspend VAT on mining, petroleum and forestry activities.⁷⁶ In principle, exports are subject to the zero rate regime, enabling exporters to obtain a rebate of the VAT paid on their inputs.

⁷⁰ Directive No. 2/98/CM/UEMOA, as amended by Directive No. 02/2009/CM/UEMOA.

⁷¹ According to the WAEMU Commission, the decision taken at community level to include this internal tax in the VAT tax base is justified by the small number of products subject to excise duties.

⁷² Additional Act No. 03/2001.

⁷³ The list is set out in Directive No. 06/2002/CM/UEMOA.

⁷⁴ The list is set out in Directive No. 02/2009/CM/UEMOA. It includes cereals (maize, millet, sorghum, wheat, fonio, rice (with the exception of glazed rice) and other cereals); tubers; pulses; eggs in shell; fresh meat; fish, fresh, smoked, salted or frozen (but not processed); and unprocessed milk.

⁷⁵ This does not concern particular agreements concluded before the application of this Directive.

⁷⁶ In general, the regulatory frameworks governing these activities provide for the negotiation of royalties payable by economic operators in the place of all tax liabilities.

76. The community framework governing excise duties sets the limits within which member States may set their national duty rates.⁷⁷ For a number of products excise duty is mandatory: non-alcoholic beverages (other than water) (0-20 per cent); alcoholic beverages (15-50 per cent); and tobacco (15-45 per cent). Moreover, six items may be chosen by each member State from the following WAEMU list: coffee (1-12 per cent), cola nuts (10-30 per cent), wheat flour (1-5 per cent), edible oils and fats (1-15 per cent), tea (1-12 per cent), arms and ammunition (15-40 per cent), perfumery preparations and cosmetics (5-15 per cent)⁷⁸, plastic bags (5-10 per cent), marble (5-15 per cent), gold bars (3-15 per cent), precious stones (3-15 per cent) and passenger vehicles with a horse power of 13 hp or more (5-10 per cent). The tax base for imports is the c.i.f. value plus any duties and taxes with the exception of VAT. Excise duties are also applied to identical locally manufactured products, when first sold or released for consumption; the tax base is the ex-factory selling price excluding VAT.

77. According to Directive No. 6/2001/CM/UEMOA, in addition to import duties and VAT petroleum products are subject to only a specific excise duty. The WAEMU member States are free to fix the levels but are required progressively to narrow the gap between individual products. The differences between diesel and ordinary petrol were to be eliminated by 31 December 2007. The differences for other petroleum products were not to exceed CFAF 100. Direct subsidies and cross subsidies for the consumption of petroleum products were also to have been eliminated within a five-year period ending 31 December 2008.⁷⁹ However, this provision does not concern direct subsidies through enterprises "when they do not distort free competition".⁸⁰

78. With regard to the advance payment of profits tax (AIB), the WAEMU rules⁸¹ stipulate that in the event of recourse to such a mechanism, exclusively for the purpose of boosting taxation of small and medium-sized enterprises, member States should ensure that its application is neutral as between imports and internal transactions. The community framework sets a ceiling rate of 3 per cent, with the option of applying a higher rate (up to 5 per cent) in the case of enterprises that do not have a tax identification number. The scope agreed by WAEMU does not include provision of services, or sales of water and electricity. Member States may also exempt operations of enterprises that are exempt from profits tax under the mining, petroleum, forestry and investment codes. At the customs border, the AIB is payable in the case of release for consumption of the goods as well as under the conditional relief procedure; the tax base is the customs value plus all duties and taxes. Nevertheless, the inclusion of VAT and excise duties in the tax base can hardly be reconciled with the purpose of the profits tax for which the advance payment is levied.

(iii) Rules of origin

79. The Rules of Origin governing eligibility of products for preferential treatment within WAEMU⁸² and ECOWAS⁸³ are largely harmonized. Community origin is conferred on unprocessed originating products (local or handmade products) and on those which have undergone sufficient

⁷⁷ Directive No. 3/98/CM/UEMOA, as amended by Directive No. 03/2009/CM/UEMOA.

⁷⁸ The list is defined in Directive No. 3/98/CM/UEMOA.

⁷⁹ Directive No. 01/2007/CM/UEMOA of 6 April 2007.

⁸⁰ Article 12 of Directive No. 6/2001/CM/UEMOA.

⁸¹ Directive No. 07/2001/CM/UEMOA of 26 November 2001.

⁸² Additional Protocol No. III/2001 establishing the WAEMU Rules of Origin (applicable as of 1 January 2003) replaces Additional Act No. 4/96 of 10 May 1996 establishing a preferential tariff regime for trade within WAEMU, as amended by Additional Act No. 4/98. Additional Protocol No. III/2001 was revised by Additional Protocol No. 01/2009/CCEG/WAEMU.

⁸³ The ECOWAS Trade Liberalization Scheme has been in force since 1 January 2004; its Rules of Origin are defined by Protocol A/P/01/03 of 31 January 2003.

working or processing. For the latter, the applicable criteria are: either a change of tariff classification affecting one of the first four digits of the tariff nomenclature, with exceptions⁸⁴; or a community value added of at least 30 per cent of the cost price of the goods, ex-factory and excluding tax.⁸⁵

80. In principle, goods processed under particular regimes involving total or partial conditional relief or exemption from import duties on inputs cannot be considered WAEMU/ECOWAS originating products. In 2009 the WAEMU regulatory framework was revised to allow for the possibility of approval of such products within the Union provided the duties and taxes payable on the materials used in the manufacturing process have been paid (revised Article 8). However, the WAEMU Commission has still to issue a regulation on the implementation of this relaxation of the WAEMU Rules of Origin.

81. According to the common provisions of the two regional groupings, the community origin of goods coming from another member State must be certified by a certificate of origin. Every shipment crossing a border within the WAEMU/ECOWAS area must be accompanied by its own certificate of origin (even if the production of the exporting enterprise has already been certified for an earlier shipment). However, this requirement does not apply to agricultural products and handicrafts. Since 1 January 2006, member States have exclusive powers as regards approval of goods produced or processed within their national territory.⁸⁶ The ECOWAS and WAEMU Commissions are responsible for publishing the approvals for their respective communities. In general, the number of approvals has been in line with the size of the economy concerned (Table III.3).

82. Despite the standardization of the origin certificate issued within ECOWAS⁸⁷ and consequently in WAEMU, economic operators must submit separate applications for approval for the scheme concerned. The definitions of community value added as adopted by the two groupings lead to a lack of symmetry which carries over into the approval of industrial products. The differences stem from the ceilings established for certain components of the ex-factory selling price in WAEMU and ECOWAS, in particular staff charges (15 and 20 per cent, respectively), external services (7 and 10 per cent) and financial costs (2 and 3 per cent).⁸⁸ Thus an application for approval may be rejected by WAEMU but accepted for the ECOWAS Liberalization Scheme.

83. In fact, even when approved some originating products do not circulate freely on the WAEMU and ECOWAS intra-community markets owing to various other obstacles, including the lack of mutual recognition of national technical standards and rules as well as unilaterally established prohibitions or authorization regimes.⁸⁹ The WAEMU Commission continues to highlight administrative obstacles imposed on community products through: pre-shipment inspection formalities; minimum import quantities in order to benefit from duty-free status (and to obtain import authorizations for certain goods); importation of originating products dependent on purchase of

⁸⁴ Regulation No. 12/2002/CM/UEMOA.

⁸⁵ Regulation No. 13/2002/CM/UEMOA and Protocol A/P/01/03.

⁸⁶ Additional Protocol No. III of 19 December 2001 establishing Rules of Origin for WAEMU products; Regulation C/REG.3/4/02 of 23 April 2002 on the approval procedure for originating products for the ECOWAS Trade Liberalization Scheme.

⁸⁷ Regulation C/REG.4/4/02 of 23 April 2002.

⁸⁸ Regulation No. 13/2002/CM/UEMOA of 19 September 2002 and Regulation C/REG.5/4/02 of 23 April 2002.

⁸⁹ In addition, the OPA, a joint WAEMU and ECOWAS initiative, has noted many check points and barriers on the main road corridors in the region. Aside from the delays thus caused, the passage of goods is often subject to payment of illicit charges.

national products; and withholding of prior import declarations.⁹⁰ A large proportion of goods eligible for free movement within ECOWAS do not reportedly benefit from this status either.

84. In principle, the ECOWAS and WAEMU Commissions may carry out checks on the approval procedures in member States. Disputes relating to non-recognition of certificates of origin are settled bilaterally or with the involvement of the relevant Commission. However, the lack of coordination between the national and supranational administrations continues to hinder the free movement of goods.

Table III.3
Trend in approvals for the WAEMU community preferential tax, 2003-2009

		2003	2004	2005	2006	2007	2008	2009 ^a	Average 2003-2009	Total 1996-2009
Benin	Enterprises	0	4	1	5	2	5	0	2.4	58
	Products	0	40	20	21	41	33	0	22.1	328
Burkina Faso	Enterprises	3	5	2	2	4	5	3	3.4	59
	Products	16	57	34	4	9	13	8	20.1	311
Côte d'Ivoire	Enterprises	0	8	13	12	24	12	25	13.4	317
	Products	0	95	113	54	124	46	71	71.9	1,533
Guinea- Bissau	Enterprises	..	..	..	..	..	..	..	..	..
	Products	..	..	..	..	..	..	..	..	..
Mali	Enterprises	0	0	0	4	0	3	3	1.4	49
	Products	0	0	0	15	0	6	4	3.6	207
Niger	Enterprises	0	1	3	3	0	0	0	1.0	21
	Products	0	2	8	8	0	0	0	2.6	73
Senegal	Enterprises	1	11	6	15	7	8	31	11.3	194
	Products	3	60	35	75	116	58	82	61.3	886
Togo	Enterprises	0	2	2	1	3	1	1	1.4	37
	Products	0	3	4	8	20	31	10	10.9	229
Total	Enterprises	4	31	27	42	40	34	63	34.4	735
	Products	19	257	214	185	310	187	175	192.4	3,567

.. Not available.

a 11 months

Source: WAEMU Commission.

(iv) Prohibitions, quantitative restrictions and licensing

85. According to the WAEMU customs regulations⁹¹, foreign products bearing a false mark or indication of origin are automatically prohibited for importation. It is also planned to establish by regulation a common approach to prohibitions and licensing, in order to harmonize the relevant national provisions. The community frameworks currently in force concern goods excluded from transit⁹² as well as goods permanently prohibited from bonded warehouses⁹³; the regimes regulating the importation of ozone-depleting substances and veterinary medicines have also been harmonized.⁹⁴

⁹⁰ WAEMU (2008).

⁹¹ Chapter 5 of the Annex to Regulation No. 09/2001/CM/UEMOA.

⁹² Regulation No. 12/2008/CM/UEMOA of 26 September 2008. In addition to goods bearing false marks or indications of origin, the list includes: explosive powders and substances; pyrotechnic articles (fire crackers, waxed fuses, rockets, hail rockets and the like); military weapons, parts and ammunition; cutlasses, swords, bayonets and similar arms, parts thereof and scabbards and sheaves therefor; projectiles, mines and parts thereof; revolvers and pistols; hunting shotguns, hunting or target shooting rifles, and ammunition

86. With regard to ozone-depleting substances and equipment containing them, the regulations prohibit their importation and production on WAEMU territory as of 1 January 2006.⁹⁵ However, imports of such substances and equipment from outside the Union may be allowed by authorization of the Minister for Trade with the prior favourable opinion of the Minister of the Environment of the State of final destination. Member States are responsible for establishing the relevant quotas and allocating them among importers. The community framework provides for the registration of importers and distributors of ozone-depleting substances by national offices, as well as the creation of a Community Ozone Committee (CCO) responsible for seeing to the implementation of the Montreal Protocol on such substances.

87. The placing of veterinary medicines on the market of a member State is subject to prior authorization by the WAEMU Commission following the opinion of the WAEMU Veterinary Committee⁹⁶ and a scientific evaluation by the regional Veterinary Medicine Committee (CRMV) set up for this purpose.⁹⁷ Applicants for authorization must be established within the community area or have a designated representative to ensure pharmaceutical supervision, handling of complaints and follow-up of batches and their withdrawal if necessary. Authorizations are valid for five years (renewable) and may be amended or transferred at the request of the holder. If necessary, an authorization may be reviewed annually and/or carry certain specific obligations. In the event of an outbreak of a serious animal disease, member States may, exceptionally and provisionally, allow the importation of veterinary medicines without community authorization into their national territory, after informing the Commission of the detailed conditions for its use. A network of nine quality laboratories has been set up to control the quality of veterinary medicines. The first regional evaluation of marketing authorization files was carried out by the CRNV in November 2009.

88. The WAEMU Treaty provides for the phasing out of the quantitative restrictions on intra-community trade, but no implementing legislation has been adopted for the purpose. Likewise, WAEMU has not yet established a framework for the application of such restrictions to trade with non-WAEMU countries. According to the WAEMU Commission, member States do not apply quantitative restrictions in their foreign trade as a whole.

therefor; narcotic drugs and psychotropic substances; pornographic writings, publications, drawings, posters, engravings, paintings, photographs, snapshots, dies, and reproductions and all objects contrary to decency or liable to disturb public order; tainted products, and counterfeit or pirated goods. The competent authorities of member States may grant exceptional transit authorizations.

⁹³ Regulation No. 13/2008/CM/UEMOA of 26 September 2008. The prohibition concerns tainted or damaged products and counterfeit or pirated goods or goods bearing false marks or indications of origin as well as goods absolutely prohibited for release or consumption or export on grounds of public security; public order; protection of human and animal life or health; public morals; protection of the environment; protection of national treasures of artistic, historical or archaeological value; protection of intellectual or industrial property; and consumer protection.

⁹⁴ Regulation No. 02/2006/CM/UEMOA establishing the community procedures for the authorization for the release for consumption and supervision of veterinary medicines and setting up a regional veterinary medicine committee.

⁹⁵ Regulation No. 04/2005/CM/UEMOA of 4 July 2005.

⁹⁶ Regulation No. 01/2006/CM/UEMOA of 23 March 2006.

⁹⁷ Regulation No. 02/2006/CM/UEMOA of 23 March 2006. The fees levied by the WAEMU Commission for the granting of veterinary medicine marketing authorizations as well as for other services provided in this context are set out in Regulation No. 03/2006/CM/UEMOA. The Commission has a maximum period of 240 days running from the date of submission of a valid authorization application to give its opinion.

(v) **Standards, technical regulations and accreditation procedures**

89. In order to foster their intra-community trade as well as their participation in the world economy, the WAEMU member States are in the process of harmonizing accreditation, certification, standardization and metrology activities. The various initiatives launched since September 2001 under a quality enhancement programme have three technical components: the upgrading of reference laboratories with a view to their international accreditation; the harmonization of national standards and regulatory frameworks, including through the strengthening of the national standardization bodies and the creation of a regional documentation centre; and quality promotion within enterprises and consumer protection (ISO 9001 certification, quality prizes, establishment of technical support centres, etc.).⁹⁸ Among the results recorded by the programme by the end of May 2009, mention should be made of eight studies carried out on priority products and 60 training sessions on quality management, standardization, metrology, accreditation, inspection, and the WTO TBT and SPS Agreements. There are 65 laboratories receiving assistance in their upgrading and international accreditation efforts.⁹⁹ Regional databases have been set up to disseminate information on available services provided by testing and calibration laboratories; existing standards and regulations; and quality management. A project for the extension of this quality enhancement programme to all West African countries (ECOWAS plus Mauritania) is under preparation.

90. Regulation No. 01/2005/CM/UEMOA, one of the programme's achievements, defines the mechanisms for cooperation among national regimes and the modalities for ensuring their mutual consistency.¹⁰⁰ The community framework is based on the principle of mutual recognition at three levels: recognition of technical regulations, standards and specifications; recognition of conformity assessment procedures; and recognition of the results of conformity assessment procedures (Article 10). The precautionary principle, allowing the imposition of barriers to the free circulation of goods and services for legitimate reasons, is recognized. This framework imposes a transparency obligation at WAEMU level through the notification to the Commission of the national TBT regime. It makes the Commission responsible for "determining the existence in a member State of any manifest, clear and unjustified obstacle of the free movement of products and services" and, if found to constitute "a means of arbitrary discrimination or disguised restriction" notifying it to the member State for action, failing which the case should be referred to the Court of Justice. Although the community framework has been in force since January 2006, mutual recognition is not yet operational within WAEMU. The Union has not concluded agreements of this kind with other countries.

91. The Regulation establishes three permanent technical bodies for quality promotion: the West African Accreditation System (SOAC); the Regional Standardization, Certification and Quality Promotion Secretariat (NORMCERQ); and the West African Metrology Secretariat (SOAMET). Their activities are coordinated by a Regional Quality Coordination Committee (CRECQ), which is *inter alia* responsible for formulating recommendations and opinions.

