

**Trade Policy Review Body**

**TRADE POLICY REVIEW**

**Report by the Secretariat**

**CÔTE D'IVOIRE, GUINEA-BISSAU AND TOGO**

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This report, prepared for the Trade Policy Review of Guinea-Bissau, Côte d'Ivoire and Togo, 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 Guinea-Bissau, Côte d'Ivoire and Togo on its trade policies and practices.

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Document WT/TPR/G/266 contains the policy statement submitted by Guinea-Bissau, Côte d'Ivoire and Togo.

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## SUMMARY

1. Côte d'Ivoire, Guinea-Bissau and Togo are members of the West African Economic and Monetary Union (WAEMU) and of the Economic Community of West African States (ECOWAS). Agriculture is of key importance to all three economies. Côte d'Ivoire, in particular, has been able to develop and diversify its agricultural sector through the cultivation of coffee, rubber, fruit, cotton and palm oil, in addition to cocoa, of which it is the world's leading producer. The main mining sector exports are petroleum products and gold. Its share of manufacturing exports, centred on the agricultural processing industry, declined sharply during the last decade, but Côte d'Ivoire has considerable potential for increasing the value added of such exports. The main destinations of its goods exports are the European Union and Africa, including the ECOWAS countries in particular.

2. In less than a decade, Guinea-Bissau has made great strides in developing its food crop sector, which exports only cashew nuts. These are grown on a small scale and exported unprocessed, almost exclusively to India. Since its last TPR in 2005, Togo, for its part, has continued to enhance the relative share of its services sector, particularly as regards port services and services related to regional transit trade: its other main activities are agriculture, which has enjoyed a remarkable boom since 2008, and the production of phosphates and cement. Most of Togo's exports go to African countries, particularly Burkina Faso, Benin, Niger, Ghana and Nigeria.

3. Overall, the national budgets of the three countries depend heavily on revenue levied at the customs border. This revenue derives from import duties and charges and internal taxes, as well as export levies. These levies reduce the income of producers of exported goods, raise the cost of imports of inputs for local enterprises and make products for local consumption more expensive. A gradual shift towards a domestic tax system, which is partially under way in two of the three countries, would make it possible to reduce this dependence on import and export taxes and, hence, to increase the revenue of the productive sectors of their economies.

### (1) ECONOMIC ENVIRONMENT

4. Côte d'Ivoire, Guinea-Bissau and Togo have experienced socio-political conflicts which have considerably inhibited their trade and held back their economic development. The economic situation in the whole of WAEMU was seriously affected by the socio-political crisis in Côte d'Ivoire which accounted for 43 per cent of the Union's GDP in 1999, compared to 35 per cent at the present time. These conflicts also had an adverse impact on the human development indicators, especially those of Guinea-Bissau and Togo, which continue to be among the lowest in the world and below the average for sub-Saharan Africa. The most recent coup d'état, in April 2012, could further worsen this situation in the case of Guinea-Bissau.

5. Socio-political instability and the democratic deficit have led in all three countries to the partial suspension of official development assistance (ODA), which accounts for a substantial proportion of their respective gross domestic products (GDP). After falling to less than 5 per cent of GDP in 2005 in Togo, ODA reached 18 per cent of GDP in 2009 in the wake of a political agreement which enabled the country to release more resources in order to improve access to credit and undertake infrastructure projects and agricultural development programmes. This led to a substantial increase in Aid for Trade. In the case of Guinea-Bissau, where ODA accounts for roughly one third of GDP, most of the national debt was cancelled in 2011 but the aid channelled into trade remains at a low level.

6. Given the persistence and scale of the budget deficits, the success of socio-economic programmes depends to a large extent on external financing. The slowdown in investment, which is the indirect cause of inadequate maintenance, has led to the widespread deterioration of basic infrastructure, with frequent cuts in electricity and water supply, and the dilapidation of ports, roads and railways. In Cote d'Ivoire, however, the infrastructure network continues to be one of the best and most extensive in the West African subregion and could enable that country rapidly to return to and surpass its pre-crisis level of development, by means of appropriate policies.

7. Given their heavy reliance on imports for the supply of basic foodstuffs such as cereals, the three countries have each attempted to contain the strong inflationary pressures caused by the rise in global food and energy prices in 2008. The suspension of import duties and VAT, and the reduction in the customs value of these products are the main emergency measures that have been taken, unilaterally in many cases, and sometimes in contradiction to WAEMU rules. It has proved necessary to introduce a community-wide rapid response mechanism.

8. Despite the socio-political instability of recent years, the BCEAO has continued to ensure the stability of the Union's banking and monetary system. Its independence *vis-à-vis* national governments has enabled it to maintain its policy of financial stability and integrity in accordance with its mandate. Key interest rates, mandatory reserve ratios and open market operations, which resumed in February 2007, are its main instruments of monetary policy.

## **(2) GENERAL FRAMEWORK**

9. Foreign investment flows in the three countries have been below their potential since 2005. In the absence of a community investment code, still under preparation within WAEMU, the tax (and customs duty) exemptions selectively granted by member States are only partially regulated. The harmonization of economic regimes within WAEMU would contribute to the establishment of a business environment that is more stable and transparent and, hence, more propitious to long-term investment decisions; this should therefore be included among the priorities of community policy.

10. The efficacy of the "single windows" for the completion of business start-up administrative formalities is limited by the fact that the officials running them frequently have no power of signature. The current trend, which seems to be towards developing parallel business formality centres that are also supposed to group together in a single location all administrative services dealing with such formalities, will not satisfy investors' need for institutional and regulatory stability and transparency. On the other hand, multiple structures should not be allowed to exist side by side, given the risk of overlapping and additional costs.

11. The free zones intended to promote exports have not been a great success, although they offer enterprises a full range of substantial tax exemptions under the ordinary law scheme, as well as a variety of discounts on electricity and input purchases, which gives them an undeniable advantage. In the absence of decisive community regulations, the free zones, including those in Cote d'Ivoire and Togo, would continue to pose competition problems at national and regional level, while also contributing to economic dualism.

12. Togo has made significant strides in the area of microcredit and financing of small and medium-sized enterprises. A national agency to promote and guarantee SME funding, financed by the State, has been processing and guaranteeing SME financing with banks since 2006. Funding has been provided in approximately 80 per cent of the cases dealt with; thus far, no claims under the

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guarantee have been made against the State. The guarantee substantially reduces the rates at which SMEs can borrow money, and this serves to increase their competitiveness.

13. Côte d'Ivoire, Guinea-Bissau and Togo have continued harmonizing their business law in the OHADA framework, with nine Uniform Acts having entered into force in April 2012, which offer a common legal framework for general trade law, commercial sales, company law, securities and arbitration, and contracts for the transportation of goods by road. OHADA law also offers an accounting reference tool, SYSCOA, whose use is mandatory in member States. The Common Court of Justice and Arbitration hears appeals in all disputes relating to the Uniform Acts. Despite the existence of this harmonized framework, its proper application, which is essential to market confidence, is frequently not ensured and the protection of contracts and other economic rights is not guaranteed. The Ivorian Government is aware that the weakness of the judicial system hampers economic development, and has introduced measures to combat corruption. Togo's National Assembly, judiciary and civil service are the subject of a capacity-building strategy including information seminars, Internet access and online accessibility of all legislation.

14. In the WTO, the WAEMU member States have individually bound their customs duties and other duties and taxes. Jointly with its WAEMU and ECOWAS partners, Côte d'Ivoire is seeking solutions to the problem posed by applied rates exceeding bindings in certain cases. Guinea-Bissau and Togo do not face this problem. All three countries are founding Members of the African Union, the successor to the Organization of African Unity.

15. The WAEMU Commission has exclusive authority over the common trade policy of its members *vis-à-vis* third States. Its activities are funded by the community solidary levy of 1 per cent, which is applied to imports from third countries and is paid in full to the WAEMU Commission. An additional community levy of 0.5 per cent is collected on behalf of ECOWAS.

16. Since 1994, member States' trade policies have been substantially harmonized by the Commission, resulting in a common trade policy in a number of fields, such as taxation at the customs border (Common External Tariff in force since 1 January 2000), bank domiciliation of trade transactions and rules of origin. Considerable efforts are also under way, and deserve support, in the areas of harmonization of internal taxation (VAT, excise duties, tax on petroleum products, advance payment of direct taxes), prohibitions and licensing, standards, technical regulations and accreditation procedures, sanitary and phytosanitary safety and government procurement.

17. The WAEMU regulations provide for free trade in products approved by the National Approval Committee of each country as originating in the Union, on the basis of rules of origin adopted in 2003. In spite of these rules, the movement of approved products between the markets of WAEMU member States continues to be fraught with difficulty. Overall, intra-community trade is still limited to 6.5 per cent of total goods trade in Côte d'Ivoire and 10 per cent in Guinea-Bissau; Togo has a higher level of intra-community trade (20 per cent), accounting for more than half of total exports and 7 per cent of imports within the WAEMU area. However, the relative share of intra-WAEMU trade and intra-ECOWAS trade in the three countries has not grown significantly over the last five years.

18. In order to reduce obstacles to trade, the WAEMU Commission has installed juxtaposed control posts at the borders so as to avoid duplication of formalities, and has begun identifying - with a view to their elimination - irregular practices such as abusive or illegal taxation and inspection formalities, attempts at tariff rearmament on certain products originating in the Union, technical and administrative obstacles to community products and a number of other practices, such as the extortion

of bribes on the main road transport corridors of the Union. Moreover, under the current regime, products from third countries that have already received customs clearance in a WAEMU country and have then been re-exported to another member State are liable to a second collection of duties and taxes, generating further opportunities for abusive taxation. The Commission is aware that the free movement of goods on the community market can be achieved only through the establishment of a single market, and has included the establishment of free movement in its regional economic programme. These efforts should be supported in the Aid for Trade context.

19. The three countries are also among the 79 ACP countries with which the European Union (EU) concluded the Cotonou Agreement in June 2000, which covers the period up to 2020. Until December 2007, its trade provisions provided for the duty-free admission of non-agricultural products and most processed agricultural products originating in 78 ACP countries (excluding South Africa) on a non-reciprocal basis. The Cotonou Agreement provides for the negotiation of regional economic partnership agreements, which were to supersede its trade provisions as from 1 January 2008; of the three countries, only Côte d'Ivoire has an Economic Partnership Agreement (EPA) with the EU, signed in Abidjan on 26 November 2008. This Agreement has enabled Côte d'Ivoire to enjoy continued duty-free access to EU markets for its products. Under the EPA, customs duties on products originating in the parties are reduced or eliminated in accordance with a schedule for their removal. The EPA also contains detailed regulatory provisions (for example, on customs and administrative cooperation, and technical regulations, including SPS).

20. Negotiations on the amendments needed to the WAEMU CET in order to extend its application to all ECOWAS members have been under way within ECOWAS since 2006. In 2008, the ECOWAS members recommended the creation of a fifth tariff band at the rate of 35 per cent, which would apply essentially to agri-food products. For some countries, the adoption of this new 35 per cent rate would *inter alia* increase the number of customs duties applied in breach of WTO commitments.

### **(3) TRADE POLICY INSTRUMENTS**

21. Imports continue to be subject to a number of burdensome charges, beginning with the CET, under which 41 per cent of the 20 per cent duties constitute international tariff peaks; other community tariffs add a further 2.5 percentage points. Certain non-WAEMU originating products are subject to a special import tax (TCI) in Côte d'Ivoire, the purpose of which is to cushion the impact of any sharp fall in world prices on community production and/or to offset unfair practices. The degressive protection tax (TDP), which continues to be collected in Côte d'Ivoire on a number of products, is another community mechanism applied nationally, which is still in effect in Côte d'Ivoire despite having already been abolished by WAEMU.

22. The three countries require a cargo tracking note (BSC) for trade flows transiting their respective maritime ports. The BSC does not come under a community regulation; generally speaking, it is introduced by the Ministry responsible for transport in each country. The (high) costs of issuing this document vary from one country to another and may give rise to discriminatory treatment depending on the point of embarkation of the imported goods. For customs purposes, the BSC appears to be of limited usefulness since most of the information it provides is already contained in the manifest. The obligation to submit an advance import or export declaration, or requirements of equivalent effect, remain in place in the three countries. These formalities increase transaction costs to the detriment of economic operators.

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23. Burdensome compulsory import inspection programmes remain in place in all WAEMU member States except Guinea-Bissau and are not always harmonized. Their implementation is entrusted to international companies which control or determine all the information normally within the purview of customs: eligibility for importation, quality and quantity of goods, type of tariff, customs value and origin. Recent developments in the three countries include the introduction of X-ray scanning, the cost of which may be additional to that of compulsory inspection.

24. Each of the three countries continues to apply its own list of reference values for import, which is not always drawn from the list kept by the WAEMU Commission. The latter has even had to intervene in several cases concerning the application of reference values to intra-community trade. In a bid to combat under-invoicing, customs valuation of used vehicles has been entrusted to foreign private companies in Cote d'Ivoire and Togo, which themselves determine the import values. These practices are WTO-inconsistent.

25. With regard to internal taxes, the exclusion of important sectors of the economy such as agriculture from the scope of application of VAT (or the general sales tax in Guinea-Bissau) causes distortions in the trade in competing imported products and problems of national treatment. A comprehensive review of the VAT regime would make it possible to eliminate the many exemptions and complete the process of harmonization of VAT regimes within WAEMU.

26. There are differences in the way the advance payment of profits tax is levied at the customs border in each member State; for example, some food products are exempted from the payment in some countries of the Union, but not in others. The WAEMU rules stipulate that, in the event of recourse to such a mechanism, exclusively for the purpose of strengthening taxation of small and medium-sized enterprises, member States should ensure that its application is neutral as between imports and internal transactions. Deviations still occur from the community framework, which provides for the option of applying a rate of up to 5 per cent in the case of enterprises with no tax identification.

27. Being aware that technical regulations constitute one of the main barriers to the expansion of their international trade, the WAEMU member States, with EU assistance, launched a "quality" programme in 2001 for the harmonization of accreditation, certification, standardization and metrological activities within WAEMU. The principle of mutual recognition under the programme is applied at three levels: recognition of technical regulations, standards and specifications; recognition of conformity assessment procedures; and lastly, recognition of the results of conformity assessment procedures. Member States are required to notify to the WAEMU Commission their respective TBT regimes and to eliminate any unjustified obstacles to the free movement of goods and services. Their activities are coordinated by a Regional Quality Coordination Committee.

28. Despite the adoption in 2007 of a regulation requiring recognition of international sanitary and phytosanitary standards and the efforts to harmonize national legislation, the only concrete measures taken to facilitate trade in the WAEMU area have been the adoption of the IPCC single phytosanitary certificate on plants and plant products, and the harmonization of the control of veterinary medicines. A single WAEMU SPS import permit would facilitate trade in these products. On the ground, given their limited resources, some member States are not in a position to carry out proper controls. Moreover, the SPS controls carried out in a member State are not recognized by the other WAEMU countries; such recognition, based on the so-called "Cassis de Dijon" principle, would stimulate intra-regional trade in food products and contribute to raising rural incomes.

29. Notwithstanding the existence of detailed regulations on anti-competitive practices within WAEMU, it has to be observed that they have produced little in the way of case law. The competition regimes of Cote d'Ivoire and Togo have not yet been brought into line with the community regulations which, in principle, are directly applicable at national level. Guinea-Bissau has not yet adopted a national competition framework. The national competition commissions are not operational. The lack of effective competition is clear in several sectors of the three economies, particularly in the markets for fixed telephony, the Internet, water and electricity distribution, and port services.

30. Government procurement management was reorganized in 2009 with the aim of transposing the relevant WAEMU directives. In Guinea-Bissau, however, the implementing decrees and government procurement code are still being developed.

31. All the WAEMU countries, including Cote d'Ivoire, Guinea-Bissau and Togo, are signatories to the Bangui Agreement (1977) introducing a uniform law and creating a common industrial property office, the African Intellectual Property Organization (OAPI). The provisions on plant varieties for which patents are required pursuant to Article 27 of the WTO TRIPS Agreement entered into force on 1 January 2006. Because of the lack of skills needed to process applications for protection, 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. According to the authorities, the main infringements concern counterfeiting of food and pharmaceutical products, usurpation of trade names and industrial designs, and pirating of musical works and films.

#### (4) **SECTORAL POLICIES**

32. As far as food crops are concerned, an increase in production and productivity has not until recently been a genuine government priority; hence the lack of progress in terms of food security, income and living conditions for rural populations. The commitment made by African governments in 2003, through the Maputo Declaration, to allocate at least 10 per cent of their national budgets to agriculture, with the aim of achieving annual agricultural growth of 6 per cent, was applied only as from 2008 when the surge in international food prices revealed their strong reliance on imported food products. The public authorities now intervene in the three countries to support food production, in particular through the provision of fertilizers, seeds and other inputs at subsidized prices. A greater number of these measures should be notified to the WTO.

33. WAEMU has not yet harmonized customs duties and taxes of equivalent effect levied by member States on their exports. In the absence of such a framework, two of the three countries impose very high taxes on their agricultural exports, and this has had as its primary consequence a significant level of trade transit through neighbouring countries (likewise WAEMU members) which do not have recourse to these taxes. Togo, for example, which produces little cocoa, has recently become a cocoa exporter. These taxes also result in a decline in small farmers' income and therefore run counter to the aims of poverty reduction and rural development schemes.

34. The fisheries and fisheries production subsector accounts for more than 7 per cent of GDP in Guinea-Bissau and a high level of economic activity in Côte d'Ivoire on account of the tuna canning factories. The fishing fleets are not normally recipients of State subsidies or aid and none of the three countries has a large national fleet. The income from fishing agreements and licences for foreign-flagged ships accounts for one third of government revenue in Guinea-Bissau, which limits the freedom of manoeuvre to introduce sustainable management measures in the sector. Guinea-Bissau's income shortfall is considerable, as the total market value of catches far exceeds the

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amount of duties collected. Although action to combat illegal fishing (IUU) is a declared priority of the three governments, their capacity for surveillance of territorial waters and intervention in the case of infringement is inadequate.

35. The three countries have continued to be particularly generous in their mining policy towards foreign enterprises. In Guinea-Bissau, recent discoveries of phosphate and bauxite open up interesting prospects in terms of additional revenue, although there are concerns about Dutch Disease-type inflationary risks; one intergovernmental organization is attempting to carry out systematic studies of the environmental and social impact of mining projects, in order to promote government awareness of the issue. In the energy field, the governments of the ECOWAS member countries have pooled their efforts to resolve the serious regional energy crisis caused by inadequate investment. The West African Gas Pipeline, begun in 2000, is now operational, but has not served to significantly increase the supply of natural gas, as the current throughput is insufficient to supply all the countries. The Côte d'Ivoire refinery, though portrayed as one of the most productive in Africa, experienced serious financial difficulties in 2010.

36. Recent developments in the area of services mainly relate to ports and airports. ASKY, a new private civil aviation company of regional scale, has chosen Togo to establish its headquarters. State-owned enterprises in the three countries continue to dominate the port and airport services sectors, water and electricity distribution, banking, insurance and telecommunications. This is mainly due to the difficulty of reforming these sectors and making them profitable, rather than to any deliberate policy of public intervention.

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## I. ECONOMIC ENVIRONMENT

### (1) MAIN FEATURES

1. In terms of integration, Côte d'Ivoire, Guinea-Bissau and Togo have made significant progress in different areas. As 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. WAEMU has advanced a long way in establishing its economic area (harmonization of monetary policy, many trade policy instruments and sectoral policies); ECOWAS, to which all WAEMU members also belong, has fallen behind in this respect, not least as regards its customs union.

2. In addition to their direct access to the sea and abundant natural resources, Côte d'Ivoire, Guinea-Bissau and Togo have many points in common, including relatively young populations that are growing rapidly (Table I.1). Guinea-Bissau and Togo have human development indicators which are among the lowest in the world, placing them in the low human development category in the UNDP 2011 ranking; those of Côte d'Ivoire have been severely affected by the country's political crisis.<sup>1</sup> As a result of persisting budget and trade deficits, the three countries are heavily dependent on current transfers from abroad. They rely heavily on development assistance to finance social programmes and large infrastructure projects; the need to improve basic infrastructure is particularly pressing in Guinea-Bissau.

3. Agriculture, livestock and related activities remain the principal source of employment and continue to have a multiplier effect on all economic activity in Côte d'Ivoire, Guinea-Bissau and Togo (see Annexes on Côte d'Ivoire, Guinea-Bissau and Togo, Chapter I(1)).<sup>2</sup> Economic performance continues to be conditioned primarily 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 support production using various measures, including the provision of fertilizer and seeds at subsidized prices.

4. Services also have an appreciable share in the three countries' GDP. Services 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 the processing of local resources, ranges from relatively small in Côte d'Ivoire to embryonic in Guinea-Bissau; this variation reflects, to an extent, the general state of the infrastructure in each country. To date, the potential of the subsoil, rich in mineral resources, has been realized only to a small extent.

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

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

Table I.1  
Main socio-economic indicators, 2005-2011

	2005	2006	2007	2008	2009	2010	2011 <sup>a</sup>
<b>Population, growth rate</b>							
Côte d'Ivoire	1.6	1.7	1.8	1.8	1.9	2.0	..
Guinea-Bissau	2.0	2.0	2.1	2.1	2.1	2.1	..
Togo	2.3	2.3	2.2	2.2	2.2	2.1	..
<b>GDP per capita (US\$)</b>							
Côte d'Ivoire	948	943	1,056	1,226	1,191	1,163	..
Guinea-Bissau	..	415	485	580	553	547	..
Togo	390	401	448	548	536	529	..
<b>Real GDP, growth rate</b>							
Côte d'Ivoire	1.7	0.7	1.6	2.3	3.8	3.0	..
Guinea-Bissau	3.3	2.0	4.6	7.9	-2.8	2.3	..
Togo	1.2	3.9	2.1	2.4	3.4	3.7	3.9
<b>Inflation (CPI, % change)</b>							
Côte d'Ivoire	3.9	2.4	2.0	6.3	0.5	1.8	4.9
Guinea-Bissau	3.3	2.0	4.6	7.9	-2.8	2.3	5.1
Togo	6.7	2.2	1.0	8.7	3.7	1.4	3.6
<b>Overall fiscal balance excluding grants (% of GDP)</b>							
Côte d'Ivoire	-2.7	-1.6	-1.4	-2.2	-2.1	-2.3	..
Guinea-Bissau	..	-9.0	-10.8	-12.2	-13.3	-11.2	..
Togo	-4.1	-4.2	-2.3	-2.3	-5.0	-3.0	..
<b>Tax revenue (% of GDP)</b>							
Côte d'Ivoire	13.9	15.1	15.6	15.6	17.4	17.4	..
Guinea-Bissau	..	6.1	5.7	5.5	6.9	8.1	..
Togo	14.6	15.4	16.2	14.9	15.3	15.6	..
<b>Customs revenue (% of tax revenue)</b>							
Côte d'Ivoire	41.2	29.9	32.7	30.5	30.3	47.7	43.5
Guinea-Bissau	..	60.9	57.0	53.8	55.7	50.8	..
Togo	21.9	21.3	21.0	23.5	23.9	..	..
<b>Current balance (% of GDP)</b>							
Côte d'Ivoire	0.2	2.8	-0.7	1.9	7.0	4.6	..
Guinea-Bissau	..	-6.9	-4.4	-3.4	-5.8	-7.7	..
Togo	..	-15.3	-8.5	-7.0	-5.6	-6.0	-7.3
<b>Trade in goods and services (% of GDP)</b>							
Côte d'Ivoire	97.2	97.4	91.9	90.3	88.0	..	..
Guinea-Bissau	..	42.2	54.5	54.1	54.1	38.2	..
Togo	..	112.1	92.9	88.5	91.3	92.9	99.7
<b>Intra-WAEMU trade as a percentage of total trade (goods)</b>							
Côte d'Ivoire	6.4	6.6	7.3	7.3	6.4	5.5	..
Guinea-Bissau	..	24.5	19.2	14.2	12.0	6.4	9.9
Togo	..	21.4	20.5	20.6	17.8	21.8	..
<b>Intra-ECOWAS trade as a percentage of total trade (goods)</b>							
Côte d'Ivoire	25.3	25.9	25.7	28.5	23.8	26.1	..
Guinea-Bissau	..	29.2	20.9	19.0	13.5	8.7	10.9
Togo	..	34.7	32.9	30.2	29.4	31.7	..

.. Not available.

a Estimates.

Source: WAEMU Commission; BCEAO Statistics Yearbook 2010; World Bank, World Development Indicators; data provided by the authorities of Côte d'Ivoire, Guinea-Bissau and Togo; and UNSD, Comtrade (SITC Rev.3).



5. The WAEMU member States pursue common monetary and exchange policies in the framework of the West African Monetary Union (WAMU).<sup>3</sup> As members of the franc zone, they have had a monetary cooperation agreement with France since 1972, supplemented by an operations account agreement of 1973.<sup>4</sup> The Central Bank of West African States (BCEAO) has the sole right to issue the common currency, the African Financial Community franc (CFA franc or CFAF), and is responsible for ensuring price stability.<sup>5</sup> In this connection the BCEAO is responsible for: defining and implementing the WAMU monetary policy; ensuring the stability of the banking and financial system; supervising payment systems and ensuring that they are secure; implementing the foreign exchange policy defined by the Council of Ministers; and managing the official foreign exchange reserves of the member States. Key interest rates, mandatory reserve ratios and open-market operations, which resumed in February 2007, are the main monetary policy tools available to the BCEAO.<sup>6</sup>

6. Under 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; capital outflows to countries that are not members of WAEMU are subject to control on the basis of submission of supporting documents.<sup>7</sup> Current account payments to non-WAEMU countries are permitted in general; the intermediary is expected to require supporting documents for transfers of amounts of CFAF 500,000 or more. However import<sup>8</sup> and export operations, unless exempted<sup>9</sup>, of a value exceeding CFAF 10,000,000, must be domiciled with a local bank<sup>10</sup>; export earnings must be repatriated (to the country of origin)

<sup>3</sup> 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.

<sup>4</sup> The franc zone is made up of the member States of WAEMU, the Comoros, the member States of the Central African Economic and Monetary Community (CEMAC), France and Monaco. Monetary cooperation in 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 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).

<sup>5</sup> Initially pegged to the French franc, the CFA franc is currently linked to the euro at the fixed parity of CFAF 1,000 = €1.52449017 (€1 = CFAF 655.957). 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.

<sup>6</sup> The minimum subscription rate for BCEAO open-market operations is 3.25 per cent, and the repurchase rate is 4.25 per cent. The mandatory reserve ratios, previously specific to each member State, have been standardized, at 5 per cent, with effect from 16 March 2012.

<sup>7</sup> Investments made by a resident in a non-WAEMU country are subject to prior authorization by the Minister responsible for finance 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 Public Savings and Financial Markets.

<sup>8</sup> Imports from franc zone countries are exempt from this obligation.

<sup>9</sup> The lists of imports and exports which are exempt from the domiciliation formalities appear in the annex to Regulation No. 09/2010/CM/UEMOA. Viewed at: [http://www.uemoa.int/Documents/Actes/CM30112010/Annexe\\_Regl\\_09\\_2010\\_CM\\_UEMOA.pdf](http://www.uemoa.int/Documents/Actes/CM30112010/Annexe_Regl_09_2010_CM_UEMOA.pdf).

<sup>10</sup> The threshold amounts triggering the presentation of supporting evidence (current account payments) and bank domiciliation (foreign trade operations) were raised in 2010, from CFAF 300,000 to CFAF 500,000 and from CFAF 5,000,000 to CFAF 10,000,000, respectively. Regulation No. 09/2010/CM/UEMOA of 1 October 2010, replacing Regulation No. 09/98/CM/UEMOA of 20 December 1998.

within one month of the date on which payment is due, converted into CFA francs and deposited with an approved local intermediary.<sup>11</sup> The Ministry responsible for finance checks exchange operations relating to exports and imports on the basis of the documents produced to customs. The exchange tax (0.25 per cent) levied by the Ministry responsible for finance on bank transfers to non-WAEMU countries has been abolished; a tax of 0.6 per cent is levied on transfers outside WAEMU, on behalf of the national treasuries. According to Regulation No. 09/2010/CM/UEMOA, residents are not permitted to purchase raw materials or commodities on foreign markets for delivery in the framework of a raw material or commodity derivative transaction.

## (2) RECENT ECONOMIC DEVELOPMENTS

7. Overall, economic development within WAEMU has been severely affected by the socio-political crisis in Côte d'Ivoire, which accounted for 42.9 per cent of the Union's GDP in 1999 (currently 35 per cent). There was moderate economic growth in all the WAEMU countries, including Côte d'Ivoire, Guinea-Bissau and Togo, during the period 2006-2011; a particularly unstable international environment characterized by peaks in the price of oil and foodstuffs, and the general appreciation of the euro (to which the CFAF is pegged at a fixed parity) were contributory factors. Like the other WAEMU countries, the three economies felt the fallout from the international financial crisis, especially owing to the downturn in incoming transfers (public and private) and the drop in external demand. Côte d'Ivoire, Guinea-Bissau and Togo remain vulnerable to external shocks because of their reliance on imported food and energy products, and their poorly diversified exports.

8. As regards the common monetary policy, an institutional reform implemented in April 2010 has altered the division of responsibilities between the various WAMU bodies.<sup>12</sup> The formulation of monetary policy, previously shared between the WAMU Council of Ministers and the BCEAO, is now in the hands of the BCEAO Monetary Policy Committee. The Council of Ministers is responsible for defining foreign exchange policy and for the regulations applicable to banks and financial establishments within the Union. The reform also confirmed the status of price stability as a priority objective of the common monetary policy; the BCEAO is required to ensure that this objective is met as part of its activities in support of the Union's economic integration.

9. Inflation has generally been moderate, leaving aside surges fuelled essentially by the steep rise in world food and oil prices. In the face of strong inflationary pressures, Côte d'Ivoire, Guinea-Bissau and Togo each responded individually with emergency measures covering various staple goods (see Annexes on Côte d'Ivoire, Guinea-Bissau and Togo, Chapter I(2)); a few contradictions with community rules arose as a result, particularly with regard to customs valuation (Chapter III(2)(i)) and management of the WAEMU CET (Chapter III(2)(ii)). Some of these exceptional measures remain in place; in addition, various support measures such as the provision of seeds and fertilizer at subsidized prices were introduced for food security purposes. WAEMU resources were also freed up to provide financial support for national food production programmes.<sup>13</sup>

<sup>11</sup> The date on which payment is due is the date stipulated on the commercial contract; in principle it must be no more than 120 days after the dispatch of the goods.

<sup>12</sup> Online information. Viewed at: <http://www.bceao.int/internet/bcweb.nsf/pages/cpr678>.

<sup>13</sup> By the end of October 2009, the West African Development Bank (BOAD) had financed eight agricultural projects (one in each WAEMU member State) for a total amount of CFAF 59.7 billion (BCEAO (2010)).

10. Performance in all the WAEMU member States generally fell short of the convergence criteria, causing the convergence timeline to be extended to 31 December 2013.<sup>14</sup>

11. Although fiscal revenue made sustained progress during the period 2006-2011, the continuation of reforms aimed at rationalizing the tax systems and improving public finance management remains key to all three countries. Amounts collected at the customs cordon, including for duties and taxes on foreign trade, represent a very large component of fiscal revenue, with wages continuing to absorb a substantial proportion of the latter. Given the persisting non-grant budget deficits, the success of socio-economic programmes continues to depend on the availability of external financing, and in particular development aid.

### **(3) TRADE AND INVESTMENT TRENDS**

12. The three countries recorded deficits in the balance of trade in services throughout the period 2006-2011. In Guinea-Bissau and Togo there were also chronic deficits in the balance of trade in goods, whereas Côte d'Ivoire's positive results in this respect gave rise to current account surpluses. Overall, the three countries' foreign trade remains little diversified, with exports strongly focused on a small number of commodities, and food and energy products accounting for a substantial share of the total import bill. This predominance of products which are subject to climatic vagaries and erratic fluctuations in global prices makes for volatile terms of trade, and exacerbates the three economies' vulnerability to external shocks.

13. Despite a geographical location which lends itself to transit trade, and the progress made - albeit at differing speeds - in regional economic integration, in general the intra-community trade of Côte d'Ivoire, Guinea-Bissau and Togo continues to fall short of its potential dynamism (Table I(1)). Apart from the size of the informal economy, a partial explanation for this situation may lie in the continued presence of obstacles to trade which need to be addressed by measures that go beyond the dismantling of tariff barriers (Chapter III(2)(iii)). The weakness of intra-community (WAEMU and ECOWAS) trade flows in Guinea-Bissau also appears to be attributable to the very poor state of the country's infrastructure and the requirement that the bulk of exports (i.e., cashew nuts) pass through the port of Bissau.

14. Foreign direct investment (FDI) in Côte d'Ivoire, Guinea-Bissau and Togo continues, essentially, to shadow developments in privatization and the opening up of sectors to competition, and its fluctuations reflect the faltering implementation of the national programmes for State withdrawal. FDI goes primarily to the banking and telecommunications sectors and the extractive industries. In all three countries, the volatility of investment and its concentration in a few economic activities point to the need to further improve the business environment.

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<sup>14</sup> The WAEMU common monetary policy is backed up by a Convergence, Stability, Growth and Solidarity Pact 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. 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). 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. Additional Act No. 04/99 of 8 December 1999, as amended by Additional Act No. 05/2009/CCEG/UEMOA. Initially set for 2003, the convergence timeline had been extended to 2006 and then to 2008.

15. In the absence of a community investment code, still under preparation within WAEMU, the advantages (tax and/or import 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 an (exhaustive) list of related exemptions. The community legislation on public aid (Chapter III(4)(i)) should in principle also limit the race to the bottom in tax exemptions in order to attract FDI. Boosting investment in member States reportedly depends, among other things, on resolving the recurrent problem of load-shedding as well as eliminating the legal uncertainties, rather than on the various incentives that are granted.

16. Despite their potential, the economies of Côte d'Ivoire, Guinea-Bissau and Togo remain vulnerable to external shocks, including the various knock-on effects of the economic crisis brought about by worldwide financial turmoil. Given the uncertainties surrounding external demand and the mobilization of private and public capital, fiscal and trade imbalances are likely to persist. Moreover, the three countries' vulnerability to weather factors remains very high, because their domestic supply is made up essentially of a limited number of agricultural products grown, for the most part, on a small scale. All in all, there are still real risks to the overall macroeconomic framework.

17. The ability of Côte d'Ivoire, Guinea-Bissau and Togo to achieve sustainable medium-term growth is believed to depend not only on their pursuing prudent macroeconomic policies, but also on the reforms undertaken with a view to improving the business 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 serve as a catalyst for the reform process.

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## II. TRADE AND INVESTMENT REGIMES

### (1) RELATIONS WITH THE WTO

18. As former Contracting Parties to the GATT 1947, Côte d'Ivoire, Guinea-Bissau and Togo all became original Members of the WTO in 1995. Within the WTO, Guinea-Bissau and Togo are accorded the status of "Least Developed Country" (LDC). The three countries 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 and have not been party, as complainants or respondents, to any disputes in the WTO. The ECOWAS member States have bound their customs duties and their other duties and taxes individually (Chapter II(2)).

19. Côte d'Ivoire and Togo each have a mission in Geneva, but Guinea-Bissau does not. The three countries continue to have major problems in updating their WTO notifications, and this reduces the transparency of their legal framework for trade. Between 1995 and 2011, the WTO Central Registry of Notifications did not receive any notifications from Guinea-Bissau; those submitted by Côte d'Ivoire and Togo are listed in Table II.1.<sup>15</sup> Although as WTO Members they are required to provide the WTO Integrated Database with detailed information about their customs tariffs and imports, by partner country and for each national tariff line, Côte d'Ivoire did not submit any data for 2002, 2010 and 2011; Guinea-Bissau for the years 2009-2011; and Togo for 2008, 2009 and 2011 (Table II.1).

**Table II.1**  
Notifications submitted to the WTO by or on behalf of Côte d'Ivoire, Guinea-Bissau and Togo, January 1995-March 2012

Agreement and subject	Country/Entity	Reference	Date
<b>GATT 1994 - Regional Agreements</b>			
European Union Economic Partnership Agreement	Côte d'Ivoire	WT/REG/258/N/1	15/12/2008
WAEMU Treaty (Enabling Clause)	Senegal	WT/COMTD/N/11	03/02/2000
WAEMU Treaty (degressive protection tax (TDP), inputs, customs value)	Burkina Faso	WT/COMTD/N/11/Add.1	
WAEMU Treaty (customs value)	Côte d'Ivoire	WT/COMTD/N/11/Add.2	22/08/2001
ECOWAS Treaty (Enabling Clause)	Ghana	WT/COMTD/N/21	26/09/2005
Article XXVIII:5	Côte d'Ivoire	G/MA/228	24/12/2008
Intention to modify its schedule within the next 3 years		G/MA/55	24/02/1997
Article XXVIII:5			
<b>Agreement on Agriculture</b>			
Article 18:2 - absence of export subsidies	Togo	G/AG/N/TGO/1	27/10/2011
Domestic support commitments (DS1)	Togo	G/AG/N/TGO/2	30/01/2012
<b>Agreement on Implementation of Article VI of the GATT 1994 - Laws and regulations</b>			
No anti-dumping regulations	Côte d'Ivoire	G/ADP/N/1/CIV/1	07/08/1996
Absence of laws and regulations	Togo	G/ADP/N/1/TGO/1	16/03/2012
<b>Agreement on Customs Valuation (Article VII of the GATT 1994)</b>			
Deferred application	Côte d'Ivoire	G/VAL/W/46	05/11/1999
	Togo	WT/LET/1R2	22/05/1995
Minimum values	Côte d'Ivoire	WT/LET/307	30/07/1999
Implementation programme	Côte d'Ivoire	G/VAL/W/46/Add.1	22/02/2000

<sup>15</sup> WTO document G/L/223/Rev. 18, 9 March 2011.

Agreement and subject	Country/Entity	Reference	Date
<b>Agreement on Rules of Origin</b>			
ECOWAS rules of origin	Côte d'Ivoire	G/RO/N/11	10/09/1996
WAEMU rules of origin	Togo	G/RO/N/70	16/06/2011
<b>Agreement on Import Licensing Procedures</b>			
Legislation under Articles 1.4(a), 8.2(b) (regulation)	Côte d'Ivoire	G/LIC/N/1/CIV/1	08/02/2002
Legislation under Articles 1.4(a), 8.2(b) (regulation)	Togo	G/LIC/N/1/TGO/2	24/05/2011
Notification under Article 7.3 - regulation		G/LIC/N/1/CIV/1	08/02/2002
Notification under Article 7.3 - regulation	Côte d'Ivoire	G/LIC/N/3/CIV/2	05/10/2007
Notification under Article 7.3 - regulation	Togo	G/LIC/N/3/TGO/2 and Corr.	19/09/2011
Deferred application (Article 2.2)	Côte d'Ivoire	<u>WT/LET/1R2</u>	22/05/1995
<b>Agreement on Preshipment Inspection</b>			
Article 5 (regulation)	Côte d'Ivoire	G/PSI/N/1/Add.7	24/02/1998
Article 5 (regulation)		G/PSI/N/1/Add.4	09/10/1996
Article 5 (regulation)	Togo	G/PSI/N/1/Add.16	23/03/2012
<b>Agreement on Safeguards</b>			
Regulation	Côte d'Ivoire	G/SG/N/1/CIV/1	13/08/1996
WAEMU special import tax	Togo	G/SG/N/1/TGO/1	13/03/2012
<b>Agreement on Subsidies and Countervailing Measures</b>			
Notification of subsidy measures	Côte d'Ivoire	G/SCM/N/16/CIV	24/06/1997
Notification (absence of measures)		G/SCM/N/3/Add.1/Rev.3	17/01/1997
Countervailing measure	Côte d'Ivoire	G/SCM/N/21	17/10/1996
Notification under Article 32.6 (absence of measures)	Togo	G/SCM/N/1/TGO/1	26/05/2011
<b>Agreement on Technical Barriers to Trade</b>			
Annex 3C (Code of conduct)	Côte d'Ivoire	G/TBT/CS/N/141	20/02/2002
Article 2.9 (regulation on reinforcing bars)	Togo	G/TBT/N/TGO/1	07/12/2011
Article 2.9 (regulation on plastic bags and packaging)	Togo	G/TBT/N/TGO/2	06/03/2012
<b>Agreement on Trade-Related Aspects of Intellectual Property Rights</b>			
Laws and regulations (Article 63.2)	Côte d'Ivoire	IP/N/1/CIV/C/1	23/07/2001
Checklist of issues	Côte d'Ivoire	IP/N/6/CIV/1	18/07/2001
<b>Integrated Database (IDB)</b>			
Applied tariffs, 2003-2011	WAEMU members	G/MA/IDB/2/Rev.30	30/9/2009
Imports 2000-2001, 2003-2009	Côte d'Ivoire		
Imports 2003-2008	Guinea-Bissau		
Imports 1996-2007, 2010	Togo		
<b>Agreement on Trade in Services</b>			
Article III:3 (Govt. procurement decree)	Togo	S/C/N/585	30/05/2011
Article III:3 (Building and public works permits)	Togo	S/C/N/586	30/05/2011
Article III:3 (Govt. procurement regulatory authority)	Togo	S/C/N/587	30/05/2011
Article III:3 (Govt. procurement control bodies)	Togo	S/C/N/588	30/05/2011
Article III:3 (Govt. procurement awards)	Togo	S/C/N/589	30/05/2011
Article III:3 (National Directorate for the Control of Government Procurement)	Togo	S/C/N/590	30/05/2011
Article III:3 (Ministry of Arts and Culture)	Togo	S/C/N/591	30/05/2011
Article III:3 (Protection of national cultural heritage)	Togo	S/C/N/592	30/05/2011
Article III:3 (Sports training centres)	Togo	S/C/N/593	30/05/2011
Article III:3 (Regulation of travel agencies)	Togo	S/C/N/580	27/05/2011
Article III:3 (Order on restaurant rating)	Togo	S/C/N/581	27/05/2011

Agreement and subject	Country/Entity	Reference	Date
Article III:3 (Order on classification of tourism establishments)	Togo	S/C/N/582	27/05/2011
Article III:3 (regulation of tourism establishments)	Togo	S/C/N/583	27/05/2011
Article III:3 (regulation of tourist guides)	Togo	S/C/N/584	27/05/2011

Source: WTO documents.

20. Notifications are sometimes supplemented by those of other members of the same regional agreements, particularly WAEMU and ECOWAS. It would be sensible to generalize this practice by establishing a systematic joint WTO notification procedure wherever possible. In January 2011, WAEMU set up a representative office in Geneva with the aim of coordinating its member States' positions at the WTO more effectively.<sup>16</sup> With the official opening of this office, scheduled for April 2012, WAEMU plans to adopt the practice whereby Council of Ministers directives give one WAEMU member a mandate to submit notifications to the WTO on behalf of the Union.

21. The three countries are seeking to obtain observer status for WAEMU in the WTO, and generally support 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.

22. Since 1997, Guinea-Bissau has been designated as one of the WTO's Inactive Members, i.e., a Member whose full contributions for three or more years remain unpaid. The WTO's administrative arrangements require that such Members be urged to liquidate their arrears. Inactive Members are now denied access to training or technical assistance, other than that necessary to meet their obligations under Article XIV:2 of the WTO Agreement (i.e., implementation of the Agreement).

23. Only Côte d'Ivoire and Togo sent delegations to the WTO Ministerial Conference in December 2011.<sup>17</sup> According to the information available, their delegations made no statements and submitted no communications, either in plenary session or in special committees.

## (2) REGIONAL TRADE AGREEMENTS

### (i) African Union<sup>18</sup>

24. Côte d'Ivoire, Guinea-Bissau and Togo are all three founding members of the African Union (AU), the successor to the Organization of African Unity (OAU).<sup>19</sup> Instituted by the Treaty of Abuja, the African Economic Community (AEC), created in 1994 by the OAU, 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.<sup>20</sup> This objective is stated explicitly in the Constitution of Guinea-Bissau. The integration process is to begin with the consolidation of the

<sup>16</sup> Decision No. 009/2011/PCOM/UEMOA of 14 January 2011.

<sup>17</sup> Viewed at: [http://www.wto.org/french/thewto\\_f/minist\\_f/min11\\_f/min11\\_f.htm](http://www.wto.org/french/thewto_f/minist_f/min11_f/min11_f.htm).

<sup>18</sup> African Union, online information. Viewed at: <http://www.africa-union.org>.

<sup>19</sup> 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.

<sup>20</sup> Declaration of Accra. Viewed at: <http://www.africa-union.org>.

principal regional economic communities (RECs)<sup>21</sup>, which will be followed by their integration. This presupposes a rationalization of the existing 14 regional economic groupings on the African Continent. In several instances their respective geographical coverage overlaps, and the pace of their integration differs substantially. For example, the WAEMU customs union has been established, whereas the Customs Union within ECOWAS, to which all the members of WAEMU also belong, has fallen somewhat behind.

25. 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 the international community.<sup>22</sup> 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. In the Maputo Declaration of 2003, the AU called upon all its member States to increase their investment in the agricultural sector to at least 10 per cent of national budgetary resources by 2008; this provided a framework for evaluating public expenditure in the agricultural sector (Chapter IV(2)). As of January 2012 the AU is also targeting the establishment of a free trade area in 2017.<sup>23</sup>

## **(ii) West African Economic and Monetary Union (WAEMU)**

26. Côte d'Ivoire and Togo are among the founding members of WAEMU which complements, through an economic chapter, the West African Monetary Union (WAMU) (Chapter I(2)). The WAEMU Treaty was signed on 11 January 1994 by Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal and Togo; the Republic of Guinea-Bissau signed its accession agreement to WAMU on 29 January 1997, and joined WAEMU on 5 March 1997.<sup>24</sup> All the WAEMU members are also members of ECOWAS.

27. The WAEMU institutional framework 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. The specialized WAEMU institutions are the Court of Justice; the Court of Auditors; the Interparliamentary Committee, which in the future is to be replaced by the Parliament; the West African Development Bank (BOAD); and the Central Bank of West African States (BCEAO). The WAEMU Commission has prepared for the advent of the Union Parliament in consultation with the WAEMU Interparliamentary Committee. The Treaty establishing the Parliament<sup>25</sup> 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 December 2011 only ratification by Côte d'Ivoire was lacking, because of the socio-political crisis which had taken place there.

<sup>21</sup> 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).

<sup>22</sup> NEPAD online information. Viewed at: <http://www.nepad.org/home/lang/en>.

<sup>23</sup> Eighteenth Ordinary Session of the African Union, Addis Ababa, 29-30 January 2012.

<sup>24</sup> WAEMU online information. Viewed at: <http://www.uemoa.int>.

<sup>25</sup> "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>.



28. To finance its activities, each of the member countries, including Côte d'Ivoire, Guinea-Bissau and Togo, applies the 1 per cent community solidarity levy (PCS) to imports from non-WAEMU countries. The entire proceeds of the PCS go to the WAEMU Commission.

29. The WAEMU Council issues regulations, directives and decisions: regulations are binding and directly applicable in each member State; directives must be transposed into the legislation and practice of member States; and decisions are binding on the persons or member States concerned.

30. WAEMU has harmonized the regulations on taxation at the customs cordon (including the Common External Tariff which has been in effect since 1 January 2000, import duties on petroleum products, VAT regimes and excise duties); internal tax rates have not been unified between the member States (common report, Chapter III). WAEMU is also developing a regional approach to standardization, accreditation and certification.

31. The WAEMU provisions provide for free trade, within the Union, in products entirely manufactured at the local level and products that have been sufficiently worked or processed, and have been approved as such by the National Approval Committee of each country, on the basis of the rules of origin adopted in 2003 (Chapter III(2), Table III.4).<sup>26</sup> There have been reports of various difficulties in getting approved products into certain WAEMU markets despite the approval.

32. Overall, the three countries' intra-community trade is limited, except in the case of Togo, which sends 52 per cent of its total exports (average 2006-2010) to the WAEMU area. By comparison only 11 per cent of Côte d'Ivoire's exports go to the WAEMU area; in the case of Guinea-Bissau the figure is 2 per cent. On the other hand, Guinea-Bissau relies on WAEMU (mainly Senegal and Mali) for 20 per cent of its goods imports - significantly more than Côte d'Ivoire (1 per cent) or Togo (7 per cent).

33. According to some observers, obstacles to trade are less significant in WAEMU than in ECOWAS. This reflects, in part, the WAEMU Commission's endeavours to harmonize its members' trade policies, as well as the efforts undertaken since 2005, with the help of the West Africa Trade Hub, to identify - with a view to their elimination - irregular practices such as: abusive or illicit taxation; attempts at tariff re-armament on certain products originating in the Union; technical and administrative obstacles imposed on community products; abusive inspection formalities; minimum import quantities in order to benefit from duty-free status; importation of originating products dependent on purchase of national products; withholding of prior import declarations; and practices such as escorts and other measures aimed at extorting bribes on the Union's main road corridors.<sup>27</sup>

34. In the face of these problems the Union has taken some initiatives, including the construction of 11 juxtaposed control posts at the borders between member countries, four of which are already operational.<sup>28</sup> Nevertheless, in the absence of a single WAEMU entry point system and of "free circulation", when a third-country product, already cleared through customs in a WAEMU country, is re-exported to another member State, it is subject to a second collection of duties and taxes, providing

<sup>26</sup> Additional Protocol No. III/2001 establishing the WAEMU rules of origin (viewed at: [http://www.uemoa.int/actes/2001/protocole\\_additionnel\\_03.htm](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.

<sup>27</sup> See in particular the reports of the Irregular Practices Observation Centre, set up by the WAEMU Commission with the help of the West Africa Trade Hub.

<sup>28</sup> Decision No. 08/2001/CM/UEMOA of 26 November 2001 on the adoption and financing of a community programme of juxtaposed control posts at the borders between the member States of the Union.

further opportunities for abusive taxation. Under its Regional Economic Programme 2006-2010, WAEMU's main objectives include the establishment of a genuine "common market". The second phase of the Regional Economic Programme (PER 2) is in preparation, and is expected to cover the period 2012-2016.

35. 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 are to 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.<sup>29</sup> Negotiations are still under way with the Kingdom of Morocco, the Republic of Tunisia, the Republic of Algeria and the Arab Republic of Egypt.

### **(iii) Economic Community of West African States (ECOWAS)**

36. Côte d'Ivoire, Guinea-Bissau and Togo are founding members of ECOWAS<sup>30</sup>, which was established in 1975 and is one of the Regional Economic Communities (RECs) responsible for realizing the objectives of the African Union (see section (i) above).<sup>31</sup> The ECOWAS institutional framework was modified in January 2007 to make it more effective.<sup>32</sup> It 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; the Parliament; the Court of Justice; and the West African Investment and Development Bank.

37. To finance its activities, each of the member countries, including Côte d'Ivoire, Guinea-Bissau and Togo, applies an ECOWAS community levy to imports from third countries (Chapter III(2)).

38. The Treaty provides for free trade in unprocessed local products, i.e., agricultural, forestry and livestock products, and handmade craft products, which should be in free circulation within the Community. The ECOWAS rules of origin were broadly harmonized with those of WAEMU in 2003 (Chapter III). The second group consists of products that have been sufficiently worked or processed (common report, Chapter III(2)(ii)), and are fully approved in their countries of origin as attested by a certificate of origin in a common format.<sup>33</sup> Some 900 product approvals (tariff lines) have apparently been granted in this second group. Many observers report that despite these free trade provisions, MFN customs duties are applied (abusively) at many customs posts to a large number of eligible products in the two groups. This abusive taxation adds to the various non-tariff barriers that impede the movement of goods within ECOWAS.<sup>34</sup>

39. For Côte d'Ivoire, Guinea-Bissau and Togo, trade with the other ECOWAS countries accounts for an average of 28 per cent, 23 per cent and 13 per cent, respectively, of total imports over the period 2006-2010, and 25 per cent, 3 per cent and 70 per cent of total exports. Togo is therefore highly dependent on the ECOWAS market for its exports, and consequently is one of the countries

<sup>29</sup> Viewed at: [http://www.ustr.gov/sites/default/files/uploads/agreements/tifa/asset\\_upload\\_file647\\_7729.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/tifa/asset_upload_file647_7729.pdf)

<sup>30</sup> ECOWAS online information. Viewed at: <http://www.ecowas.int>.

<sup>31</sup> 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.

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

<sup>33</sup> Regulation C/REG.4/4./02 adopting an ECOWAS Certificate of Origin.

<sup>34</sup> The ECOWAS Secretariat estimated that there were 69 checkpoints along the thousand kilometres of road between Lagos and Abidjan. ECOWAS online information.

that stands to benefit the most from any trade facilitation measure that leads to the elimination of abusive taxation in intra-ECOWAS trade.

40. In December 2001, a decision by the ECOWAS Conference of Heads of State and Government mandated the ECOWAS Secretariat, in collaboration with the WAEMU Commission, to negotiate with the European Union (EU) with a view to the conclusion of an Economic Partnership Agreement (EPA, see section (3)(i) below). As a prerequisite for the conclusion of an EPA with the EU, ECOWAS decided to establish 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 and Guinea have introduced the CET, along with the WAEMU member countries. Nigeria has reduced the number of its tariff bands from 19 to five and has lowered its tariff rates; nevertheless, 10 per cent of its tariff lines are in a fifth band and hence inconsistent with the WAEMU CET.

41. The process of adoption of the ECOWAS CET coincided with the preparation of accompanying measures for the implementation of the ECOWAP, the ECOWAS common agricultural policy (Chapter IV(2)). 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 agri-food products, on which negotiations are also continuing. The adoption of this new 35 per cent rate would increase the number of customs duties applied in breach of WTO commitments (see Annex on Côte d'Ivoire).

42. ECOWAS has also implemented the free movement of persons within the Community, in particular by abolishing the visa requirement and introducing an ECOWAS passport. A regional third-party motor vehicle insurance regime is also in place.

43. An important ECOWAS initiative is the West African Power Pool (WAPP)<sup>35</sup>, 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.

### **(3) OTHER PREFERENTIAL RELATIONS**

#### **(i) Relations with the European Union**

44. The three countries are among the 79 ACP countries with which the European Union concluded the Agreement signed on 23 June 2000 at Cotonou (Benin)<sup>36</sup>, to replace the Lomé Convention. The Cotonou Agreement covers the period up to 2020. Its trade provisions constituted one of the mechanisms of cooperation between the ACP countries and the EU. Until 31 December 2007<sup>37</sup>, 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.

<sup>35</sup> ECOWAS online information. Viewed at: <http://www.ecowas.int>.

<sup>36</sup> Cotonou Agreement. Viewed at: [http://europa.eu/legislation\\_summaries/development/african\\_caribbean\\_pacific\\_states/r12101\\_en.htm](http://europa.eu/legislation_summaries/development/african_caribbean_pacific_states/r12101_en.htm).

<sup>37</sup> 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).

45. The Cotonou Agreement provides for the negotiation of regional EPAs, which were to take over from its trade provisions as from 1 January 2008; Côte d'Ivoire, Guinea-Bissau and Togo are part of the West Africa Group. Côte d'Ivoire has signed an EPA with the EU which allows it to continue to enjoy duty-free access to EU markets for its products (Côte d'Ivoire Annex).<sup>38</sup> The EU is negotiating a global EPA with the West Africa Group, which would in principle replace the agreements concluded individually with countries of the subregion. The negotiations on the EPA with West Africa are continuing.<sup>39</sup>

46. Guinea-Bissau and Togo benefit from the EU's "Everything but Arms" initiative, which provides for the duty-free admission of all products, with the exception of arms and ammunition, of LDC origin. For the year 2010, about 97 per cent of EU imports from Togo (which totalled €222 million) were admitted under MFN conditions; out of the remaining €5.2 million which were subject to MFN dutiable rates, €4 million of imports entered under the EBA scheme for LDCs. For the remainder, i.e., €1.2 million, importers opted for the MFN regime despite the existence of the EBA scheme. The percentages are similar in the case of Guinea-Bissau (with imports totalling €5.6 million in 2010).<sup>40</sup> Unlike Côte d'Ivoire, these two countries are deriving relatively marginal benefits from the EBA scheme, as the bulk of their exports to the EU involve products already admitted to the EU territory duty free under the MFN regime. Côte d'Ivoire, for its part, exports to the European Union many products, notably agri-food products, for which the MFN customs duties are higher than zero.

## **(ii) Relations with the United States**

47. Guinea-Bissau was among the 34 countries initially designated as eligible for the programme established by the United States under the African Growth and Opportunity Act (AGOA) in October 2000.<sup>41</sup> Côte d'Ivoire was accepted for the programme in May 2002, then removed from the list of eligible countries in January 2005 and readmitted in October 2011. Togo was designated as AGOA-eligible in April 2008.

48. The eligible countries 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. For the latter there is a special provision, relating to the incorporation of third-country fabrics in apparel, which remains in force until 30 September 2012, alongside the provision concerning handmade (so-called "Category 9") products and the provision concerning articles made from ethnic fabrics. However, neither Guinea-Bissau nor Togo is eligible for this provision.

49. National economic operators in the two countries are failing to take advantage of the AGOA provisions. Hardly any US imports from Togo called for the use of a special programme (AGOA or GSP). The statistics show that these flows increased by 250 per cent in 2011, reaching approximately US\$31 million under HS Chapter 18 (cocoa) (Table II.2). US imports from Côte d'Ivoire are significant, ranging from US\$750 million to US\$1 billion. In 2004, the last of the three years when Côte d'Ivoire was eligible for the AGOA, its imports under the programme amounted to US\$88 million. Its imports under the GSP programme amounted to US\$65 million dollars in 2010.