92. The WAEMU regulatory framework also provides for the preparation of regional standards according to the needs established by the national standardization bodies and transmitted to NORMCERQ. At community level the standardization priorities are defined on the basis of various considerations: need expressed by at least half the States; relevance to health, safety, the

⁹⁸ Establishment of a WAEMU accreditation, standardization and quality promotion system. Viewed at: <http://www.uemoa.int/ONUDI/ProgrammeQualite1.htm>.

⁹⁹ WAEMU online information, "Programme qualité de l'Afrique de l'ouest: Appui à la compétitivité et à l'harmonisation des mesures OTC et SPS". Viewed at: <http://www.uemoa.int/qualite/index.htm>.

¹⁰⁰ WAEMU online information. Viewed at: http://www.uemoa.int/actes/2005/REGL_01_2005_CM.htm.

environment and trade; upgrading of local products; technical barriers to trade noted between member States of the Union; and importance for local use or consumption.¹⁰¹ The national standardization bodies establish regional technical standardization committees (CTRN) consisting of two representatives per member State to deal with specific areas and prepare draft WAEMU standards; their progress is regularly monitored by NORMCERQ.¹⁰² A breakdown of the 17 operational CTRNs in 2007 by area and by host country is given in Table III.4.¹⁰³

93. To the extent possible, international standards are used as a reference for the preparation of WAEMU standards; otherwise, the basic texts are the national standards and technical regulations. The procedure for drafting WAEMU standards provides for the submission of draft standards to public enquiry for a maximum of three months in the member States prior to their adoption.¹⁰⁴ WAEMU standards are approved by the WAEMU Council of Ministers. Their application is voluntary and they serve as a reference in intra-community trade.¹⁰⁵ The WAEMU Commission may also propose that a standard be made mandatory with the approval of the Council of Ministers. To date no standard is in force for WAEMU.

Table III.4
WAEMU Regional Technical Standardization Committees, 2009

Countries	Committee
Benin	Chemical industry and petroleum products
	Handicraft products and equipment
	Transport
Burkina Faso	Building and engineering
	Telecommunications
CONOBAFI ^a	Banks, securities and other financial services
Côte d'Ivoire	Electricity and renewable energy
	Protection, safety and health, social responsibility
Guinea-Bissau	Tourism and hotel industry
Mali	Packaging
	Textiles
Niger	Quality management
	Livestock products, hides and skins
Senegal	Environment
	Food products
Togo	Wood and wood products
	Basic standards

a The West African Committee for the Organization of Banking and Financial Standardization (CONOBAFI) groups the representatives of the WAEMU banking and financial sector for the purpose of drafting preliminary specific standards for the sector. It is planned to recognize CONOBAFI as an official regional standardization office.

Source: WAEMU Commission.

¹⁰¹ WAEMU (2007).

¹⁰² A cooperation agreement between NORMCERQ and the African Organization for Standardization is envisaged to foster the development of standardization and related activities in Africa.

¹⁰³ WAEMU (2007).

¹⁰⁴ On 24 June 2009, NORMCERQ launched public enquiries for six draft standards: APN UEMOA 3500: 2009 Cotton lint - Specifications; APN UEMOA 3502: 2009 Seed cotton - Specifications; APN UEMOA 3501: 2009 Cotton thread - Specifications; APN UEMOA 7001: 2009 Cardboard packaging - Vocabulary; APN UEMOA 7002: 2009 Parallelepiped packaging for fruit and vegetables - Specifications and test methods; and APN UEMOA 7000: 2009 Quality classes of wood used for palettes and packaging.

¹⁰⁵ Approved standards are reviewed every five years and may be revised to upgrade their technical level.

94. In January 2008, WAEMU adopted a Common Environmental Improvement Policy (PCAE).¹⁰⁶ The objectives of the PCAE are to reverse the trends of "deterioration and reduction of natural resources", improving life environments and maintaining biodiversity. In addition to the main guidelines for the sustainable management of natural resources and management of environmental problems, the Additional Act proclaims the member States' commitment to harmonize and standardize their environmental standards and technical regulations. The PCAE also envisages the implementation of appropriate modes of production, consumption and economic use of natural resources, in particular through the promotion of renewable energy sources (Chapter IV(3)).

95. In the context of the "Quality" programme, WAEMU has provided resources to promote more active participation by member States in the work of the International Organization for Standardization (ISO). In January 2010, Mali acquired "Member Body" status enabling it to participate with full voting rights in the drafting of any standard considered important for its economy. For the time being, Benin and Burkina Faso are Correspondent Members of ISO, and thus not yet in a position to influence the course of its work.¹⁰⁷

(vi) Sanitary and phytosanitary measures

96. A process of harmonization of national sanitary and phytosanitary legislation is under way within WAEMU, but no concrete results have yet been achieved. In particular, import and export requirements and control procedures are the same for community and non-community products.

97. Among recent texts, Regulation 07/2007/CM/UEMOA of 6 April 2007 defines a framework for plant and animal health and food safety. The idea is to establish mechanisms for cooperation and establish mutual recognition, subject to the precautionary principle, among member States. The relevant authorities are supposed to align their sanitary measures on the international standards, directives and other recommendations, in particular those of the Codex Alimentarius, the WTO (SPS and TBT Agreements), the International Plant Protection Convention (IPPC), the World Organisation for Animal Health (OIE) and those established by the Cartagena Protocol on the Prevention of Biotechnological Risks. The member States also undertake to support the WAEMU health and safety bodies with a view to the adoption of international standards.

98. The rules governing the approval, marketing and control of pesticides in WAEMU were harmonized in 2009¹⁰⁸; their transposition into domestic legislation is still under way. Following close cooperation between ECOWAS and the Inter-State Standing Committee for Drought Control in the Sahel (CILSS), these two institutions drew up the contents of the community framework in this area. The framework invites member States to ratify the main international conventions in this field, to base their national regulations on these provisions, and to harmonize the requirements and criteria for approval, including those for the labelling, packaging, and storage of approved pesticides. Five lists are to be drawn up to this end: pesticides that have been approved or provisionally authorized for sale (APV); those which are prohibited; those which are under toxicological surveillance; those which are severely regulated; and those accepted as approved in each member State. Authorization to import pesticides into the community area is defined according to the conditions and criteria for each list. The regulation establishes a WAEMU Regional Pesticides Committee (CRPU), which is responsible for checking that approval applications are compliant, as well as ensuring post-approval control. In principle, a State may grant authorization for the importation of a pesticide approved by another WAEMU State or provisionally authorized for sale,

¹⁰⁶ Additional Act No. 01/2008/CCEG/UEMOA of 17 January 2008.

¹⁰⁷ ISO online information. Viewed at: http://www.iso.org/fr/about/iso_members.htm.

¹⁰⁸ Regulation No. 04/2009/CM/UEMOA.

but may refuse to allow it to be offered for sale on its own market. Such refusals must be reasoned and notified to the Commission.

99. Regulation No. 03/2009/CM/UEMOA establishes a harmonizing sub-regional legal framework for the quality control, certification and marketing of plant seeds and seedlings in the Union's member States. It is planned to prepare a regional catalogue of the plant species and varieties of the Union (CREVU), which would consolidate the national catalogues approved at national level. Member States undertake to implement the "principle of mutual recognition of certifications based on community technical regulations and standards on plant seeds and seedlings as well as the control and approval procedures in force in the Union, recognizing them as equivalent" (Article 6). The framework also defines the occupations related to the marketing of plant seeds and seedlings. At the end of December 2009, this regulation had not been implemented in the countries concerned.

100. Other common bodies dealing with SPS issues include the African Union/Inter African Phytosanitary Council (AU/IAPSC), which *inter alia* organizes training for government officials.

(vii) Contingency measures

101. On 23 May 2003, WAEMU adopted an Anti-Dumping Code¹⁰⁹, applicable as from 1 July 2004. This incorporates in full the provisions of the relevant WTO Agreement and applies only to imports from non-WAEMU countries. However, no anti-dumping measure has been formally taken since the entry into force of the Code; a case concerning mustard imports from France is currently under study.

102. Although none of the WAEMU member States has reserved the right to apply the special safeguard clause provided for in the WTO Agreement on Agriculture, the special import tax (TCI) adopted by the Union in 1999 (section (2)(ii)(b)) seems, among other things, also to play this role. The purpose of the TCI is to protect community agricultural and agrifood products against the effects of volatile world prices, as well as against unfair business practices such as export subsidies and dumping. The eligibility of a product for the TCI also depends on the local industry's capacity to cover a major part of the Union's needs. According to the WAEMU Commission, the TCI will remain in force until the introduction of community safeguard mechanisms such as frameworks for subsidies and countervailing measures.

103. The regulations establishing the circumstances in which member States are authorized to take safeguard measures by way of a waiver of the common trade policy date from 1998.¹¹⁰ A member State facing serious economic difficulties may not waive the WAEMU rules unless the Commission so decides; the latter also approves the nature and duration (which may not exceed six months, unless formally extended) of the proposed measures.¹¹¹ Application for review of the Commission's decision may be lodged with the Council of Ministers. Authorized safeguard measures are applied exclusively within the customs territory of the beneficiary State. The community regulation does not explicitly distinguish between Union members and other countries. However, the possibility of lodging a

¹⁰⁹ Regulation No. 9/2003/CM/UEMOA.

¹¹⁰ Regulation No. 14/98/CM/UEMOA. Such a measure can be taken only with the authorization of the WAEMU Commission, following upon a request lodged by the member State. The regulations specify that "the Commission will ensure that the safeguard measures adopted are consistent with the general principles of the relevant rules of the World Trade Organization" (Article 7).

¹¹¹ The Commission may also authorize provisional measures on the grounds of exceptional circumstances for a maximum period of 90 days deductible from the derogation period. The normal procedure for requesting derogation must be followed at the same time.

challenge exists only for member States affected by non-compliance with the implementation procedures for a waiver that has been granted, or by a measure consistent therewith.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and customs procedures

104. The registration requirements for the importation of goods (section (2)(i)) also apply to exportation and re-exportation. According to the exchange regime adopted by the countries of the franc zone and implemented by WAEMU¹¹², every economic operator is under the obligation to repatriate the earnings resulting from exporting to countries outside the Union and to convert them into CFA francs through an approved financial intermediary. This requirement is implemented by having export transactions domiciled with approved financial intermediaries.¹¹³ Foreign currency must be repatriated within one month of the settlement date specified in the contract with the foreign customer. Repatriation becomes effective when the bank concerned transfers the corresponding foreign currency to the BCEAO, via the operations account.

105. The option of a simplified customs declaration, which may be final or subsequently regularized through a supplementary declaration, applies to goods for export as well import (section 2(i)). The community framework defines the essential information that must be included in simplified declarations as well as the conditions of eligibility of trade transactions.

(ii) Export duties and taxes

106. WAEMU has not established a framework harmonizing customs duties and charges of equivalent effect levied on exports. No distinction is made in the treatment of goods of community origin and those destined for other countries.

(iii) Goods in transit

107. According to the WAEMU Customs Code, goods in transit are transported under customs control, with the suspension of duties and charges and prohibition measures; provision is made for a security (guarantee) mechanism, including customs escort.¹¹⁴ The customs authorities fix the duration of transit and may impose an itinerary on carriers; they are also responsible for establishing the forms of security that may be required. Certain goods (arms, explosives, narcotic drugs, counterfeit goods) are barred from the transit regime by the regulations, but may be authorized on an exceptional basis by the relevant authorities of member States.¹¹⁵

108. A WAEMU recommendation aimed at rationalizing port transit administrative procedures dates from 27 June 2002.¹¹⁶ WAEMU member States were invited to set up national transport facilitation committees by 31 December 2002 and to ratify the Convention on Facilitation of International Maritime Traffic (FAL Convention of the International Maritime Organization), as well as the International Convention on the Simplification and Harmonization of Customs Procedures, known as the revised Kyoto Convention. The governments of member States are also encouraged to open up the merchandise handling sector in ports to the private sector; to give priority to customs procedures based on information provided in advance; and to establish a computerized link between

¹¹² Annex to Regulation No. 09/2001/CM/UEMOA.

¹¹³ Circular No. 005 of 30 June 1994.

¹¹⁴ Maritime transport is excluded from transit.

¹¹⁵ Regulation No. 12/2008/CM/UEMOA of 26 September 2008.

¹¹⁶ Recommendation No. 02/2002/CM/UEMOA of 27 June 2002.

the port authority and Customs in order to avoid duplication of formalities. According to the information provided by the WAEMU Commission, national transport facilitation committees have been established in all member States; a technical monitoring committee has also been set up at community level to speed up the elimination of non-tariff barriers. In addition, member States are in the process of installing juxtaposed control posts at the internal borders of the Union in order to avoid duplication of formalities; the introduction of a single entry system allowing free movement of goods within the community market is not envisaged for the time being.

109. ECOWAS, which includes all the WAEMU countries, adopted an Inter-State Road Transit (TRIE) regime¹¹⁷ in 1982, but so far it has only been applied unevenly with respect to its fundamental principles. The regime provides for a single customs document for road transit on approved vehicles and without load-breaking. A security mechanism for TRIE operations throughout the journey is also provided for, following the principle of a single flat-rate payment (0.5 per cent of the c.i.f. value) at the point of departure; the proceeds of the payments should be fairly distributed among the countries concerned by the transit.¹¹⁸ This security mechanism has not been implemented. In addition, the WAEMU Customs Code only partially recognizes the TRIE arrangements: only road transit within WAEMU and the customs territory of an ECOWAS member State is governed by the provisions in force in ECOWAS. According to the WAEMU Commission, this approach is justified by the fact that the Union is supposed to constitute a single customs territory. However, at present the payments levied as securities under the transit regime in WAEMU countries are not harmonized; re-exports (outside the transit regime) of non-originating goods are also subject to import duties when crossing the border between two member States.

(iv) Prohibitions, quantitative restrictions and licences

110. Once adopted, the community approach to import prohibitions and licences (section (2)(iv)) should also apply to export and re-export operations. For the time being there are no explicit community export prohibitions; however, in view of the list of prohibited goods barred from bonded warehouses (section (2)(iv)), their possible application cannot be ruled out.

(v) Free zone regime

111. The WAEMU Customs Code specifies that goods introduced into a free zone on the territory of a member State are in general exempted from import duties and taxes and not subject to the normal customs control. However, imports and exports under the free zone regime are carried out under the supervision of the competent customs administration and must be covered by a detailed declaration.¹¹⁹ Goods thus introduced may remain for an unlimited duration, and are considered foreign to the Union. The possibility of releasing goods from a free zone for consumption on the customs territory has been approved; in principle, such products are eligible for WAEMU-originating product status following payment of the duties and charges payable on the inputs used in their manufacture. However, the procedures for implementing this decision have not yet been defined.

¹¹⁷ Convention A/P4/5/82 of 29 May 1982.

¹¹⁸ Additional Convention A/SP/1/5/90 of 30 May 1990 establishing within the Community a security mechanism for inter-State road transit operations (ECOWAS); agreement linking national security deposits for inter-State road transit operations for goods within ECOWAS of 24 April 1998; and Additional Agreement linking security deposits for inter-State road transit operations within ECOWAS of 22 March 2005.

¹¹⁹ Regulation No. 14/2008/CM/UEMOA of 26 September 2008.

112. In the absence of a community implementing regulation, member States that have free zones have authorized the sale of part of their output on the domestic market upon payment of the duties and charges applicable to like products from other (non-WAEMU) countries.¹²⁰

(4) OTHER MEASURES

(i) Competition and price control

113. The regulation and treatment of anti-competitive practices within WAEMU takes place at two levels. Community law covers the following areas: anticompetitive agreements; abuse of a dominant position; State aid; and practices attributable to member States.¹²¹ National legislative competence is limited to areas not regulated at Union level, such as unilateral practices of non-dominant enterprises and consumer protection. Some member States, including Burkina Faso, will have to adapt their pre-existing legislation to the WAEMU rules in this area so as to reflect the principle of exclusive application of the rules.¹²² Other member States, including Benin, are still in the process of drawing up a national competition framework.¹²³

114. The community competition regime, which has been in force since 1 January 2003¹²⁴, prohibits any agreement or concerted practice between enterprises, including association decisions, for the purpose or with the effect of restricting or distorting free competition within the Union. Abuse of a dominant position held by one or several enterprises is likewise prohibited. This prohibition also covers concentrations (mergers between previously independent companies) that create or strengthen a dominant position. These provisions also apply to State-owned enterprises as well as companies to which WAEMU States grant special and exclusive rights. The WAEMU Commission may grant individual (and conditional) exemptions if the anticompetitive practice helps to improve the production and distribution of goods or promote technical or economic progress; it may also define exemptions by category in the case of specialization agreements, research and development agreements and technology transfer agreements.¹²⁵

115. As far as procedure is concerned, the community competition regime grants the WAEMU Commission not only the responsibility for deciding in the first instance, but also an active role in the investigations and hence to a large extent the burden of proof.¹²⁶ The national competition bodies have a general investigative function either at national initiative or at the Commission's express

¹²⁰ OECD (2010).