<sup>38</sup> 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.

<sup>39</sup> Viewed at: <http://www.acp-eu-trade.org/index.php?loc=tni/>; <http://ictsd.org/>; <http://www.ecdpm.org/>; and <http://ec.europa.eu/trade/wider-agenda/development/economic-partnerships>.

<sup>40</sup> A methodological explanation (Note TRADE/H3/SLG/D(2006)) was viewed at: <http://nui.epp.eurostat.ec.europa.eu>.

<sup>41</sup> AGOA online information. Viewed at: <http://agoa.gov>.

Table II.2

United States imports from Côte d'Ivoire, Guinea-Bissau and Togo, by tariff regime, 2004-2011<sup>a</sup>

(US\$ thousand)

Regime	2004	2005	2006	2007	2008	2009	2010	2011 <sup>b</sup>
<b>Côte d'Ivoire</b>	<b>714,613</b>	<b>1,140,983</b>	<b>722,674</b>	<b>585,403</b>	<b>1,074,928</b>	<b>746,965</b>	<b>1,196,499</b>	<b>0</b>
MFN <sup>c</sup>	587,413	1,118,274	702,710	563,541	1,055,703	705,831	1,116,696	993,210
AGOA (excluding GSP)	88,601	0	0	0	0	0	0	0
GSP	38,599	22,710	19,965	21,861	19,225	41,134	79,803	38,694
<b>Guinea-Bissau</b>	<b>26,611</b>	<b>114</b>	<b>470</b>	<b>38</b>	<b>164</b>	<b>43</b>	<b>885</b>	<b>0</b>
MFN	479	114	470	38	164	43	885	261
AGOA (excluding GSP)	26,131	0	0	0	0	0	0	0
GSP <sup>b</sup>	0	0	0	0	0	0	0	0
<b>Togo</b>	<b>1,582</b>	<b>6,439</b>	<b>3,554</b>	<b>5,039</b>	<b>11,127</b>	<b>6,640</b>	<b>9,120</b>	<b>0</b>
MFN <sup>b</sup>	1,572	6,298	1,279	4,889	10,978	6,616	9,059	31,111
AGOA (excluding GSP)	10	141	2,276	149	149	24	62	54
GSP	0	0	0	0	0	10	0	0

a January-December.

b January-November.

c No special scheme requested.

Source: US International Trade Commission.

#### (4) FOREIGN INVESTMENT REGIMES

50. Two WTO Agreements contain obligations in respect of investment, particularly foreign investment, for WTO Members. The Agreement on Trade-Related Investment Measures, one of the multilateral agreements on trade in goods, prohibits trade-related investment measures such as local content requirements, which are inconsistent with the key provisions of the GATT 1994<sup>42</sup>; the General Agreement on Trade in Services (Chapter IV(4)) addresses foreign investment in services, which is one of the four modes of supply of services.

51. A draft community investment code has been under discussion in WAEMU since 1997. A study report on the draft code was validated by the member States in November 2011. Pending the adoption of a community code each WAEMU member State has drawn up its own legislation, and those of Côte d'Ivoire, Guinea-Bissau and Togo are presented in their respective Annexes.

52. Côte d'Ivoire, Guinea-Bissau and Togo are all members of the World Bank's Multilateral Investment Guarantee Agency (MIGA), which enables eligible foreign companies to receive MIGA's guarantee coverage for their investments in a member country. The guarantee varies, but generally covers the risks of transfer restriction, expropriation, breach of contract, and losses caused by war or civil disturbance (including terrorism). Membership makes countries eligible for technical assistance from MIGA, helping them to attract foreign investment.<sup>43</sup>

53. Côte d'Ivoire, Guinea-Bissau and Togo are also signatories to the International Centre for Settlement of Investment Disputes (ICSID) Convention, but Guinea-Bissau has never deposited its instruments of ratification.

<sup>42</sup> This agreement can be viewed at: [http://www.wto.org/english/docs\\_e/legal\\_e/18-trims.pdf](http://www.wto.org/english/docs_e/legal_e/18-trims.pdf).

<sup>43</sup> Viewed at: <http://www.miga.org/projects/advsearchresults.cfm?srch=s&hctry=90c &hcountrycode=GW>.

**(5) OHADA TREATY**

54. Côte d'Ivoire, Guinea-Bissau and Togo are among the 17 member States of the Organization for the Harmonization of Business Law in Africa (OHADA), located in Yaoundé. Since 2002, their business legal frameworks have been harmonized through the implementation of the OHADA Uniform Acts<sup>44</sup>; in April 2012, nine Uniform Acts were in force. The Ministry of Justice is generally responsible for the administration of OHADA in the member States.

55. The OHADA provisions on general commercial law define the status of traders and intermediaries such as customs clearing agents and brokers, and contain common provisions governing commercial sales. Company law is also harmonized, and this has consequences where commercial presence is concerned: foreign companies wishing to operate in WAEMU member States are required to domicile their headquarters, and keep their accounts, there. However, under the OHADA provisions companies may initially set up a branch there instead, for a maximum of two years, after which the branch must be affiliated to a company established in one of the OHADA member States.

56. The common commercial legislation also covers securities and arbitration. This has enabled "arbitration" to be promoted as the judicial means of dealing with commercial disputes, and in certain countries has led to the establishment of an arbitration centre within the Chamber of Commerce. One of the Uniform Acts specifically relates to the regulation of contracts for the transportation of goods by road involving the territory of an OHADA State Party. The OHADA legislation is accompanied by the SYSCOA accounting reference model whose use is mandatory in the member States (Chapter IV(8)). All the Uniform Acts are directly applicable. The Common Court of Justice and Arbitration (CCJA) entertains all disputes relating to the uniform law, which are referred to it on appeal from the appeal courts of the member States.

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<sup>44</sup> OHADA online information. Viewed at: <http://www.ohada.org>.

### III. COMMON TRADE POLICIES AND PRACTICES BY MEASURE

#### (1) OVERVIEW

57. Through the regional integration arrangements to which they are parties, Côte d'Ivoire, Guinea-Bissau and Togo have been able to harmonize many of their trade policy instruments. The instruments harmonized within WAEMU include, among others, the Common External Tariff (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 aim to ensure some degree of 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; standards, technical regulations and accreditation procedures; sanitary and phytosanitary safety; and government procurement. Some trade policy instruments are also harmonized within ECOWAS, albeit to a lesser extent, namely the ECOWAS community levy, rules of origin (similar to those of WAEMU), competition regulations (not yet operational), and the Inter-State Road Transit (TRIE) regime, which is still unevenly implemented. Intellectual property rights are protected under a regional structure grouping together 16 member States, including Côte d'Ivoire, Guinea-Bissau and Togo.

58. The WAEMU CET has not undergone any major changes since 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. In general terms, 2.5 percentage points are added to the CET by other community duties and charges. Côte d'Ivoire, Guinea-Bissau and Togo are taking part in the ongoing negotiations concerning the ECOWAS five-band CET; the fifth band, at 35 per cent, has already been decided and the products concerned are currently under discussion.

59. The eligibility of goods for the WAEMU and ECOWAS community tariff preference regimes is governed by rules of origin, the basic principles of which have been harmonized since 2004. The WAEMU/ECOWAS origin is conferred systematically on wholly obtained products (for which a certificate of origin is not necessary), or products that have been sufficiently worked or processed, which must be approved and accompanied by a certificate of origin. The conditions for approval of such products in ECOWAS and WAEMU are virtually identical; the WAEMU rules were made more flexible in 2009.

60. WAEMU has introduced a competition regime which also covers State aid and is administered by the Commission. The legislative competence of member States relates essentially 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. Provision is also made for a community rather than a national preference.

61. Like all the other WAEMU countries, Côte d'Ivoire, Guinea-Bissau and Togo 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 subject matters and terms of protection on the provisions of the WTO TRIPS Agreement, with the exception of those relating to topographies, the implementation of which has been deferred for lack of the necessary expertise.

## **(2) MEASURES DIRECTLY AFFECTING IMPORTS**

### **(i) Customs procedures**

62. The WAEMU customs regulations deal with the harmonization of the national provisions on organizational frameworks and customs procedures and regimes.<sup>45</sup> The WAEMU Customs Code applies to all goods, including those of community origin (see below). Trade is also subject to legislation governing the external financial relations of the WAEMU member States, which is applicable to all economic operators. 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, or any other authorized procedure. A "clearance credit" option, allowing speedier removal of goods, is also provided.<sup>46</sup>

63. 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.<sup>47</sup> 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.<sup>48</sup> The basic elements of these declarations are laid down by the community regulations.<sup>49</sup> 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 and ECOWAS have introduced a single customs declaration, although this is not yet applied in practice by all the member States.<sup>50</sup>

64. Côte d'Ivoire, Guinea-Bissau and Togo require a cargo tracking note (BSC) for trade flows transiting their respective maritime ports. The BSC does not come under a community regulation; generally speaking, it is introduced by the Ministry responsible for transport in each country. The (high) costs of issuing this document vary from one country to another (Annexes on Côte d'Ivoire, Guinea-Bissau and Togo, Chapter III(2)) and may give rise to discriminatory treatment depending on the point of embarkation of the imported goods. For purposes of customs clearance procedures, the

<sup>45</sup> Regulation No. 09/2001/CN/UEMOA on the adoption of the WAEMU Customs Code.

<sup>46</sup> To make use of this option, the person concerned must deposit an annual sum to guarantee payment of duty and tax liabilities within a maximum of 15 days after the "clearance voucher" is issued. The total amount payable to customs is also increased, at a rate set by the competent authorities in each member State.

<sup>47</sup> According to Regulation No. 05/1999/CN/UEMOA of 6 August 1999, the customs value of imported goods includes transport costs up to the community border and the cost of insurance. In the absence of proof of the amount of insurance and freight, each WEAMU country makes whatever adjustment it deems necessary.

<sup>48</sup> Regulation No. 09/2008/CN/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.

<sup>49</sup> The details that must be provided are: name or company name or 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; name, address, corporate name and approval number of declarer, date and signature. Regulation No. 09/2008/CN/UEMOA of 26 September 2008.

<sup>50</sup> Regulation No. C/REG.4/08/99 of 20 August 1999.



BSC appears to be of relatively limited usefulness since most of the information it provides is already contained in the manifest.

65. The obligation to submit an advance import or export declaration, or requirements of equivalent effect, remain in place in most member States, including Côte d'Ivoire, Guinea-Bissau and Togo. These formalities increase transaction costs to the detriment of economic operators. Moreover, the import verification programmes and related procedures, as applied in most of the States, have not yet been harmonized.

66. The conditions for licensing of customs brokers within WAEMU were harmonized in 2008.<sup>51</sup> Under the community framework, only legal persons may represent others in carrying out customs formalities concerning the detailed declaration of goods. Applicants for licensing must: be set up in the form of a public limited company (with minimum share capital of CFAF 10 million) or a private company (minimum share capital of CFAF 1 million) in the same member State; meet the minimum threshold (25 per cent) for equity participation by nationals of the Union<sup>52</sup>; undertake to lodge a general security (amount set at national level, but not less than CFAF 25 million) with an approved bank<sup>53</sup>; and possess an establishment comprising amenities suited to each office for which the licence is granted. Customs brokers licensed under the provisions previously in force were required to meet the requirements of this Regulation by October 2010; no assessment of its implementation has yet been carried out.

67. Trade transactions between WAEMU and non-franc<sup>54</sup> zone countries must be domiciled with an approved intermediary bank if their value exceeds the established threshold: this threshold was raised from CFAF 5 million to CFAF 10 million in 2010.<sup>55</sup> 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 (Annexes on Côte d'Ivoire, Guinea-Bissau and Togo, Chapter III(2)(i)). The 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 BCEAO Directorate responsible for external finance. 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)).<sup>56</sup>

68. The community framework for customs valuation<sup>57</sup> reproduces in full the relevant provisions of the WTO Agreement; however, the three countries are experiencing difficulties in its implementation. 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,

<sup>51</sup> Regulation No. 10/2008/CM/UEMOA of 26 September 2008. A community framework harmonizing the conditions for the exercise of maritime transport intermediary professions has also been adopted (Chapter IV(5)(ii)).

<sup>52</sup> The share capital must be fully paid up through a bank or notary established in the member State where the company plans to locate.

<sup>53</sup> In order to obtain clearance or duty credit facilities, the applicant must lodge a separate security; no additional requirement is stipulated in the community framework for this security.

<sup>54</sup> The franc zone includes: the member States of the WAEMU and EMCCA, France and its overseas departments and territories, the Principality of Monaco and the Comoros.

<sup>55</sup> Regulation No. 09/2010/CM/UEMOA of 1 October 2010.

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

<sup>57</sup> Regulation No. 05/99/CM/UEMOA.

and may subsequently be brought before the courts. The WAEMU Customs Code specifies 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 truth or accuracy of the declared value", which forms part of the Marrakesh Agreement.<sup>58</sup>

69. WAEMU maintains a system of reference values<sup>59</sup>, which is implemented nationally on an optional basis, although none of its member States currently benefits any longer from waivers of the WTO rules in this respect.<sup>60</sup> The system consists of a list of products 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 at the national level. Some WAEMU member States justify their non-compliance with their obligations regarding minimum values under the WTO by the existence of this community system. Côte d'Ivoire, Guinea-Bissau and Togo apply their own list of import reference values which, generally speaking, are not drawn from the community list. Moreover, the WAEMU has had to intervene in several cases concerning the application of reference values to intra-community trade; this practice was noted in Côte d'Ivoire in respect of toothpaste.<sup>61</sup>

70. Côte d'Ivoire, Guinea-Bissau and Togo 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 certain member States) of the uniform model detailed declaration adopted by ECOWAS, as well as the rationalization of cross-border transit procedures through the interconnection of national systems.

## **(ii) Customs levies**

71. Goods not originating in WAEMU are subject to the Common External Tariff (CET), which entered into force in 2000.<sup>62</sup> The CET is currently based on the 2007 version of the Harmonized Commodity Description and Coding System (HS); it is applied *ad valorem* on all lines.<sup>63</sup> 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 on 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 means of a regulation are applicable immediately.<sup>64</sup>

<sup>58</sup> Article 16 of Regulation No. 05/99/CM/UEMOA.

<sup>59</sup> Regulation No. 04/99/CM/UEMOA.

<sup>60</sup> 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.

<sup>61</sup> UEMOA (2011).

<sup>62</sup> Regulation No. 2/97/CM/UEMOA.

<sup>63</sup> 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.

<sup>64</sup> The most recent amendment of the WAEMU CET dates from 21 June 2010 (Regulation No. 04/2010/CM/UEMOA).

72. The introduction of the CET was not accompanied by harmonization of the national schedules of bindings which differ considerably in terms of tariff line coverage and bound rates. Some WAEMU member States do not comply with their WTO commitments in regard to some of the tariff lines which they have bound.<sup>65</sup> Thus, the rates of the WAEMU CET are higher than Côte d'Ivoire's bindings on 962 tariff lines; Guinea-Bissau and Togo are not in a position of non-compliance (Table III.1).

**Table III.1**  
National tariff bindings

	Côte d'Ivoire	Guinea-Bissau	Togo
Bound tariff lines (% of all tariff lines)	33.8	96.1	14.8
Simple average bound rate	11.49	48.5	80
Range of bound rates (%)	0-64	40-50	80
Number of lines not compliant with bindings	962	0	0

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

73. Imports other than those 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 within WAEMU. However, the WAEMU member States have not harmonized tariff exemptions and concessions, in particular those primarily designed to promote investment. Several member States have granted exemptions from duties and taxes levied at the customs border on certain mass consumption products to combat the surge in international prices in 2008; these measures were notified *ex post* to the WAEMU Commission.

(a) Applied MFN tariff

74. The WAEMU CET contains 5,544 ten-digit tariff lines of the 2007 version of the Harmonized System (HS); it is *ad valorem* on all lines. The simple average of the CET rates, unchanged since 2003, is 12.1 per cent. The average rate 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.2 and Chart III.1). The coefficient of variation of 0.6 (Table III.3) indicates moderate tariff rate dispersion (0, 5, 10 or 20 per cent), with about 40.7 per cent of tariff lines carrying the modal 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, basket-ware, wickerwork, iron, steel or base metals (Table III.3).

**Table III.2**  
Structure of the WAEMU CET, 2011

	2011
1. Simple average applied MFN rate	12.1
Agricultural products (WTO definition)	14.6
Non-agricultural products (WTO definition)	11.6
Agriculture, hunting, forestry and fishing (ISIC 1)	13.1

<sup>65</sup> The introduction of the ECOWAS CET, which provides for a fifth tariff band at 35 per cent, would further worsen the current situation.

	2011
Mining and quarrying (ISIC 2)	5.0
Manufacturing (ISIC 3)	12.1
2. Tariff lines eligible for duty-free entry (% of all tariff lines)	1.6
3. Simple average rate (dutyable lines)	12.3
4. Duties other than <i>ad valorem</i> (% of all tariff lines)	0.0
5. Tariff quotas (% of all tariff lines)	0.0
6. National tariff peaks (% all tariff lines) <sup>a</sup>	0.0
7. International tariff peaks (% of all tariff lines) <sup>b</sup>	40.7
8. Overall standard deviation of applied rates	6.9
9. "Nuisance" applied rates (% of all tariff lines) <sup>c</sup>	0.0

a Domestic tariff peaks are duties at a rate exceeding three times the simple average applied rate.

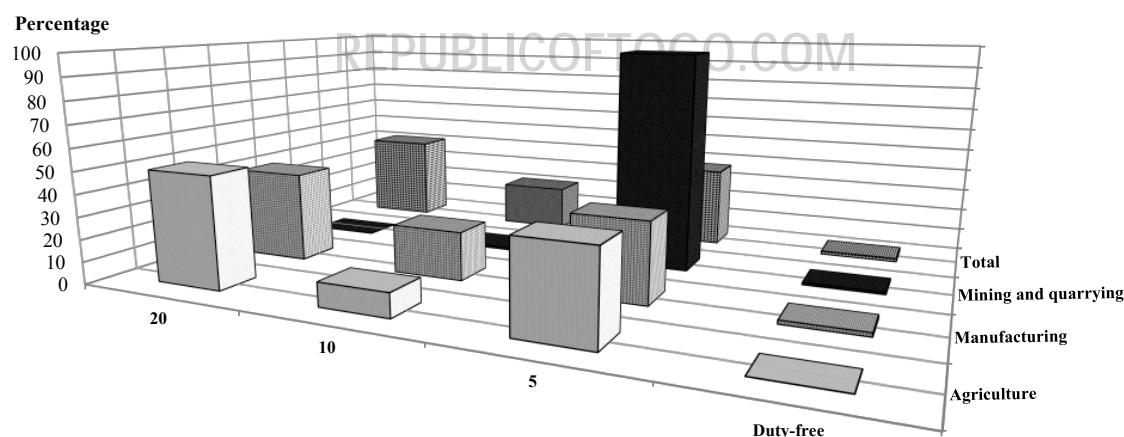
b International tariff peaks are duties exceeding 15 per cent.

c Nuisance duty rates are those greater than 0 but less than or equal to 2 per cent.

Note: The 2011 CET comprises 5,550 tariff lines (with eight digits, in accordance with the HS07 nomenclature).

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

**Chart III.1**  
**MFN tariff distribution by sector, 2011**



Note: International Standard Industrial Classification of All Economic Activities (Rev. 2), excluding electricity, gas and water (one tariff line).

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

Table III.3  
Summary of the WAEMU CET, 2011

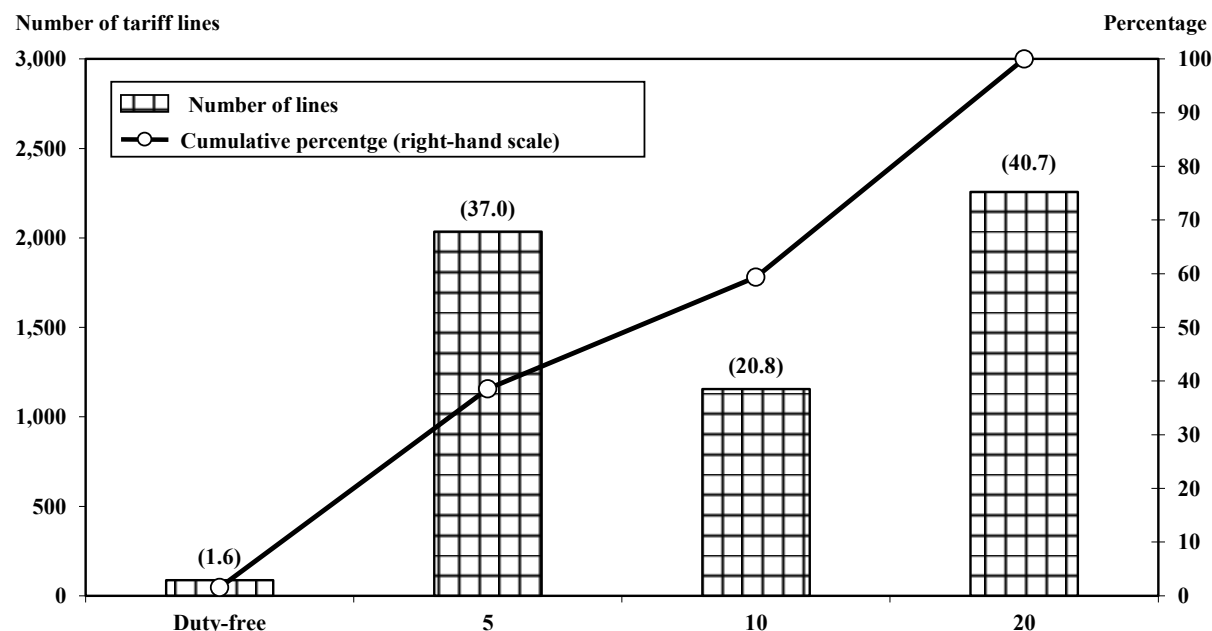
Description	Number of lines	Simple average rate	Range of rates	Standard deviation	CV
<b>Total</b>	5,550	12.1	0-20	6.9	0.6
<b>Harmonized System (HS)</b>					
Chapters 1 to 24	845	15.3	5-20	6.2	0.4
Chapters 25 to 97	4,705	11.5	0-20	6.8	0.6
<b>WTO definition</b>					
Agricultural products	786	14.6	5-20	6.7	0.5
Products of animal origin	96	18.8	5-20	4.0	0.2
Dairy products	31	14.2	5-20	7.3	0.5
Fruits, vegetables, plants	204	17.3	5-20	5.7	0.3
Coffee, tea	64	17.1	5-20	5.1	0.3
Cereals and other preparations	92	13.3	5-20	6.5	0.5
Oil seeds, fats and oils	90	10.7	5-20	5.6	0.5
Sugars and confectionery	18	12.2	5-20	7.1	0.6
Beverages and tobacco	54	18.7	5-20	4.1	0.2
Cotton	7	5.0	5	0.0	0.0
Other agricultural products	130	9.0	5-20	5.6	0.6
Non-agricultural products	4,764	11.6	0-20	6.8	0.6
Non-agricultural products (excluding petroleum)	4,741	11.7	0-20	6.8	0.6
Fish and fishery products	129	14.5	5-20	5.0	0.4
Metals and minerals	980	11.8	0-20	7.0	0.6
Chemicals	919	7.6	0-20	5.4	0.7
Wood, paper, etc.	268	11.3	0-20	6.6	0.6
Textiles	609	16.4	0-20	5.1	0.3
Clothing	219	20.0	20	0.0	0.0
Leather, footwear, etc.	167	13.1	0-20	6.0	0.5
Non-electrical machinery	555	7.3	5-20	4.9	0.7
Electrical machinery	255	11.2	0-20	6.4	0.6
Transport equipment	209	10.4	0-20	6.3	0.6
Other manufactured products, n.e.s	431	14.3	0-20	6.6	0.5
Petroleum	23	7.8	0-10	3.2	0.4
<b>By ISIC sector<sup>a</sup></b>					
Agriculture, hunting, forestry and fishing	337	13.1	5-20	7.1	0.5
Mining and quarrying	104	5.0	0-10	0.7	0.1
Manufacturing	5,108	12.1	0-20	6.8	0.6
<b>By stage of processing</b>					
Raw materials	691	10.6	0-20	6.7	0.6
Semi-finished products	1,780	10.0	0-20	6.1	0.6
Finished products	3,079	13.6	0-20	6.9	0.5

a International Standard in Industrial Classification of All Economic Activities (Rev. 2). Excluding electricity, gas and water (one tariff line).

Note: CV = coefficient of variation.

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

**Chart III.2**  
**Distribution of WAEMU CET rates, 2011**



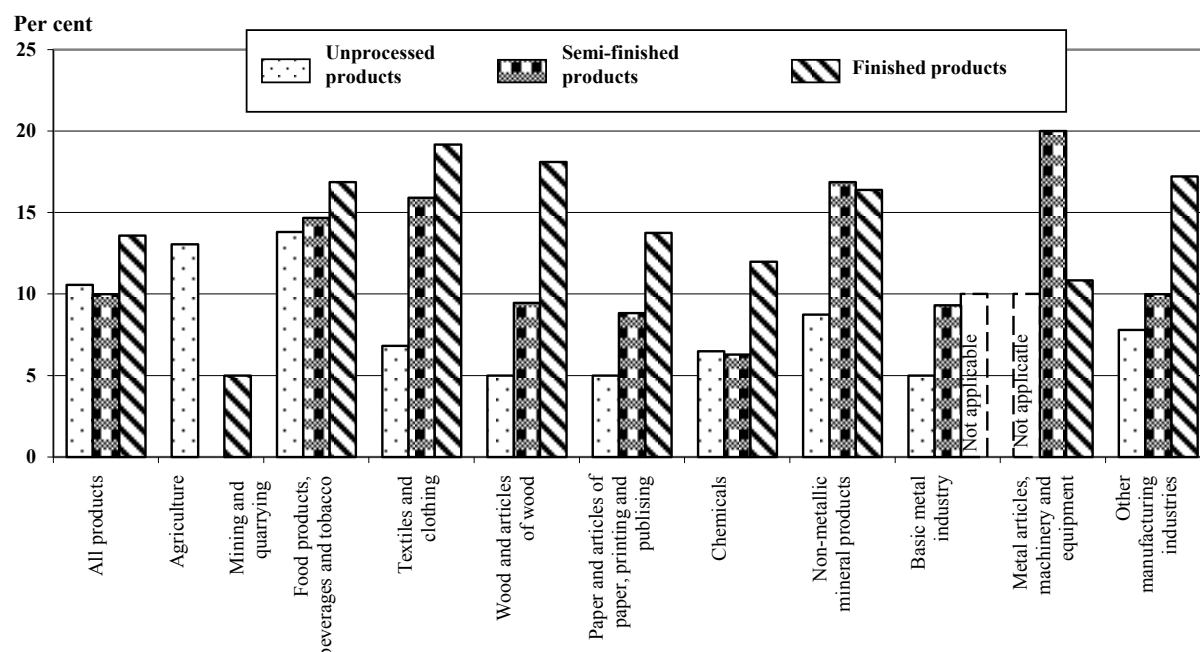
**Note:** The figures in parentheses correspond to the percentage of all tariff lines.

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

75. 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 chemicals. The tariff escalation from raw materials to finished products is very pronounced in the wood and wood products industries; textiles and clothing; and paper, printing and publishing. However, it should be noted that, in the absence of harmonization of the import duty exemptions granted by member States (see Annexes on Côte d'Ivoire, Guinea-Bissau and Togo, Chapter III(2)(iv)), the tariff protection levels actually granted may vary considerably from one country to another.

76. 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 exports of processed goods. Furthermore, the negative escalation reduces competitiveness because raw materials or semi-finished products are more heavily taxed than the goods resulting from their processing.

**Chart III.3**  
**Escalation of WAEMU CET rates, 2011**



**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

77. The other community duties and taxes levied at the customs border add 2.5 percentage points to the WAEMU CET. 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 (ECC) go to the ECOWAS Commission.<sup>66</sup> The RS, the PCS and the PCC are calculated on the basis of the c.i.f. value.

78. Certain non-WAEMU originating products may be subject to a special import tax (TCI), the purpose of which is to cushion the impact of any sharp fall in world prices on community production and/or offset unfair practices (section (2)(vii)). Another community mechanism applied nationally, the degressive protection tax (TDP)<sup>67</sup>, expired on 31 December 2006 after having been extended three times.<sup>68</sup> However, Côte d'Ivoire still collects the TDP on several products (see Annex on Côte d'Ivoire).

79. A number of additional duties and taxes are also imposed on goods and means of transport at each border crossing, as well as at checkpoints within the same country. Some of these levies have

<sup>66</sup> On a provisional basis, Togo collects the PCC at the rate of 1 per cent in order to clear the arrears in its contributions to ECOWAS.

<sup>67</sup> Regulation No. 3/99/CM/UEMOA.

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

been introduced by community regulations<sup>69</sup> or national regulations (see Annexes on Côte d'Ivoire, Guinea-Bissau and Togo, Chapter III(2)(v)); others have no legal basis but represent a major source of income for the public or private operators involved. The Irregular Practices Observation Centre, a joint WAEMU and ECOWAS initiative, has noted many checkpoints and barriers on the main road corridors in the region.<sup>70</sup> Since most imports and exports are carried on these same routes, the taxes collected and the delays caused account for considerable additional costs in international trade.

(c) Tariff preferences

80. In principle, tariff preference schemes apply to products originating in WAEMU countries and in ECOWAS countries that are not WAEMU members. Total exemption from import duties and taxes is granted to these products within the WAEMU/ECOWAS area.<sup>71</sup> The relevant rules of origin have for the most part been harmonized (see below).

81. Financial compensation mechanisms were provided for within WAEMU and ECOWAS in order to offset the loss of customs revenues suffered by States that are importers of originating industrial goods. The WAEMU scheme was in operation during the period 1996-2005; the ECOWAS scheme never became operational. According to the authorities, Côte d'Ivoire, Guinea-Bissau and Togo grant the preferential treatment provided for under the ECOWAS regime.

(d) Internal taxes

82. WAEMU has adopted community frameworks governing the collection of VAT, excise duties and flat-rate advance payments for profits tax; these frameworks are based on the principle of convergence of the tax base and rates.

83. 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 selected from a limitative list.<sup>72</sup> 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 that the thresholds applied to member States should be situated 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.

84. The tax base for imports 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. The rate is the same for both local products and imports.

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<sup>69</sup> The operation of juxtaposed checkpoints, used jointly by the control services of the respective border States, is financed by means of a fee collected on each vehicle and each crossing. The amount is set by the WAEMU Commission in the light of the infrastructure investment costs, operating costs and annual traffic.

<sup>70</sup> The reports of the Observation Centre are available online at the following address: <http://www.borderlesswa.com/resources/publications>.

<sup>71</sup> 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>.

<sup>72</sup> Directive No. 2/98/CM/UEMOA, as amended by Directive No. 02/2009/CM/UEMOA.



85. In principle, agriculture is excluded from the scope of VAT.<sup>73</sup> However, the modalities for its exclusion remain to be determined, and each member State may apply its own VAT regime in this sector. The common VAT exemptions concern the sale or delivery of: medical care; medicines and pharmaceutical products, specialized equipment and products for medical use<sup>74</sup>; unprocessed and basic staple foods<sup>75</sup>; 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 reinsurance 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 arts; 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 also exempt from VAT, as are aircraft engaged essentially in international traffic.

86. The list of common exemptions is limitative. Member States undertake not to grant exemptions or relief from VAT in the context of incentives for enterprise creation and investment, measures or provisions targeting specific sectors, or under particular agreements.<sup>76</sup> However, this Directive does not exclude the application of national customs regimes that defer or suspend VAT on mining, petroleum and forestry activities.<sup>77</sup> In principle, exports are subject to the zero rate regime, enabling exporters to obtain a rebate of the VAT paid on their inputs. VAT exemptions, decided at national level, have been noted in Côte d'Ivoire and Guinea-Bissau.

87. The community framework governing excise duties establishes the limits within which member States may set their national duty rates.<sup>78</sup> Excise duty is mandatory for certain products: non-alcoholic beverages (other than water) (0-20 per cent); alcoholic beverages (15-50 per cent); and tobacco (15-45 per cent). Moreover, each member State may choose to impose duty on a maximum of six items 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)<sup>79</sup>, 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 horsepower of 13hp 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. Moreover, according to Directive No. 6/2001/CM/UEMOA, in addition to import duties and VAT, petroleum products are subject to a non-*ad valorem* excise duty (Chapter IV(3)).

88. With regard to the advance payment of profits tax (AIB), the WAEMU rules<sup>80</sup> stipulate that, in the event of recourse to such a mechanism, exclusively for the purpose of strengthening taxation of small and medium-sized enterprises, member States should ensure that its application is neutral as

<sup>73</sup> Additional Act No. 03/2001.

<sup>74</sup> The list is set out in Directive No. 06/2002/CM/UEMOA.

<sup>75</sup> 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.

<sup>76</sup> This does not concern particular agreements concluded before the application of this Directive.

<sup>77</sup> 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.

<sup>78</sup> Directive No. 3/98/CM/UEMOA, as amended by Directive No. 03/2009/CM/UEMOA.

<sup>79</sup> The list is set out in Directive No. 3/98/CM/UEMOA.

<sup>80</sup> Directive No. 07/2001/CM/UEMOA of 26 November 2001.

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 with no tax identification. The scope agreed by WAEMU does not include provision of services, or sales of water and electricity. Member States may also waive this payment in the case of 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 due.

**(iii) Rules of origin**

89. The rules of origin governing eligibility of products for preferential treatment within WAEMU<sup>81</sup> and ECOWAS<sup>82</sup> are largely harmonized. Community origin is conferred on unprocessed originating products (local or handmade products) and on those that have undergone sufficient 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 exceptions<sup>83</sup>; or a community value added of at least 30 per cent of the cost price of the goods ex-factory and excluding tax.<sup>84</sup>

90. In principle, goods processed under economic regimes or particular regimes entailing 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 that the duties and taxes payable on the materials used in the manufacturing process have been paid; the modalities for implementation of this provision have yet to be made the subject of a WAEMU Commission regulation (section 3(v)).

91. 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).<sup>85</sup> However, this obligation does not apply to agricultural and livestock products and handicrafts. Since 1 January 2006, member States have had exclusive powers as regards approval of goods produced or processed within their national territory.<sup>86</sup> 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.4).

<sup>81</sup> Additional Protocol No. III/2001 establishing the WAEMU rules of origin, applicable since 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/UEMOA.

<sup>82</sup> 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.

<sup>83</sup> Regulation No. 12/2002/CM/UEMOA.

<sup>84</sup> Regulation No. 13/2002/CM/UEMOA and Protocol A/P/01/03.

<sup>85</sup> A certificate can cover only one product and remains valid for 18 months from the date of issue.

<sup>86</sup> Additional Protocol No. III of 19 December 2001, establishing rules of origin for WAEMU products. Regulation No. C/REG.3/4/02 of 23 April 2002 on the approval procedure for originating products under the ECOWAS Trade Liberalization Scheme.

Table III.4  
Trend in approvals for the WAEMU community preferential tax, 2005-2010

		2005	2006	2007	2008	2009	2010	Average 2005-2010	Total 1996-2010
Benin	Enterprises	1	5	2	5	0	4	2.8	62
	Products	20	21	41	33	0	17	22.0	345
Burkina Faso	Enterprises	2	2	4	5	3	4	3.3	63
	Products	34	4	9	13	8	12	13.3	323
Côte d'Ivoire	Enterprises	13	12	24	12	25	3	14.8	320
	Products	113	54	124	46	71	19	71.2	1,552
Guinea-Bissau	Enterprises	0	0	0	0	0	0	0	0
	Products	0	0	0	0	0	0	0	0
Mali	Enterprises	0	4	0	3	4	3	2.3	53
	Products	0	15	0	6	5	8	5.7	216
Niger	Enterprises	3	3	0	0	0	0	1.0	21
	Products	8	8	0	0	0	0	2.7	73
Senegal	Enterprises	6	15	7	8	31	11	13.0	205
	Products	35	75	116	58	62	-57	48.2	809
Togo	Enterprises	2	1	3	1	2	0	1.5	38
	Products	4	8	20	31	13	3	13.2	235
<b>Total</b>	<b>Enterprises</b>	<b>27</b>	<b>42</b>	<b>40</b>	<b>34</b>	<b>65</b>	<b>25</b>	<b>38.8</b>	<b>762</b>
	<b>Products</b>	<b>214</b>	<b>185</b>	<b>310</b>	<b>187</b>	<b>159</b>	<b>200</b>	<b>209.2</b>	<b>3,751</b>

Source: WAEMU Commission.

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92. Despite the standardization of the certificate of origin issued within ECOWAS<sup>87</sup> and consequently in WAEMU, economic operators must submit separate applications for approval under 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).<sup>88</sup> Thus, an application for approval may be rejected by WAEMU but accepted under the ECOWAS liberalization scheme.

93. In fact, even when approved some originating products do not circulate freely in the WAEMU/ECOWAS area. Obstacles to intra-community trade stem from both non-compliance with community regulations by member States and inadequate harmonization of national frameworks. The existence of irregular practices by private or public operators creates additional obstacles (section 2(ii)). The WAEMU Commission continues to highlight administrative obstacles imposed on community products through: reference values; preshipment 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 national products; and the requirement of prior import declarations.<sup>89</sup> The weakness of the follow-up

<sup>87</sup> Regulation No. C/REG.4/4/02 of 23 April 2002.

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

<sup>89</sup> A summary of the disputes dealt with by the WAEMU Commission in 2008-2010 is set forth in its 2010 activity report (UEMOA, 2011).

mechanisms in ECOWAS also seems to suggest that a large proportion of goods eligible for free movement within ECOWAS do not benefit from this status.

94. 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 either 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.

**(iv) Prohibitions, quantitative restrictions and licensing**

95. 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.

96. The regulations of WAEMU member States on prohibitions and licensing are harmonized in only certain areas governed by community frameworks. Thus, the Union's customs code<sup>90</sup> provides for an automatic ban on foreign products bearing a false mark or indication of origin; the other community prohibitions currently in force concern goods excluded from transit<sup>91</sup> as well as goods permanently prohibited from bonded warehouses.<sup>92</sup> In principle, the regimes regulating the importation of ozone-depleting substances, veterinary medicines and pharmaceutical products for human use are also harmonized. It should be noted, however, that member States are behindhand in the transposition of the various community regulations.

97. 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.<sup>93</sup> 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. The CCO has not yet been established.

<sup>90</sup> Chapter V of the Annex to Regulation No. 09/2009/CM/UEMOA.

<sup>91</sup> 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, 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 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.

<sup>92</sup> 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.

<sup>93</sup> Regulation No. 04/2005/CM/UEMOA of 4 July 2005.

98. In principle, the placing of veterinary medicines on the market of a member State has been subject to prior authorization by the WAEMU Commission since 2006. Authorization is granted following the opinion of the WAEMU Veterinary Committee<sup>94</sup> and a scientific evaluation by the regional Veterinary Medicine Committee (CRMV) set up for this purpose.<sup>95</sup> In 2009, WAEMU adopted several related implementing texts (Table III.5). The delay in establishing the centralized system for the issue of authorizations led to a change in the community regulations in 2010.<sup>96</sup> The amendment imposes an obligation on the holders of a national authorization to submit proper documentation to the WAEMU Commission by 31 December 2011 at the latest, with extension to 31 December 2012.<sup>97</sup> The conditions for the granting of authorization remain unchanged: applicants 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. In the event of the 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 their use.

**Table III.5**  
Community legislation on veterinary medicines

Reference	Description
Implementing Regulation No. 007/2009/COM/UEMOA	Establishes standards and pre-clinical and clinical analytical and safety protocols for the testing of veterinary medicines
Implementing Regulation No. 008/2009/COM/UEMOA	Establishes "fit and proper" and experience criteria for the Chairman and members of the Regional Veterinary Medicine Committee
Implementing Regulation No. 009/2009/COM/UEMOA	Establishes a list of fields in which the Veterinary Committee may issue opinions and a list of entities authorized to take part in sessions of the Committee as observers
Decision No. 009/2009/COM/UEMOA	Establishes the procedures for the filing of a request for authorization of placement on the community market
Decision No. 010/2009/COM/UEMOA	Designates laboratories in the network responsible for quality control of veterinary medicines within WAEMU

*Source:* Information provided by the WAEMU Commission.

99. The release of pharmaceutical products for human consumption on the market of a WAEMU member State is also subject to prior authorization<sup>98</sup>; the latter is issued at the national level, following the favourable opinion of the technical and administrative bodies responsible for evaluating and validating the files. The community framework defines the criteria for validation<sup>99</sup> and stipulates that the technical evaluation reports are to be transmitted to the Unit for the Harmonization of Pharmaceutical Regulations and Cooperation of the WAEMU Commission. Reference to this unit may be made by the regulatory authorities of member States, if necessary. The regulations also

<sup>94</sup> Regulation No. 01/2006/CM/UEMOA of 23 March 2006.

<sup>95</sup> 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 to give its opinion.

<sup>96</sup> Regulation No. 08/2010/CM/UEMOA amending Regulation No. 02/2006/CM/UEMOA.

<sup>97</sup> Non-compliance with this obligation would entail cancellation of the national authorization and a halt to marketing.

<sup>98</sup> Regulation No. 06/2010/CM/UEMOA of 1 October 2010.

<sup>99</sup> The validation criteria include: the opinion of the Technical Committee; therapeutic benefit and effectiveness; harmlessness under normal conditions of use; wholesale price excluding tax (PGHT); cost of daily and total treatments; and the number of similar multisource finished products on the market.

provide for the filing of a summary application for products that have been prequalified by the World Health Organization and products already assessed by a pharmaceutical regulatory authority belonging to the International Conference on Harmonization of Technical Requirements for Registration of such products. The processing period for a new request for authorization of placement on the market (full file) may not exceed 120 days; the (renewable) authorization is valid for five years.<sup>100</sup> Approval fees (payable for each dose, each pharmaceutical form and each presentation) are determined at national level and must comprise a 50 per cent reduction for medicines produced within the Union. Member States had until 31 December 2011 to conform to this requirement.

100. Furthermore, WAEMU has adopted, by decision, guidelines and good practice guides intended to ensure a degree of uniformity in the national regulations in various fields (Table III.6). Each of these decisions provides that member States are obliged to establish the necessary institutional and legal frameworks by October 2011. These texts could eventually serve as a basis for the development of harmonized community regulations.

**Table III.6**  
**Harmonization projects under way within WAEMU**

Decision	Description
No. 06/2010/CM/UEMOA	Adoption of guidelines for the approval of nutritional supplements (oral administration only) in the WAEMU member States
No. 07/2010/CM/UEMOA	Adoption of guidelines for the approval of cosmetic products in the WAEMU member States
No. 08/2010/CM/UEMOA	Adoption of the good practice guide for the manufacture of pharmaceutical products for human use in the WAEMU member States
No. 09/2010/CM/UEMOA	Adoption of the good practice guide for distribution and importation of pharmaceutical products for human use in the WAEMU member States
No. 10/2010/CM/UEMOA	Adoption of guidelines for the control of information and advertising on medicines applicable to health professionals in the WAEMU member States

*Source:* Information provided by the WAEMU Commission.

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

101. The process of harmonization of accreditation, certification, standardization and metrology within WAEMU is carried out in the context of the "quality" programme launched in September 2001. With European Union financing of approximately CFAF 9.5 billion (€14.5 million), this programme currently covers all ECOWAS member States together with Mauritania (Table III.7); in principle, it should contribute to the convergence and mutual recognition of standards and practices in the subregion. However, more progress seems to have been made in establishing the WAEMU component of the programme than in that for the other member States of ECOWAS and Mauritania, which is managed by a different team.

<sup>100</sup> As an exceptional measure, a special import authorization may be granted by the Minister responsible for health, for reasons of public health and for a period not exceeding 12 months.

**Table III.7**  
**Implementation of the quality programme**

	<b>WAEMU Quality Programme (PQ1)</b>	<b>West Africa Quality Programme (PQ2)</b>
Period of implementation	September 2001 - December 2005	September 2007 - December 2011
Contractor	WAEMU Commission	ECOWAS + WAEMU
Donors	European Community	European Community
Implementing agency	UNIDO	UNIDO
States concerned	WAEMU members	ECOWAS members and Mauritania
Budget	€14 million	€16.5 million
Main beneficiaries	Laboratories, enterprises, standardizing bodies, inspection bodies, consumer associations	

*Source:* Information provided by the WAEMU Commission.

102. The various initiatives launched at WAEMU level have three technical components: upgrading of the reference laboratories with a view to their international accreditation; strengthening of regulatory frameworks and technical capacities at national and regional levels; and support for enterprises in the work of quality enhancement (ISO 9001 certification, quality prize, establishment of technical support centres, etc.).

103. One of the achievements of the "quality" programme is the scheme for the harmonization of accreditation, certification, standardization and metrological activities within WAEMU.<sup>101</sup> 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. Member States are required to notify to the WAEMU Commission their respective TBT regimes and to eliminate any unjustified obstacles to the free movement of goods and services. The harmonization of the national regimes is supported by three technical structures: the West African Accreditation System (SOAC); the Regional Standardization, Certification and Quality Promotion Agency (NORMCERQ); and the West African Metrology System (SOAMET). Their activities are coordinated by a Regional Quality Coordination Committee (CREQ).

104. At the community level, standardization priorities are defined on the basis of the need expressed by at least half the States; relevance to health, safety, the 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.<sup>102</sup> Community standards are applied on a voluntary basis. They are drawn up and adopted by NORMCERQ and must be approved by the WAEMU Commission; a public enquiry, lasting up to three months, is provided for in the drafting procedure.<sup>103</sup> Regional technical standardization committees, consisting of two representatives per member State, are established to deal with specific areas and prepare draft WAEMU standards. At the end of March 2012, no standard had yet been approved at community level.

105. Having been adopted by regulation in 2005, the community framework was modified in 2010 to give the WAEMU Commission a key role in the design and monitoring of all activities under the scheme. The revision also defined the mechanism for adopting technical regulations within the Union; such regulations are introduced by the Council of Ministers on the basis of community

<sup>101</sup> Regulation No. 01/2005/CM/UEMOA of 4 July 2005, replaced by Regulation No. 03/2010/CM/UEMOA of 21 June 2010.

<sup>102</sup> UEMOA (2007).

<sup>103</sup> Approved standards are reviewed every five years and may be revised to upgrade the technical level.

standards and standards laid down by international standardization organizations, following the opinion of NORMCERQ. Although the community framework has been in force since January 2006, mutual recognition is not yet operational within WAEMU. Instances of recourse to national standards deemed scientifically impracticable have been treated by the Commission as infringements of the community competition regime. The Union has not concluded mutual recognition agreements with other countries.

106. In January 2008, WAEMU adopted a Common Environmental Improvement Policy (PCAE).<sup>104</sup> In addition to the main guidelines for the sustainable management of natural resources and management of environmental problems, this text proclaims the member States' commitment to harmonize and standardize their environmental standards and technical regulations. The PCAE also provides for 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)).

107. In the context of the "quality" programme, WAEMU has also provided resources to promote more active participation by member States in the work of the International Organization for Standardization (ISO). Côte d'Ivoire has acquired member status, enabling it to participate with full voting rights in the drafting of any standard considered important for its economy. For the time being, Guinea-Bissau and Togo are not members of ISO.<sup>105</sup>

#### **(vi) Sanitary and phytosanitary measures**

108. Despite the adoption of certain community frameworks and efforts to harmonize national legislation, no concrete measure facilitating trade in the WAEMU area has yet taken shape. In the absence of mutual recognition and effective coordination at regional level, both imports and exports are subject to the same requirements and control procedures, whether or not they have been authorized for marketing in a member State. Moreover, at the national level, sanitary and phytosanitary safety is often the responsibility of several bodies, each of which may act independently. Some member States, including Côte d'Ivoire in particular, have not yet set up a functioning national SPS Committee in accordance with the terms of the WTO SPS Agreement. Given their limited resources, some member States are also not in a position to carry out adequate controls throughout their territory.

109. In 2007, WAEMU adopted a framework for plant and animal health and food safety.<sup>106</sup> Its purpose is to establish mechanisms for cooperation and establish mutual recognition, subject to the precautionary principle, among the 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. In 2009, the WAEMU Commission adopted an implementing regulation

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<sup>104</sup> Additional Act No. 01/2008/CCEG/UEMOA of 17 January 2008.

<sup>105</sup> Online information on the International Organization for Standardization. Viewed at: [http://www.iso.org/iso/about/iso\\_members.htm?=](http://www.iso.org/iso/about/iso_members.htm?=).

<sup>106</sup> Regulation No. 07/2007/CM/UEMOA of 6 April 2007.



containing a list of animal diseases requiring immediate notification to the WAEMU department responsible for animal health, as well as the special measures applicable to such diseases.<sup>107</sup>

110. The rules governing the approval, marketing and control of pesticides in WAEMU were harmonized in 2009.<sup>108</sup> However, no implementing regulation has yet been adopted; the transposition of community regulations 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.<sup>109</sup> 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 strictly regulated; and those considered 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 member State may grant authorization for the importation of a pesticide approved by another WAEMU State or provisionally authorized for sale, but may refuse to allow it to be offered for sale on its own market. Such refusals must be reasoned and addressed to the Commission.

111. Regulation No. 03/2009/CM/UEMOA establishes a subregional legal framework harmonizing the quality control, certification and marketing of plant seeds and seedlings in the member States of the Union. It provides for the establishment of a regional catalogue of the plant species and varieties of the Union (CREVU) with a view to consolidating the 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.

#### **(vii) Contingency measures**

112. The WAEMU Anti-Dumping Code has been in force since 1 July 2004.<sup>110</sup> It 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.

113. 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, a 10 per cent special income tax (TCI) seems, among other things, also to play this role. As a community mechanism applied at national level, the TCI may be imposed on certain non-Union originating products if their c.i.f. value

<sup>107</sup> Implementing Regulations No. 010/2009/COM/UEMOA and No. 011/2009/COM/UEMOA of 10 September 2009.

<sup>108</sup> Regulation No. 04/2009/CM/UEMOA.

<sup>109</sup> A common approval mechanism for pesticides is managed by the Sahel Pesticides Committee established by the CILSS for its member States (including Burkina Faso, Guinea-Bissau, Mali, Niger and Senegal, which are also WAEMU members).

<sup>110</sup> Regulation No. 9/2003/CM/UEMOA of 23 May 2003.

is below the trigger price.<sup>111</sup> Its scope includes agricultural, agro-industrial, livestock and fishery products, with the exception of fish and fish-based products. The WAEMU Commission, by decision, approves<sup>112</sup> products for the TCI and sets the trigger prices on the basis of world prices and average production costs in the member State.

114. According to the WAEMU Commission, in the case of products benefiting from guaranteed prices, a different formula is applied, which takes into account the "spot market price" and shipping costs, instead of local production costs.<sup>113</sup> The trigger prices are adjusted every six months and serve as the basis for calculating the taxable value.<sup>114</sup> The purpose of the TCI is to protect community agricultural and agri-food 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.

115. The arrangements whereby member States are authorized to take safeguard measures by way of a waiver of the common trade policy date from 1998.<sup>115</sup> 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.<sup>116</sup> 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 expressly distinguish between Union members and other countries. However, the possibility of lodging a 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**

116. The registration and financial domiciliation requirements for the importation of goods (section (2)(i)) also apply to exportation and re-exportation. Earnings from exports to countries outside the Union are subject to repatriation and conversion into CFA francs through an approved

<sup>111</sup> Regulation No. 6/99/CM/UEMOA of 17 September 1999.

<sup>112</sup> 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; crude 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 agri-food products may also be approved for the TCI, in which case the request must be approved by the CET Management Committee.

<sup>113</sup> In the case of products with guaranteed prices, member States may replace the 10 per cent surcharge with an equalization tax.

<sup>114</sup> Online information from the Senegalese Observatory of Industry. Viewed at: [www.obs-industrie.sn/TEC1.htm](http://www.obs-industrie.sn/TEC1.htm).

<sup>115</sup> Regulation No. 14/98/CM/UEMOA. Such a measure can be taken only with the authorization of the WAEMU Commission, following a request lodged by the member State. The regulations specify that: "the Commission shall ensure that the safeguard measures adopted are consistent with the general principles of the relevant rules of the World Trade Organization" (Article 7).

<sup>116</sup> 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.

financial intermediary, if the amount exceeds CFAF 10 million. Foreign currency must be repatriated within one month of the settlement date specified in the contract with the foreign customer.<sup>117</sup> Repatriation becomes effective when the domiciling financial institution transfers the corresponding foreign currency to the BCEAO, via the operations account.

117. 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 as import. The community framework defines the essential information that must be included in simplified declarations, as well as the conditions of eligibility of trade transactions (section (2)(i)).

**(ii) Export duties and taxes**

118. WAEMU has not yet harmonized customs duties and taxes of equivalent effect levied on exports. In the absence of such a framework, member States are not required to apply different treatment to goods of community origin compared with goods destined for other countries.

**(iii) Goods in transit**

119. According to the WAEMU Customs Code, goods in transit are transported under customs control, with suspension of duties, charges and non-community prohibition measures (section (2)(iv)); provision is made for a security (guarantee) mechanism, including customs escort.<sup>118</sup> 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.

120. A WAEMU recommendation aimed at rationalizing port transit administrative procedures dates from 27 June 2002.<sup>119</sup> 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 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, WAEMU is in the process of installing juxtaposed control posts at the internal borders, in order to avoid duplication of formalities; the establishment of a single entry point system (free circulation), allowing free movement of goods within the community market, is under consideration in the Commission.

121. ECOWAS, which includes all the WAEMU countries, adopted an Inter-State Road Transit (TRIE) regime<sup>120</sup> 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

<sup>117</sup> This date should not, in principle, be later than 120 days after shipment of the goods.

<sup>118</sup> Maritime transport is excluded from transit.

<sup>119</sup> Recommendation No. 02/2002/CM/UEMOA of 27 June 2002.

<sup>120</sup> Convention A/P4/5/82 of 29 May 1982.

among the countries concerned by the transit.<sup>121</sup> This security mechanism has not been implemented. In addition, the WAEMU Customs Code provides for only partial recognition of the TRIE arrangements: only road transit between the WAEMU area and the customs territory of an ECOWAS member State is governed by the provisions in force within ECOWAS. According to the WAEMU Commission, this approach is justified by the fact that the Union is supposed to constitute a single customs territory. At present, however, the payments levied as securities under the transit regime in WAEMU member countries are not harmonized. Re-exports (outside the transit regime) of non-originating goods are also subject to import duties whenever they cross the border between two member States.

**(iv) Prohibitions, quantitative restrictions and licences**

122. Once adopted, the community approach to import prohibitions and licences should also apply to export and re-export operations. For the time being, there are no explicit community export prohibitions; however, the list of goods barred from bonded warehouses (section (2)(iv)) may apply to exports.

**(v) Free zone regime**

123. 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 are 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.<sup>122</sup> Goods thus introduced may remain for an unlimited duration, and are considered foreign to the Union.

124. Goods from a free zone may be released for consumption in the community area; in principle, their eligibility for WAEMU-originating product status is subject to payment of the duties and charges payable on the inputs used in their manufacture.<sup>123</sup> However, the procedures for implementing this provision have not yet been defined. 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.<sup>124</sup>

**(4) OTHER MEASURES**

**(i) Competition and price control**

125. The regulation and treatment of anti-competitive practices within WAEMU take place at two levels. Community law covers the following areas: anti-competitive agreements, abuse of a dominant position; State aid; and practices attributable to member States.<sup>125</sup> National legislative

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<sup>121</sup> 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.

<sup>122</sup> Regulation No. 14/2008/CM/UEMOA of 26 September 2008.

<sup>123</sup> Additional Protocol No. I/2009/CCEG/UEMOA of 17 March 2009.

<sup>124</sup> OECD (2010).

<sup>125</sup> Regulation No. 2/2002/CM/UEMOA on anti-competitive practices in WAEMU; Regulation No. 3/2002/CM/UEMOA on procedures applicable to understandings and abuse of dominant positions:

competence is limited to areas not regulated at Union level, such as unilateral practices of non-dominant enterprises and consumer protection. There have been some delays in the harmonization of the national and community competition regimes. The transposition of the Directive on the definition of the powers of national bodies is still under way in some pre-existing legislative systems, including that of Côte d'Ivoire. Other member States, such as Guinea-Bissau, do not yet have a national competition framework.

126. Community competition legislation 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 more enterprises is likewise prohibited. This prohibition also covers concentrations (mergers between previously independent companies) that create or strengthen a dominant position.<sup>126</sup> These provisions also apply to State-owned enterprises as well as companies to which WAEMU member States grant special and exclusive rights.

127. The WAEMU Commission may grant individual (and conditional) exemptions if the anti-competitive practice helps to improve the production or distribution of goods or to 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. To date, the Commission has not yet enacted rules relating to exemptions by category; no requests for individual exemptions have been submitted.

128. At the procedural level, the community competition regime gives the WAEMU Commission not only the responsibility for taking decisions at first instance, but also an active role in the investigations and hence, to a large extent, the burden of proof.<sup>127</sup> The national competition bodies have a general investigative function either at national initiative or at the Commission's express request.<sup>128</sup> Hence, the Union's ability to tackle anti-competitive 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 eventually be carried out. In addition, the availability of an online database on the legal precedents (case law) developed by the WEAMU Commission would contribute to better understanding of competition matters by economic operators and the general public.