¹²¹ Regulation No. 2/2002/CM/UEMOA on anticompetitive practices in WAEMU; Regulation No. 3/2002/CM/UEMOA on procedures applicable to understandings and abuse of dominant position; and Regulation No. 04/2002/CM/UEMOA on State aid within WAEMU and implementing procedures for Article 88(c) of the WAEMU Treaty.

¹²² Mali's legislation was brought into conformity with the WAEMU and OHADA standards through Ordinance No. 07-025/P-RM of 18 July 2007 replacing Ordinance No. 92-021/P-CTSP of 13 April 1992. Viewed at: http://www.cuts-ccier.org/7up4/ppt/PPT-IRM-%C3%99tat_de_la_concurrence_au_Mali.ppt.

¹²³ Bakhoum, M. (2005), pp. 319-354.

¹²⁴ The WAEMU Treaty prohibits *ipso jure*, as from one year after its entry into force (i.e. in 1995), anticompetitive understandings, abuse of dominant position and official aid likely to distort competition. However, the relevant implementing legislation only entered into force in January 2003.

¹²⁵ No exemption defined by category is currently in force.

¹²⁶ Directive No. 02/2002/CM/UEMOA of 23 May 2002. The WAEMU Commission has sole competence for deciding cases involving anticompetitive practices likely to have a distorting effect on trade between member States, practices attributable to member States, and official aid. In other areas governed by community law, the Commission also has sole competence both to carry out the investigations and to take the decisions.

request.¹²⁷ Hence, the Union's ability to take on anticompetitive behaviour largely depends on the Commission's administrative resources; a reorganization of the framework for cooperation with national authorities, by granting the latter additional powers, could help community law to be implemented more effectively. In addition, the availability of an online database on the legal precedents (case law) developed by the WAEMU Commission would contribute to better understanding of competition matters by economic operators and the general public.

116. In order to obtain exemption from the relevant provisions or negative clearance, it is necessary to notify the WAEMU Commission of any inter-enterprise agreement, association decision or concerted practice. The community framework does not provide for any systematic a priori control of concentration operations; only those involving enterprises that already have a dominant position must be notified. The Commission may initiate proceedings ex officio or at the request of an interested party for the purpose of acting against anti-competitive practices.¹²⁸ It may order the operators concerned to cease their anti-competitive practices within a specified period, or impose special conditions on their activities. It may also fine the enterprises involved, under the supervision of the WAEMU Court of Justice.¹²⁹

117. The cases currently being handled from the three countries concern telecommunications (Mali), the audiovisual sector (Benin, Burkina Faso and Mali) and the carriage of mail (Burkina Faso).

118. Since the beginning of 2003, the policy on State aid within WAEMU has, in principle, been governed by a Union regulation. "Official aid" is defined as any measure which: "(1) involves a direct or indirect cost or a loss of revenue for the State, its subdivisions or any public or private body that the State establishes or designates with a view to managing the aid; and (2) thus bestows an advantage on certain enterprises or certain products".¹³⁰ Only "official aid liable to distort competition by favouring certain enterprises or certain products" is prohibited. The prohibition of an official aid programme is determined, in principle, only after review by the WAEMU Commission. So far, the cases handled (at the request of private operators) have concerned air transport and the production of cement, flour and oils. However, certain State aid programmes are prohibited as a matter of course. This is the case, for example, of aid contingent upon the results of exporting to the other member States or the use of domestic products rather than imports from other member States.

119. Member States are required to notify the Advisory Committee on Competition of any new official aid programme so that it can be reviewed; issues may also be brought before the Committee ex officio on the basis of information from various sources.¹³¹ If a review leads to a finding of illegality, the official aid programme must be withdrawn. In order to ensure compliance with the notification obligation, the WAEMU Commission has decided to carry out an annual survey of public aids; any aid that has not been notified becomes illegal.

¹²⁷ Member States also participate in the work of the Union's Advisory Committee on Competition.

¹²⁸ Given the novelty of the implementation of competition law in WAEMU and the need to establish an institutional framework, a programme of clemency for cases of illicit understandings in order to improve their detection has not yet been established.

¹²⁹ The fines for infringement may range from CFAF 500,000 to CFAF 1 million; the latter amount may be raised to 10 per cent of the assets or turnover in the previous business year for each of the enterprises concerned. In setting the amount of a fine, the Commission takes into consideration the seriousness and duration of the infringement. Fines in the case of submission of false information to the Commission may not exceed CFAF 500,000. Decisions to impose fines are not of a penal character.

¹³⁰ Article 1 of Regulation No. 4/2002/CM/UEMOA. See also Article 1 of the WTO Agreement on Subsidies and Countervailing Measures.

¹³¹ The Advisory Committee on Competition set up by Regulation No. 3/2002/CM/UEMOA is composed of officials (two per member State) with competition responsibilities.

120. A regulatory framework for competition policy is also envisaged within ECOWAS and the draft legislation is being prepared.¹³² In principle, the WAEMU experience will be taken into account; however, the distribution of responsibilities and cooperation between the WAEMU Commission and the future ECOWAS competition authority remain to be defined.¹³³ In addition, since 2009 the WAEMU Commission has been participating in the annual meeting of the International Competition Network. A framework for a technical partnership with the French competition authority is also being drawn up.

(ii) Government procurement

121. Some basic principles for government procurement within WAEMU were established by the Code of Transparency and the Management of Government Finance adopted in 2000.¹³⁴ Under the Code, member States undertake to award public contracts and have them executed "economically, transparently and effectively"; give all bidders that meet the selection criteria the opportunity to compete; and encourage the participation of Union nationals (Article 2-1-2). The Code also stipulates that the results of all competitions must be published, as must the follow-up reports on contract execution.

122. In addition to the Code, a community framework for government procurement was adopted in 2005 for the purpose of harmonizing national regimes and opening them up to competition within WAEMU.¹³⁵ The Rules concern the award, execution and regulation of public contracts and the award of public service concessions.¹³⁶ The Rules also define the powers and procedures of national authorities, and provide for the separation of control and regulation functions, as well as provisions concerning sanctions and non-jurisdictional application for review. However, the States remain responsible for the definition of the applicable thresholds. The community provisions were to have been transposed into national legislation by the end of 2007; this obligation was fulfilled by all member States with respect to the national codes but not their implementing provisions.

123. The community framework recognizes two principal methods of awarding contracts - invitation to tender and direct negotiation - but makes it clear that "open invitation to tender shall be the rule; recourse to any other method of awarding contracts must be exceptional, justified by the contracting authority and previously authorized by the administrative entity responsible for supervising government procurement" (Article 28). However, contracts for the provision of intellectual services may be negotiated by consultation. There is an obligation to notify the WAEMU Commission (the relevant threshold for community publication remains to be defined) in order to ensure publicity at subregional level. Any discrimination against nationals of WAEMU member States is prohibited. There is also a preference (not to exceed 15 per cent) in favour of any bid submitted by a community enterprise, in place of preferences for nationals.¹³⁷

¹³² The draft acts concern community rules on competition and the creation of a regional competition authority. Viewed at: <http://www.cuts-ccier.org/7up4/ppt/12>.

¹³³ The creation of an ECOWAS competition agency was agreed by the Heads of State and government of member States in December 2008. Viewed at: http://www.ebcam.org/documents/ECOWAS_brochure_fr.pdf.

¹³⁴ Directive No. 02/2000/CM/UEMOA of 29 June 2000.

¹³⁵ Directive No. 04/2005/CM/UEMOA and No. 05/2005/CM/UEMOA of 9 December 2005.

¹³⁶ External financing contracts are subject to the community rules insofar as they are not contrary to the provisions of the financing agreements. Government procurement relating to national security is excluded.

¹³⁷ Winners of government procurement contracts may not subcontract more than 40 per cent of its total value. However, bidders who undertake to subcontract at least 30 per cent of the total value of the contract to a national enterprise may benefit from a preference margin (not to exceed 5 per cent) in addition to the community preference.

124. Benin, Burkina Faso and Mali, like all the other WAEMU countries, are not parties to the WTO Plurilateral Agreement on Government Procurement and do not have observer status in the WTO Committee on Government Procurement. According to the WAEMU Commission, no action is envisaged in this respect at community level for the time being.

(iii) Protection of intellectual property rights

125. All the WAEMU countries, including Benin, Burkina Faso and Mali, are signatories to the Bangui Agreement (1977) establishing the African Intellectual Property Organization (OAPI).¹³⁸ The Bangui Agreement was revised on 24 February 1999; the revised Agreement entered into force on 28 February 2002, together with its Annexes I to VIII on: patents (Annex I), utility models (Annex II), trademarks and service marks (Annex III), industrial designs (Annex IV), trade names (Annex V), geographical indications (Annex VI), literary and artistic property (Annex VII), and protection against unfair competition (Annex VIII). Annex X on plant varieties, for which patents are required pursuant to Article 27 of the WTO TRIPS Agreement, entered into force on 1 January 2006; the year 2009 represents a new transitional period for the registration of patents relating to the old varieties. The OAPI Administrative Council has postponed the entry into force of Annex IX on layout-designs (topographies) of integrated circuits, which must be protected under Article 35 of the TRIPS Agreement, because of a lack of skills needed to process the applications for protection. The revised Bangui Agreement (1999) has been notified to the WTO and was examined by the TRIPS Council at its session on 27-28 November 2001.¹³⁹ The terms of protection established by the Agreement are defined in accordance with the WTO TRIPS Agreement (Table III.5).

126. In principle, the revised Bangui Agreement (1999) does not authorize parallel imports.¹⁴⁰ However, ex officio licences may be granted in cases of vital interest to the national economy, public health or national defence.¹⁴¹

127. In each of the member States, the OAPI serves as the national industrial property service and provides a common system of administrative procedures for registering the relevant rights. For an applicant resident in a member country, the procedure for obtaining a title begins with the filing of an application and supporting documents with the National Liaison Structure (SNL). The issuing of a title by OAPI (in relation to an application originating with an applicant domiciled in one of its member countries, or internationally under an agreement or treaty) automatically gives rise to rights valid in all of the member States.

Table III.5
Subjects and terms of protection under the Bangui Agreement (1999)

Agreement	Bangui Agreement (1999)
Patents	20 years
Utility models	10 years
Trademarks and service marks	10 years, renewable every 10 years
Industrial designs	5 years
Trade names	10 years, renewable every 10 years
Appellations of origin	n.a.
Literary and artistic property	

¹³⁸ The other parties to the Bangui Agreement are Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mauritania, Niger, Senegal and Togo. Viewed at: <http://www.wipo.oapi.net>.

¹³⁹ WTO Document IP/Q/GAB/1, IP/Q2/GAB/1, IP/Q3/GAB/1, IP/Q4/GAB/1 of 18 May 2004.

¹⁴⁰ Annex I (Article 7) of the revised Bangui Agreement (1999).

¹⁴¹ Article 56 of the revised Bangui Agreement (1999).

Agreement	Bangui Agreement (1999)
Copyright	Lifetime of the author + 70 years
Films, radio and audiovisual programmes	70 years
Photographic works	25 years
Related rights for performances	50 years
Related rights for phonograms	50 years
Related rights for radio broadcasts	25 years
Layout-designs (topographies) of integrated circuits ^a	10 years
Protection of plant varieties	25 years

n.a. Not applicable.

a The revised Bangui Agreement regime is not in force.

Source: WTO Secretariat.

128. The revised Bangui Agreement (1999) contains provisions concerning the protection of intellectual property rights, for whose implementation the national authorities are responsible. A communication plan is currently being studied within OAPI with a view to enhancing the impact of awareness-raising efforts, which are often inadequate at the national level.

IV. TRADE POLICIES AND PRACTICES BY SECTOR

(1) INTRODUCTION

129. Since the previous review of the respective trade policies of Benin, Burkina Faso and Mali in 2004, the WAEMU member countries, and to some extent those of ECOWAS, have made major efforts to harmonize their sectoral regulations in order to advance towards the goal of a regional common market. This applies in particular to the energy sector, where they are seeking regional solutions to remedy the serious supply crisis hindering the region's economic development. In addition, the development of gold and other mining activities in some member countries, such as Burkina Faso and Mali, has benefited from the stable legislative framework provided by the new community Mining Code.

130. Common community policies are already in place in several service sectors, in particular banking and insurance. New regulations have been adopted to harmonize community policies in the field of telecommunications services, which have grown notably. Competition also seems to have developed in the transport sector, which in principle has been liberalized since 2000. Despite the adoption of a series of regulations and directives by WAEMU and the establishment of an Irregular Practices Observation Centre, access to efficient road transport services remains a major challenge, partly owing to the lack of the necessary financial resources to maintain and develop road links. New community regulations to foster competition among maritime transport companies and enhance port efficiency have not yet been transposed into national legislation. The harmonization of national law has also concerned accounting systems and several categories of professional services.

131. WAEMU and ECOWAS have adopted similar common policies for agriculture, but their implementation suffers from a lack of financial resources. The agrifood sector, which generates the bulk of the three countries' income, including export earnings, has continued to suffer from infrastructural shortcomings, in particular as regards energy and transport. With a view to improving the performance of agrifood enterprises, in addition to the maximum tariff protection of 20 per cent (plus a further 2.5 per cent percentage points from other duties and charges), a Regional Agricultural Development Fund and a Restructuring and Upgrading Programme have been established by WAEMU and are awaiting financing. The community authorities are also aware that regional trade is still hindered by many barriers and are trying to establish trade facilitation programmes, in particular for meat and livestock.

(2) AGRICULTURE, LIVESTOCK AND RELATED ACTIVITIES

132. Agriculture, including livestock farming, fisheries and forestry, provides the bulk of the food consumed by the population of Benin, Burkina Faso and Mali and is the main economic activity. The governments of these countries have therefore attached special importance to drawing up an agricultural policy that fosters production and productivity since this will improve food security as well as the incomes and living conditions of the rural population. Reducing food dependency by boosting domestic output is also a recognized objective. Thus, proposals to raise MFN tariffs on agricultural imports were made in 2008.

133. In both WAEMU and ECOWAS, major efforts have been made to coordinate the objectives, guiding principles, main thrusts and instruments of agricultural policies. These efforts have been embodied in several new community decisions. In practice, measures are gradually being introduced to eliminate the many regulatory barriers (various charges, rules of origin, standards, approvals, restrictions on cross-border transhumance) as well as informal obstacles to the free intra-community

movement of agricultural products, which restrict the development of the regional markets for such products, and hence the opportunities of increasing incomes.

(i) Recent developments within WAEMU

134. The principal WAEMU legislation for agriculture, including livestock-raising, fisheries and forestry, dates from 2001.¹⁴² It identifies the three main thrusts of the Union Agricultural Policy (PAU) as: the adaptation of production systems and improvement of the production environment (boosting productivity and competitiveness); deepening the agricultural common market; and integration into the subregional and world markets. Intra-community and extra-community trade thus have an important position in the PAU strategy.

135. Five priority sectors were identified by the WAEMU Commission in 2007: rice, livestock and meat, poultry, maize and cotton. A master plan to improve the competitiveness of these sectors was adopted by the WAEMU Council of Ministers in 2007.¹⁴³ Likewise in 2007 the WAEMU member States adopted a programme for the development of fisheries and aquaculture. According to the WAEMU Commission, current activities concern the harmonization of policies and legislation, evaluation of fishery stocks in the region, collection of statistical data and creation of a regional database, definition of a regional strategy for negotiations on fisheries agreements and the regulation of licensing conditions for Union member States and for non-WAEMU countries, support for fishery monitoring, control and surveillance services in the five coastal countries and the development of intra-community trade in such products. The main constraints are the lack of suitable infrastructure for ensuring product quality and compliance with the SPS regulations of the European Union, which is an important potential export market. WAEMU currently has no regulations in force for the forestry product sector.

136. Since 2006 a Regional Agricultural Development Fund (FRDA), intended for financing regional upgrading projects, has been awaiting financing; the Fund has CFAF 12 billion (€18.3 million) provided by the WAEMU Commission's own resources. In order to make the FRDA operational, the WAEMU Commission has obtained FAO assistance through a technical cooperation project for the preparation of national and regional projects and programmes. FRDA activities were expected to start up in 2010.

137. With respect to international trade, the PAU provides for a coordination, information and decision-making support body for the international trade negotiations on agriculture. The WAEMU members have already worked out a number of joint negotiating positions on agriculture at the various WTO ministerial conferences.¹⁴⁴ With regard to tariff protection, the WAEMU CET (Chapter III(2)) is not on average significantly higher for agricultural products (14.6 per cent) than for non-agricultural products (11.7 per cent). However, local products are generally protected from competition from imports by the highest CET rate of 20 per cent. In addition to the CET and other charges levied by Customs (which add 2.5 percentage points to the TEC), MFN imports¹⁴⁵ may be subject to a special

¹⁴² Additional Act No. 03/2001 adopting the WAEMU agricultural policy. Viewed at: http://www.uemoa.int/actes/2001/acte_additionnel_03_2001.htm. See also Decision No. 05/99/CM/UEMOA adopting the special regional programme for food security in WAEMU member States (PSRSA/UEMOA).