129. 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 may be notified. The Commission may initiate proceedings ex officio or at the request of a natural or legal person for the purpose of penalizing anti-competitive practices. It has the authority to order the

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Regulation No. 04/2002/CM/UEMOA on State aid within WAEMU and implementing procedures for Article 88(c) of the WAEMU Treaty; and Directive No. 02/2002/CM/UEMOA on cooperation between the Commission and the national competition bodies of the WAEMU member States.

<sup>126</sup> In determining a dominant position, the Commission takes account of structural criteria (market shares; barriers to entry (legislative and regulatory obstacles, obstacles related to the functioning of the market, obstacles deriving from the conduct of the enterprise); financial power); and conduct.

<sup>127</sup> The WAEMU Commission has sole competence for deciding cases involving anti-competitive 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 decisions (Directive No. 02/2002/CM/UEMOA of 23 May 2002).

<sup>128</sup> Member States also participate in the work of the Union's Advisory Committee on Competition.

operators concerned to cease their anti-competitive practices within a specified period, or to impose special conditions on their activities. It may also fine the enterprises concerned, under the supervision of the WAEMU Court of Justice.<sup>129</sup>

130. As far as implementation is concerned, the Commission's interventions are few in number (Table III.8), given the size of the economic area under its responsibility. In order to make better use of its limited administrative resources and improve the detection rate of anti-competitive agreements, the Commission could establish a leniency and/or immunity programme for economic operators which report an undetected infringement or provide substantial evidence to facilitate an ongoing investigation. In fact, the Commission's competition experts are called upon to intervene in the elimination of obstacles to intra-community trade arising from the non-implementation of other Union frameworks, such as the regulation providing for mutual recognition of national standards (section (2)(v)), which increases their workload. The Commission also appears to favour the friendly settlement of disputes over the imposition of fines or other sanctions which could have a more marked disciplinary effect on anti-competitive behaviour. Moreover, the interface between the Commission's powers and those of the national sectoral regulators remains to be defined.

**Table III.8**  
**Implementation of the community competition regime, 2005-2011**

	2005	2006	2007	2008	2009	2010	2011
Total number of complaints/requests, including	2	0	1	0	0	0	0
Requests for negative clearance	2	0	1	0	0	0	0
Complaints/requests from individuals	0	0	0	0	0	0	0
Advisory opinions (in all fields)	..	..	..	..	..	..	..
Initiation of reviews and investigations, including	1	1	0	0	2	0	0
Concentrations (mergers)	0	0	0	0	0	0	0
Abuse of dominant position	0	0	0	0	0	0	0
Anti-competitive agreements	0	0	0	0	0	0	0
Practices attributable to member States	1	1	0	0	2	0	0
Reviews and investigations conducted, including	3	1	0	0	2	0	0
Negative clearances	2	0	0	0	0	0	0
Abuse of dominant position	0	0	0	0	0	0	0
Anti-competitive agreements	0	0	0	0	0	0	0
Practices attributable to member States	1	1	0	0	2	0	0
Advisory opinions (in all fields)	..	..	..	..	..	..	..
Total amount of fines/pecuniary penalties	0	0	0	0	0	0	0
Appeals (against Commission decisions), including	0	0	0	0	0	0	0
Decisions reversed/modified on appeal	0	0	0	0	0	0	0

.. Not available.

Source: WAEMU Commission.

131. Since early 2003, the policy on State aid within WAEMU has been governed by Article 88(c) of the Treaty and an implementing regulation.<sup>130</sup> "Official aid" is defined as any measure which:

<sup>129</sup> 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.

"(i) 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 (ii) thus bestows an advantage on certain enterprises or certain products". 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. However, some official aid programmes are prohibited as a matter of course. This is the case, for example, for 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.

132. Member States are required to notify the Commission of any new official aid programme so that it can be reviewed; the Commission may also initiate proceedings *ex officio* when it possesses information concerning allegedly illegal aid. If a review leads to a finding of illegality, the official aid programme must be scrapped. In order to ensure compliance with the notification obligation, the WAEMU Commission has decided to carry out an annual survey of State aid; any aid that has not been notified becomes illegal.

133. ECOWAS is also introducing a regulatory and institutional mechanism on competition. To this end, Additional Acts<sup>131</sup> were adopted in 2008, but are not yet being actually implemented. However, the allocation of responsibilities and the procedures for cooperation between the WAEMU Commission and ECOWAS regional competition authority remain to be defined.

134. In addition, since 2009 the WAEMU Commission has been participating in the annual meeting of the International Competition Network. A cooperation agreement has been signed with UNCTAD for capacity building in the Commission and the member States.

## **(ii) Government procurement**

135. Some basic principles for government procurement within WAEMU were established by the Code of Transparency in the Management of Government Finance, adopted in 2000.<sup>132</sup> Under the Code, member States undertake to ensure that public contracts are executed "economically, transparently and effectively"; to guarantee freedom of access to the procurement process for all candidates that meet the selection criteria; and to 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.

136. 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.<sup>133</sup> The provisions of the WAEMU directives concern the award, execution and regulation of public contracts and the award of public service concessions.<sup>134</sup> The directives also define the powers and procedures of national authorities; the community framework provides for the separation of control and regulatory functions and contains provisions on sanctions and non-jurisdictional application for review. However, the member States retain autonomous responsibility for defining

<sup>130</sup> Regulation No. 04/2002/CM/ UEMOA of 23 May 2002.

<sup>131</sup> Additional Acts A/SA.1/06/08 and A/SA.2/06/08 of 19 December 2008 establishing the community competition rules and ECOWAS regional competition authority. Viewed at: [http://www.comm.ecowas.int/dept/stand.php?id=i\\_i1\\_act\\_add&lang=en](http://www.comm.ecowas.int/dept/stand.php?id=i_i1_act_add&lang=en).

<sup>132</sup> Directive No. 02/2000/CM/UEMOA of 29 June 2000.

<sup>133</sup> Directives No. 04/2005/CM/UEMOA and No. 05/2005/CM/UEMOA of 9 December 2005.

<sup>134</sup> External financing contracts are subject to the community rules in so far as they are not contrary to the provisions of the financing agreements. Government procurement relating to national security is excluded.

national public procurement thresholds, which differ from community thresholds in respect of the publication of tender notices.

137. 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. The framework lays down an obligation to notify the WAEMU Commission in order to ensure publicity at subregional level. The community thresholds defined for this purpose, and the mechanism and regional system for public procurement management, have not yet been the subject of a decision by the WAEMU Commission and are therefore not yet operational. Any discrimination against nationals of WAEMU member States is prohibited. Moreover, a preference (not exceeding 15 per cent of the amount of the bid) has been introduced in favour of any bid submitted by a community enterprise, in place of preferences for nationals.<sup>135</sup>

138. Côte d'Ivoire, Guinea-Bissau and Togo, 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.

139. By the end of 2007, all the member States should have transposed the community provisions on government procurement into their respective national codes; to date, only Guinea-Bissau has not yet adopted a national code. At the regional level, the Regional Government Procurement Observatory (ORMP) has been set up to monitor and assess the quality and performance of the national system. A study has been carried out on the definition of the financing conditions of the National Procurement Regulatory Authorities (ARMP). Moreover, a study is under way to harmonize the working methods of the ARMP, which currently exhibit a number of inconsistencies in terms of both their constitution and their practices.

### **(iii) Protection of intellectual property rights**

140. All the WAEMU countries, including Cote d'Ivoire, Guinea-Bissau and Togo, are signatories to the Bangui Agreement (1977) introducing a uniform law and creating a common industrial property office, the African Intellectual Property Organization (OAPI).<sup>136</sup> The various intellectual property subject-matters covered by the Agreement are governed by annexes which have the status of national law for each of the member States.

141. The Bangui Agreement, as revised in February 1999, has been in force since 28 February 2002; at that date, its scope related to: 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), copyrights and related rights (Annex VII), and protection

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<sup>135</sup> The winner of a government procurement contract may not subcontract more than 40 per cent of its total value. However, bidders that undertake to subcontract at least 30 per cent of the total of the contract to a national enterprise may benefit from a preference margin (not exceeding 5 per cent) in addition to the community preference.

<sup>136</sup> The other parties to the Bangui Agreement are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea, Gabon, Guinea, Mali, Mauritania, Niger and Senegal. Viewed at: <http://www.oapi.int/index.php/en/aipo/etats-membres>.



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 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 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 and 28 November 2001.<sup>137</sup> Terms of protection established by the Agreement are defined in accordance with the WTO TRIPS Agreement (Table III.9).

**Table III.9**  
**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	...
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 <sup>a</sup>	10 years
Protection of plant varieties	25 years

... Not available.

n.a. Not applicable.

a The revised Bangui Agreement is not in force.

Source: WTO Secretariat.

142. In principle, the revised Bangui Agreement (1999) does not authorize parallel imports with regard to patents.<sup>138</sup> However, ex officio licences may be granted in cases of vital interest to the national economy, public health or national defence.<sup>139</sup>

143. 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.

<sup>137</sup> WTO document IP/Q/GAB/1, IP/Q2/GAB/1, IP/Q3/GAB/1, IP/Q4/GAB/1 of 18 May 2004.

<sup>138</sup> Annex I (Article 7) of the revised Bangui Agreement (1999).

<sup>139</sup> Article 56 of the revised Bangui Agreement (1999).

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

#### IV. COMMON TRADE POLICIES AND PRACTICES BY SECTOR

##### (1) AGRICULTURAL, FORESTRY AND LIVESTOCK PRODUCTS

145. In all West African countries, agriculture, including livestock breeding, fishing and forestry, is the main economic activity. Nevertheless, with the exception of Côte d'Ivoire, until recently their respective governments did not attach sufficient importance to developing an agricultural policy that would substantially increase production and productivity, hence the lack of progress in terms of food security, revenue and living conditions for the rural population. Since the Maputo Declaration in 2003, however, agricultural growth has been declared an objective, although it only really started to be targeted in 2008 when soaring food prices on global markets highlighted the strong dependence of many African countries on imports of food products.

146. The measures adopted since 2007-2008 to boost agricultural growth have mainly consisted of distributing subsidized seeds and fertilizer and, to a lesser extent, equipment. The principal measures taken at the border have been exemption from customs duty and VAT at importation in order to facilitate imports of basic food products or inputs. In Côte d'Ivoire, producers in export subsectors also receive support, advice and assistance.

##### (i) Agricultural policies in ECOWAS and NEPAD

147. Faced with the challenge of guaranteeing the food security of their populations, in Maputo in 2003 African Heads of State undertook to set aside at least 10 per cent of their national budgets for agriculture, with the aim of achieving annual agricultural growth of 6 per cent. This commitment is set out in the Comprehensive Africa Agriculture Development Programme (CAADP), the agricultural component of the New Partnership for Africa's Development (NEPAD). In 2005, ECOWAS published its Regional Agricultural Policy for West Africa - ECOWAP<sup>140</sup>, whose main objective is to guarantee food security for a population that is expected to double between 2005 and 2030. In addition to policy planning and action programmes, ECOWAS is also actively engaged in organizing workshops and forums for discussion and exchange of views.

148. In the area of planning, ECOWAS supports the introduction of the CAADP in each member country. It determines, in particular, a regional framework for planning national agricultural investment programmes (NAIPs) developed at the regional level.<sup>141</sup> The principle underlying the NAIPs is to define activities for development to reduce poverty. This definition required an in-depth analysis of the growth trend in the economy in general and in the agricultural sector in particular. For this purpose, the methodological approach adopted comprised four stages: (i) the diagnosis and analysis of the performance of current and recent programmes; (ii) modelling to identify the sources of growth and financing required in order to achieve the growth targets; (iii) preparation of investment programmes to promote the sector's development; and (iv) the drafting and signature of a pact in the course of a round table with technical and financial partners. Trade, notably international trade, was not at the forefront of these considerations.

149. With regard to international trade, ECOWAS negotiates EPAs with the European Union (Chapter II(4)), convinced of the need to give domestic industries in member countries greater protection. Accordingly, in January 2008, the Heads of State of ECOWAS member countries decided to introduce a "fifth" MFN tariff band, at a rate of 35 per cent. This rate is to apply to a list of

<sup>140</sup> Viewed at: [http://www.comm.ecowas.int/dept/d/d1/fr/documents/1-Politiques%20agricoles/ECOWAP/Decision\\_adoption\\_politique2005.pdf](http://www.comm.ecowas.int/dept/d/d1/fr/documents/1-Politiques%20agricoles/ECOWAP/Decision_adoption_politique2005.pdf).

<sup>141</sup> Online information from ECOWAS. Viewed at: <http://www.ecowas.int/>.

"sensitive" goods, consisting mainly of domestic agri-food products. In March 2012, negotiations were still under way to define the goods to be included in this list.

**(ii) Agricultural policies within WAEMU**

150. Efforts are continuing within WAEMU for effective coordination of agricultural policy objectives and instruments and to facilitate trade in agricultural products. WAEMU has laid particular emphasis on the link between combating poverty and developing trade, and is striving to introduce measures to eliminate the many regulatory barriers (various charges, rules of origin, standards, approvals, restrictions on cross-border transhumance), as well as informal obstacles (illegal road blocks, cutting off roads, etc.) to the free intra-community movement of agricultural products. These obstacles indeed limit the development of regional markets for such products and hence opportunities to increase income.

151. The principal WAEMU legislation for agriculture, including livestock-raising, fishing and forestry, dates from 2001<sup>142</sup>: the Union Agricultural Policy (PAU) gives a leading role to deepening the agricultural common market and integrating the region's agriculture into the regional and global markets. The PAU's objective is to make a sustainable contribution to meeting the population's food needs, to its economic and social development and to reducing poverty.

152. The PAU had been awaiting its principal financing tool since 2006: the Regional Agricultural Development Fund (FRDA), intended to finance regional upgrading projects.<sup>143</sup> The FRDA has been operating since 2011, with a forward budget of over CFAF 11 billion (€16.7 million). Infrastructure (storage, cattle markets, abattoirs) and animal health (Newcastle disease and contagious bovine pleuro-pneumonia (CBPP)) have been the first beneficiaries.

153. In 2007, the WAEMU Commission identified five priority subsectors: rice, livestock and meat, poultry, maize and cotton. A master plan to raise the competitiveness of these subsectors was adopted by the WAEMU Council of Ministers in 2007.<sup>144</sup> In order to make this master plan operational and ensure that it is implemented under the best possible conditions, the WAEMU Commission conducted two studies which resulted in the preparation of management models, although these have not yet been implemented.

154. With respect to international trade, the PAU provides for a coordination, information and decision-making support body for the international trade negotiations on agriculture. WAEMU members have already worked out a number of joint negotiating positions on agriculture at various WTO ministerial conferences.<sup>145</sup> With regard to tariff protection, local products are generally protected from competition from imports by the highest CET rate, i.e. 20 per cent, plus other the taxes levied by customs, which add 2.5 percentage points to the CET (Chapter III(2)). MFN imports<sup>146</sup> may

<sup>142</sup> Additional Act No. 03/2001 adopting the WAEMU agricultural policy. Viewed at: [http://www.uemoa.int/actes/2001/acte\\_additionnel\\_03\\_2001.htm](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/WAEMU).

<sup>143</sup> Additional Act No. 03/2006. The criteria for intervention, organization and operation of the FRDA are determined in Regulation No. 06/2006/CM/UEMOA.

<sup>144</sup> See Regulation No. 12/2007/CM/UEMOA on the creation and operating procedures of the regional consultative committee for the agricultural subsectors within WAEMU; and Regulation No. 06/2007/CM/UEMOA adopting the master plan for priority agricultural subsectors within the WAEMU area.

<sup>145</sup> Online information from WAEMU. Viewed at: <http://www.uemoa.int>.

<sup>146</sup> Fish and fish-based products are excluded from the scope of the TCI.

be subject to a special import tax (TCI) of 10 per cent, which is temporary and applied at the national level (Chapter III(2)) and, in practice, is generally applied to agricultural imports.<sup>147</sup>

155. Among members of WAEMU (and ECOWAS), in principle local agricultural products have entered completely free of duties and taxes since July 1996 (Chapter III(2)).<sup>148</sup> According to a number of observers, however, the situation on the ground is different and practical application of this legislative framework remains a challenge. One of the main barriers is the questioning of community origin of goods by customs officials at border posts. This is compounded by illegal quantitative restrictions, unwarranted controls, long and repetitive formalities at borders, etc. To remedy these constraints, WAEMU members are gradually implementing trade facilitation programmes, including for road transport and transit, together with a Single Window and juxtaposed border control posts (on the borders of two member States), grouping all the police and customs services.

### **(iii) Reform of property law and foreign direct investment**

156. Aware that land is capital for agriculture and that security of land tenure to a large extent conditions access to financing for agricultural activities, countries in the region have, to varying degrees, undertaken to reform customary law and the provisional concession systems that are still typical of a large number of legislative frameworks in the region. This process is only in the early stages, however, and lacks financing. Making land tenure more secure and using it as collateral would nevertheless help many farms to obtain financing, whereas the absence of title deeds currently limits access to financing.

157. With financing from the World Bank and technical support from the Rural Hub, in 2005 the Commission carried out a study on rural land tenure, updating it in 2009. It plans to set up a regional monitoring centre for rural land tenure, with support from the AFD.

### **(iv) Coffee and cocoa**

158. Côte d'Ivoire and Togo belong to the International Coffee Organization (ICO), which constitutes a forum for exchange of views, consultation, statistical and analytical monitoring, for exporting and importing countries which account for 97 per cent of production and over 80 per cent of global consumption of coffee.<sup>149</sup> The latest International Coffee Agreement dates from 2007. Côte d'Ivoire and Togo also belong to the International Cocoa Organization (ICCO), established in London in 1973. The 2001 International Cocoa Agreement has recently been replaced by the 2010 International Cocoa Agreement, published under the auspices of UNCTAD.<sup>150</sup> According to the ICCO, the new Agreement, which will come into force in October 2012, will improve the procedures for developing, approving and following up projects and will give the Consultative Board on the World Cocoa Economy a greater role to play, while at the same time improving its market survey functions.

<sup>147</sup> Regulation No. 6/99/CM/UEMOA of 17 September 1999. The TCI appears to be currently imposed on imports of bovine meat; poultry meat and edible offal of HS No. 01.05; condensed milk; potatoes; onions; bananas; maize; rice; sorghum; millet; wheat flour; unrefined vegetable oils; refined vegetable oils; sugar; tomato concentrate; cigarettes and cigarillos; and fruit juice.

<sup>148</sup> Online information from WAEMU. Viewed at: <http://www.uemoa.int/uemoa/historique.htm>.

<sup>149</sup> Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:186.0013:0029:EN:PDF>; and <http://www.ico.org/>.

<sup>150</sup> Viewed at: <http://www.icco.org/pdf/agree10english.pdf>.

159. The trade measures applied to trade in coffee and cocoa by Côte d'Ivoire and Togo are set out in the Annexes because they are specific to each country. Overall, the comparison shows that producer prices are much higher in Togo than in Côte d'Ivoire (Table IV.1). Between 2000 and 2010, there was a striking increase in cocoa production in Togo, whereas coffee production has only shown a marked increase since 2008.

**Table IV.1**  
**Indicators for coffee and cocoa production and trade, 1990, 1995, 2000, 2005 and 2008-2010**

	1990	1995	2000	2005	2008	2009	2010
<b>Cocoa</b>							
<b>Côte d'Ivoire</b>							
Production (tonnes)	807,501	1,120,000	1,401,100	1,360,000	1,382,440	1,223,150	1,242,300
Share of total production (%)	31.9	37.4	41.5	33.9	32.7	29.5	29.4
Value of exports (€ thousands)	563,951	812,654	914,714	1,187,413	1,202,040	1,861,127	1,880,150
Producer price (CFAF/kg)	..	320	313	329	355	401	..
<b>Togo</b>							
Production (tonnes)	6,814	6,000	6,600	53,000	111,000	105,000	101,500
Share of total production (%)	0.3	0.2	0.2	1.3	2.6	2.5	2.4
Value of exports (€ thousands)	11,924	4,583	5,061	16,206	151,787	204,675	..
Producer price (CFAF/kg)	..	550	385	1,112	1,323	1,340	..
<b>Coffee</b>							
<b>Côte d'Ivoire</b>							
Production (tonnes)	285,164	194,968	380,000	230,000	173,118	142,945	100,000
Share of total production (%)	4.7	3.5	5.0	3.1	2.1	1.7	1.2
Value of exports (€ thousands)	187,784	259,430	264,068	55,840	90,789	96,323	128,774
Producer price (CFAF/kg)	..	700	318	250	518	592	..
<b>Togo</b>							
Production (tonnes)	12,800	12,080	15,200	7,200	8,280	12,240	15,000
Share of total production (%)	0.2	0.2	0.2	0.1	0.1	0.1	0.2
Value of exports (€ thousands)	13,985	15,952	12,440	3,464	16,450	3,770	4,069
Producer price (CFAF/kg)	..	650	350	255	246	249	..

.. Not available.

Source: FAOStat (date accessed: January 2012).

## (v) Cotton

160. There has been a sharp decline in cotton production in Côte d'Ivoire and Togo over the past decade (Table IV.2). In Côte d'Ivoire, the highest levels of production were recorded in 1999 (177,000 tonnes) and in 2002 (172,000 tonnes). Production fell in 2006. In Togo, there was a virtually constant increase in cotton production between 1990 (41,000 tonnes) and 2004 (72,000 tonnes), before it collapsed from 2005 onwards (27,000 tonnes) up to 2009, since when it has recovered. The national trade measures taken in this sector are described in the respective Annexes.

**Table IV.2**  
**Indicators for production of cotton lint, 1990, 1995, 2000, 2005 and 2007-2010**

	1995	2000	2005	2007	2008	2009	2010
<b>Côte d'Ivoire</b>							
Production (tonnes)	92,757	122,518	116,530	52,415	53,145	76,110	96,475
Share of total production (%)	0.47	0.96	0.57	0.25	0.22	0.25	0.34
Value of exports (€ thousands)	105,775	160,129	112,517	71,414	54,643	48,767	94,965
Producer price (CFAF/kg)	364	210	140	150	185	205	..
<b>Guinea-Bissau</b>							
Production (tonnes)	1,000	1,086	1,947	2,000	1,653	1,752	1,500
Share of total production (%)	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Value of exports (€ thousands)	986	1,299	191	174	162	171	..
Producer price (CFAF/kg)	..	..	..	..	..	..	..
<b>Togo</b>							
Production (tonnes)	23,593	48,740	27,127	19,947	13,137	11,634	17,640
Share of total production (%)	0.21	0.26	0.12	0.09	0.06	0.06	0.05
Value of exports (€ thousands)	68,971	26,022	21,496	18,301	15,088	15,910	13,544
Producer price (CFAF/kg)	170	200	150	60	160	175	185

.. Not available.

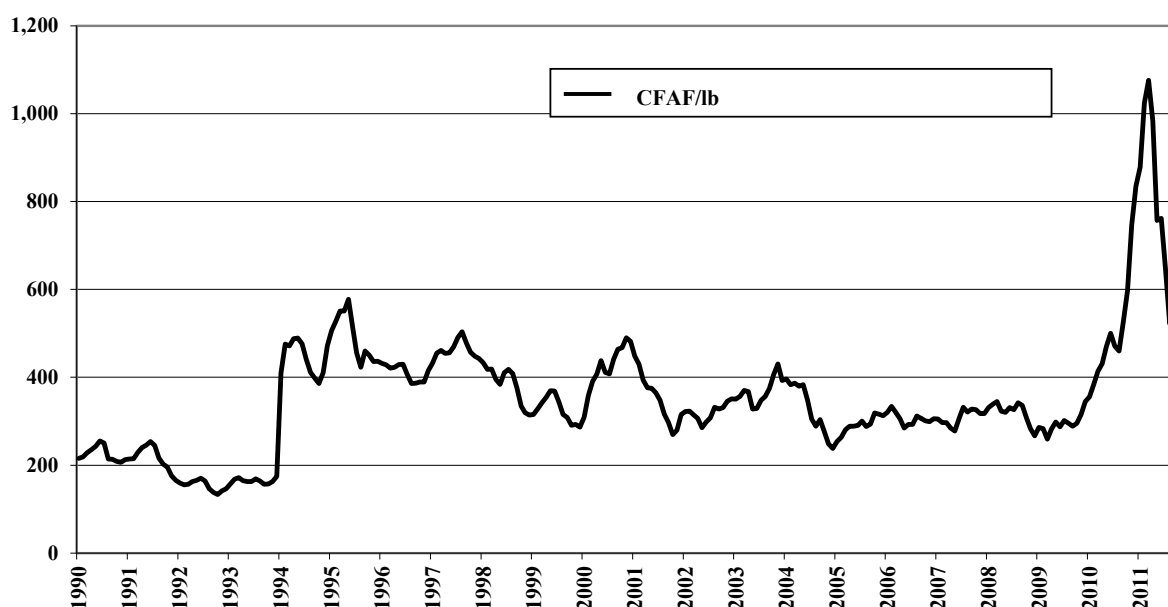
Source: FAOStat (date accessed: January 2012); Intercoton and Nouvelle société cotonnière du Togo.

161. As mentioned above, since 2007 cotton has been one of the five priority subsectors of WAEMU's PAU. A master plan to improve the competitiveness of these subsectors was adopted by the WAEMU Council of Ministers in 2007. Global cotton prices have tended to fall over the past 15 years, with sharp variations during the period 2010-2011 (Chart IV.1). Fluctuations in cotton prices are, in general, determined by supply and demand on the market. Other factors which contribute to a lesser extent are competition from synthetic fibres, rising world output of cotton, production or export subsidies by certain countries when prices fall (see below), and decreasing production costs in several countries thanks to the use of genetically modified seeds. 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 trading in cotton is essentially in United States dollars.

162. As mentioned when their trade policies were reviewed in 2010, three WAEMU members, namely Benin, Burkina Faso and Mali (which, together with Chad, compose the C-4), consider that the support given to cotton producers by some WTO Members creates distortions in international markets. Confronted with this state of affairs, in 2003 these four countries adopted a common position under the Sectoral Initiative in Favour of Cotton.<sup>151</sup> They primarily request WTO Members that use domestic production support measures and export subsidies for cotton to remove them and to give duty- and quota-free access for cotton exports from least developed countries (LDCs) as of the start of the implementation period. In December 2011, the Ministers responsible for trade in the C-4 countries once again appealed to WTO Members to make practical and tangible progress on the cotton issue.

<sup>151</sup> WTO document TN/AG/GEN/4 of 16 May 2003.

**Chart IV.1**  
**Global cotton prices<sup>a</sup>, January 1990 - October 2011**



<sup>a</sup> "A" index. For details of the estimate of this index see the website of Cotlook, Ltd.

Source: National Cotton Council of America. Viewed at: <http://www.cotton.org/econ/prices/monthly.cfm>. (December 2011).

**(vi) Cashew nuts**

163. All three countries produce cashew nuts (Table IV.3). While this crop is the only agricultural export of Guinea-Bissau, Côte d'Ivoire is one of the leading global exporters (after Viet Nam, India, Nigeria and Brazil). The national trade measures concerning this sector are described in the respective Annexes for the two countries. Producer prices are shown in Table IV.3.

**Table IV.3**  
**Principal indicators for production of cashew nuts, 1990, 1995, 2000 and 2005-2010**

	1990	1995	2000	2005	2006	2007	2008	2009	2010 <sup>a</sup>
<b>Côte d'Ivoire</b>									
Production (tonnes)	6,500	39,400	63,380	185,000	235,000	280,000	330,000	350,000	370,000
Share of total production (%)	0.9	3.5	3.3	5.8	6.7	7.6	8.4	10.2	10.3
Value of exports (€ thousands)	3,162	14,477	45,101	79,475	72,579	74,288	117,150	122,156	234,539
Producer price (CFAF/kg)	..	190	350	177	175	100	95	80	..
<b>Guinea-Bissau</b>									
Production (tonnes)	30,000	29,007	72,725	89,000	95,000	98,000	81,000	64,653	91,100
Share of total production (%)	4.1	2.6	3.7	2.8	2.7	2.7	2.1	1.9	2.5
Value of exports (€ thousands)	9,113	15,191	53,053	69,072	35,207	39,891	64,650	72,393	..
Producer price (CFAF/kg)	..	..	300	250	100	150	300	186	273
<b>Togo</b>									
Production (tonnes)	587	750	320	616	700	650	700	559	790
Share of total production (%)	0.08	0.07	0.02	0.02	0.02	0.02	0.02	0.02	0.02
Value of exports (€ thousands)	186	115	0	14	506	11	10	17	235

.. Not available.

<sup>a</sup> Export value (2010); Côte d'Ivoire - Comtrade. Togo - Government data.

Source: FAOStat (date accessed: January 2012).



**(vii) Forestry products**

164. WAEMU currently has no common regulations for forestry products. Nevertheless, in 2008 a common policy to improve the environment was adopted (Chapter III(3)). Of the three countries, only Côte d'Ivoire has an internationally active timber industry (Annex on Côte d'Ivoire).

**(viii) Livestock products**

165. There is little production of animals in the three countries and, moreover, there has been no notable increase since 2005 (Table IV.4). In the three countries, the authorities have recognized that the animal production subsectors have been greatly neglected over the past decade in favour of commercial crops. The per capita production of bovine animal products (meat, milk) is much higher in Guinea-Bissau than in the two other countries.

**Table IV.4**  
**Animal production, 2005-2010**  
(Tonnes)

	2005	2006	2007	2008	2009	2010	Per capita production (2009, kg)
<b>Côte d'Ivoire</b>							
Bovine meat	29,612	31,145	28,928	30,678	33,558	35,000	1.8
Poultry meat	22,521	22,346	22,576	22,786	23,388	24,000	1.2
Eggs in the shell (millions)	580	560	500	608	600	640	32.4 <sup>a</sup>
Cow milk, whole, fresh	29,265	29,850	26,473	30,447	31,148	32,000	1.6
Meat of goats and sheep	8,602	8,768	6,436	9,633	9,312	11,519	0.6
<b>Guinea-Bissau</b>							
Bovine meat	5,247	5,346	5,445	6,652	6,149	6,353	4.2
Poultry meat	1,477	1,540	1,582	1,593	1,638	1,638	1.1
Eggs in the shell (millions)	23.5	25	26	27	28	28	18.5 <sup>a</sup>
Cow milk, whole, fresh	14,450	14,960	15,615	16,303	16,867	17,340	11.4
Meat of goats and sheep	1,716	1,827	1,966	2,097	2,207	2,338	1.5
<b>Togo</b>							
Bovine meat	8,200	8,325	8,531	8,531	8,531	8,531	1.4
Poultry meat	17,600	19,040	20,560	20,136	25,976	28,400	4.7
Eggs in the shell (millions)	160	145	161	174	185	185	30.7 <sup>a</sup>
Cow milk, whole, fresh	9,023	9,293	9,585	9,900	10,206	10,485	1.7
Meat of goats and sheep	7,787	7,942	8,062	8,204	8,339	8,339	1.4

a Number of eggs.

Source: FAOStat (date accessed: April 2012).

166. All three countries import livestock and animal products, particularly from Burkina Faso, Mali, and other WAEMU Sahel countries. The traditional livestock-raising methods that still exist in the Sahel countries are largely based on transhumance, including transhumance across national borders, which is significantly impaired by the abusive taxation at the Union's internal borders. This is an encouragement to informal trade and makes it difficult to impose health controls. The Confederation of National Livestock/Meat Federations of WAEMU member

countries (COFENAVI) is working to remove these obstacles, with the technical and financial support of the Agribusiness and Trade Promotion (ATP) subregional programme.<sup>152</sup>

167. The Commission has introduced programmes to improve animal production in its member States, including harmonization of the legislation on veterinary pharmaceuticals. The texts adopted by the Council of Ministers include Directive No. 7/2006/CM/UEMOA, which provides for the following: control of the import and movement of veterinary medicines within the Union; their marketing; and control of the criteria for opening up and operating facilities for the manufacture, possession for commercial purposes, import and retail and wholesale distribution of veterinary medicines. This Directive is not yet effectively applied by all States.

## (2) FISHERIES PRODUCTS

### (i) Overview

168. Table IV.5 provides some statistics on the fisheries products sector in Côte d'Ivoire, Guinea-Bissau and Togo. In general, the small-scale or industrial fishing fleets in the three countries receive little or no support from their governments. The trade in fisheries products is described in the respective Annexes.

**Table IV.5**  
Indicators for the fisheries sector, WAEMU coastal countries

Indicator	Year	Benin	Côte d'Ivoire	Guinea-Bissau	Senegal	Togo
EEZ (km <sup>2</sup> )		33,221	176,254	123,725	158,861	12,045
Length of coastline (km)		120	515	280	531	60
	2001	0.3	80	12	431	23
Catches of fish, crustaceans, cephalopods (thousands of tonnes)	2005	0.4	43	18	422	28
	2009	0.4	48	12	459	27
	2010	..	..	..	..	..
Imports (€ millions)	2009	20.0	254.5	1.1	0.8	7
Exports (€ millions)	2009	0.1	119.2	2.2	169.9	4
Per capita consumption of fisheries products (kg/inh/year)	2007	7.8	12.3	1.2	24.3	7.0

.. Not available.

Source: FAOStat, viewed at: <http://ftp.fao.org/FI/STAT/summary/default.htm>; and information provided by the authorities of Côte d'Ivoire, Guinea-Bissau and Togo.

169. With the exception of the fish going to tuna-processing factories in Côte d'Ivoire, most of the catches from West African waters are offloaded in Europe, either from European vessels returning from their fishing voyages or from cargo ships that have transhipped the catch from vessels that stay in the zone. This is above all a reflection of the more profitable prices on European markets and the vertical integration of the production process, which involves fishing by European vessels and packaging and processing in factories in southern Europe. The profit lost when selling fishing licences allowing offloading and/or processing of catches abroad is today a concern for the national authorities.

<sup>152</sup> 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 in agricultural products in West Africa.

170. Non-conformity with the European Union's health regulations is one of the main constraints on exports. Since October 2008, around a dozen Ivorian processing factories have appeared on the list of facilities authorized to market their products on EU markets.<sup>153</sup> In the case of Togo, since December 2009 the list has only included one factory processing rock lobster.<sup>154</sup> For the moment, Guinea-Bissau has no access to the European Union market for its fisheries products.

171. Fisheries and aquaculture occupy a strategic place in the economy of WAEMU member countries as regards both revenue and food security.<sup>155</sup> There is a major risk of over-fishing (legal or illegal) in the region's fisheries and this constitutes a threat to both food security and the balance of the marine ecology. Cod fishing in Canada in the early 1990s provided a prime example of the devastating and very long-term impact of over-fishing and how difficult it is to estimate. Observers have therefore recommended an overall change in the perception of the marine environment if these countries want to continue benefiting from their fisheries resources in the future.<sup>156</sup>

## (ii) Community measures

172. In 2007, WAEMU members adopted a programme for the development of fishing and aquaculture (Table IV.6), whose aim is to harmonize policies and legislation; evaluate fisheries stocks within WAEMU; collect statistical data and create a regional database; define a regional strategy for negotiating fisheries agreements and the regulation of licensing conditions for Union member States and for non-WAEMU countries; and support for fisheries monitoring, control and surveillance services in the five coastal countries, together with development of intra-community trade in such products.<sup>157</sup>

REPUBLICOFTOGO.COM

<sup>153</sup> Online information from the European Union. Viewed at: [https://webgate.ec.europa.eu/sanco/traces/output/listsPerCountry\\_en.htm#](https://webgate.ec.europa.eu/sanco/traces/output/listsPerCountry_en.htm#).

<sup>154</sup> *Ibid.*

<sup>155</sup> An assessment of agricultural information needs in African, Caribbean and Pacific (ACP) States, West Africa, case study: Guinea-Bissau, Final Report, prepared by Maria José Moura Araújo on behalf of the Technical Centre for Agricultural and Rural Cooperation (CTA), Project No. 4-7-41-207-5/f, 27/07/2006. Viewed at: [http://www.anancy.net/documents/file\\_en/Rapport\\_Final\\_Guinee-Bissau\\_15.12.pdf](http://www.anancy.net/documents/file_en/Rapport_Final_Guinee-Bissau_15.12.pdf). See also: <http://www.ec0d.org/ataoecd/38/51/41642482.pdf>.

<sup>156</sup> "Accords de pêche et libéralisation du commerce international: Le cas de la Guinée-Bissau", Pierre Failler, Balde Bjibril, Hugo Vieira, Virginia Pires Correia, Victorino Nahada. See also the Centre for the Economics and Management of Aquatic Resources (CEMARE), Department of Economics, University of Portsmouth; and the Centre for Applied Fisheries Research (CIPA), Bissau, Guinea-Bissau. Viewed at: [http://www.accordsdepeche.com/fichiers/docs/bibli\\_08/738.pdf](http://www.accordsdepeche.com/fichiers/docs/bibli_08/738.pdf).

<sup>157</sup> [http://www.uemoa.int/Documents/Actes/Annexe\\_Reglement05\\_plan\\_concerte\\_peches.pdf](http://www.uemoa.int/Documents/Actes/Annexe_Reglement05_plan_concerte_peches.pdf).

**Table IV.6**  
**WAEMU laws and regulations on trade in fisheries products**

Legislation	Subject	Website
Regulation No. 05/2007/CM/UEMOA	Agreed management plan for fishing and aquaculture within WAEMU - action programme	<a href="http://www.uemoa.int/Documents/Actes/Annexe_Reglement05_plan_concerte_peches.pdf">http://www.uemoa.int/Documents/Actes/Annexe_Reglement05_plan_concerte_peches.pdf</a>
Regulation No. 04/2007/CM/UEMOA	Regional framework for consultation on the harmonization of policies and legislation of WAEMU member States on fishing and aquaculture	<a href="http://www.uemoa.int/Documents/Actes/Reglement_04_portant_creation_comite_harmonisation_politiques_et_legislations.pdf">http://www.uemoa.int/Documents/Actes/Reglement_04_portant_creation_comite_harmonisation_politiques_et_legislations.pdf</a>
Draft Regulations on the common regime for sustainable management of fisheries resources in WAEMU member States	General fisheries regulations, including: introduction of a suitable framework for the sustainable exploitation and conservation of fisheries resources; regulation of access to fisheries resources; regulation of aquaculture activities; development of fisheries products (health regulations, import, export of fisheries products); introduction of a regional cooperation scheme for scientific research and collection of statistical data on fishing; restoration of degraded ecosystems	Being adopted
Draft Decision creating a regional consultative committee for negotiation of fisheries agreements	Negotiation of fisheries agreements and management of shared fisheries resources. Establishment of a regional strategy for consultation and coordination of negotiations on fisheries agreements and contribution to the development of the fisheries sector in the Union Introduction of a regional structure to provide support for international and regional negotiations on fisheries agreements, composed of representatives of member States, the WAEMU Commission, the private sector and civil society	Being adopted
Draft Regulations on creation of a common regime for fisheries control applicable within WAEMU member States	Establishment of a common regime for monitoring, control and surveillance of fisheries activities within WAEMU in order to ensure sustainable exploitation of fisheries resources Monitoring, control and surveillance of the territorial waters of member States	Being adopted

*Source:* WTO Secretariat, on the basis of information from the WAEMU Commission.

173. Because of the long unbroken line of the West African coast, on the one hand, and the need for information on the status of fisheries resources in the region, on the other, this Programme also covers non-members of WAEMU (Mauritania, Gambia, Guinea and Ghana). Vessels from the Dakar Thiaroye Centre for Oceanographic Research (CRODT) and the National Centre for Fisheries Science at Boussoura (CNHSB) in Conakry have been selected to evaluate fisheries stocks.

174. A website giving statistical data on small-scale maritime and coastal fishing has been set up and can be viewed at: [STATPECHE-UEMOA.org](http://STATPECHE-UEMOA.org). It will receive statistical data on fisheries from member States. A list of indicators and a strategy for framework surveys to be conducted under the Programme have been drawn up and adopted.

175. MFN customs duty on fish is high despite the objective of supporting the local fish preparation and conservation industry. There are customs duties on the fresh or frozen fish used to produce canned fish (and also to feed the population), which are taxed at a rate of 10 per cent, to which other duties and taxes must be added (2.5 per cent). In all, the import duty collected on imports of frozen fish in Togo in 2009, for example, amounted to 30.8 per cent of the c.i.f. value.

176. The maximum nominal tariff protection applies to the production of canned fish and fish fillets, that is, 20 per cent, plus the 1 per cent statistical fee (RS) and the 1 per cent community solidarity levy (PCS). There is a fisheries free-zone regime in Côte d'Ivoire for exporting firms.

**(3) MINING AND ENERGY**

177. Over the past decade, several large-scale energy and mining projects have been launched in West Africa, on the one hand to take advantage of the wealth of its subsoil, and on the other to address the current energy crisis in several countries in the region that is hampering their economic development. WAEMU member States in particular have envisaged a number of regional solutions to overcome the energy crisis, set out in a Regional Sustainable Energy Initiative (IREN) published in 2008 (Table IV.7). The programme defined for implementing the IREN comprises three successive phases: (i) to make energy available over the period 2010-2012; (ii) to make energy competitive in the WAEMU area over the period 2013-2020; and lastly (iii) to provide a sustainable supply of energy over the period 2021-2030.

**Table IV.7**  
**WAEMU Decisions relating to the energy sector**

Legislation/website
<p>Directive No. 06/2001/CM/UEMOA on the harmonization of taxation of petroleum products within WAEMU</p> <p>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</p> <p>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</p> <p>Decision No. 06/2009/CM/UEMOA adopting the WAEMU "Regional Sustainable Energy Initiative" (IREN) Strategy</p> <p>Annex to Decision No. 06/2009/CM/UEMOA adopting the WAEMU "Regional Sustainable Energy Initiative" (IREN) Strategy</p> <p>Decision No. 07/2009/CM/UEMOA on the implementing procedures for the WAEMU "Regional Sustainable Energy Initiative" (IREN) Strategy</p> <p>Decision No. 08/2009/CM/UEMOA creating the Energy Development Fund (FDE)</p>

Source: Online information from WAEMU, *Les Décisions de l'UEMOA*. Viewed at: [http://www.uemoa.int/actes/index\\_dec.HTM](http://www.uemoa.int/actes/index_dec.HTM).

178. In addition, Côte d'Ivoire and Togo are candidates for the Extractive Industries Transparency Initiative (EITI), but not Guinea-Bissau.<sup>158</sup>

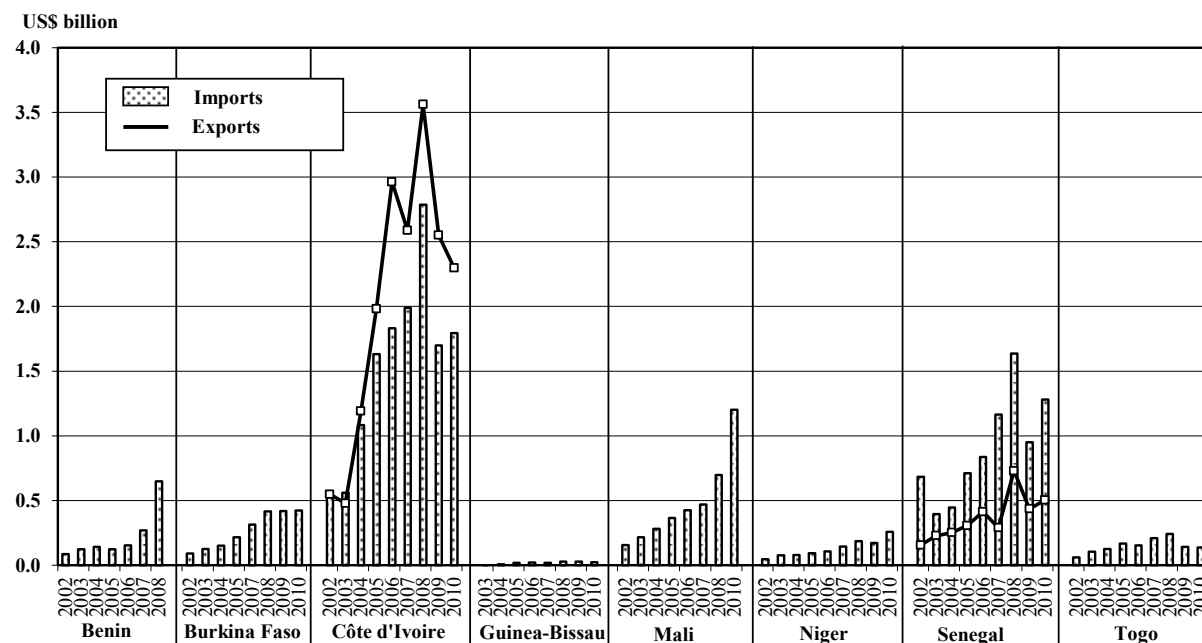
**(i) Petroleum and gas products, and coal**

179. Most Western African countries are net importers of petroleum products. Only Côte d'Ivoire has surpluses.<sup>159</sup> The countries of West Africa have therefore suffered from the steep rise in oil prices (Chart IV.2). The regulations in effect in Côte d'Ivoire, Guinea-Bissau and Togo are described in the respective Annexes.

<sup>158</sup> Online information from EITI. Viewed at: <http://eiti.org/fr>.

<sup>159</sup> According to the Government of Niger, the sub-surface contains the equivalent of 320 million barrels of oil and 10 billion m<sup>3</sup> of gas (WTO, 2009).

**Chart IV.2**  
**Petroleum trade<sup>a</sup> in WAEMU countries, 2002-2010**



<sup>a</sup> HS 2709 and 2710.

Note: Benin: Estimates for the year 2007 and 2008.

Source: UNSD, Comtrade database, and data provided by the authorities.

180. The West African Gas Pipeline, begun in 2000, is now operational; it should significantly increase the supply of natural gas to Benin, Ghana, and Togo, linking Lagos (Nigeria) to Takoradi (Ghana), with branches to Cotonou (Benin), Lomé (Togo) and Tema (Ghana). This gas pipeline is for the most part under the sea offshore and has potential capacity of 450 million m<sup>3</sup>, although current flow is said to be insufficient to supply all the countries. In March 2012, Ghana was the only country supplied. The pipeline is operated by a consortium of international private companies and State-owned enterprises: the Nigerian National Petroleum Corporation (25 per cent); the Volta River Authority (16 per cent); the Benin Gas Company (2 per cent); and the Togolese Gas Company (2 per cent).

181. As regards the taxation of imports, MFN customs duty of 10 per cent is levied on white products (petrol, gas oil) and 5 per cent on black products (diesel, fuel oil). The average tariff on crude oil and natural gas is 3.8 per cent, and that on refined products is 7.4 per cent, compared to 12.1 per cent on average in the manufacturing sector (Chart III.1). In addition to the CET and VAT, a non-*ad valorem* tax is levied on petroleum products (Chapter III(2)); the WAEMU member States are free to fix the levels, but are required progressively to narrow the gap between individual products. WAEMU's goal remains to harmonize prices at the pump, 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 among different products within each country.

182. By 31 December 2007, the excise gap between gas oil and regular petrol should have been eliminated; for other petroleum products, the gap should not be more than CFAF 100. Direct subsidies and cross-subsidies for the consumption of petroleum products should have been eliminated within a period of five years, ending on 31 December 2008.<sup>160</sup> This provision does not, however, concern direct subsidies through enterprises "when they do not distort free competition".<sup>161</sup> In practice, the taxation of petroleum products in the three countries concerned does not comply with the community provisions. Discussions are still under way.

## (ii) Other mining products

183. The community Mining Code (CMC), adopted by WAEMU on 23 December 2003, was designed to serve as a common framework for the drafting of member countries' mining legislation.<sup>162</sup> 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 gaseous hydrocarbons. This Code has been described in previous TPRs of WAEMU member States.<sup>163</sup> Investors may cite the CMC in the courts.

184. According to the Commission, Togo and Guinea-Bissau have revised their national Codes to bring them into line with the CMC and their regimes are now consistent with the latter. Côte d'Ivoire is currently revising its national Code.

185. The CMC guarantees, *inter alia*, the freedom to import goods, materials, machinery, equipment, spare parts and consumables subject to compliance with the WAEMU Customs Code. Capital goods imported for the purpose of exploration benefit from the temporary admission procedure throughout the period of validity of the mining permit at the exploration stage. The materials, spare parts and fuel and lubricants needed for the operation of the capital goods used for exploration work are fully exempt from customs duties and charges, with the exception of the PCS and the RS.

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

## (iii) Electricity

187. Over the past decade, public and private investment in the electricity sector in the West African region has been inadequate to meet growing demand, and the WAEMU countries, including Côte d'Ivoire, Guinea-Bissau and Togo, are currently in the midst of an unprecedented crisis: in some cases, the accumulated periods of load-shedding sometimes exceed 12 hours a day.

188. The IRED emergency programme (see above) is built around three basic components: a programme to expand the supply of electricity (thermal generation and interconnection of the grid), which has financed an emergency project in each member country for a total amount of around CFAF 177 billion (€270 million); a regional energy saving programme to enable WAEMU to

<sup>160</sup> Directive No. 01/2007/CM/UEMOA of 6 April 2007.

<sup>161</sup> Article 12 of Directive No. 6/2001/CM/UEMOA.

<sup>162</sup> 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](http://www.uemoa.int/actes/2003/CM22_12_03/reglement_18_2003_CM_UEMOA.htm). The Mining Code does not cover quarrying activities.

<sup>163</sup> See, for example, WTO (2010).

undertake energy efficiency activities in government departments, households and industry, including the dissemination of low energy consumption bulbs; and better governance in the electricity sector in terms of the quality of management of national electricity companies and of regulation.

189. Broadly speaking, the national electricity markets are too small to attract private investment so the interconnection of electricity among West African countries is essential. The ECOWAS West African Power Pool (WAPP) aims to interconnect the West African countries.<sup>164</sup> Among recent developments, the BOAD has partly financed a project to interconnect the electricity grids of Côte d'Ivoire and Mali, which was to start operating in 2011. So far, the following interconnections have not yet been completed: Senegal-Guinea-Bissau; Burkina Faso-Benin; Burkina Faso-Togo; and Burkina Faso-Mali (project under way). The other electrification projects that have started are the following:

- Benin: construction of a 161 kV electricity interconnection Bembéréké-Kandi-Malanville;
- Burkina Faso: building production capacity in the Komsilga power station by 20 MW;
- Côte d'Ivoire: implementation of the emergency phase of the programme to boost the electricity sector;
- Guinea-Bissau: building of a 15 MW diesel thermal power station at BOR (Prabis) and rehabilitation of five (05) DEUTZ diesel generators of 1 MVA each;
- Mali: building of a national dispatching centre in Bamako and doubling capacity at the Sotuba hydroelectric power station;
- Niger: raising production capacity at the Goudel power station by 20 MW;
- Senegal: construction of a 225 kV Senelec loop, and a 40 MW thermal power station;
- Togo: building of a 161 kV line linking the cities of Lomé and Atakpamé, and 33 kV and 20 kV medium voltage lines and low voltage lines to connect larger centres to the national electricity grid.

#### **(4) MANUFACTURING SECTOR**

190. The number of industrial enterprises in WAEMU is small, with about 2,500 enterprises located mainly in Côte d'Ivoire and Senegal. According to UNIDO<sup>165</sup>, during the decade, Côte d'Ivoire's industrial fabric declined sharply, even though it remains one of the most important in Africa. Per capita manufacturing value added has declined in particular, together with the manufacturing sector's share of GDP, indicating that the sector has been more severely affected than others by the crisis. Togo and Guinea-Bissau each have manufacturing sectors that are little developed, with value added of some US\$10-15 per capita at constant prices and per year (Chart IV.3).

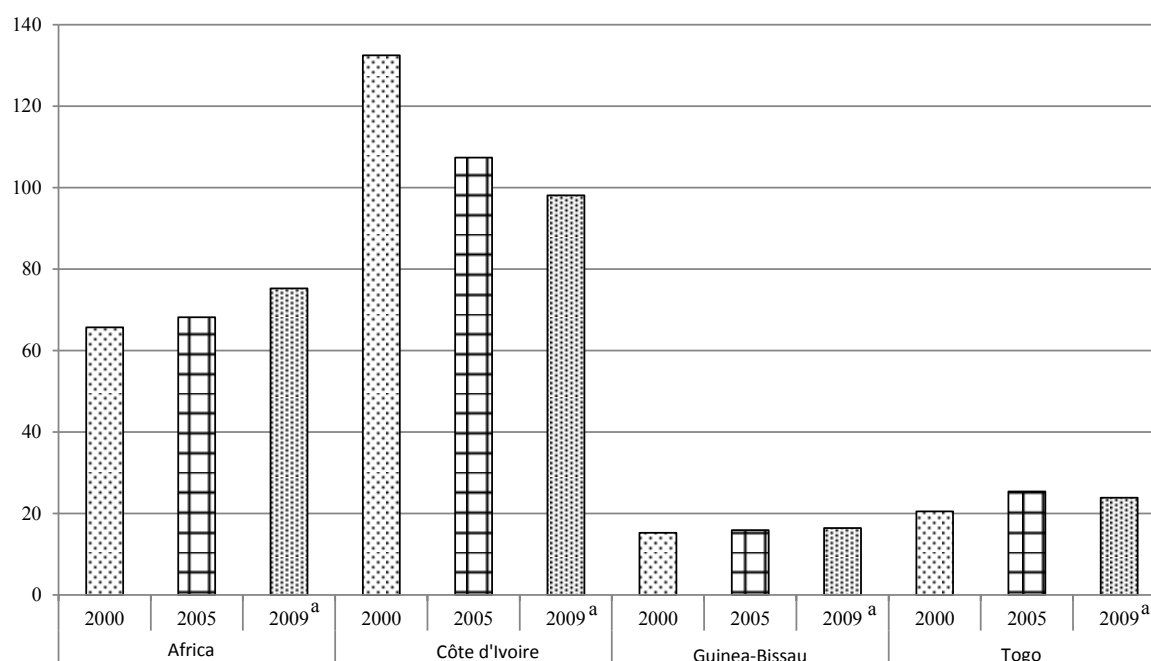
<sup>164</sup> Online information from WAPP. Viewed at: [http://www.ecowapp.org/english/english\\_home.html](http://www.ecowapp.org/english/english_home.html).

<sup>165</sup> UNIDO (2009).



Chart IV.3

Per capita manufacturing value added at 2000 constant prices (US\$)



<sup>a</sup> UNIDA estimates.

Source: UNIDO.

191. Every WAEMU country has numerous small micro-enterprises that generally operate in the informal sector and provide jobs for a large part of the population. Development of West Africa's manufacturing sector is therefore key to reducing poverty, but it generally occurs in an environment that is hampered by lack of regular access to affordable energy, and also by high costs and deficiencies in the water, (micro-) finance and transport infrastructures. As users of infrastructure services, enterprises' competitiveness is penalized if this infrastructure is not efficient.

192. Several of the programmes and projects described below aim to overcome the sector's problems, for example, the "upgrading" programmes designed to make enterprises more competitive, the projects to harmonize technical standards, or the WAEMU Quality Programme (Chapter III(2)), with support from UNIDO. The latter has implemented several programmes to improve industrial governance and to make industrial enterprises more competitive.

193. In ECOWAS there is a policy based on a need to increase protection of the regional market, as can be seen from the plan for a fifth 35 per cent tariff band, which for the most part aims to protect the agri-food industry. Furthermore, its declared policy on free trade in regional products is not effective on the ground because some member States continue to restrict the access of industrial products to their markets, even approved products from other member States.

194. Since the adoption of the Union's Common Industrial Policy in 1999<sup>166</sup>, 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, under the CET, the average MFN tariff protection for manufacturing was 12.2 per cent (Chapter III(2)), to which are added 2.5 percentage points in other duties and taxes. The most highly protected industries are, *inter alia*, beverages, clothing, building materials and some agri-food industries (Chart IV.4 and Table III.2).

195. Products officially "approved" are in principle exported to other WAEMU countries free of customs duty (but not of the RS or the PCS), provided that they are correctly labelled, accompanied by the necessary documentation, and exported directly from the producer to the consumer country, in accordance with the rules of origin applicable.<sup>167</sup> In practice, few products have been approved (common report, Table III.3). Moreover, approved products are not always recognized as such and, therefore, in practice are frequently taxed each time they cross a border within WAEMU, thereby considerably raising their cost for consumers and reducing the latter's purchasing power by an equivalent amount.

196. Probably because of these obstacles to the free movement of goods, despite the objective of a "closely integrated" industrial fabric 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 among the manufacturing sectors at regional level. One of the major sources of competitiveness gains, including for exports, could therefore come from the elimination of barriers to intra-community trade, with the establishment, for example, of a real single market ("free practice").