¹⁴³ See Regulation No. 12/2007/CM/UEMOA on the creation and operating procedures of the regional consultative committee for the agricultural sectors within WAEMU; and Regulation No. 06/2007/CM/UEMOA adopting the master plan for priority agricultural sectors within WAEMU.

¹⁴⁴ WAEMU online information. Viewed at: <http://www.uemoa.int>.

¹⁴⁵ Fish and fish products are excluded from the scope of the TCI.

import tax (TCI) of 10 per cent on a temporary basis (Chapter III(2)), which in practice is generally applied to agricultural imports.¹⁴⁶

138. Since July 1996, local agricultural products are in principle admitted entirely free of duties and charges among WAEMU (and ECOWAS) members (Chapter III(2)).¹⁴⁷ According to several observers this is not really the case and the actual implementation of the legislation remains a challenge. One of the main barriers is the questioning of community origin of goods by customs agents at border posts. This is compounded by quantitative restrictions, unwarranted controls, long and repetitive formalities at borders, etc. To remedy these constraints, the WAEMU members are in the process of implementing trade facilitation programmes, including for road transport and transit, a single window and juxtaposed control posts grouping all the police and customs services at the borders between member States.

139. In the livestock and animal product sectors, the traditional livestock-raising methods that still exist in the Sahel countries are largely based on transhumance across national borders, which is significantly impaired by border controls. Some WAEMU countries (see annex on Benin, Chapter IV(2)) import large quantities of meat from non-WAEMU countries on an MFN basis rather than from neighbouring member countries that have an exportable surplus (such as Burkina Faso and Mali) owing to the serious obstacles hindering trade within the Union. In order to remove these obstacles, the Confederation of National Livestock/Meat Federations of WAEMU member countries (COFENAVI) organized a workshop in August 2009¹⁴⁸ with the technical and financial support of the Agribusiness and Trade Promotion (ATP) subregional programme.¹⁴⁹

(ii) Recent developments within ECOWAS

140. ECOWAS has also established a Community Agricultural Policy - ECOWAP - whose objectives are much the same as those of the PAU.¹⁵⁰ ECOWAS has repeatedly announced its plan for a regional agricultural fund to be financed both by ECOWAS and by international donors, but the plan has not yet come into existence. A Regional Action Plan 2006-2010 for the implementation of the ECOWAS Agricultural Policy and the NEPAD in West Africa was adopted in June 2005, but no concrete actions have yet started under this plan.

141. The ECOWAS Heads of State and Government decided in January 2008 to establish a new tariff band at a rate above the highest WAEMU CET rate, in order to protect their agriculture against competition from imports. The rate of this "fifth band" was set at 35 per cent, and is to apply to a list of "sensitive" goods consisting basically of agrifood products. Each member country is responsible for drawing up its own list, which is subsequently to be harmonized with the lists of the other WAEMU countries and then with those of the ECOWAS members in order to arrive at a single common list.¹⁵¹ One of the reasons given for introducing this fifth tariff band is to protect a number

¹⁴⁶ Regulation No. 6/99/CM/UEMOA of 17 September 1999. The TCI is currently imposed on imports of beef; poultry meat and edible offal of HS 01.05; condensed milk; potatoes; onions; bananas; maize; rice, sorghum; millet; wheat flour; raw vegetable oils; refined vegetable oils; sugar, tomato concentrate; cigarettes and cigarillos; and fruit juice.

¹⁴⁷ WAEMU online information. Viewed at: <http://www.uemoa.int/uemoa/historique.htm>.

¹⁴⁸ *L'Indépendant*, "Vers un plaidoyer commun pour la levée des contraintes liées à la commercialisation du bétail/viande au niveau régional: enjeux et défis", 18 August 2009. Viewed at: http://www.malikounda.com/nouvelle_voir.php?idNouvelle=22599.

¹⁴⁹ ATP is a project financed by the United States government through USAID; its objective is to increase the volume and value of intra-regional trade and agricultural products in West Africa.

¹⁵⁰ ECOWAS online information. Viewed at: <http://www.ecowas.int>.

¹⁵¹ ECOWAS/WAEMU (2009).

of essential sectors against competition from subsidized imports from certain WTO Members and the ensuing world market distortions (see below, for example, in the case of cotton).

(iii) "C-4" trade policy on cotton

142. As mentioned above, cotton is one of the priority industries of the WAEMU's PAU. In Benin, Burkina Faso and Mali, cotton alone represents more than 15 per cent of GDP and more than half of total export earnings. The living standards of many people and the prospects for poverty reduction thus depend to a large extent on cotton-related developments in world markets, bearing in mind that the three countries account for a relatively small share of world cotton trade and an even smaller share of world production (Table IV.1).

143. World cotton prices in US dollars (Cotlook A Index) have followed a falling trend over the last 15 years (Chart IV.1), partly owing to competition from man-made textiles as well as rising world output. The impact of falling world prices on production decisions has been offset by the rise in subsidies in some countries (see below), as well as by decreasing production costs in several countries thanks to the use of genetically modified seeds.

Table IV.1
Main cotton producers and exporters, 2004 and 2007
(US\$ million)

Production				Exports			
Region	2007	Region	2004	Region	2007	Region	2004
China	11,318	China	9,387	United States	4,580	United States	4,251
India	6,532	United States	7,511	India	2,118	Uzbekistan	1,070
United States	6,208	India	4,146	Uzbekistan	988	Australia	714
Pakistan	2,942	Pakistan	3,602	Brazil	507	Egypt	483
Brazil	2,014	Brazil	1,775	Australia	466	Brazil	406
Uzbekistan	1,677	Uzbekistan	1,707	Burkina Faso	245	Greece	365
Turkey	1,425	Turkey	1,389	Greece	228	Mali	353
Syria	542	Greece	580	Mali	198	Burkina Faso	264
Turkmenistan	460	Australia	518	Kazakhstan	180	Zimbabwe	237
Greece	445	Syria	491	Turkmenistan	161	Benin	204
Australia	407	Turkmenistan	490	Egypt	153	Kazakhstan	170
Egypt	335	Egypt	433	Benin	119	Syria	164
Nigeria	229	Mali	356	Tajikistan	115	Tajikistan	162
Burkina Faso	218	Burkina Faso	312	Côte d'Ivoire	98	Côte d'Ivoire	154
Argentina	215	Tajikistan	255	Zimbabwe	95	Cameroon	144
Mexico	215	Nigeria	254	Cameroon	90	Paraguay	125
Tajikistan	206	Benin	223	Syria	82	Turkmenistan	124
Kazakhstan	164	Kazakhstan	208	Turkey	72	Zambia	122
Benin	162	Mexico	205	Mexico	65	Spain	93
Mozambique	140	Iran	199	Chad	54	Sudan	88

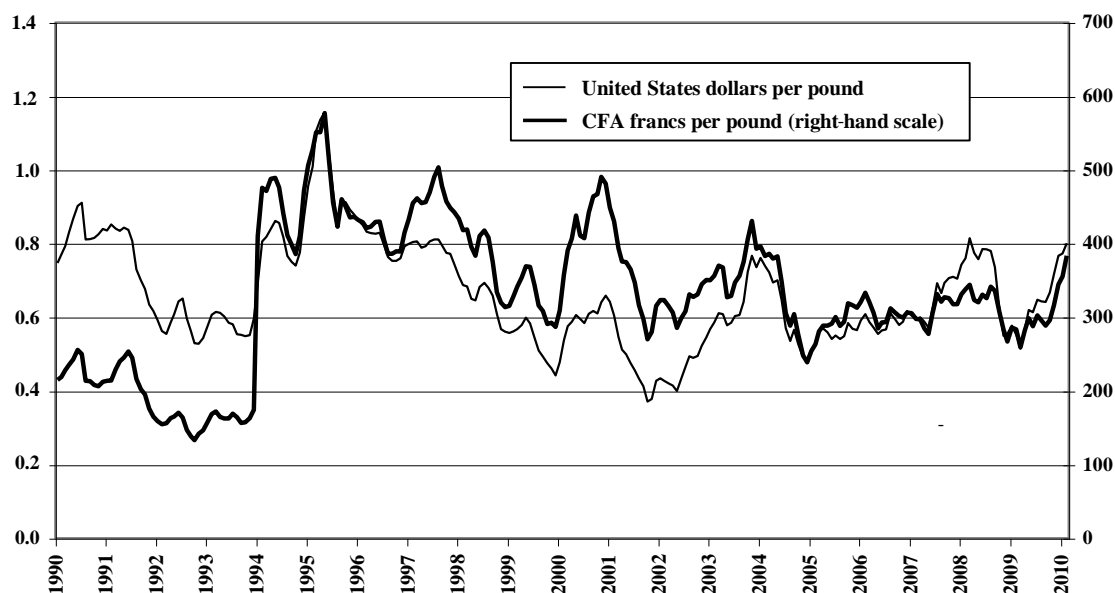
Source: FAO online information, "Production". Viewed at: <http://faostat.fao.org/site/339/default.aspx>.

144. The three countries' cotton lint export earnings also depend on euro-US dollar exchange rate trends, as the CFA franc is pegged to the euro and cotton trade is essentially carried out in US dollars. Thus, for the CFAF zone cotton producers, the rise in world prices in 2007-2008 was cancelled out by the depreciation of the US dollar (Chart IV.1). The African cotton industries have incurred large deficits since agricultural year 2004/2005, and producer incomes have fallen significantly.

145. According to the four cotton-producing countries (C-4, i.e. Benin, Burkina Faso, Chad and Mali), the support given by some WTO Members¹⁵² artificially swells supply on international markets and lowers world prices, reducing export earnings accordingly. The countries that depend heavily on cotton income are disproportionately affected. Confronted with this state of affairs, in 2003 these four countries adopted a common position in the Sectoral Initiative on Cotton.¹⁵³ They primarily request WTO Members that use domestic production support measures and export subsidies for cotton to remove them. They request duty and quota-free access for cotton exports from least developed countries (LDCs) as of the start of the implementation period. These requests are summarized in Box IV.1. In October 2009 the Ministers of Trade of the C-4 countries again launched a pressing appeal to WTO Members for a rapid, effective and global resumption of negotiations, stressing that in the context of the energy, food, financial and economic crises which were impacting their countries, the cotton issue should be taken up in the context of an early harvest.

Chart IV.1

World cotton price^a, January 1990 - February 2010



a "A" index. For details of index estimation, see website of Cotlook Ltd.

Source: National Cotton Council of America. Viewed at: <http://www.cotton.org/econ/prices/monthly.cfm>.

¹⁵² In particular the United States, China, and the European Union (for Spain and Greece).

¹⁵³ WTO document TN/AG/GEN/4 of 16 May 2003.

Box IV.1: Provisions contained in the proposal of the four co-sponsors of the Sectoral Initiative on Cotton (Benin, Burkina Faso, Chad and Mali)

Cotton support reductions

1. In accordance with the Hong Kong Ministerial Declaration, reduction in the AMS (aggregate measurement of support) applicable to cotton shall be determined as follows and using the following formula:

$$R_c = R_g + \frac{(100 - R_g) * 100}{3 * R_g}$$

R_c = Specific reduction applicable to cotton as a percentage

R_g = General reduction in AMS as a percentage

2. The six-year period for the implementation of the results of the Uruguay Round (1995-2000) shall serve as a base period. The blue box cap (e.g. for measures such as direct payments under production limitation programmes) applicable to cotton shall amount to one third of the product-specific cap that would otherwise have resulted from the above generally applicable methodology. The substantial reduction of support granted to cotton and having trade-distorting effects shall lead to their eventual elimination. The timeframes for commitments on cotton not entering into force on the date of the conclusion of the Round shall be one third of the respective timeframes applicable to agricultural products on general.

Market access

3. The developed countries together with the developing countries that are in a position to do so shall give duty- and quota-free access for cotton exports from least developed countries (LDCs). Other Members undertake to grant duty and quota free access for cotton exports from the developing countries. These commitments shall be fully applicable as of the conclusion of the negotiations.

Export competition

4. The developed country Members shall notify the legislative and regulatory measures they have adopted in order to fulfil their commitment to eliminate, by 31 December 2006, their export subsidies for cotton, including all of the disciplines applicable to export competition. Their schedules of commitments shall be modified with effect from 31 December 2006. The same commitment shall be made by the developing country Members, applicable as of 31 December 2007 at the latest. This commitment shall apply to all export competition disciplines, such as export credits, credit guarantees, and insurance programmes. As these deadlines have passed, elimination of subsidies will depend on the progress of the Doha Round negotiations.

Source: WTO document TN/AG/GEN/22-TN/AG/SCC/GEN/6 of 16 June 2006.

(3) MINING AND ENERGY

146. Over the last decade several large-scale energy projects have been launched in West Africa, basically to take advantage of its underground wealth and to address the current energy crisis in several countries in the region that is restricting their economic development. The WAEMU member States have envisaged several regional solutions to this crisis, set out in a "Regional Initiative for Sustainable Energy" published in 2008 (Table IV.2). In the short term, the aim is to increase electricity supply by means of new gas turbines that will use more efficiently the natural gas that should be available thanks to the West Africa Gas Pipeline project. In the long term, the Initiative gives priority to renewable energy, in particular solar energy, which could account for more than 80 per cent of all energy produced in the countries of the subregion by 2030.

Table IV.2

WAEMU Decisions relating to the energy sector

Directive No. 06/2001/CM/UEMOA on the harmonization of taxation of petroleum products within WAEMU
Decision No. 06/2004/COM/UEMOA foregoing objections to the laws establishing the single harmonized legal and tax regime applicable in Benin and Togo in relation to the implementation of the West African Gas Pipeline project
Decision No. 002/2005/COM/UEMOA providing negative clearance for the agreements creating joint ventures in the context of the realization and exploitation of the West African Gas Pipeline and the sale of natural gas on the markets of Benin and Togo
Directive No. 01/2007/CM/UEMOA of 6 April 2007 amending Directive N° 06/2001/CM/UEMOA on the harmonization of taxation of petroleum products within WAEMU
Decision No. 02/2009/CM/UEMOA on the creation, organization and functioning of the Regional Committee of Energy Sector Regulators of WAEMU member States
Decision No. 06/2009/CM/UEMOA adopting the WAEMU "Regional Sustainable Energy Initiative" (IREN) Strategy
Annex to Decision No. 06/2009/CM/UEMOA adopting the WAEMU "Regional Sustainable Energy Initiative" (IREN) Strategy
Decision No. 07/2009/CM/UEMOA on the implementing procedures for the WAEMU "Regional Sustainable Energy Initiative" (IREN) Strategy
Decision No. 08/2009/CM/UEMOA creating the Energy Development Fund (FDE)

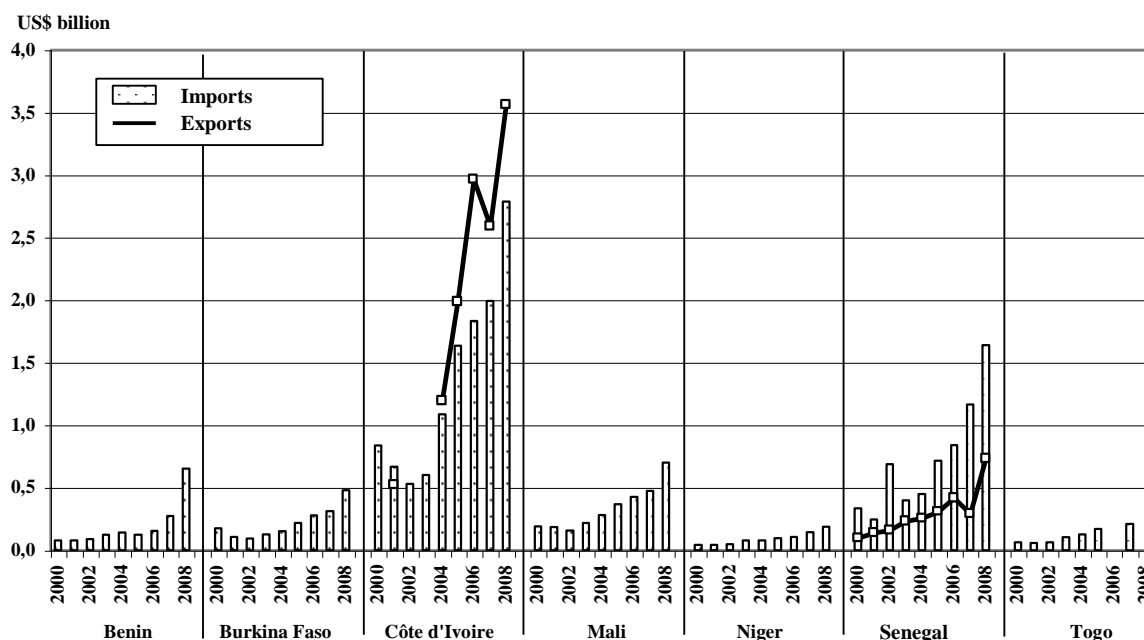
Source: WAEMU online information, "Les Décisions de l'UEMOA". Viewed at: http://www.uemoa.int/actes/index_dec.HTM.