REPUBLICOFTOGO.COM

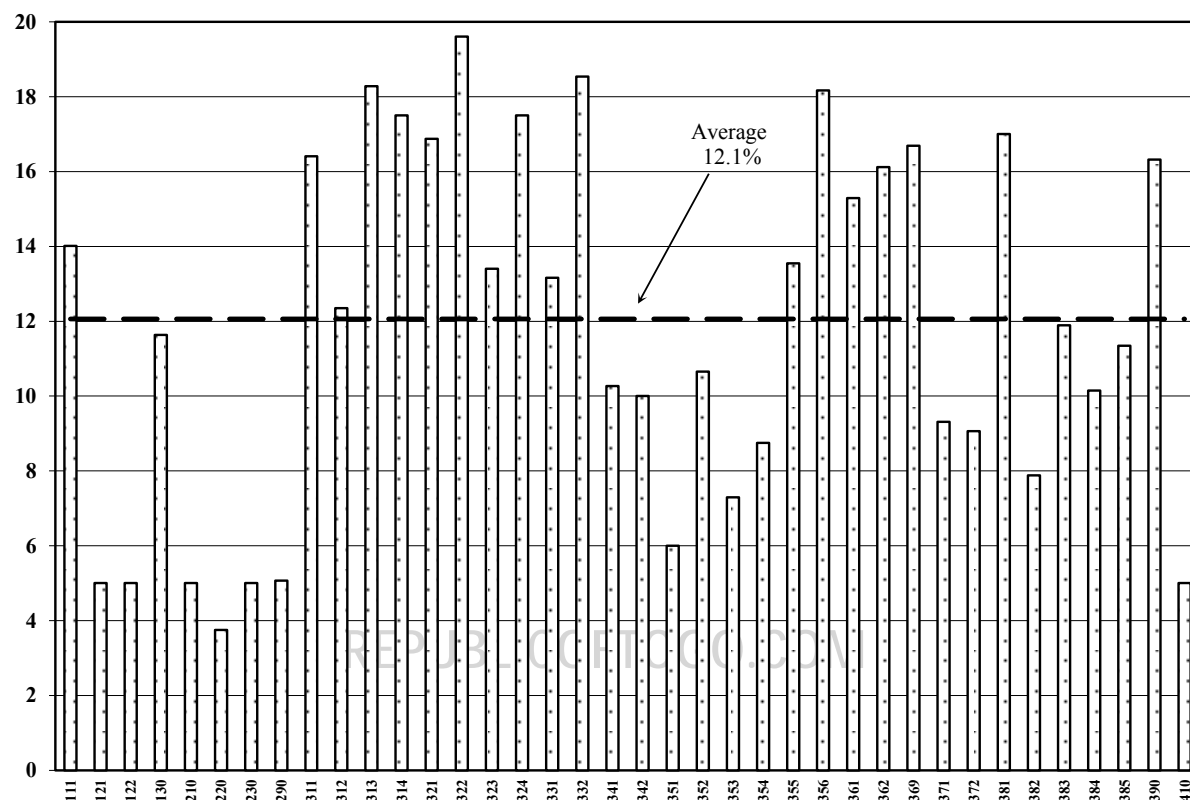
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<sup>166</sup> Additional Act No. 05/99 on the adoption of the WAEMU Common Industrial Policy. Viewed at: <http://www.uemoa/actes/dec99/AA0599.htm>.

<sup>167</sup> Regulation No. 13/2002/CM/UEMOA. Viewed at: [http://www.uemoa.int/actes/2002/reglement\\_13\\_2002\\_CM\\_UEMOA.htm](http://www.uemoa.int/actes/2002/reglement_13_2002_CM_UEMOA.htm).

**Chart IV.4**  
**Tariff protection by subsector, 2011**

Percentage



ISIC major groups

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.s.
220 Crude petroleum and natural gas production	356 Manufacture of plastic products, n.e.s.
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 equipment
321 Textiles	382 Non-electrical machinery, including computers
322 Manufacture of wearing apparel, except footwear	383 Electrical machinery, apparatus, appliances and supplies
323 Leather products, except footwear and wearing apparel	384 Transport equipment
324 Footwear, except vulcanized rubber and plastic footwear	385 Professional and scientific equipment
331 Wood and wood products, except furniture	390 Other manufacturing industries
332 Fabrication of furniture and fixtures, except primarily of metal	410 Electricity
341 Paper and paper products	
342 Printing, publishing and allied industries	

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

197. In the context of the implementation of the Common Industrial Policy, in 2006 the WAEMU Council of Ministers adopted a Restructuring and Upgrading Programme (PRMN).<sup>168</sup> 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 bearing in mind the elimination of tariff protection that would result from the entry into force of the EPAs (Chapter II(3)). Its total budget is about CFAF 211 billion (€322 million), with the involvement of 1,000 industrial enterprises.

198. In Côte d'Ivoire, the PRMN helped to create and build the capacity of the personnel in its Restructuring and Upgrading Bureau (BRMN) and its National Steering Committee (CPN). The direct assistance given by the PRMN in Côte d'Ivoire made it possible to prepare diagnostics and investment plans for 13 agro-industrial industries. The intangible investment priority action identified for these enterprises amounts to CFAF 562 million, while the tangible investment priority action for the same enterprises is estimated to be CFAF 1.7 billion. Overall, during the pilot phase the Ivorian agri-food enterprises and the national bodies managing the Programme will benefit from financial support of around CFAF 778 million.

199. In Guinea-Bissau, the assistance given by the PRMN enabled diagnostics and investment plans to be prepared for nine agro-industrial enterprises. The intangible investment priority action was estimated to be CFAF 122 million, while the tangible investment priority action for these enterprises was estimated at CFAF 18 million. In Togo, assistance concerned eight agro industrial industries, with intangible and tangible investment needed estimated to be CFAF 230 million and CFAF 1.1 billion, respectively. The next phase, namely deployment, will have to be financed from national budgets, should last three years and enable the Programme to be generalized in order to reach the objective of 1,000 enterprises (of which 670 to be upgraded and 330 to be reorganized), including 880 industrial enterprises.

#### **(5) POSTAL, TELECOMMUNICATIONS AND BROADCASTING SERVICES**

200. Following the major changes in the telecommunications sector during the 2000s, almost all WAEMU countries (with the exception of Togo and Benin) have terminated the traditional operators' monopoly. New regulatory frameworks and new licences are intended to boost competition and make the respective markets more attractive to investors. Currently, all WAEMU countries have a recent framework law on telecommunications. All of them also have an independent national regulatory authority (although that of Benin is still transitional). In terms of transparency and availability of information, where a national regulatory authority is in place, it also has a website on which the regulations are available. Table IV.8 provides a synopsis of the existing competition conditions in WAEMU countries.

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<sup>168</sup> Online information from WAEMU/UNIDO. Viewed at: <http://www.uemoa.int/PRMN/index.htm>.

Table IV.8

Level of competition in telecommunications markets in WAEMU countries, 2011

	Benin 2008	Burkina Faso 2010	Côte d'Ivoire 2008	Guinea-Bissau 2008	Mali 2008	Niger 2008	Senegal 2008	Togo 2012
Local services	M	C	..	M	P	M	P	M
Domestic long distance services	M	C	P	M	P	M	P	M
International long distance services	M	C	P	M	P	M	P	P
Wireless local loop <sup>a</sup>	..	C	P	C	P	..	P	..
Data transmission	..	C	C	C	C	M	P	C
DSL <sup>b</sup>	M	C	..	C	P	..	P	C
VSAT <sup>c</sup>	..	C	C	C	C	P	P	C
Leased lines <sup>d</sup>	M	P	P	M	P	M	P	C
Fixed wireless broadband <sup>e</sup>	..	C	..	C	P	..	P	C
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	C
Mobile satellite service	..	P	..	C	P	..	P	C
GMPCS <sup>f</sup>	..	P	P	C	P	C	P	..
IMT 2000 (for example 3G) <sup>g</sup>	..	P	..	P	P	..	P	P
Internet services	..	C	C	C	C	M	P	C
International gateways <sup>h</sup>	..	P	M	P	P	..	P	C

.. 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.

201. 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 information and communication technologies market in West Africa.<sup>169</sup> 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 one Decision (Table IV.9). These texts constitute a minimum common reference base, which may be supplemented by national regulations and by rules issued by the national regulatory authorities.

<sup>169</sup> Online information from ITU, "ITC Market Harmonization for ECOWAS/WAEMU". Viewed at: [http://www.itu.int/ITU-D/treg/projects/itu\\_ec/index.html](http://www.itu.int/ITU-D/treg/projects/itu_ec/index.html).

Guinea-Bissau has transposed all these texts into its domestic legislation, although this is not the case for Côte d'Ivoire or Togo, where the process is under way.

**Table IV.9**  
**Transposition of WAEMU legal texts relating to the telecommunications sector, March 2012**

	Benin	Burkina Faso	Côte d'Ivoire	Guinea-Bissau	Mali	Niger	Senegal	Togo
Directive No. 01/2006/CM/UEMOA on the harmonization of control and regulatory policies for the telecommunications sector	..	..	No	Yes	..	..	..	No
Directive No. 02/2006/CM/UEMOA on the harmonization of the regimes applicable to network operators and service providers	..	..	No	Yes	..	..	..	No
Directive No. 03/2006/CM/UEMOA on the interconnection of telecommunications networks and services	..	..	No	Yes	..	..	..	No
Directive No. 04/2006/CM/UEMOA on universal service and network performance obligations	..	..	No	Yes	..	..	..	No
Directive No. 05/2006/CM/UEMOA on the harmonization of tariff-setting for telecommunications services	..	..	No	Yes	..	..	..	No
Directive No. 06/2006/CM/UEMOA organizing the overall framework for cooperation among national telecommunications regulatory authorities	..	..	No	Yes	..	..	..	No
Decision No. 09/2006/CM/UEMOA creating the Committee of National Telecommunications Regulators of WAEMU member States	..	..	No	Yes	..	..	..	No

.. Not available.

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

202. These texts have been described in detail in the previous TPRs of the WAEMU member States.<sup>170</sup> Only recent developments since 2010 are described below. The first Directive establishes a Committee of Regulators (CRTEL), comprising the national regulatory authorities of the member States. The CRTEL held its first meeting in 2007 and its programme of activities includes a plan to create a website.

203. The second Directive defines the telecommunications networks and services that are subject to the authorization regime, in particular telephone services and other public telecommunications networks, leased-line services, as well as the use of scarce resources (radio frequencies and numbering). A declaration system is established for the provision of Internet services and value added services such as voice messaging services, as well as a "single window" type procedure accessible to all operators and service providers wishing to establish telecommunications networks or supply telecommunications services in several community countries. In practice, in most countries the regulator acts as the single window. According to the Commission, these provisions are applied in

<sup>170</sup> See, for example, WTO (2010).

all three countries, even though Togo and Côte d'Ivoire have not yet completed the transposition of the Directives into their domestic legislation.

204. 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 schedules of charges to the national regulatory authority. The Directives regulate in particular the interconnection charges of "powerful" operators (third Directive) and "dominant" operators (fifth Directive). Guinea-Bissau is the only one of the three countries to have transposed the provisions of these two Directives into its domestic legislation. If a dispute arises, the regulator intervenes by setting the interconnection tariffs on the basis of costs.

205. The fourth Directive includes the obligation of universal service. It provides for a universal service financing fund to be established in each member State to finance this universal service. According to the Commission, this fund is being set up in Guinea-Bissau. In Côte d'Ivoire, the fund has been set up but is not yet operating. In Togo, the fund has been set up and is operating. The "play or pay" practice operates in Togo and allows an operator to serve a zone identified by the regulator and to deduct the amount of the investment it has made from its contribution to the universal service fund.

206. 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. The CRTL is the tool for this cooperation among national regulatory authorities and works towards mutual recognition of approval of telecommunications equipment and terminals.

207. 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 telephony services and the other main services.

208. Since 2002, ECOWAS has also been active in the implementation of a number of projects to harmonize telecommunications markets within the community, with the creation in particular of the West Africa Telecommunications Regulators Assembly (WATRA) in 2002. WATRA members are the national regulatory authorities or the departments responsible for regulating telecommunications services in the absence of such authorities.<sup>171</sup> WATRA has developed guidelines for the preparation of draft regulations on access to submarine cables in West Africa; this project was considered and adopted at the meeting of ECOWAS Ministers responsible for telecommunications in September 2011 in Côte d'Ivoire. Togo does not belong to WATRA.

209. Neither the WAEMU texts nor the WTO commitments cover radio and television broadcasting. Likewise, the postal sector is not the subject of common regulations within WAEMU.

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<sup>171</sup> Online information. Viewed at: <http://smsi.francophonie.org/IMG/pdf/harmonisation-telecom.pdf>.

**(6) TRANSPORT SERVICES**

**(i) Air transport services**

210. Côte d'Ivoire, Guinea-Bissau and Togo are all three members of the International Civil Aviation Organization (ICAO), the International Air Transport Association (IATA) and the Agency for the Security of Aerial Navigation in Africa and Madagascar (ASECNA).<sup>172</sup> ASECNA manages air traffic and air traffic control in airfields in the member countries. Over the period 2000-2009, the number of intra-Africa flights within the airspace covered by ASECNA increased by 131 per cent, to reach 262,000 flights in 2009; the corresponding number of flights between Europe and Africa increased by 136 per cent (113,000 flights); between Africa and America by 226 per cent (9,600 flights); and between Africa and the Middle East by 374 per cent (15,000 flights).

211. The liberalization of intra-Africa air transport services began with the signing of the Yamoussoukro Ministerial Declaration in 1988, but the emergence of new West African companies and the resulting competition are still very limited. The Decision on implementation of this Declaration<sup>173</sup> in principle phases out all non-physical barriers and restrictions relating to the granting of traffic rights, and especially those concerning the fifth freedom of the air, among the signatories<sup>174</sup>; it prohibits uncompetitive behaviour as regards the regulation of tariffs or designation of operating tools by States; and introduces a "community clause" of ownership whereby in any member State of the African Union the companies of any other member State of the Union are assimilated to a national airline of the former. The Yamoussoukro Declaration provides for a similar regime for scheduled and non-scheduled flights (passengers or any cargo).<sup>175</sup>

212. Any company, whether wholly or majority owned by foreign capital or interests, may benefit from the advantages of the 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 signatory State concerned.<sup>176</sup> The African Civil Aviation Commission (AFCAC) was set up by the African Union to regulate issues relating to a single African sky and questions of rights, in accordance with the Yamoussoukro Decision. One of its current priorities is to lessen the particularly high risk of accidents associated with air transport in Africa, which is not conducive to the continent's international trade.<sup>177</sup>

213. As part of the coordination of national sectoral policies within WAEMU, various texts on air transport have been adopted. In 2002, WAEMU community regulations liberalized access for the Union's air carriers to intra-community air routes by giving them third and fifth freedom rights

<sup>172</sup> Online information from ASECNA. Viewed at: [http://www.asecna.aero/asecna\\_administrations.html](http://www.asecna.aero/asecna_administrations.html).

<sup>173</sup> The Decision was adopted under Article 10 of the Treaty of Abuja establishing the African Economic Community; it was signed in July 2000 and has been in force since 12 August 2002. According to its Article 2, the Decision has precedence over all incompatible bilateral and multilateral air transport agreements.

<sup>174</sup> 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.

<sup>175</sup> WTO document S/C/270/Add.2 of 28 September 2007.

<sup>176</sup> Article 6.9 of the Decision.

<sup>177</sup> Online information. Viewed at: <http://www.afcac.org/>.



without any limitation as to frequency or capacity.<sup>178</sup> This allows an air carrier belonging to one of the member States to fly a route between two other member States.

214. These texts have allowed the creation and operation of airlines under private law and have encouraged the conclusion of technical and commercial cooperation agreements between existing companies (for example, joint Air Burkina, Air Mali and Air Ivoire flights). New private companies have emerged, for example ASKY (see below) and Sénégal Airlines, exploiting fourth and fifth freedom rights between various member States of the Union. The difficulties encountered in the course of this liberalization process include the restrictions highlighted by the company ASKY in obtaining fourth and fifth freedom rights for the Lomé-Dakar and Ouagadougou-Abidjan routes.

215. ASKY is the result of a decision taken in 2004 by the ECOWAS and WAEMU Heads of State and Government following the liquidation of the multinational Air Afrique in 2002, to give the community a new private, competitive and profitable airline providing all necessary guarantees of security and safety. Following this decision, on 29 August 2005, the ECOWAS Executive Secretariat, the ECOWAS Bank for Investment and Development (EBID), the WAEMU Commission, the Central Bank of West African States (BCEAO), the West African Development Bank (BOAD) and the ECOBANK Group decided to set up a company to promote a regional airline. This company conducted several feasibility studies and market surveys, sought various financial and strategic partners and took the measures which led to the creation of the company ASKY in November 2007. The company's registered capital is CFAF 1.25 billion, divided as follows: Skhumnotho: 25 per cent; Ethiopian Airlines: 20 per cent; EBID: 5 per cent; BOAD: 0.46 per cent; ECOBANK Group: 5 per cent; and other private investors: 44.54 per cent.

216. In 2003, a WAEMU community Directive liberalized access to the market for ground handling, ending the legal monopoly given to sole suppliers of ground services in most airports in the Union.<sup>179</sup> By means of a ministerial order, Burkina Faso transposed this Directive into its domestic legislation, although it would appear that a State-owned company continues to provide this service at Ouagadougou airport. Senegal has authorized two private companies at Dakar international airport. Benin, Guinea-Bissau, Niger, Mali and Togo have each granted one authorization to a private law company to provide ground services at their main airports. Côte d'Ivoire has not yet transposed these regulations and its services are still provided by a government company. A special unit to train personnel in ground services (EAMA) has been established in Bamako (Mali).

217. The WAEMU legal framework has since been reinforced by the introduction of community provisions for the coordination of air safety (Table IV.10). In particular, the WAEMU member States' Common Air Transport Programme (PCTA) provides for the establishment of a community agency - currently the COSCAP Project - for the oversight of civil aviation safety and security, with primary responsibility for the supervision of licensing of personnel, airworthiness, technical operation of aircraft and airfield certification.<sup>180</sup> The COSCAP project began in November 2005 and is provisionally based in Ouagadougou in the WAEMU Commission, although it is planned that its headquarters should be in Abidjan. The initial estimated cost of the COSCAP project is US\$4.5 million. The COSCAP's achievements so far include closer cooperation with ICAO, the

<sup>178</sup> Regulation No. 24/2002/CM/UEMOA determining the conditions for access to intra-community air links by WAEMU air carriers. Viewed at: [http://www.uemoa.int/actes/2002/reglement\\_24\\_2002\\_CM\\_UEMOA.htm](http://www.uemoa.int/actes/2002/reglement_24_2002_CM_UEMOA.htm).

<sup>179</sup> Directive No. 01/2003/CM/UEMOA. Viewed at: [http://www.uemoa.int/actes/2003/directive\\_012003\\_cm.htm](http://www.uemoa.int/actes/2003/directive_012003_cm.htm).

<sup>180</sup> Online information from the Cooperative Development of Operational Safety & Continuing Airworthiness Programme (COSCAP). Viewed at: <http://www.coscap-uemoa.org/coscap.htm>

European Aviation Safety Agency (EASA) and the United States Federal Aviation Administration (FAA).

**Table IV.10**  
**Legal texts concerning air safety, 2010**

Legal text	Description
Decision No. 08/2002/CM/UEMOA	Adopts the Common Air Transport Programme of WAEMU member States (PCTA)
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 for civil aviation safety supervision in WAEMU member States (COSCAP)
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 licensing and the common air agreement
Regulation No. 01/2007/CM/UEMOA	Contains the community Civil Aviation Code of WAEMU member States, covering most of the areas in the International Civil Aviation Convention (Chicago Convention establishing ICAO)

*Source:* Online information from WAEMU. Viewed at: <http://www.uemoa.int>.

218. Under the PCTA, the WAEMU Commission has also provided support for the establishment of a Permanent Council of Air Carriers in WAEMU (CPTA) by the area's airlines. This is a cooperation structure grouping the main scheduled air carriers within the WAEMU area. It provides a forum for exchange and cooperation among the Union's air carriers and defends the collective interests of the profession. The PCTA discusses, in particular, the rate of aviation fees and ticket prices.

219. On 30 November 2009, an agreement was signed between WAEMU and the EU with a view to the introduction of a community designation clause into the air services agreements between WAEMU members and EU member States.<sup>181</sup> This agreement replaces some provisions in the 47 existing bilateral agreements on air services concluded between EU member States and WAEMU member countries.<sup>182</sup> Article 2 of the agreement in particular 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 an EU member country and a WAEMU member country provided that one of the 47 bilateral agreements is in force between the two countries served. Its implementation is facing a number of difficulties, but Togo has indicated that it has renegotiated its bilateral agreement with Belgium.

220. In implementation of other agreements concluded under IATA auspices, scheduled air transport from the three countries to countries other than African countries or members of the EU can be operated on the basis of a route-sharing agreement between the national airlines and the foreign airlines in the countries served.

<sup>181</sup> Online information from the European Union, International Aviation: Status of aviation relations by country: UEMOA. Viewed at: [http://ec.europa.eu/transport/air/international\\_aviation/country\\_index/uemoa\\_en.htm](http://ec.europa.eu/transport/air/international_aviation/country_index/uemoa_en.htm).

<sup>182</sup> Proposal for a Council Decision on 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\(02\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0463(02):EN:HTML).

221. Under the Uruguay Round negotiations, traffic rights and services directly related to them were excluded from the GATS. The three countries did not make any commitment in the sectors covered by the Agreement, namely aircraft repair and maintenance services; the sale or marketing of air transport services; or computerized reservation services.

**(ii) Maritime transport and port services**

222. 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, on the one hand, and the national shippers councils, on the other. The EWATA was concluded at the end of 1999 as an exception to the EU competition rules on liner conferences and governed much of sub-Saharan Africa's international traffic.<sup>183</sup> To coincide with the repeal of these regulations, EWATA ended operations in October 2008. In most member States, however, the legislative texts allowing for liner conferences have not been repealed, in particular, the United Nations Convention on the Code of Conduct for Liner Conferences of 1974, which entered into force in 1983, and the United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) of 1978, which came into force in 1992.

223. Although the majority of WAEMU countries still have their shippers councils (Table IV.11), these are not the subject of any community regulations. They are, however, grouped together within the Maritime Organization of West and Central Africa (MOWCA), an institution that has returned to Abidjan since October 2011, and manages maritime transport and transit issues common to its 25 members from the West African region.<sup>184</sup> Since its creation in 1975, MOWCA has been a forum for establishing maritime transport policies, programmes and projects. Its declared objectives are: to provide efficient and low-cost maritime transport and transit services; a common regional policy for coastal shipping; to facilitate transit transport; and to develop multimodal transport and logistics services.

224. In 2009, within MOWCA, the national shippers councils decided to introduce an (electronic) cargo tracking note (see Annexes on Côte d'Ivoire, Guinea-Bissau and Togo, Chapters III(2)). This appears to have replaced the former "hold reservation statement". Some countries also continue to levy shippers' fees (Table IV.11).

<sup>183</sup> Regulation (EEC) No. 4056/86.

<sup>184</sup> The MOWCA website (<http://www.mowca.org>) was suspended at the time this report was prepared. Tel: (225) 20 22 71 15 / 20 22 31 93; Fax: (225) 20 21 65 54 / 22 42 38 02. E-mail address: [mowca@africaonline.co.ci](mailto:mowca@africaonline.co.ci).

**Table IV.11**  
**Legal texts, financing and objectives of shippers councils within WAEMU, 2012**

Body (country) - legal texts	Description of the objective	Financing/levies (see Chapters III(2))
<b>Benin</b> National Shippers Council of Benin (CNCB) Decree No. 83-197 of 25 May 1983	Defends the interests of shippers; negotiates with a view to obtaining lower freight charges and surcharges; information and assistance.	Annual fee: CFAF 50,000 per importer/exporter; plus 0.18% commission on all goods imported or exported by sea, including intra-WAEMU; plus a shipper's fee of CFAF 400/tonne for imports and CFAF 300/tonne for exports (CFAF 100/tonne for bulk cargo); plus BSC cost <sup>a</sup> : €25 (Europe, Africa), €100 elsewhere.
<b>Burkina Faso</b> Burkina Shippers Council (CBC) ( <a href="http://www.cbcbesc.com/">http://www.cbcbesc.com/</a> ) Order No. 56/MTT/MEF of 17 April 2001	Negotiates the rates to be paid by importers and exporters for the transport of goods by sea, land, rail or air.	Specific levy. Plus, since 2006, BESC <sup>b</sup> of €25 per vehicle, €40 per TEU container, and €25 per consignment of 300 tonnes imported or exported.
<b>Côte d'Ivoire</b> Ivorian Shippers Office ( <a href="http://www.oic.ci">http://www.oic.ci</a> ) Law No. 69-240 of 9 June 1969 Law No. 75-940 of 26 December 1975 Decree No. 77-618 of 29 August 1977	Represents and defends the interests of importers and exporters, and users of transport services in connection with the transport of their goods with a view to lowering freight costs.	BSC: €25 per bill of lading; goods imported in bulk pay €100 per bill of lading (€125 for rice, wine or oil). For goods in containers, the BSC is €20 per TEU and €40 per 40-foot container. Vehicles pay €25 per unit; the same rate applies to each consignment of 10 motorized bicycles appearing on the same bill of lading.
<b>Guinea-Bissau</b> National Shippers Council of Guinea-Bissau (CNC-GB)		BSC: a fixed service fee (€35), plus €50/75 per TEU container; €100/125 per 40-foot container (ex-Europe or Africa/other origin). €5 per tonne for cashew nuts and aluminium, and €2 per tonne for bauxite, irrespective of the origin/destination.
<b>Mali</b> Malian Shippers Council Ordinance No. 99-036/p-RM of 23 September 1999 Order No. 08/3718	Contributes to improving and organizing the transport and transit sector by means of professional representation of Malian shippers.	BSC: €50 per vehicle of less than 5 tonnes, €100 for vehicles of over 5 tonnes, €50 per TEU container, €100 per 40-foot container, bulk €5/tonne (minimum €50). Cost of issuing the BSC: €50 for Africa and Europe, €100 for other origins.
<b>Niger</b> Niger Council of Transport Users (CNUT) Ordinance No. 88 of 25-28 April 1988	Assists and supports economic operators for rapid clearance of goods at lower cost.	BSC: €25/50 for each vehicle depending on whether it weighs less/more than 5 tonnes; €25/50 per 20/40-foot container, respectively; €5 per tonne or cubic metre of bulk; €2/tonne of hydrocarbons. The BSC is billed at €60 each.
<b>Senegal</b> Senegalese Shippers Council (COSEC) ( <a href="http://www.cosec.manobi.sn">http://www.cosec.manobi.sn</a> ) Decree No. 96-606 of 9 June 1994 Interministerial Order No. 04350 of 26 May 2008.	Defines a policy for promotion and protection of the interests of Senegalese importers and exporters and provides direct assistance to shippers in various forms.	CFAF 10,000 per importer/exporter card issued. Plus BSC: vehicles: CFAF 10,000/20,000 for vehicles weighing less/more than 5 tonnes ex Africa; €15/30 for those of less/more than 5 tonnes ex Europe; and US\$20/40 for vehicles of less/more than 5 tonnes from any other origin. For containers: CFAF 10,000/20,000 for 20/40-foot containers ex Africa; €15/30 for 20/40-foot containers ex Europe; and US\$20/40 for 20/40-foot containers from any other origin. For bulk goods (with the exception of rice) and approved goods, the BSC is billed at CFAF 32,500/€50/US\$65 per 300 tonnes or cubic metre ex Africa/Europe/elsewhere, respectively.
<b>Togo</b> Togolese National Shippers Council ( <a href="http://www.cnct.tg/">http://www.cnct.tg/</a> ) Ordinance No. 80-11 bis of 9 January 1980	Various types of assistance to shippers, training and re-training of economic operators, conduct and preparation of studies on behalf of shippers, training and information.	The amount levied for the BSC is €25 per unit for cargo ex Europe and €100 for other cargo. Traders must create an electronic account and deposit a minimum of €150.

a BSC: Cargo tracking note (Chapter III).

b BESC: Electronic cargo tracking note.

Source: WTO Secretariat, on the basis of information provided by the authorities in WAEMU member States.

225. A community text specifically aims to introduce competition among maritime transport companies and to make ports in WAEMU member countries more efficient.<sup>185</sup> The principle of free access to international maritime transport services on a commercial and non-discriminatory basis, subject to reciprocity, is affirmed. Accordingly, both community and foreign shippers are subject to the same operating conditions when departing from or arriving at a port in the Union or coming from or going to third countries.

226. On the other hand, according to this text, only community shippers are authorized to provide internal and/or intra-community maritime transport services (cabotage). Lastly, according to these new regulations, community and foreign shippers operating an international transport service must pay a fee for traffic rights, which is intended to finance national funds and a regional fund to develop the maritime subsector within the Union. In practice, this fee is not generally levied in member States.

227. In the three countries that are the subject of this Report, there is still no full separation between port authorities responsible for regulatory activities and an autonomous private law entity following commercial management rules and responsible for commercial operations. Concessions to international private operators of terminals including operators affiliated to shipping companies have nevertheless enabled ports to be reorganized and have helped to improve port services.

228. Providers of port services - pilots, tugboat operators, ships' chandlers - are also the subject of a new WAEMU Directive<sup>186</sup> aimed at introducing trade facilitation measures in ports in order to reduce transshipment times. This Directive facilitates the implementation of the common programme for development of the maritime subsector; harmonizes the activities of various governmental or private institutions involved in the maritime subsector; and establishes a harmonized institutional framework for the subsector covering also port safety and security.<sup>187</sup> In Togo, the authorities have indicated that this Directive has not been transposed into domestic legislation but that its provisions are implemented.

### (iii) Land transport

229. Mindful of the importance of good quality transport infrastructure to encourage trade and investments, since 2001 WAEMU members have been committed to improving the development and maintenance of the road network under the Community Action Plan for Road Infrastructure and Transport (PACITR). They have concentrated on the transport corridors that are an important feature of international trade for West African countries as they link the landlocked countries to the ports of the coastal countries of transit. ECOWAS, NEPAD and WAEMU investment programmes are also being implemented with a view to the eventual establishment of permanent trans-Sahel road links.

230. In 2001, aware of the fact that impromptu road blocks are one of the main causes of the low productivity of the transport mode and hence an obstacle to economic competitiveness, WAEMU members adopted a decision aimed at reducing the number of controls authorized on

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<sup>185</sup> Regulation No. 02/2008/CM/UEMOA on maritime transport within WAEMU. Viewed at: [http://www.uemoa.int/actualite/2008/CM28032008/Reglement\\_02\\_2008\\_CM\\_UEMOA.pdf](http://www.uemoa.int/actualite/2008/CM28032008/Reglement_02_2008_CM_UEMOA.pdf).

<sup>186</sup> Directive No. 03/2008/CM/UEMOA on port service providers within WAEMU.

<sup>187</sup> 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/Documents/Actes/Directive\\_04\\_2008\\_CM\\_UEMOA.pdf](http://www.uemoa.int/Documents/Actes/Directive_04_2008_CM_UEMOA.pdf).

inter-State road corridors<sup>188</sup>; according to the WAEMU Commission, however, there is no compliance with this decision. The report of WAEMU's Irregular Practices Observation Centre covering the period January to March 2010 indicates an average of three checkpoints per 100 kilometres on the Tema Ouagadougou-Bamako, Lomé-Ouagadougou and Bamako-Dakar corridors. The situation is described as worse on the two new corridors monitored: Abidjan-Bamako and Abidjan-Ouagadougou. Compared to 2009, harassment had once again increased. The time taken for controls varies from seven minutes in Togo to 26 minutes in Côte d'Ivoire.<sup>189</sup> The amount of the racket per 100 kilometres is CFAF 7,400 in Côte d'Ivoire (€11.3), and CFAF 1,683 in Lomé. In 2011, on the other hand, there was some progress in Togo, and, to a lesser extent, in Côte d'Ivoire.

231. Access to the profession of carrier in WAEMU is, in principle, no longer reserved for nationals but has been extended to Union nationals too. National treatment is also said to be applied to ECOWAS nationals. However, cabotage is generally prohibited to foreigners of any nationality. Road transport of goods between WAEMU States continues to be governed by bilateral agreements between States which generally provide for the sharing of freight by truckers' councils.<sup>190</sup> This scheme, which discourages competition by keeping under-performing carriers in operation, is being revised as part of the regional road transport and transit facilitation programme. A regional study has recommended the immediate abolition of the rotation system, the development of a physical freight exchange and, in the short term, a virtual freight exchange, together with gradual liberalization and implementation of complementary measures concerning, *inter alia*, renewal of the vehicle fleet.

## (7) TOURISM AND TEMPORARY STAY OF NATURAL PERSONS

### (i) Tourism services

232. Development of tourism has been declared a priority by WAEMU, which has decided to make efforts to increase the number of tourists visiting the eight countries belonging to the Union, currently numbering 1.7 million annually for all eight countries (Table IV.12). The number of visitors stagnated between 2005 and 2010, while hotel earnings increased in most member countries. The slow growth in the number of tourists was partly attributable to the sharp decline in visits to Côte d'Ivoire because of the feeling of insecurity. Earnings have risen because of the dynamism recorded on the intra-community tourism market, which enabled occupation rates in accommodation facilities to increase despite the drop in the number of visitors from outside the community.

Table IV.12  
Tourism indicators in WAEMU member countries, 2005-2010

	Number of visitors		Tourism budget (CFAF million) <sup>a</sup>		Hotel earnings (€ million)	
	2005	2010	Current expenditure	Investment	2005	2010
Benin	176,000	190,000 (2009)			86.6	161.4 (2008)
Burkina Faso	245,000	269,000			37.0	56.0 (2008)
Côte d'Ivoire	145,000	..	..	..	74.8	81.4 (2009)
Guinea-Bissau	..	1,040	..	..	1.3	26.1 (2010)
Mali	143,000	160,000			120.0	195.2 (2009)
Niger	58,000	66,000			35.3	58.7 (2008)

<sup>188</sup> Decision No. 15/2005/CM/UEMOA on the practical modalities for the implementation of the WAEMU regional plan for inter-State road corridor controls.

<sup>189</sup> Irregular Practices Observation Centre, West Africa Trade Hub. Viewed at: <http://www.watradehub.com>.

<sup>190</sup> For example, Convention A/P2/5/82 on the regulation of inter-State road transport (ISRT/ECOWAS). Online information from ISRT/ECOWAS National Guarantors. Viewed at: <http://www.cautionstrie.org>.

	Number of visitors		Tourism budget (CFAF million) <sup>a</sup>		Hotel earnings (€ million)	
<b>Senegal</b>	769,000	875,000 (2007)			286.6	434.9 (2008)
<b>Togo</b>	81,000	150,000	414.0	303.3	21.7	30.0 (2008)
<b>Total</b>	1,617,000	1,711,040			663.3	1,043.7

.. Not available.

a 2011 budget allocated to the sector.

Source: WTO Secretariat, on the basis of data provided by the WCO and the authorities. Viewed at: <http://www.unwto.org>.

233. The sector is in general open to foreign investment and is also one of the only sectors for which the WAEMU member States made commitments in the WTO in 1994 under the General Agreement on Trade in Services (Table IV.13). For the time being, there is no common legislative framework for tourism in WAEMU, although a common policy on tourism has recently been enacted with a view to making the Union "an integrated, attractive and accessible regional tourism market that offers diversified, high quality, visible and competitive products in the generating markets".<sup>191</sup>

Table IV.13

Inclusion of tourism services by WAEMU member countries in their schedules of GATS commitments

Member State	Sectors or subsectors included	Government body and website
<b>Benin</b>	Hotels and restaurants Accommodation facilities Restaurants	Ministry of Tourism and Crafts <a href="http://www.benintourisme.com">http://www.benintourisme.com</a>
<b>Burkina Faso</b>	Hotels and restaurants Travel agencies	Ministry of Culture, Tourism and Communications <a href="http://www.culture.gov.bf">http://www.culture.gov.bf</a>
<b>Côte d'Ivoire</b>	Hotels and restaurants Travel agencies, tourist guides	Ministry of Tourism and Crafts <a href="http://www.tourismeci.org">http://www.tourismeci.org</a>
<b>Guinea-Bissau</b>	Hotels and restaurants Tourist guides	Ministry of Tourism and Urban and Rural Planning <a href="mailto:mtotg-bissau@hotmail.com">mtotg-bissau@hotmail.com</a>
<b>Mali</b>	Hotels and restaurants	Ministry of Tourism and Crafts <a href="http://www.tourisme.gov.ml">http://www.tourisme.gov.ml</a>
<b>Niger</b>	Hotels and restaurants Travel agencies Tourist guides	Ministry of Tourism and Crafts <a href="http://www.niger-tourisme.com">http://www.niger-tourisme.com</a>
<b>Senegal</b>	Hotels and restaurants Travel agencies	Ministry of Tourism <a href="http://www.tourisme.gouv.sn">http://www.tourisme.gouv.sn</a>
<b>Togo</b>	Hotels and restaurants Travel agencies Tourist guides	Ministry of the Environment, Tourism and Forestry Resources <a href="http://www.togo-tourisme.com">http://www.togo-tourisme.com</a>

Notes: Hotels and restaurants = hotel and restaurant services (including catering services) (CPC 641-643): accommodation facilities (hotels, motels, post-houses, boarding houses, holiday villages, inns, spas, campsites) and restaurants, bars and canteens.  
Travel agencies = travel agency, tour operator and tourism organization services (CPC 7471).  
Tourist guides = tourist guide services (CPC 7472).

Source: WTO Secretariat, viewed at: <http://www.wto.org>. UNWTO, viewed at: <http://unwto.org/en/members/states>.

234. A regional programme to develop tourism within WAEMU (PRD TOUR) is the result of this policy.<sup>192</sup> This programme started in 2011 and is aimed at harmonizing the regulatory framework for tourism activities and professions within the community and the adoption of common standards for classifying tourist accommodation facilities. It has been estimated that its implementation will cost CFAF 161 billion (€246 million) for the period 2011-2020.

235. All WAEMU member States, including the three countries reviewed, belong to the World Tourism Organization; some of their tourism offices also belong to the African Travel

<sup>191</sup> WAEMU (2010).

<sup>192</sup> Viewed at: [http://www.uemoa.int/Documents/Actes/Annexe\\_Dec\\_11\\_2010\\_CM\\_UEMOA.pdf](http://www.uemoa.int/Documents/Actes/Annexe_Dec_11_2010_CM_UEMOA.pdf).

Association (ATA), an international professional association for tourism and travel whose objective is to promote travel, tourism and transport to and within the African continent and to strengthen inter-African partnerships. The ATA provides services to tourism and cultural offices and organizations, airlines, hotels, travel agents and tour operators.

236. The general rate of VAT at 18 per cent (19 per cent in Niger) generally applies to this sector and is the subject of recurrent complaint on the part of stakeholders. In addition, WAEMU countries impose a tourism promotion tax, although its rate and terms have not been harmonized among member countries. The sector is subject to payment of VAT, the business tax and the "bed tax" (tax on each night of accommodation). The latter is applied at the following rates: Benin (CFAF 500), Burkina Faso (CFAF 500, 700 and 1,000), Côte d'Ivoire (CFAF 2,500), Guinea-Bissau (CFAF 22,957, see below), Mali (CFAF 500), Niger (CFAF 500), Senegal (CFAF 600) and Togo (CFAF 1,000). Professionals in this sector consider that the taxation has a negative effect on the cost of tourism and makes the WAEMU destination less competitive in comparison with other rival destinations in north and southern Africa. Taking the opportunity of a WAEMU Commission Directive on reduced VAT, Senegal adopted measures to bring the VAT on tourism down to 10 per cent as of 1 January 2011.

237. In Guinea-Bissau, the tourist tax is included in the cost of hotels, restaurants and other tourism facilities. The rates are: 3 per cent on turnover (bars, *maquis* (small local restaurants) and cheap restaurants), 6 per cent (restaurants, grillrooms and discotheques) and 8 per cent (hotels). Revenue from the tourism tax is paid into the Tourism Development Fund. An operator may, however, decide to opt for a flat-rate regime based on an annual estimate. The average payment on accommodation has been estimated to be CFAF 23,000 per night. A reform is under way to introduce a tourism tax of around CFAF 1,000 per night.

238. The development of tourism is also facing many environmental problems that threaten natural resources, caused for the most part by non-sustainable exploitation of resources. For example, the beaches in Togo and Côte d'Ivoire are frequently covered by oil slicks and waste from ships flushing out their tanks along the coast. Accordingly, Côte d'Ivoire and Togo (but not Guinea-Bissau) have signed and ratified the Abidjan Convention, which served as the basis for implementation policies in several of West Africa's coastal countries in order to remedy common ecological problems. The Abidjan Convention, signed in March 1981, came into force in 1984 and covers 22 countries.<sup>193</sup> The Regional Coordinating Unit (RCU) in Abidjan is responsible for coordinating the Action Plan's various technical activities, under the guidance of UNEP's Regional Office for Africa.

## **(ii) Free movement of persons**

239. Partly with a view to encouraging regional tourism, WAEMU member States have undertaken to facilitate the movement and stay of non-WAEMU nationals in the WAEMU area by requiring a single visa, and to simplify and harmonize administrative procedures governing the entry and stay of non-WAEMU nationals. Accordingly, visas issued by one member State to persons who are not Union nationals should be accepted by the other Union States, thus enabling the visa holders to move freely within the community territory. According to the Commission, these provisions are being drawn up.

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<sup>193</sup> Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central Africa Region, adopted at Abidjan in 1981. Viewed at: <http://www.biodiv.be/benin/convention/conv-abidjan>.



240. ECOWAS nationals are not required to hold an entry visa for the territory of the Union.<sup>194</sup> A single ECOWAS passport has also been adopted by the member States as part of the programme to harmonize ECOWAS travel documents and is being put into effect.

## **(8) FINANCIAL SERVICES**

### **(i) Insurance**

241. The regional insurance market remains small, largely owing to the population's low purchasing power. Total turnover rose from CFAF 229 billion in 1995 to CFAF 442 billion in 2005 (€674 million), of which 78 per cent for asset insurance and the remainder for life insurance. The market includes insurance groups with majority foreign owned capital and local groups. The regional market suffers from cumulative arrears in insurance premium payments and other major structural problems.

242. 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.<sup>195</sup> Maritime, river or air insurance contracts, as well as reinsurance contracts, are excluded from the Code's scope. The provisions in the CIMA Code have been described in previous TPRs of signatory States.<sup>196</sup>

243. The only compulsory insurance under the CIMA Code is motor vehicle third-party insurance. However, the Code provides that member States may make other types of insurance compulsory, as is the case in several countries for the insurance of imported goods. The CIMA Code also provides for the principle of specialization, whereby the same company may not provide damage and life insurance services simultaneously.<sup>197</sup>

244. The Code provides that insurance premiums are to be set freely by insurance companies. The minimum premium for motor vehicle third-party insurance is, however, set by the governments of member countries, then endorsed by the Insurance Monitoring Commission (CRCA), which is the regulatory body for the insurance market.

245. 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 technical experts.

246. 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 two in Côte d'Ivoire and two in Togo. Since 1 October 2011, the

<sup>194</sup> Regulation No. 06/2009/CM/UEMOA on mutual recognition of visas issued by WAEMU member States. Viewed at: [http://www.uemoa.int/actualite/2009/CM26062009/reglement\\_06\\_2009\\_CM\\_UEMOA.pdf](http://www.uemoa.int/actualite/2009/CM26062009/reglement_06_2009_CM_UEMOA.pdf).

<sup>195</sup> 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. Comoros have never ratified it, while Guinea-Bissau did so subsequently.

<sup>196</sup> See, for example, WTO (2010).

<sup>197</sup> Article 326 of the CIMA Code.

provisions in the CIMA Code have specified that there is no longer any effective guarantee if premiums are not paid.

247. In April 2007, the CMA decided to raise the minimum equity capital requirement for insurance 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 of 7 April 2010. Companies that did not comply with this requirement by the deadline automatically had to cease their activities.<sup>198</sup>

248. Despite the existence of the CIMA Code, it appears that harmonization of the regulation of insurance services in countries in the region needs to be taken further. In particular, the CIMA insurance market still does not have any single approval procedure. In the CIMA countries, insurance may not be directly taken out with a foreign company that is not authorized to operate within the country unless a specific waiver is obtained from the Minister responsible for insurance. In practice, the ministries responsible for insurance grant authorizations on an ad hoc basis to one or more institutions that have not been approved to associate with one or more approved insurance institutions for the insurance of specific risks or special categories of risk.

249. 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.<sup>199</sup>

250. Reinsurance is not covered by the CIMA Code. However, any transfer of reinsurance abroad involving more than 75 per cent of a risk relating to a person, property or a liability on the territory of a member State, with the exception of certain branches, must be authorized by the Minister responsible for insurance (Articles 308 and 328). In practice, however, 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, especially 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.<sup>200</sup>

251. 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 CRCA 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.

## **(ii) Other financial services**

252. Banking in 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.<sup>201</sup> The BCEAO, in cooperation with the WAMU Banking Commission, is responsible for such regulation and for the surveillance and prudential supervision of banks and

<sup>198</sup> The text of the Regulation was viewed at: [http://www.cima-afrique.org/hc.php?hcl\\_id=1361](http://www.cima-afrique.org/hc.php?hcl_id=1361).

<sup>199</sup> Ziguélé, M. (2008).

<sup>200</sup> *Ibid.*

<sup>201</sup> Online information from the BCEAO. Viewed at: <http://www.bceao.int/internet/bcweb.nsf/french.htm?OpenFrameSet>.

financial institutions in member countries. At the end of 2009, in WAEMU countries the percentage of the population with a bank account was 11.11 per cent, including accounts with micro-finance institutions. Paper money still accounts for a relatively large proportion of the money supply. A campaign to promote the use of banking services and non-cash means of payment was launched in 2010.<sup>202</sup>

253. In general, there are no restrictions on market access for foreign companies. There are some restrictions on foreign presence, however, in the BCEAO's statutes. For example, under Article 14 of the Banking Regulation Law, only a national of a WAMU country may direct, administer or manage a bank or financial institution or one of their agencies. The Minister of Finance may, subject to the favourable opinion of the Banking Commission, grant individual waivers from this provision. The Secretary General of the Banking Commission exercised his delegated authority to give 38 favourable opinions in 2008 compared to 47 the previous year, to allow non-Union nationals to occupy 32 management posts and 14 directors' posts. In 2010, the Law was amended to allow directors who had obtained a waiver from the nationality requirement in order to exercise in a particular country of the Union not to have to request another waiver when they changed their post, their institution or the country (Article 25).

254. The prudential situation of banks deteriorated slightly in 2009 and 2010 (Table IV.14). In order to strengthen the financial system, including banking, the minimum equity capital requirement for banks and financial institutions was raised to CFAF 5 billion and CFAF 1 billion (€7.6 million and €1.5 million), respectively, as of 1 January 2008. The banks and financial institutions already in operation were given until 31 December 2010 to comply with this obligation. These thresholds are reportedly to be raised to CFAF 10 billion and CFAF 3 billion, respectively, in a second stage whose time-frame has yet to be established.

**Table IV.14**  
**Number of banks complying with WAMU prudential standards, 31 December 2011**

	Côte d'Ivoire	Guinea-Bissau	Togo	Benin	Burkina Faso	Mali	Niger	Senegal	WAMU
<b>Total number of banks, of which:</b>		<b>4</b>	<b>4</b>	<b>12</b>	<b>12</b>	<b>13</b>	<b>..</b>	<b>..</b>	<b>97</b>
<b>Number complying with the following standards:</b>									
Representation of minimum capital <sup>a</sup>	..	3	11	7	11	11	..	..	75
Risk coverage <sup>b</sup>	..	3	11	7	11	12	..	..	80
Note: average solvency ratio (%)	..	..	13.4	..	..	..	..	..	11.9
Limitation of capital assets and stockholding <sup>c</sup>	..	4	9	7	10	12	..	..	73
Limitation of commitments on a single signature	..	3	6	7	5	9	..	..	57
Limitation of individual risks overall volume <sup>d</sup>	..	3	12	7	11	12	..	..	79
<b>Other prudential standards</b>									
Limitation of loans to main shareholders, managers and staff <sup>e</sup>	..	4	9	7	9	12	..	..	74

<sup>202</sup> BCEAO (2011). 2010 Annual Report. Viewed at: <http://www.bceao.int>.

	Côte d'Ivoire	Guinea-Bissau	Togo	Benin	Burkina Faso	Mali	Niger	Senegal	WAMU
Coverage of long- and medium-term uses with stable resources <sup>d</sup>	..	3	5	4	6	9	..	..	52
Liquidity ratio <sup>e</sup>	..	4	7	8	7	9	..	..	66

.. Not available.

- a Number of establishments whose core capital is at least equal to the minimum capital requirement of CFAF 5 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 stockholdings 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 the same maturity.

Source: BCEAO.

255. In 2009, the authorities responsible for regulating and supervising the financial sector, including the BCEAO and CIMA, the Inter-African Conference on Social Security (CIPRES), and representatives of the eight member States of the Union, decided to establish a Financial Stability Committee within WAMU. This Committee held its first regular session on 29 October 2010 and decided on the following priorities: to identify the risks in the financial system as a whole; to monitor unregulated financial activities and products; and to decide on the control mechanisms for financial groups.

256. Most bank loans are still for short-term commercial activities and there is a high rate of default on the loans granted. Micro-finance has therefore continued to develop as the only way of giving farmers and small enterprises access to loans which they are unable to obtain through the traditional banking system. Micro-finance institutions are generally savings and loan cooperatives; these decentralized financial systems (DFS) are covered by common WAEMU regulations. DFS institutions are exempt from all direct or indirect taxes, charges or fees relating to their savings and loan operations.

257. Since its creation in 1998, the Regional Stock Exchange (BRVM), with headquarters in Abidjan, has been an additional source of financing, supplementing traditional sources such as bank finance or private investment in securities, debt instruments or shares (Annex on Côte d'Ivoire).<sup>203</sup> The BRVM is a private company holding a concession for a community public service established by WAEMU. The majority of its capital is held by commercial operators, while States only hold about 13 per cent. The Regional Council for Public Savings and Financial Markets regulates the BRVM, gives authorizations to those involved and monitors its operations; it also authorizes issue of the shares traded on the BRVM.

258. Management and intermediation companies (SGIs) play a leading role on these markets. They have the exclusive right to negotiate securities traded on the Exchange and are responsible for safekeeping most of the securities on behalf of their clients. They are set up in the form of public limited companies having the status of a financial institution. There is no restriction on participation by SGIs whose capital is owned by persons who are not nationals of WAEMU member countries. In each member State, the BRVM has a national stock exchange office (ANB) responsible, *inter alia*,

<sup>203</sup> Online information from the BRVM. Viewed at: <http://www.brvm.org>.

for: (i) centralizing transmission of orders; (ii) disseminating information; and (iii) organizing local promotion of the market. There is no SGI in Guinea-Bissau, which does not have an ANB.

259. Since 2010, WAEMU has issued two new Directives aimed at harmonizing the fiscality applicable to securities and investment companies in member States.<sup>204</sup> Both of these have been implemented in Togo. The purpose of the Directive on securities is to harmonize the taxation of revenue earned from securities and services provided by approved intermediaries on the WAEMU regional financial market. It also provides for the adoption of incentive fiscal measures to develop the regional financial market in order to boost the number of stock exchange transactions and provide an alternative form of financing for enterprises, thereby increasing economic investment in the Union. The Directive on the harmonization of taxation applicable to closed-end investment companies is aimed at harmonizing the duties and taxes applicable to such enterprises and the taxes payable on the earnings of those which have their headquarters in a WAEMU member State. According to the Commission, closed-end investment companies play an extremely important role in financing small and medium-sized enterprises.

## (9) PROFESSIONAL SERVICES

260. Professional services have been the subject of several WAEMU Commission regulations (Table IV.15). The aim of these texts is to institute free movement and residence within the community area for certified professionals who are WAEMU nationals. The section below describes the progress made in terms of common regulations within WAEMU, as well as the national regulations communicated to the WTO Secretariat in connection with this Report.

Table IV.15  
Implementation of regulations on professional services by WAEMU member countries, February 2012

	Benin	Burkina Faso	Côte d'Ivoire	Guinea-Bissau	Mali	Niger	Senegal	Togo
Regulation No. 05/2006/CM/UEMOA, adopted on 2 May 2006, on the free movement and residence of chartered accountants and certified accountants within WAEMU	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Regulation No. 01/2009/CM/UEMOA, adopted on 27 March 2009, establishing a Permanent Council of the Accountancy Profession (CPPC) in the Union	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Regulation No. 02/2009/CM/UEMOA, adopted on 27 March 2009, establishing a West African Accountancy Council (CCOA) in the Union	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Directive No. 02/97/CM/UEMOA, adopted on 28 September 1997, establishing a National Association of Chartered Accountants and Certified Accountants (ONECCA) in member States of the Union	Yes	No	Yes	No	No	No	Yes	Yes
Directive No. 03/97/CM/UEMOA, adopted on 28 November 1997, establishing a National Accountancy Council (CNC) in member States of the Union	Yes	No	Yes	No	No	No	Yes	No

<sup>204</sup> Directive No. 02/2010/CM/UEMOA on harmonization of fiscality applicable to securities in WAEMU member States. Viewed at: [http://www.uemoa.int/Documents/Actes/DIRECTIVE\\_02\\_2010\\_CM\\_UEMOA.pdf](http://www.uemoa.int/Documents/Actes/DIRECTIVE_02_2010_CM_UEMOA.pdf); and [http://www.uemoa.int/Documents/Actes/CM24062011/Directive\\_02\\_2011\\_CM\\_UEMOA.pdf](http://www.uemoa.int/Documents/Actes/CM24062011/Directive_02_2011_CM_UEMOA.pdf).

	Benin	Burkina Faso	Côte d'Ivoire	Guinea- Bissau	Mali	Niger	Senegal	Togo
Directive No. 04/97/CM/UEMOA, adopted on 28 November 1997, on the adoption of a legal regime for approved management centres (CGA) in member States of the Union	Yes	No	Yes	No	No	No	Yes	Yes
Directive No. 04/2009/CM/UEMOA, adopted on 27 March 2009 establishing a single window for the submission of financial statements (GUDEF)	Yes	No	Yes	No	No	No	Yes	Yes
Special accounting rules applicable to approved participants in the WAEMU regional financial market, Annex to Regulation No. 09/2006/CM/UEMOA	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Regulation No. 10/2006/CM/UEMOA of 25 July 2006 on the free movement of lawyers	No	No	No	No	No	No	No	No
Directive No. 06/2005/CM/UEMOA of 16 December 2005 on the free movement of physicians who are nationals of the Union	No	No	No	No	No	No	No	No
Directive No. 07/2005/CM/UEMOA on the free movement of architects who are nationals of the Union	..	..	..	..	..	..	..	..
Directive No. 06/2008/CM/UEMOA on the free movement and residence of pharmacists who are nationals of the Union	No	No	No	No	No	No	No	No
Directive No. 07/2008/CM/UEMOA on the free movement of dental surgeons who are nationals of the Union	No	No	No	No	No	No	No	No

.. Not available.

Note: Yes: Community text fully implemented.

No: Community text not implemented.

Source: WAEMU Commission.

261. As far as accounting services are concerned, the bookkeeping method is also regulated and this has an effect on market access because services by a foreign supplier must comply with the regulations. Since 1998, enterprises located in OHADA member countries are required to present their accounts and financial statements in accordance with the reference model provided by the West Africa Accounting System (SYSCOA).<sup>205</sup> In addition to the balance sheet for the accounts, however, enterprises often have several balance sheets for the same financial year, including a balance sheet for tax purposes intended for the tax administration and a "banking" balance sheet intended for banks.

262. In order to avoid these multiple balance sheets, a Directive provides for a single window for the submission of financial statements (GUDEF), to which a single balance sheet for each company or organization has to be submitted. This Directive has only been partly implemented in certain member countries, where the GUDEF receives all the balance sheets, but does not yet forward them to the BCEAO.<sup>206</sup> To avoid the submission of multiple balance sheets, the Directive provides that the national SYSCOA structure must be given a single annual financial statement for each company or organization. This Directive is partly implemented, but some countries in the Union have not yet set

<sup>205</sup> The SYSCOA was adopted by Regulation No. 04/97/CM/UEMOA of 20 December 1996. It came into effect in the WAEMU area on 1 January 1998.

<sup>206</sup> Directive No. 04/2009/CM/UEMOA of 27 March 2009 establishing a single window for the submission of financial statements in member States of the Union (GUDEF).

up a GUDEF (Burkina Faso, Guinea-Bissau, Mali and Niger). Benin, Côte d'Ivoire, Senegal and Togo have such a structure, which is starting to operate.

263. The method of bookkeeping is regulated in two ways: at the community level and at the national level. At the community level, regulations overseen on the one hand by the West African Accountancy Council (CCOA) require that non-financial companies prepare their financial statements according to the SYSCOA. In 2011, the SYSCOA accounting reference model was in force in all countries of the Union.

264. On the other hand, a second community regulation overseen by the Permanent Council of the Accountancy Profession (CPPC) requires that the financial statements of equity capital firms (mainly public limited companies) must be certified by professionals listed in the National Lists of the National Association of Chartered Accountants and Certified Accountants (ONECCA) for the community area. According to this second community regulation, only auditors properly listed in the ONECCA lists for WAEMU are authorized to certify financial statements. Each member State has an ONECCA. Financial companies (mainly banks) draw up their balance sheets on the basis of the banking accountancy plan, while insurance companies keep their accounts on the basis of the CIPRES Code.<sup>207</sup>

265. At the national level, the National Accountancy Council (CNC) must in principle verify effective application of accounting standards in force in the WAEMU area. The GUDEF must ensure that the financial statements are properly prepared in a single copy by national firms, and have been drawn up properly on the basis of the accounting references in force in the Union. At the national level, ONECCA ensures that the financial statements have been verified and certified by authorized professionals.

266. With the aim of integrating informal sector enterprises into the sphere of legal economic operators, the WAEMU Commission has provided for a new type of professional accountancy services. These are services provided by professionals belonging to approved management centres (CGAs) who mainly work with informal sector entrepreneurs providing them with accounting assistance to allow them to create small and medium-sized enterprises in the Union. Bookkeeping by CGA professionals is also regulated by the SYSCOA, which has provided a minimal cash provision system for this purpose. According to the WAEMU Commission, local texts adopted under national finance legislation also provide specific conditions for keeping accounts for those belonging to CGAs, giving them certain special fiscal benefits. With the exception of Guinea-Bissau and Togo, all member States of the Union have CGAs.

<sup>207</sup> CIPRES: Inter-African Social Security Conference.





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