(i) Petroleum, gas and coal products

147. Most West African countries are net importers of petroleum products. Only Côte d'Ivoire has surpluses, while Niger's subsurface is thought to contain large oil fields.¹⁵⁴ The countries of West Africa have therefore suffered from the steep rise in oil prices (Chart IV.2).

¹⁵⁴ According to the Government of Niger, the subsurface contains the equivalent of 320 million barrels of oil and 10 billion m³ of gas (WTO, 2009).

Chart IV.2
Petroleum trade^a in WAEMU countries, 2000-2008



a HS 2709 and 2710

Note: Imports of Guinea Bissau totaled US\$18.4 million in 2006.
Benin: Estimates for 2007 and 2008.

Source: UNSD, Comtrade database.

148. The West African Gas Pipeline, begun in 2000, is understood to be on the point of becoming operational and should significantly increase the supply of natural gas to Benin, Ghana and Togo. The pipeline is operated by the Western African Gas Pipeline Company Ltd. (WAPCo), which is owned by Chevron Texaco (36.7 per cent); the Nigerian National Petroleum Corporation (NNPC, 25 per cent); Royal Dutch Shell (18 per cent); the Volta River Authority (VRA, 16 per cent, a company wholly owned by the State of Ghana), the Benin Gas Company (Sobegaz, 2 per cent); and the Togolese Gas Company (Sotogaz, 2 per cent). According to the WAEMU Commission, the first deliveries of gas to Benin, Ghana and Togo should begin in early summer 2010.¹⁵⁵ A number of WAEMU decisions relate to this gas pipeline, concerning *inter alia* the compatibility of the aid granted by member States with the relevant WAEMU provisions (Table IV.2).

149. Another gas pipeline project which has been under way since 2006 could eventually increase the supply of natural gas in the region. By 2015 the Trans-Saharan Gas Pipeline should carry between 20-30 billion m³ of natural gas from Nigeria to Europe via Niger and Algeria.¹⁵⁶ According to the Commission, WAEMU has not been involved in this project.

150. As regards the taxation of imports, a customs tariff rate of 10 per cent applies to white products (petrol, gas oil) and a rate of 5 per cent to black oils (diesel, fuel oil). The average tariff on

¹⁵⁵ Togo Television, online information, "Le Directeur général de la WAPCo rend compte au chef de l'État de l'évolution des travaux du gazoduc". Viewed at: <http://www.tvt.tg/tvt/spip.php?article1619>.

¹⁵⁶ TSGP online information. Viewed at: www.tsgpipeline.com.

crude oil and natural gas is 3.8 per cent, and that on refined products is 7.4 per cent, compared with 12.1 per cent on average in the manufacturing sector (Chart III.1).

151. In addition to the CET and VAT, an internal consumption tax - the single specific duty (or "consolidated excise duty") - is levied on petroleum products, at a rate that varies from country to country as well as from product to product within each country.¹⁵⁷ In order to ensure coherence among the various domestic taxation systems for petroleum products and eliminate price distortions resulting from the different taxes on each product within the Union countries and between different products within each country, Directive No. 06/2001/CM/UEMOA of 26 November 2001 called for their harmonization within WAEMU. The five-year period afforded to member States under Articles 12 and 13 of the Directive was extended to 31 December 2008.¹⁵⁸ WAEMU's objective remains the harmonization of petrol pump prices.

(ii) Electricity

152. Over the past decade, public and private investment in the electricity sector in the region has been inadequate to meet growing demand, and the WAEMU countries, including Benin, Burkina Faso and Mali, are currently in the midst of an unprecedented crisis: in some cases, the accumulated periods of load-shedding sometimes exceed 12 hours a day. In 2008, the WAEMU supply was estimated at less than 2,700 MW, with an estimated deficit of about 250 MW, which could reach more than 750 MW in 2012 despite some increase in supply foreseen in 2010. Electricity costs are amongst the highest in the world. By way of illustration, medium voltage electricity in the WAEMU area costs five times more than in South Africa and twice the cost in Tunisia and Nigeria. The electricity generating system is old and has huge losses.¹⁵⁹ In view of the seriousness of these disruptions, the energy market was the subject of a number of WAEMU joint decisions in 2009, including a Regional Sustainable Energy Initiative (Table IV.2). According to the Initiative, the effective implementation of the proposed projects, taking into account the decommissioning of generating units whose service life has expired, would make it possible to double the number of WAEMU electric power generating plants between 2009 and 2012 and multiply the number by 3.3 between 2009 and 2030.

153. Broadly speaking, the national electricity markets are too small to attract private investment, and therefore the interconnection of the West African countries is essential. The ECOWAS West African Power Pool (WAPP) aims to interconnect the West African countries.¹⁶⁰ According to the WAEMU Commission, interconnection now allows continuity between the networks of Benin, Burkina Faso, Côte d'Ivoire, Ghana, Mali, Niger, Nigeria and Togo.

154. In 2008 the WAEMU member countries decided to establish a regional committee of energy sectors regulators of WAEMU member States in order to enhance the efficiency of management of the sector. Little information on its recent work is available. In 2009, the member countries published a Regional Sustainable Energy Initiative (Table IV.2). Under the Initiative, the share of renewable and sustainable energies (including hydroelectricity, solar energy, biomass and wind energy) in total electricity generation should rise from 36 per cent in 2007 to 82 per cent in 2030. In particular, the sunshine period is both long and intense in the Sahel region, and large areas (savannah and deserts) have no activity whatsoever and therefore are available at low cost. According to the

¹⁵⁷ In Senegal, for example, the specific tax on petroleum products amounts to CFAF 206,650/m³ for premium (higher-octane) petrol, and CFAF 93,950/m³ for diesel (WTO, 2009).

¹⁵⁸ Directive No. 01/2007/CM/UEMOA of 6 April 2007, amending Directive No. 06/2001/CM/UEMOA on the harmonization of taxation of petroleum products within WAEMU. Viewed at: <http://www.uemoa.int>.

¹⁵⁹ West African Power Pool (2007).

¹⁶⁰ WAPP online information. Viewed at: http://www.ecowapp.org/french/french_home.html.

Initiative, solar thermal technology should reach maturity in 2015-2020, at a kWh cost of CFAF 30 in 2020 for a large power station (900 MW). The total investment required to increase electricity supply tenfold between 2007 and 2030 (about 25,000 MW) is evaluated at CFAF 20,000 billion (around €30 billion). According to the WAEMU Commission, no project has yet been financed in this context.

155. The Initiative also envisages an Energy Development Fund (FDE), managed by the BOAD, to help launch implementation of supply enhancement projects by supporting programmes for reorganizing electricity companies. The FDE is a concessionary fund financed from States, regional institutions (BCEAO, BOAD, WAEMU Commission) and donors. The total amount required for the FDE is CFAF 500 billion (€762 million). It should receive an initial immediate funding of CFAF 25 billion (€38 million).

(iii) Other mining products

156. The community Mining Code adopted by WAEMU on 23 December 2003 was designed to serve as a common framework for the drafting of member countries' mining legislation.¹⁶¹ It governs all operations relating to prospection, exploration, exploitation, storage, circulation, treatment, transport, possession, processing and marketing of mineral substances throughout the territory of the Union, with the exception of liquid or gas hydrocarbons. According to the WAEMU Commission, its provisions take precedence over those of domestic legislation, but not over those of mining permits. For example, in the case of VAT on mining activities, the rate of which varies from one member State to another, the authorities may defer or suspend it.

157. The determination of the nature of mining permits, the obligations and rights associated with them and their administrative management, as well as the occupation of the sites needed for activities of prospection, exploration or exploitation of mineral substances and the related industries, as well as the relations between land owners and other occupants and the mining permit holders are still governed by the domestic legislation of each member State in the absence of any existing community regulations. However, the Code guarantees to mining permit holders, and their suppliers and sub-contractors, the right to dispose freely of their movable and immovable assets, both tangible and intangible, and to organize their enterprise, which is in particular guaranteed against any measure of nationalization, expropriation or requisition. All legal and commercial aspects of private property are protected, including its elements and subdivision, its transfer and contracts of which it is the object.

158. Title III of the Code spells out the benefits that may be granted to mining permit holders during the exploration and exploitation stages. During the exploitation stage, mining permit holders may in particular benefit from a system of accelerated depreciation and a tax-deductible provision for profits tax as a depletion allowance. Other advantages include a three-year exemption from business tax; profits tax; and employers' payroll tax. Throughout the period of exploitation mining permit holders are exempt from land taxes and the minimum flat rate tax or its equivalent.

159. The Mining Code guarantees the freedom to import goods, materials, machinery, equipment, spare parts and consumables in compliance with the WAEMU Customs Code. Capital goods imported for exploration benefit from the temporary admission regime throughout the period of validity of the mining permit at the exploration stage. The materials, spare parts and fuels and lubricants needed for the operation of the capital goods used for exploration work are totally exempt

¹⁶¹ Regulation No. 18/2003/CM/UEMOA of 23 December 2003. Viewed at: http://www.uemoa.int/actes/2003/CM22_12_03/reglement_18_2003_CM_UEMOA.htm. The Mining Code does not cover quarrying activities.

from customs duties and charges with the exception of the community solidarity levy (PCS) and the statistical fee (RS).

160. During the exploitation stage, permit holders enjoy exemption from duties and taxes with the exception of the statistical fee payable on petroleum products intended for the production of energy, for the extraction, transport and processing of mineral ore and for the operation and maintenance of social and sanitary infrastructure. The temporary entry of capital goods included in the Mining Schedule is possible for three years. During this period, an exemption from all import duties and taxes is also granted in relation to tools, spare parts, other than those for passenger cars and vehicles for private use; and materials intended to be definitively integrated into the works. Throughout the period of validity of mining permits at the exploitation stage, holders enjoy total exemption from import duties and charges on chemical products, reagents, oils and greases for capital goods.

161. The simple average of WAEMU CET import duties in 2009 on mining sector products is 5 per cent, with rates ranging from zero to 10 per cent (Table III.2). For example, gold powder is subject to a customs duty of 5 per cent, while semi-worked gold bears a rate of 10 per cent.

(4) MANUFACTURING SECTOR

162. The number of industrial enterprises in WAEMU is small, with about 2,500 enterprises located mainly in Côte d'Ivoire and Senegal. In addition to these enterprises, in each country there is a multitude of handicraft micro-enterprises, generally in the informal sector, providing jobs for much of the population. The West African manufacturing sector is developing in an environment fraught with many obstacles, chief among which are the absence of reliable access to cheap energy, but also the high cost and shortcomings of the water, financial and transport infrastructures. As users of infrastructure services, enterprises are penalized competitively if the infrastructure is inadequate. Besides the existing energy market problems (see above), according to a 2006 World Bank survey the shortcomings of transport and telecommunication services are a major or very serious problem for 15 per cent to 62 per cent of enterprises according to the sector.¹⁶² These constraints must be overcome as a matter of priority if the "upgrading" programmes introduced to enhance business competitiveness are truly to succeed.

163. However, according to the United Nations Industrial Development Organization (UNIDO)¹⁶³, some WAEMU member achieved large industrial performance gains between 2000 and 2005. UNIDO measures in particular the Competitive Industrial Performance Index (CIP), which combines several competitiveness indicators, in particular per capita manufacturing value added; per capita manufacturing exports; share of manufacturing in GDP; share of high and medium technology-intensive activities in manufacturing value added and exports. Among the countries for which this Index has been established, Côte d'Ivoire and Senegal have recorded significant gains, in particular as regards per capital manufacturing value added; however, Benin and Niger recorded a loss of competitiveness.

(i) Trade regulation

164. Since the adoption of the Union's Common Industrial Policy in 1999¹⁶⁴, there have been no new community regulations for the manufacturing sector with the exception of the preferential rules of origin adopted in 2002. In 2010, the average MFN tariff protection for manufacturing under the

¹⁶² World Bank (2006).

¹⁶³ UNIDO (2009).

¹⁶⁴ Additional Act No. 05/99 for the adoption of the WAEMU Common Industrial Policy. Viewed at: <http://www.uemoa.int/actes/dec99/AA0599.htm>.

CET is 12.2 per cent on average, as mentioned in Chapter III, to which are added 2.5 percentage points in other duties and charges. The most protected industries are, *inter alia*, beverages, clothing, building materials and some agrifood industries (Chart III.1 and Table III.2).

165. Only products that are "officially approved for the community preferential tax", at zero rate, may be exported to the other WAEMU countries free of customs duty (but not of the statistical fee or the community solidarity levy (PCS), provided they are properly labelled, accompanied by the necessary documentation, and exported directly from the producer to the consumer country. A 2002 regulation on rules of origin determines the community value added required for manufactures to be eligible for approval and thus to be freely traded within WAEMU.¹⁶⁵ In practice, few products have been approved (Table III.3); furthermore, approved products are not always recognized as such, and therefore in practice products are frequently taxed each time they cross a border within WAEMU. This raises considerably the cost of goods for consumers, thereby reducing their purchasing power.

166. Probably because of these obstacles to the free circulation of goods, despite the objective of a "heavily integrated" industrial fabric proclaimed in the Union's Industrial Policy, the domestic markets are small and have similar subsectors from one country to another, partly because it remains difficult to produce in one West African country in order to sell in one or more other countries of the subregion. For the same reason, there is very little integration at regional level among the manufacturing sectors. One of the major sources of competitiveness gains, including for exports, could therefore come from the elimination of barriers to intra-community trade.¹⁶⁶

(ii) Restructuring and upgrading programme

167. In the context of the negotiation of the EPAs with the European Union, the WAEMU Council of Ministers in 2006 adopted a Restructuring and Upgrading Programme (PRMN).¹⁶⁷ The objective of this five-year programme (2007-2012) is to provide enterprises with technical and financial support with a view to improving their competitiveness, in particular in the context of the elimination of tariff protection that would result from the entry into force of the EPAs (Chapter II(3)). Its total budget is expected to be about CFAF 211 billion (€322 million), involving 1,000 industrial enterprises.

168. UNIDO was responsible for the implementation of the pilot phase of the programme, at an estimated cost of about CFAF 10 billion (€15 million), partly financed by the French Development Agency (AFD). It involved 117 pilot enterprises (15 per country), exclusively in the agrifood area, and enabled national bodies to be set up, in particular the national steering committees which approve the upgrading plans. The next phase, i.e. roll out, should be financed under the respective national budgets; it is due to last three years and should make it possible to extend the programme so as to achieve the objective of 1,000 enterprises (670 upgraded and 330 restructured), including 880 industrial enterprises.

169. The upgrading process is steered at national level by Restructuring and Upgrading Offices (BRMN). The procedure is as follows: enterprises send a letter of expression of interest and the Upgrade Office agrees to pay the fees of the consultant responsible for preparing a diagnostic report and making the upgrade application, up to a maximum of CFAF 10 million (about €15,000). The diagnostic report leads to an upgrading or restructuring plan.

¹⁶⁵ Regulation No. 13/2002/CM/UEMOA. Viewed at: http://www.uemoa.int/actes/2002/reglement_13_2002_CM_UEMOA.htm.

¹⁶⁶ WAEMU/UNIDO (2007).

¹⁶⁷ WAEMU/UNIDO online information, "Programme de restructuration et de mise à niveau de l'industrie des États membres de l'UEMOA". Viewed at: <http://www.uemoa.int/PRMN/index.htm>.

170. The investment comprises both non-physical components (such as for management, training, quality certification, improving management capability through the purchase of software) and physical components (such as the acquisition of new equipment, etc.). In line with the amount of investment proposed, the State pays premiums to the approved enterprises for up to 80 per cent of non-physical investment (with a maximum of CFAF 51 million or €78,000) and up to 20 per cent of physical investment (likewise subject to a ceiling of CFAF 51 million).

(5) SERVICES

(i) Telecommunications and postal services

(a) Telecommunications

171. Since the previous review of the respective trade policies in 2004, major changes have taken place in the telecommunications sector in the three countries and more generally in West Africa. Some countries have ended the historical operators' monopoly, others have introduced new regulatory frameworks and new licences to encourage competition and make their markets more attractive to investors. At present, all WAEMU countries have a recent framework law on telecommunications. Most of them have an independent national regulatory authority, as is the case of Burkina Faso and Mali (but not yet Benin). As regards transparency and availability of information, when the national regulatory authority is in place it also maintains a website on which the regulations are available. Table IV.3 provides a synopsis of the existing competition conditions in WAEMU countries.

Table IV.3
Competition on telecommunications markets in WAEMU countries, 2010

	Benin 2008	Burkina Faso 2010	Côte d'Ivoire 2008	Guinea-Bissau 2008	Mali 2008	Niger 2008	Senegal 2008	Togo 2008
Local services	M	C	..	M	P	M	P	C
Domestic fixed long distance	M	C	P	M	P	M	P	C
International fixed long distance	M	C	P	M	P	M	P	M
Wireless local loop ^a	..	C	P	C	P	..	P	..
Data transmission	..	C	C	C	C	M	P	..
DSL ^b	M	C	..	C	P	..	P	C
Cable modem	..	C	..	C	..	..	P	..
VSAT ^c	..	C	C	C	C	P	P	C
Leased lines ^d	M	P	P	M	P	M	P	C
Fixed wireless broadband ^e	..	C	..	C	P	..	P	..
Mobile (cellular) services	C	C	P	P	P	C	P	C
Paging	C	C	..	C	..	..	..	..
Cable television	..	C	..	C	..	P	P	..
Fixed satellite service	..	P	..	C	P	..	P	..
Mobile satellite service	..	P	..	C	P	..	P	..
GMPCS ^f	..	P	P	C	P	C	P	..
IMT 2000 ^g	..	P	..	P	P	..	P	C
Internet services	..	C	C	C	C	M	P	C
International gateways ^h	..	P	M	P	P	..	P	M

.. Not available

a Over-the-air link connecting a user to a telecommunications network.

b Cable modem: broadband internet services.

c Very Small Aperture Terminal, satellite transceiver with a dish antenna less than 3 m. in diameter.

d Point-to-point dedicated communication circuit reserved by the network operator for a subscriber's exclusive use.

e High-speed (e.g. 2Mbps) over-the-air connection.

f Global mobile personal communications by satellite, with global coverage accessible with small transportable terminals.

g ITU-approved third generation (3G) cellular mobile phone standards.

h Permanent facility for sending and receiving electronic communications between the facilities of a domestic network and those of another country.

Note: M = Monopoly; P = Partial competition; C = Free competition

Source: ITU world telecommunication regulatory database. Viewed at: <http://www.itu.int/ITU-D/icteye/Default.aspx>, updated by the authorities.

172. In 2004, in cooperation with the International Telecommunication Union (ITU) and the European Union, WAEMU launched a project to support the establishment of an integrated ICT (information and communication technologies) market in West Africa.¹⁶⁸ The project was implemented in several stages. During the first two years, assistance was provided to countries to enable them to legislate on the various regulatory aspects. This assistance facilitated the establishment of a WAEMU harmonized regulatory framework comprising six directives (which must be transposed into the domestic legislation of member States in order to come into force) and a decision (Table IV.4). These texts constitute a minimum common reference base, which may be supplemented by national regulations and by rules issued by the national regulatory authorities.

¹⁶⁸ ITU online information, "ITC Market Harmonization for ECOWAS/WAEMU". Viewed at: <http://www.itu.int/ITU-D/treg/projects/itu-ec/index.html>.

Table IV.4
WAEMU legal texts relating to the telecommunications sector

Directive No. 01/2006/CM/UEMOA on the harmonization of control and regulatory policies for the telecommunications sector
Directive No. 02/2006/CM/UEMOA on the harmonization of the regimes applicable to network operators and service providers
Directive No. 03/2006/CM/UEMOA on the interconnection of telecommunications networks and services
Directive No. 04/2006/CM/UEMOA on universal service and network performance obligations
Directive No. 05/2006/CM/UEMOA on the harmonization of tariff-setting for telecommunications services
Directive No. 06/2006/CM/UEMOA organizing the overall framework for cooperation among national telecommunications regulatory authorities
Decision No. 09/2006/CM/UEMOA creating the Committee of National Telecommunications Regulators of WAEMU Member States

Source: WAEMU online information. Viewed at: <http://www.uemoa.int>.

173. These texts cover telecommunications services as a whole, as well as the Internet, but generally not other ICT areas such as radio and television broadcasting, which are not addressed by community sectoral policies. The first Directive defines the responsibilities of national regulatory authorities and guarantees their independence *vis-à-vis* the political authorities by requiring that they exercise their powers impartially and transparently. This Directive establishes a dispute settlement procedure and organizes cooperation among the national authorities of member States; it also establishes a Committee of Regulators (CRETL) comprising the national regulatory authorities of the member States. This Committee was set up in 2006 and consists of a President, a Vice-President and a permanent Secretariat provided by WAEMU. The presidency is held on a rotating basis, and the CRETL meets once a year to review the activities carried out during the past year and adopt the new programme of activities.

174. The second Directive aims at harmonizing the legal regimes applicable to network operators and telecommunications service providers. It defines the telecommunications networks and services that are subject to the authorization regime, in particular telephone services and those of the other public telecommunications networks, leased-line services, and the use of scarce resources (radio frequencies and numbering). Member States may choose to limit the number of authorizations solely in order to guarantee the optimal use of scarce resources such as radio frequencies and numbering resources, or to take account of market conditions. A declaration system is established for the provision of Internet services and value added services, such as voice messaging services. The second Directive defines a "single window" procedure accessible to service providers and operators wishing to establish networks or provide services in the telecommunications field in several community countries. In practice, in most countries the regulator acts as the single window.

175. The third and fifth Directives deal primarily with interconnection between telecommunications networks and tariff-setting. In general, operators and service providers set charges freely and must communicate their detailed schedules of charges to the national regulatory authority at the beginning of each year, as well as any subsequent modifications before they are applied. The Directives regulate in particular the interconnection charges of "powerful" operators (third Directive) and "dominant" operators (fifth Directive).

176. A powerful operator (having at least 25 per cent of the volume of the market for a service or group of services) must, when setting its interconnection charges, respect the principle of "relevant cost orientation". Relevant costs include the general network costs, i.e. those relating to network components used by the operator both for services for its own customers and for interconnection services; and costs specific to interconnection services. Non-relevant costs include costs specific to services other than interconnection. The costs taken into account must consider long-term economic

efficiency and in particular the investment required to ensure network renewal and extension. They include the cost of return on capital invested. Powerful operators must communicate to the national regulatory authority at least once a year the basic information required to check the calculation of interconnection costs. The Committee of Regulators meets periodically with the WAEMU national regulatory authorities in order to discuss the relevant costs to be taken into account in the setting of interconnection charges.

177. The fifth Directive defines dominant operators and aims to harmonize the charges for interconnection between operators (including dominant operators) within WAEMU. It provides member States with a framework for determining common tariff-setting principles for telecommunications services, and supervision by national regulatory authorities. It specifies the cases in which the authority may intervene in tariff-setting, and entrusts the regulatory committees with the responsibility of establishing a common methodology for the calculation of reference costs for fixed telephone services and the other main services.

178. The fourth Directive includes the obligation of universal service, including national and international telephone communications, sending and receiving of voice messages, documents by telefax and/or data with a sufficiently high bandwidth to allow access to the Internet, "at rates that are accessible to all". The Directive provides for a universal service financing fund to be established in each member State; however, according to the WAEMU Commission, the situation of each fund is not known, and the funds collected have not been managed efficiently in all cases. Finally, the sixth Directive organizes cooperation among national regulatory authorities, which should aim at the convergence of standards with a view to ensuring *inter alia* the security and interoperability of networks, and the compatibility of terminal equipment throughout the territory of the Union; coordination of frequency planning and allocation and supervision of the use of the radio spectrum; convergence of national numbering plans; and coordination of statistical data collection in the telecommunications sector.

179. Since 2002, ECOWAS has also been active in the implementation of a number of projects to harmonize telecommunications markets within the Community. Specifically, the West Africa Telecommunications Regulators Assembly (WATRA) was officially created in 2002 by the ECOWAS member States. The WATRA members are the national regulatory authorities or departments responsible for regulating telecommunications services in the absence of such authorities.¹⁶⁹

(b) Postal services

180. WAEMU does not have common regulations dealing with the postal services.

(ii) Transport services

(a) Air transport

181. The liberalization of intra-Africa air transport services began with the signing of the Yamoussoukro Ministerial Declaration in 1988. The decision relating to the implementation of this Declaration¹⁷⁰ aims at the phasing out of all non-physical barriers and restrictions relating, *inter alia*,

¹⁶⁹ WATRA online information, "Membership". Viewed at: <http://98.130.227.12/Members/Membres.aspx>.

¹⁷⁰ The Decision was adopted under Article 10 of the Treaty of Abudja establishing the African Economic Community; it was signed in July 2000 and has been in force since 12 August 2002. According to

to: the granting of traffic rights, and especially those relating to the fifth freedom of the air, between signatories¹⁷¹; the strengthening of technical and commercial cooperation among African airline companies; tariff regulation; designation of airlines by States; and a "community clause" of ownership whereby in any member State of the African Union the companies of any other member State of the African Union are assimilated to a national airline of the former. The Yamoussoukro Declaration provides for a similar regime for scheduled cargo flights and for non-scheduled flights (passenger and cargo).¹⁷²

182. Any company, whether wholly or majority owned by foreign capital or interests, may benefit from the advantages of the Yamoussoukro Decision if it meets the eligibility requirements and, in particular, if it has its headquarters, central administration and principal place of business physically located in the State concerned.¹⁷³

183. Within the context of the coordination of national sectoral policies within WAEMU, various texts have been adopted on air transport. Article 4 of the WAEMU Treaty stipulates that the Union should establish coordination of national sectoral policies for the implementation of common action and potentially of common policies, in particular in the transport areas. Additional Protocol No. II of the Treaty also entrusts the Union with the responsibility of drawing up a plan for the improvement of transport infrastructure and systems linking member States, and also of adopting provisions for the liberalization of transport services on a gradual basis.

184. In 2002, a WAEMU Agreement liberalized access for Union carriers to intra-community flights by granting them unlimited third to ninth freedom rights.¹⁷⁴

185. In 2003 a community directive liberalized the market for handling and stop-over assistance services at Union airports.¹⁷⁵ Burkina Faso has transposed this Directive into its national legislation by ministerial order; however, a State-owned enterprise apparently continues to provide this service at Ouagadougou airport. Senegal has authorized two private companies to provide stop-over assistance services at Dakar International Airport. Benin, Guinea-Bissau, Niger, Mali and Togo have each granted one authorization to one private law company to provide stop-over assistance services at their main airports.

186. The WAEMU legal framework has since been reinforced by the introduction of community provisions for the coordination of air safety (Table IV.5). In particular, the WAEMU member States' common air transport programme provides for a community agency for the oversight of civil aviation security and safety, with responsibility for, among other things, the supervision of aircraft personnel, airworthiness and technical operation licences and airfield certification.¹⁷⁶

Table IV.5

its Article 2, the Decision has precedence over all incompatible bilateral and multilateral air transport agreements.

¹⁷¹ That is, the right of an airline to carry passengers, freight and mail between two States Parties other than the State Party in which it is licensed.

¹⁷² WTO document S/C/W/270/Add.2 of 28 September 2007.

¹⁷³ Article 6.9 of the Decision.

¹⁷⁴ Regulation No. 24/2002/CM/UEMOA establishing the conditions for access by WAEMU air carriers to intra-community air links. Viewed at: http://www.uemoa.int/actes/2002/reglement_24_2002_CM_UEMOA.htm.

¹⁷⁵ Directive No. 01/2003/CM/UEMOA. Viewed at: http://www.uemoa.int/actes/2003/directive_01_2003_cm.htm.

¹⁷⁶ Online information from the Cooperative Development of Operational Safety & Continuing Airworthiness Programme (COSCAP). Viewed at: <http://www.coscap-uemoa.org/coscap.htm>.

Legal texts concerning air safety, 2010

Legal text	Description
Directive No. 01/2004/CM/UEMOA	Aims at providing WAEMU member States' civil aviation administrations with an appropriate legal status for fulfilling their obligations with respect to the regulation and supervision of civil aviation, primarily as regards safety and security.
Decision No. 13/2005/CM/UEMOA	Establishes a community mechanism of civil aviation safety supervision in WAEMU member States.
Decision No. 15/2006/CM/UEMOA	Aims at creating a regional control and coordination committee and the adoption of a community legal framework on market access, air carrier licences and the common air agreement.
Regulation No. 01/2007/CM/UEMOA	Contains the community Civil Aviation Code of the WAEMU member States, covering most of the areas of the International Civil Aviation Convention (Chicago Convention establishing ICAO).

Source: WAEMU online information. Viewed at: <http://www.uemoa.int>.

187. On 13 November 2009 an Agreement was signed between WAEMU and the European Union on the introduction of a community designation clause into the air transport agreements between WAEMU members and EU member States.¹⁷⁷ The Agreement replaces some provisions of the 47 existing bilateral agreements on air services concluded between EU member States and WAEMU member States.¹⁷⁸ In particular, Article 2 of the Agreement replaces the nationality restrictions contained in the traditional designation clauses by a community designation clause enabling all community carriers to benefit from the right of establishment. Consequently, any WAEMU or EU company may henceforth fly between a EU member country and a WAEMU member country provided one of the 47 bilateral agreements is in force between the two countries served.

188. According to some observers, competition has increased on the West African air transport markets.¹⁷⁹ New operators, especially from North and East Africa, are competing with the European carriers, and new hubs have developed, in particular in Casablanca and Tripoli. Moreover, in addition to the traditional competition on North-South routes there is now also East-West competition coming from the Persian Gulf States.

(b) Maritime transport and port services

189. Of the three countries, only Benin is directly concerned by the provision of maritime transport services. However, Burkina and Mali, as landlocked countries, use the maritime transport services of the region's coastal countries to transport the bulk of their goods. Although these two countries do not have a sea coast, access to efficient maritime transport services remains a major economic challenge for them.

Maritime transport

190. Maritime transport in West Africa has long been characterized by small volumes carried essentially towards Europe. In addition, the traffic flows have traditionally been unbalanced:

¹⁷⁷ European Union, online information, "International Aviation: Status of aviation relations by country: UEMOA". Viewed at: http://ec.europa.eu/transport/air/international_aviation/country_index/uemoa_en.htm.

¹⁷⁸ Proposal for a Council decision concerning the conclusion of the agreement between the European Union and the West African Economic and Monetary Union on certain aspects of air services. Viewed at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0463\(02\):FR:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0463(02):FR:HTML).

¹⁷⁹ *Jeune Afrique*, "Etienne Rachou: "Air France-KLM n'a pas de monopole en Afrique", 5 February 2009. Viewed at: http://www.jeuneafrique.com/Article/ARTJAJA2508p064-065.xml0/etienne-rachou-air-france-klm-n-a-pas-de-monopole-en-afrique.-Actualite_Info.html.

southbound traffic represents roughly two-thirds of the total. Container flows on the Europe-West Africa lines totalled about 550,000 TEUs (20-foot equivalent units) southbound and 280,000 TEUs northbound.¹⁸⁰ Nevertheless, changes are currently taking place in West Africa's trade flows, with a relative increase in trade with Asia in particular.

191. Until 2008, freight charges for container traffic were negotiated between the Europe-West Africa Trade Agreement (EWATA, grouping the maritime shipping companies of West African countries, including Benin) on the one hand and the national shippers' councils. The EWATA was concluded at the end of 1999 in accordance with Regulation (EEC) No. 4056/86 for the exemption of liner conferences from EU competition rules, and governed much of sub-Saharan Africa's international traffic. EWATA ended operations in October 2008, at the same time as the regulation was repealed.¹⁸¹

192. Despite the virtual non-existence of a national merchant fleet, Benin, Burkina Faso and Mali do not appear to have repealed their legislative texts allowing liner conferences and these are therefore still authorized under specified conditions. In October 2008 the three countries were still members of the 1974 United Nations Convention on a Code of Conduct for Liner Conferences, which entered into force in 1983 but was never put into practice owing to the lack of any national ship-owners. Burkina Faso and Mali are members of the 1978 United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules), which entered into force in 1992.

193. A WAEMU regulation of 28 March 2008 establishes the conditions governing domestic, intra-community and international maritime transport within the Union for both passengers and goods.¹⁸² The directive seeks to boost competition among maritime transport companies in the markets where it is lacking. It embodies the principle of free access to international maritime transport services, on a commercial and non-discriminatory basis, subject to reciprocity. Thus, community and foreign ship-owners are subject to the same operating conditions when departing from or bound for a Union port and when arriving from or sailing to third countries. On the other hand, only community ship-owners are authorized to provide domestic and/or intra-community maritime transport services. Where competition is concerned, the community provisions set out in Articles 88, 89 and 90 of the WAEMU Treaty are applicable to maritime transport activities within the Union. According to the WAEMU Commission, most States have not yet transposed this directive into their domestic legislation.

194. Lastly, under this new regulation community and foreign shipping lines operating an international transport service must pay a traffic rights fee, the proceeds of which are channelled into national funds and a regional fund for the development of the Union's maritime subsector. Although the regional fund has not yet come into being owing to the absence of any community carrier, most WAEMU countries apply these provisions and this fee.

195. The Maritime Organisation of West and Central Africa (MOWCA) is an institution that manages maritime transit and transport issues common to its 25 members from the West African region.¹⁸³ Since its creation in 1975, MOWCA has been a forum for establishing maritime transport policies, programmes and projects. Its objectives are to provide efficient, low-cost maritime transport and transit services; a common subregional policy for coastal shipping; facilitation of transit transport; and development of multimodal transport and logistical services.

¹⁸⁰ UNCTAD (2006).

¹⁸¹ OT Africa Line (2008).

¹⁸² Regulation No. 02/2008/CM/UEMOA relating to maritime transport within WAEMU. Viewed at: http://www.uemoa.int/actualite/2008/CM28032008/Reglement_02_2008_CM_UEMOA.pdf.

¹⁸³ MOWCA online information. Viewed at: <http://www.mowca.org/new%20design/index.html>.

Port services

196. At a time of concentration and increased competition characterizing transport service markets, the quality of handling services in terminals and the ensuing cross-docking time are a decisive factor in determining the choice of a port. According to a recent study, about eight West African ports will in future become "megaports" acting as transit hubs for the region, and redistributing traffic towards secondary ports and inland to landlocked countries.¹⁸⁴ Hence, the countries that have the best inland transport infrastructures towards landlocked countries are likely to attract the majority of intercontinental traffic.

197. The concessions granted to private international terminal operators, including those affiliated with liner companies, could bring about the redevelopment of ports and significantly help to improve handling services, particularly in Benin, which has just granted such a concession (see annex on Benin, Chapter IV).

198. A number of community regulations and directives on maritime transport and port services were adopted in 2008 in order to boost the competitiveness of member States, specifically of their port and transport sectors, and reduce port costs and transit times within the Union. In particular, port service providers - pilots, tugboat operators, suppliers of ships' stores - are also the subject of a new directive¹⁸⁵ aimed at introducing trade facilitation measures in ports in order to reduce cross-docking times.

199. Since 2008 a new directive has applied to licensed customs brokers and forwarders; shipping agents and maritime agents (excluding port service providers); cargo agents; and *commissionnaires de transport* (transport organizers).¹⁸⁶ It seeks to facilitate the implementation of the common programme for the development of the maritime subsector; harmonize the activities of the various public or private institutions involved in the maritime subsector; and establish a harmonized institutional framework for the maritime subsector, including as regards port security and safety.¹⁸⁷

(c) Land transport

Road transport

200. Mindful of the importance of good quality transport infrastructure to encourage trade and investment, the WAEMU members have been committed since 2001 to improving the development and maintenance of the road network.¹⁸⁸ The transport corridors are in particular an important feature of international trade for West African countries as they link the landlocked countries to the ports of the transit coastal countries. ECOWAS, NEPAD and WAEMU also have investment programmes under way for eventually establishing permanent trans-Saharan road links.

¹⁸⁴ Pálsson, G., Harding, A., and Raballand, G. (2007).

¹⁸⁵ Directive No. 03/2008/CM/UEMOA on port service providers within WAEMU.

¹⁸⁶ Regulation No. 03/2008/CM/UEMOA of 28 March 2008 on the conditions for the exercise of maritime transport intermediary professions within WAEMU.

¹⁸⁷ Directive No. 04/2008/CM/UEMOA of 28 March 2008 on the establishment of a harmonized institutional framework for the maritime subsector within WAEMU. Viewed at: http://www.uemoa.int/actualite/2008/CM28032008/Directive_04_2008_CM_UEMOA.pdf.

¹⁸⁸ See in particular the WAEMU Programme of Community Action for Road Infrastructure and Transport (PACITR), adopté on 20 September 2001 (WAEMU online information, "La Semaine de l'UEMOA: Bulletin hebdomadaire de l'UEMOA", No. 250, 12-18 October. Viewed at: <http://www.uemoa.int/BullInfo/Bull250.pdf>).

201. Owing to the damage inflicted on roads by vehicles with excessive axle loads, it was decided within WAEMU to harmonize subregional regulations pertaining to axle load.¹⁸⁹ The Regulation establishes the total authorized laden weight of vehicles and the total permissible gross weight of combined vehicles, according to the number and arrangement of axles, with immediate unloading as a penalty. The deadline for implementing the Regulation is 30 June 2010.

202. In 2001, aware of the fact that impromptu roadblocks are one of the main causes of the low productivity of this transport mode and hence an obstacle to economic competitiveness, the WAEMU members adopted a decision aimed at reducing the number of controls authorized on inter-State road links.¹⁹⁰ According to the WAEMU Commission, this decision has not been complied with; in this connection, the report of the WAEMU Irregular Practices Observation Centre for the period October-December 2009 indicates an average of three checkpoints per 100 km. on the Tema - Ouagadougou - Bamako, Lomé - Ouagadougou and Bamako - Dakar corridors.

203. Access to the profession of carrier in WAEMU is no longer in principle reserved for nationals but has been extended to Union nationals too. National treatment is also said to be applied to ECOWAS nationals. However, cabotage (transport within the same country) is generally prohibited to foreigners of whatever nationality. Road transport of goods among WAEMU States continues to be governed by bilateral agreements between States which generally provide for the distribution of freight by truckers' councils.¹⁹¹ This system, which discourages competition by keeping underperforming carriers in operation, is being revised as part of the regional road transport and transit facilitation programme. Meeting in May 2009 in Sikasso, Mali, the Confederation of Truck Drivers Unions of West Africa drew the attention of the 15 ECOWAS member States, in particular Benin, Côte d'Ivoire and Mali, to the irregular practices affecting inter-State road traffic, in particular unauthorized roadblocks and extortion, which give rise to additional costs as a result of unwarranted controls and the need for a costly escort, as well as the many payments that have to be made.

Rail transport

204. Broadly speaking, rail links within the region are almost non-existent, but several projects are under way for the development of railways, in particular in the context of new mining projects. Among these rail infrastructure projects, AfricaRail aims at bringing together the private and public sectors in a consortium to build new rail links between Benin, Burkina Faso, Niger, Togo and Chad for passenger transport but above all for the transport of mining products. The majority of the investment would take the form of private capital from mining companies or countries with mining interests in the region.¹⁹² The project is currently looking for investors.

(iii) Tourism

205. According to the WAEMU Commission, the Union accounts for only 4 per cent of tourist arrivals on the continent, with about 1.6 million tourists recorded in 2008. For the time being there is no specific community legislative framework for tourism in WAEMU, nor is there a common policy on tourism. The 14th session of the Conference of Heads of State and Government meeting on

¹⁸⁹ Regulation No. 14 2005/CM/UEMOA. Viewed at: http://www.uemoa.int/actualite/2005/Reglement_14_2005_CM_UEMOA.pdf.

¹⁹⁰ Decision No. 15/2005/CM/UEMOA on the practical modalities for the implementation of the WAEMU regional plan for inter-State road corridor controls.

¹⁹¹ For example, Convention A/P2/5/82 on the regulation of inter-State road transport (TRIE/ECOWAS) (Cautions nationales TRIE/CEDEAO, online information. Viewed at: <http://www.cautionsstrie.org>).

¹⁹² AfricaRail online information. Viewed at: http://www.africarail.org/afr_prg.htm.

20 February 2010 in Bamako adopted, through a draft Act additional to the Union Treaty, a draft WAEMU Common Tourism Policy. The policy is aimed at making the Union "an integrated, attractive and accessible tourism market that offers products that are diversified, high quality, visible and competitive on the relevant markets".¹⁹³ Several tourism fairs and events are held in Burkina Faso, such as the SIAO, SITHO and FESPACO (see annex on Burkina Faso, Chapter IV(5)(iv)).

206. Partly with a view to encouraging regional tourism, the WAEMU member States have undertaken to facilitate the movement and stay of non-WAEMU nationals in the WAEMU area by means of a single visa, and have undertaken to simplify and harmonize administrative procedures for the entry and stay of non-WAEMU nationals. Since 1 October 2009, the member States have applied mutual recognition of their national visas. Accordingly, any visa issued by one member State to persons who are not Union nationals is accepted by the other Union States, thus enabling the visa holders to move freely within the community territory. ECOWAS nationals are in principle not required to hold an entry visa for the territory of the Union.¹⁹⁴

(iv) Financial services

(a) Credit institutions

Banking

207. Banking in the member countries of the West African Monetary Union (WAMU) is subject to common regulations, the main text being the law regulating banking which came into force on 1 October 1990.¹⁹⁵ The Central Bank of West African States (BCEAO) and the WAEMU Banking Commission are responsible for such regulation, as well as for the surveillance and prudential supervision of the banks and financial institutions in the member countries. Applications for approval are addressed to the Minister responsible for finance and lodged with the BCEAO, which refers them to the WAMU Banking Commission for an opinion and then approves the credit institutions and appoints their external auditors. Once approved by a WAEMU member State, a bank may open branches in other member countries without requiring approval in each country.

208. As at 31 December 2008, most banks respected the main prudential standards (Table IV.6). The average solvency ratio of the Union banks rose in 2008 from 10.3 per cent to 11.9 per cent, as against a statutory minimum of 8 per cent.

209. With a view to strengthening the banking and financial system, the minimum equity capital requirement for banks and financial institutions was raised to CFAF 5 billion and 1 billion, respectively (Notice No. 01/2007/RB of 2 November 2007). The banks and financial institutions already in operation have an additional time period, until 31 December 2010, to comply with this obligation. These thresholds are to be raised to CFAF 10 billion and 3 billion, respectively, in a second stage whose time-frame has yet to be established.

210. The financial system has been reformed with a view to expanding use of banking services and (non-cash) means of payment. In the WAEMU countries the percentage of the population with a bank

¹⁹³ WAEMU (2010).

¹⁹⁴ Regulation No. 06/2009/CM/UEMOA on the mutual recognition of visas issued by WAEMU member States. Viewed at: http://www.uemoa.int/actualite/2009/CM26062009/reglement_06_2009_CM_UEMOA.pdf.

¹⁹⁵ BCEAO online information. Viewed at: <http://www.bceao.int/internet/bcweb.nsf/french.htm?OpenFrameSet>.

account is very small: out of the total population of 80 million, of whom about 30 million are economically active, 3 per cent to 7 per cent, depending on the country, are holders of bank accounts. Paper money still accounts for a relatively large proportion of the money supply. With a view to implementing these reforms, a Directive was adopted in 2002 concerning measures to promote the use of banking services and means of payment.¹⁹⁶ These include the obligation of payment by cheque or bank transfer for any financial transaction for an amount of CFAF 100,000 or more¹⁹⁷ between the State or one of its subdivisions and individuals, enterprises and other private persons concerning: wages and salaries, benefits and other monetary payments owed by the State, and taxes, charges and other payments owed to the State. The payment of water, electricity and telephone bills and the settlement of any liability in money form of are exempted from the payment of stamp duty when carried out by means of a banking instrument or procedure. The Directive also imposes the obligation for any person or company established in one of the States of the Union and providing proof of a regular income of CFAF 50,000 or more per year, to open a bank account with the establishment of their choice, and to be provided with at least one payment instrument against the necessary guarantees.

Table IV.6
Number of banks complying with WAEMU prudential standards, 31 December 2008

	Benin	Burkina Faso	Mali	WAEMU
Total number of banks, of which:	12	12	13	97
Number complying with the following standards:				
Representation of minimum capital ^a	7	11	11	75
Risk coverage ^b	7	11	12	80
Note: average solvency ratio (%)	..	..	..	11.9
Limitation of capital assets and stockholding ^c	7	10	12	73
Limitation of commitments on a single signature	7	5	9	57
Limitation of individual risks overall volume ^d	7	11	12	79
Other prudential standards				
Limitation of loans to main shareholders, management and staff ^e	7	9	12	74
Coverage of long and medium-term uses with stable resources ^f	4	6	9	52
Liquidity ratio ^g	8	7	9	66

.. Not available.

a Number of establishments whose core capital is at least equal to the minimum capital requirement of CFAF 1 billion or the requirement set in the approval decision.

b Number of establishments meeting the standard of risk coverage by equity share capital, set at 8 per cent.

c Number of establishments whose capital assets and stock-holdings do not exceed their equity share capital.

d Number of establishments limiting risks on a single beneficiary or a single signature to less than 75 per cent of their equity share capital.

e Number of establishments limiting accumulated loans to their main shareholders, managers and staff to 20 per cent of their equity share capital.

f Number of establishments covering at least 75 per cent of their fixed uses or uses with a residual maturity of more than two years with stable resources, so as to avoid an excessive shift of banks' short-term resources into medium or long-term uses.

g Number of establishments with sufficient cash or uses whose residual maturity does not exceed three months to cover at least 75 per cent of their liabilities with same maturity.

Source: BCEAO (2009), Annual Report 2008, September. Viewed at: <http://www.bceao.int>.

211. Since 1999 various structures have been established, such as:

- The Automated Transfer and Settlement System (STAR-UEMOA);

¹⁹⁶ Directive No. 8/20002/CM/UEMOA, supplementing Regulation 15/2002/CM/UEMOA on means of payment in WAEMU member States, adopted on 19 September 2002.

¹⁹⁷ This threshold is fixed by a BCEAO instruction.

- the Automated Inter-Bank Compensation System (SICA-UEMOA);
- the Inter-Bank Electronic Banking Processing Centre (CTMI-UEMOA); and
- the Inter-Bank Electronic Banking Group (GIM/UEMOA).

212. The GIM-UEMOA groups some 60 banks and financial and postal institutions, which together are the shareholders of the CTMI-UEMOA. The latter is responsible for the provision of delegated and supplementary inter-bank electronic banking services for banks and financial and postal institutions and microfinance structures within and outside WAEMU.

213. There are some legal restrictions on foreign presence. For example, under Article 14 of the banking regulation framework law, only a national of a WAMU country may direct, administer or run a bank or financial institution or one of their agencies. The Ministry of Finance may, with the favourable opinion of the Banking Commission, grant individual waivers of this provision. The President of the Banking Commission has exercised his delegated authority to give 38 favourable opinions in 2008, compared to 47 in the previous year, to allow non-Union nationals to occupy 32 management posts and 14 directors' posts.

(b) Regional Stock Exchange

214. Since its creation in 1998, the Regional Stock Exchange (BRVM), with headquarters in Abidjan, has been an additional source of finance supplementing traditional sources such as bank finance, or private investment in securities, debt instruments or shares.¹⁹⁸ Total capitalization of the BRVM is CFAF 3,330 billion (about €5 billion), and trading is at a level of about CFAF 3 billion (€5 million) per month. The BRVM is a private company holding a concession from a community public service established by WAEMU. A majority of its capital is held by commercial operators, while States hold only about 13 per cent. In each member State the BRVM has an National Stock Exchange Office (ANB) responsible for, *inter alia*, (i) centralizing transmission of orders; (ii) disseminating information; and (iii) organizing local promotion of the market. The Regional Council for Public Savings and Financial Markets regulates the BRVM, and is responsible for giving authorizations and monitoring its operation; it also authorizes issues of shares traded on the BRVM.

(c) Microfinance systems

215. Microfinance has continued to develop in the three countries, especially outside the urban centres served by the banking establishments. Microfinance improves access to credit for farmers and small enterprises which often do not have access to the traditional banking system. Microfinance institutions are generally savings and loan cooperatives; these "decentralized financial systems" (DFS) are covered by a WAEMU common regulation. In 2007, the WAEMU Council of Ministers adopted legislation amending the 1993 PARMEC law, which provides a framework for DFSs in WAEMU member countries.

216. In 2004, the BCEAO drew up a DFS support programme for the five-year period 2005-2009. This Regional Programme for the Support of Decentralized Financing (PRAFIDE) has among its objectives that of finding appropriate corrective measures for the shortcomings detected over the last few years in the Union's microfinance sector. Among these support measures, DFS institutions are exempted from all direct or indirect taxes, charges or fees relating to their savings and loan operations.

¹⁹⁸ BRVM online information. Viewed at: <http://www.brvm.org/>.

(d) Insurance services

217. The regional insurance market remains small, largely owing to the low purchasing power of the population. Total turnover likewise remains small, rising from CFAF 229 billion in 1995 to CFAF 442 billion in 2005 (€674 million), of which 78 per cent for insurance of goods and the rest for life insurance. The market includes insurance groups with majority foreign shareholders (such as AXA, Allianz, COLINA, etc.) and local groups (NSIA, SUNU, FEDAS, etc.). The sector has major structural problems. In Benin, for example, accumulated insurance premium arrears amounted to a third of the sector's turnover in 2007 (nearly €13 million).

218. The Insurance Code of the member States of the Inter-African Conference on Insurance Markets (CIMA), created in the franc zone in 1992, establishes the framework regulating all direct non-marine insurance activities in 14 African countries, including the WAEMU member States.¹⁹⁹ Maritime, river or air insurance contracts, as well as reinsurance contracts, are excluded from the Code's scope.

219. The only compulsory insurance under the Code is automobile third-party insurance. However, the Code provides that member States may make other types of insurance compulsory, as is the case in Benin and Burkina Faso, for example, the insurance of goods at importation. The CIMA Code also provides for the principle of specialization, whereby the same company may not provide damage and life insurance services simultaneously.²⁰⁰

220. Under the CIMA Code, the establishment of an insurance enterprise is subject to the prior approval of the Minister responsible for insurance of the State in which the company wishes to operate, subject to the prior favourable opinion of the Regional Insurance Monitoring Commission (CRCA), which is the regulatory body of the insurance market. Nationals and foreigners are subject to the same conditions. The sole difference concerns the submission of administrative documents by a foreign company.²⁰¹ The CRCA Secretariat is in Libreville (Gabon).

221. The Council of Ministers responsible for insurance (CMA) is the CIMA's highest body. Under the Code, National Insurance Boards (DNAs) have been set up in each country and are responsible for applying the decisions and recommendations of the CRCA. They authorize the exercise of the profession of insurance intermediary and supervise the work of the technical experts. The CRCA plays an important part in ensuring the financial health of the sector, in particular by seeing that only financially sound enterprises retain their authorization to operate. For example, between September 1995 and December 2007, the CRCA revoked all the authorizations for 19 insurance companies, including one in Benin (SADES).

222. The CMA has regularly raised the minimum equity capital requirement for insurance companies in order to strengthen their financial base and their solvency, and to bring these minima into line with international prudential standards. In April 2007, it decided to raise the minimum equity capital required for limited companies from CFAF 500 million to CFAF 1 billion; and to raise the establishment fund for mutual societies from CFAF 300 million to CFAF 800 million, as from

¹⁹⁹ Treaty signed on 10 July 1992 at Yaoundé by the 14 member States: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Mali, Niger, Senegal and Togo. The Comoros has never ratified it, while Guinea-Bissau did so subsequently.

²⁰⁰ Article 326 of the CIMA Code.

²⁰¹ These conditions are set out in Article 328-6 of the CIMA Code.

7 April 2010. Enterprises that do not comply with this requirement by the deadline will automatically cease their activities.²⁰²

223. Despite the existence of the CIMA Code, it seems that the harmonization of insurance services regulation in the countries of the region needs to be taken further. In particular, the CIMA insurance market still does not have a single approval procedure. In the CIMA countries, direct insurance may not be taken out with a foreign company that is not authorized to operate within the country without a specific waiver from the Minister responsible for insurance; in practice, the Ministers responsible for insurance grant on an ad hoc basis authorizations to one or more institutions that are not approved to associate with one or more approved insurance institutions for the insurance of specific risks or specific categories of risk.

224. Likewise, resident companies may not provide insurance services to non-residents. Under the Code, contracts for the insurance of persons, property or liabilities within a member country must be signed with companies that have been approved for such a purpose in the country in question. This measure restricts the freedom to provide services and is a barrier to the development of a single market. The introduction of a single approval procedure would also help to place the CIMA insurance sector on a sounder footing.²⁰³

225. Reinsurance is not covered by the CIMA Code, and enterprises engaged exclusively in reinsurance do not need to request approval (Articles 300 and 326 of the CIMA Code). However, any transfer of reinsurance abroad involving more than 75 per cent of a risk relating to a person, a good or a liability on the territory of a member State, with the exception of certain branches, is subject to authorization by the Minister responsible for insurance (Articles 308 and 328). In practice, reinsurance-related commitments are probably much higher than those of the "fronting" insurance companies, thus in fact transferring abroad the actual coverage of risks situated in the CIMA area, particularly for major petroleum and mining risks. It would seem that several companies are engaged in fronting for most of the major industrial and commercial risks, thus placing these high-premium risks outside the CIMA area.²⁰⁴

226. Community co-insurance, introduced by a regulation of 2004, is a step towards market harmonization, by facilitating cooperation between insurance companies through reciprocity or reinsurance agreements for certain major risks.²⁰⁵ This principle should enable insurance enterprises operating in different CIMA member States to participate in the co-insurance of risks which, because of their nature or scale, require the participation of several insurers in the region to guarantee them. However, enterprises are required to exhaust the national risk coverage capacity before co-insuring with insurance companies located in other CIMA member States.

227. The CIMA Code (Article 533) provides that the Minister responsible for insurance approves brokers at national level, and draws up, updates and publishes the list of brokers which he transmits to the CRCA. The National Insurance Boards are supposed to draw up lists on an annual basis, taking into account the conditions of eligibility for the profession of insurance broker defined by the Code. The Code provides that insurance premiums are set freely by insurance companies. However, a minimum rate for automobile third-party insurance is set by national governments and validated by the CRCA (Article 212).

²⁰² The text of the Regulation was viewed at: http://www.cima-afrique.org/hc.php?hcl_id=1361.

²⁰³ Ziguélé, M. (2008).

²⁰⁴ *Idem*.

²⁰⁵ This principle was introduced by Regulation No. 004/CIMA/PCMA/PCE/SG/04.

(v) Professional services

228. Little information is available on the conditions governing trade in professional services in the three countries and more generally in the subregion. The following section describes developments in the WAEMU common regulations as well as the national regulations communicated to the WTO Secretariat for this report by Burkina Faso and Benin.

(a) Accounting services

229. Accounting and audit services are covered by two WAEMU Commission Regulations. The first is Regulation No. 05/2006/CM/UEMOA on the free movement and establishment of public auditors and chartered accountants who are WAEMU nationals within the community area, adopted on 2 May 2006. According to the information provided by Benin and Burkina Faso, the two countries have implemented the provisions of this Regulation.²⁰⁶ Hence, any WAEMU national meeting the conditions to be a member of the Benin Public Auditors and Chartered Accountants Association (OECCA)²⁰⁷ or the Burkina Faso National Association of Public Auditors and Chartered Accountants (ONECCA)²⁰⁸ may exercise the profession of accountant in these countries. Nationals of other countries may do so provided their country has concluded a convention on establishment or an international agreement in this area. The second Regulation, No. 01/2009/CM/UEMOA of 27 March 2009, establishes a Permanent Council of the Accountancy Profession in the Union. The Council is based in Ouagadougou.

230. Since 1998, enterprises located in the OHADA member countries are required to present their accounts and financial statements in accordance with the reference model provided by the West African Accounting System (SYSCOA).²⁰⁹ In practice, however, often several balance sheets coexist for the same financial year, specifically a balance sheet for tax purposes intended for the tax administration, a "banking" balance sheet intended for banks, as well as the accounting balance sheet. In order to avoid these multiple balance sheets, Directive No. 04/2009/CM/UEMOA, adopted on 27 March 2009, provides for the establishment of a single window for financial statements (GUDEF), which is supposed to receive the annual financial statements produced by companies and organizations. This Directive has been partially implemented in Benin, where the GUDEF receives all financial balance sheets but does not yet forward them to the BCEAO.

231. In the case of finance companies, the Regional Council for Government Saving and Financial Markets (CREPMF) has devised a new set of common accounting rules, the "Specific Accounting Rules applicable to approved regional financial market participants"²¹⁰, with a view, in particular, to standardizing the various accounting methods and practices in order to facilitate the comparative analysis of accounting data and their aggregation. Approved participants consist of the central market structures (Regional Stock Exchange (BRVM)) and various banks and finance companies in each country. Approved regional financial market participants must register their operations and make up

²⁰⁶ Law No. 2004-03 of 27 April 2006 establishing the Benin Public Auditors and Chartered Accountants Association; and Law No. 048-2005 establishing the National Association of Public Auditors and Chartered Accountants and regulating the professions of public auditor and chartered accountant and the activity of external auditor (Burkina Faso).

²⁰⁷ OECCA online information. Viewed at: <http://www.oecca-benin.org/>.

²⁰⁸ ONECCA online information. Viewed at: <http://www.onecca.bf/fr>.

²⁰⁹ For example, in accordance with Article 19 of the community Mining Code, mining permit holders must keep regular accounts in conformity with SYSCOA accounting standards.

²¹⁰ Specific accounting rules applicable to WAEMU approved regional financial market participants, Annex to Regulation No. 09/2006/CM/UEMOA. Viewed at: http://www.uemoa.int/actualite/2006/CM29062006/Annexes_09_2006_CM_UEMOA.pdf.

their accounts in accordance with the principles and provisions of ordinary law set out in the Regulation on Accounting Law in the WAEMU States.²¹¹ In Benin, several finance companies already apply these accounting standards.

(b) Legal services

232. There is a directive implementing the principles of the WAEMU Treaty on the Free Movement of Lawyers, but it does not appear to have been put into practice in member States.²¹² Some WAEMU countries require lawyers to hold the *Certificat d'aptitude à la profession d'avocat* - CAPA (a postgraduate legal qualification needed to practise as a solicitor or barrister) before they may begin to exercise the profession, but this is not the case in other countries.²¹³

233. In Burkina Faso, lawyers are members of the Burkina Faso Lawyers Association; lawyers from any State that grants reciprocal treatment (including but not confined to WAEMU member States) may plead in Burkina Faso courts provided they comply with the conditions laid down by the host country for the exercise of the profession, subject to being domiciled with a Burkinabè colleague. The schedule of fees and charges applied by lawyers for official acts is regulated.²¹⁴ Notaries belong to the Benin Chamber of Notaries, the Burkina Faso Notaries Association and the Mali National Chamber of Notaries.²¹⁵

(c) Health services

234. The Directives relating to the medical field provide *inter alia* for the free movement of doctors²¹⁶, dental surgeons and pharmacists²¹⁷ and the temporary exercise of their profession, on a self-employed or salaried basis, within the WAEMU area. The three Directives concerning health professionals were to have been implemented by 31 December 2009. According to the Commission, in most countries they have been transmitted to the presidents of the Associations of doctors, pharmacists and dental surgeons, but no national legislation transposing them into domestic law had been adopted by April 2010. In Burkina Faso, the Ministry of Health has drawn up draft legislation that takes into account the provisions of the Directives. Burkinabè doctors belong to the Burkina Faso National Doctors Association. Generally speaking, the difficulties in implementation relate to the need for all States to effectively implement the Directives in the same way so as to avoid inequality of treatment in the various countries. In addition, the Directives do not regulate market access for holders of a diploma from a Union country of which they are not a national but wish to establish themselves in that country when they have completed their studies.

²¹¹ These are the nine principles generally recognized by international standards and contained in SYSCOA: the principles of prudence; transparency; materiality; balance sheet intangibility; historical costs; going concern; consistency; periodicity; and reality before appearance (sincerity) (specific accounting rules applicable to approved regional financial market participants, Annex to Regulation No. 09/2006/CM/UEMOA. Viewed at: http://www.uemoa.int/actualite/2006/CM29062006/Annexes_09_2006_CM_UEMOA.pdf).

²¹² Regulation No. 10/2006/CM/UEMOA of 26 July 2006.

²¹³ WAEMU Weekly Bulletin, No. 240 of 18-24 May 2008. Viewed at: <http://www.uemoa.int/BullInfo/Bull240.pdf>.

²¹⁴ Law No. 016-2000/AN of 23 May 2000 regulating the legal profession.

²¹⁵ Ordinance No. 92-52/PRES of 21 October 1992 on the status of notaries and implementing Decree No. 93-148/PRES/MIJ.

²¹⁶ Directive No. 06/2005/CM/UEMOA of 16 December 2005.

²¹⁷ Directives No. 07/2008/CM/UEMOA and No. 06/2008/CM/UEMOA, respectively.

(d) Other professional services

235. A Directive on free movement also applies to architects.²¹⁸ The Benin National Architects and Town Planners Association, the Burkina Faso Architects Association²¹⁹, and the Mali Architects Association group the professionals in each of the three countries. None appears to have a website. The Burkina Engineers and Engineering Technicians Association (AITB) groups the engineering professionals, a profession which has not yet been the object of WAEMU common regulations.

²¹⁸ Directive No. 07/2005/CM/UEMOA of 16 December 2005.

²¹⁹ The Order of Architects was established in 1993 by zatu No. 180031 FP/PRES establishing and regulating the Burkina Order of Architects. It is estimated to have about 80 members.

REFERENCES

Bakhoun, M. (2005), "Répartition et exercice des compétences entre l'Union et les États membres en droit de la concurrence dans l'Union économique et monétaire ouest-africaine (UEMOA)" (Distribution and exercise of powers between the Union and the member States in respect of competition law in the West African Economic and Monetary Union (WAEMU)), *Revue internationale de droit économique* (International economic law journal).

World Bank (2006), *Summary of Investment Climate Assessment: Burkina Faso*. Viewed at: <http://siteresources.worldbank.org/INTAFRsumaftps/Resources/aftpsnote32F0610-17.pdf>.

Economic Community for West African States (ECOWAS)/West African Economic and Monetary Union (WAEMU) (2009), *Sixième réunion du Comité conjoint CEDEAO-UEMOA de gestion du tarif extérieur commun de la CEDEAO - Rapport final* (Sixth meeting of the Joint ECOWAS/WAEMU Committee for the Management of the ECOWAS Common External Tariff - Final report), February. Viewed at: <http://www.uemoa.int/CentreOMC/douanes/rapport%206e%20reunion%20comite%20conjoint.pdf>.

United Nations Conference on Trade and Development (UNCTAD) (2006), *Review of Maritime Transport*, Table 54. Viewed at: http://www.unctad.org/en/docs/rmt2006_en.pdf.

New Partnership for Africa's Development (NEPAD) (undated), *Évaluation de la mise en œuvre du schéma de libéralisation des échanges au sein de la CEDEAO* (Assessment of the implementation of the ECOWAS trade liberalization scheme). Viewed at: <http://www.nepad.gouv.sn/documents/EchangesCEDEAO.doc>.

Organization for Economic Cooperation and Development (OECD) (2010), *Global Forum on Competition - Competition, State Aids and Subsidies*, DAF/COMP/GF/WD(2010)35, 26 January. Viewed at: [http://www.oilis.oecd.org/oilis/2010doc.nsf/ENGREFCORPLOOK/NT00000A12/\\$FILE/JT03278121.PDF](http://www.oilis.oecd.org/oilis/2010doc.nsf/ENGREFCORPLOOK/NT00000A12/$FILE/JT03278121.PDF).

World Trade Organization (WTO) (2009), *Trade Policy Review: Niger and Senegal*, Geneva.

OT Africa Line (2008), *Bulletin Économique et de Transport Ouest-Africain* (West African economic and transport bulletin), August. Viewed at: <http://www.otal.com/images/OTAL%20Services/TransportReport/TRaout2008.pdf>.

Pálsson, G., Harding, A. and Raballand, G. (2007), *Port and Maritime Transport Challenges in West and Central Africa*, Sub-Saharan Africa Transport Policy Program (SSATP) Working Paper No. 84, World Bank. Viewed at: <http://www4.worldbank.org/aft/ssatp/Resources/SSATP-WorkingPapers/ssatpwp84.pdf>.

West African Power Pool (WAPP) (2007), *Indicateurs de performance 2005 des systèmes électriques des sociétés membres de l'EEEOA* (2005 Performance indicators for the electrical systems of WAPP member companies), May. Viewed at: <http://www.ecowapp.org/french/PDF%20french/pdf%20direct/KPI%20french.pdf>.

West African Economic and Monetary Union (WAEMU) (2007), *La Normalisation Communautaire* (Community standardization). Viewed at: <http://www.arso-oran.org/download/ASHAAM/presentations/uemoa.pdf>.

WAEMU (2008), *Rapport annuel de la Commission sur le fonctionnement et l'évolution de l'Union* (Annual Commission report on the functioning and development of the Union). Viewed at: http://www.uemoa.int/Publication/Rapport_Activite_UEMOA.htm.

WAEMU (2009), *Rapport semestriel d'exécution de la surveillance multilatérale* (Semi-annual report on implementation of multilateral supervision). Viewed at: http://www.uemoa.int/Publication/2009/RSM_juin09.pdf.

WAEMU (2010), *14^{ème} Session ordinaire de la conférence des chefs d'État et de gouvernements, Communiqué final* (14th Ordinary Session of the Conference of Heads of State and Government, Final communiqué), February. Viewed at: http://www.uemoa.int/actualite/2010/com_final_14_session_CCEG_UEMOA_20022010.pdf.

WAEMU/United Nations Industrial Development Organization (UNIDO) (2007), *Programme de Restructuration et de Mise à Niveau de l'Industrie des Pays de l'UEMOA (PRMN)* (Programme for the restructuring and upgrading of industry in WAEMU countries). Viewed at: <http://www.uemoa.int/PRMN/PRMN%20Manuel%20de%20formation.pdf>.

UNIDO (2009), *Industrial Development Report 2009: Breaking In and Moving Up: New Industrial Challenges for the Bottom Billion and the Middle-Income Countries*. Viewed at: http://www.unido.org/fileadmin/user_media/UNIDO_Header_Site/Issues/IDR_summary.pdf.

Ziguélé, M. (2008), *Comment renforcer les compagnies d'assurances africaines de la zone CIMA* (How to strengthen African insurance companies in the Inter-African Conference on Insurance Markets (CIMA) zone), Centre d'analyse et de proposition pour l'Afrique (Centre for Analysis and Proposals for Africa), July. Viewed at: <http://www.capafrique.org/pdf/20080728Ziguele.pdf>.