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Terence P. Stewart

Margaret E.O. Edozien

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Cover Page Footnote

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Towards a Truly Global Marketing Strategy: A Need to Consider Trade and Investment Opportunities in West Africa

Terence P. Stewart* and Margaret E.O. Edozien**

I. Introduction

A. Overview

Although the U.S. corporate outlook is becoming increasingly more global, as it must for U.S. firms to compete effectively with their counterparts in the European Economic Community (EEC) and Japan, little attention is given to investment opportunities in Africa. Because of the economic and political problems facing many African nations, doing business in Africa can be difficult and frustrating. However, as African countries, like Nigeria, abandon military dictatorships in favor of democratically elected governments and also liberalize their trade and investment laws, it would be short-sighted for U.S. corporations to continue to discount the continent in their business planning.¹ Indeed, the European Community² and Japan, rec-

* Managing Partner, Stewart and Stewart, Washington, D.C. B.A., College of the Holy Cross; M.B.A., Harvard University; J.D., Georgetown University. Member, District of Columbia Bar.

** Associate, Stewart and Stewart, Washington, D.C. B.A., Duke University; J.D., University of North Carolina; LL.M. (international and comparative law), Georgetown University. Member, New York Bar and Nigerian Bar.

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¹ See EXPORT IMPORT BANK OF THE UNITED STATES, 1990 ANNUAL REPORT (March 1991)[hereinafter EXIMBANK 1990 REPORT] ("The United States has become an export-driven economy. With 75% of the world's gross national product outside our borders, our economic well-being depends on our international commercial prominence, our industrial competitiveness, and our share of the world markets.").

² See A. Tovias, *World Bank Discussion Papers: The European Communities' Single Market — The Challenge of 1992 for Sub-Saharan Africa*, PAPER NO. 100 WORLD BANK DISCUSSION PAPERS, 1990, at 5 [hereinafter Tovias]. The EEC has traditionally been the "most important outlet for [Sub-Saharan Africa's] goods and services" for the following reasons: (1) due to the small markets of their neighbors, there is limited possibilities for inter-region trade; (2) "the relative propinquity to the EC, coupled with its huge purchasing power;" (3) tariff-free access into the EEC as a result of the EEC's various preferential trading arrangements with countries in Sub-Saharan Africa; (4) knowledge of three European languages — French, English and Portuguese; (5) "the presence in [Sub-Saharan Africa] of institutions, standards and transport facilities favoring trade with Europe dating from co-

ognizing the trade implications of the emergence of several economically viable and politically stable nations in Africa, have already expanded their trade and investment relations with countries in Sub-Saharan Africa.

A recent Journal of Commerce article predicts a brighter future for the continent, dependent, of course, upon continued political stability in the region:

Political change in Africa, easing economic access and curtailing the risk of natural resource deals, may make the continent a more active player in world trade by the end of the decade, business leaders and government officials say.

"Five years from now, Africa may move from its current status of almost non-existent in world trade to a relatively active position like South or Central America," said K.R. Locklin, manager of the Africa Growth Fund [based in Washington, D.C.]. . . .³

According to a May 1990 report prepared by the U.S. Department of Commerce, countries in Sub-Saharan Africa imported a total of \$56 billion in 1988. These countries purchased only about 1% of

lonial times;" and (6) commercial and investment ties between most countries in Sub-Saharan Africa and former colonial powers. *Id.*

³ Erich E. Toll, *Reforms, Resources Boost Africa Appeal*, J. COM. & COMMERCIAL, July 10, 1991, at 1. See R.W. Hull, *The Challenge to the United States in Africa*, 90 CURRENT HISTORY 193 (May 1991)[hereinafter Hull].

The United States is quietly disengaging from sub-Saharan Africa. Since 1983, it has accelerated the pace of disinvestment. Bilateral trade has fallen off appreciably, except with oil-producing countries. The United States is purchasing fewer nonpetroleum African imports and is exporting fewer capital goods to Africa. And even when petroleum imports have dramatically increased, as in the case of Nigeria, the United States has failed to increase exports substantially. . . .

In an effort to encourage American corporations to invest in Africa, in 1990 the United States initiated a \$30-million "Africa Growth Fund." In 1988 the United States played a major role in establishing the Multilateral Investment Guaranty Agency (MIGA) as a World Bank affiliate (MIGA encourages the flow of direct investment capital to underdeveloped countries). The response by American business to both initiatives has been discouraging. This is unfortunate. Not since the era of independence three decades earlier have African countries been so eager for American trade and investment. And not since the beginning of the colonial era nearly a century ago have these countries undergone such a fundamental restructuring of their economies and been so receptive to American participation. . . .

Congress, characteristically at odds with the President on African issues, appears to be more acutely aware of the need to aid Africa. In November, 1990, it raised aid to Africa to about \$800 million, which was more than 40 percent over the \$560 million suggested by the President. Nevertheless, the amount is paltry when compared with \$2.3 billion in United States aid for Egypt and \$3 billion in economic and military assistance for Israel.

Why has American private enterprise not risen to the challenge? The recession and the crisis in the Persian Gulf are part of the answer. But running deeper are the currents of fear, uncertainty and ennui felt by American business people when confronted with Africa. Corporate America remains largely ignorant of Africa and its potential. Its knowledge of the continent barely extends beyond what appears in the popular media, which is usually distorted and laden with stereotypes. Rarely does corporate America have contact with American specialists on Africa, who are well informed on African issues and who could act as bridge builders.

Id. at 193-94.

America's worldwide exports (\$3.78 billion), 2.3% of West Germany's exports (\$5.8 billion), and 3.5% of the United Kingdom's exports (\$4.5 billion).⁴ Noting the growth potential in the region stemming from economic and political reforms, and considering the comparative figures cited above, the Department of Commerce concluded that:

Our competitiveness as an exporting nation rests with those American companies that aggressively export on a global basis. Africa, while modest by comparison with some other markets, nonetheless deserves to become part of the export global strategy of more American companies.⁵

This Article focuses on business opportunities in West Africa for companies in the United States and other industrialized countries that aggressively pursue a truly global marketplace. Part I of this Article contains an introduction and discussion of international joint ventures. Part II describes trade and investment opportunities available in seven West African countries: Nigeria, Ghana, Cameroon, Cote D'Ivoire, Togo, Cape Verde, and Gambia. Part III examines various U.S., multilateral, and bilateral programs which provide investors in Africa with capital, loans, guarantees, and risk protection. Part IV presents the conclusion.

B. International Joint Ventures — An Option for Establishing a Business Enterprise in Developing Countries

Advisory comments from an August 1990 report of the American Embassy in Yaounde, Cameroon apply equally to investors in any of the seven profiled countries:

Success in Cameroon, as elsewhere, depends on persistence, willingness to adapt to local conditions, and a good product. Frequently, difficulties encountered by U.S. businesses have resulted from lack of market research or insufficiently detailed agreements with Cameroonian partners. The importance of personal contacts cannot be overemphasized, and patience is necessary when working with the local bureaucracy. Joint ventures with Cameroonian partners can be helpful in overcoming difficulties caused by local practices.⁶

⁴ U.S. DEP'T. OF COMMERCE, AFRICA: GUIDE TO BUSINESS FINANCE FOR U.S. FIRMS v (May 1990)[hereinafter GUIDE TO BUSINESS FINANCE].

The Commerce Department's Office of Africa, which develops and recommends trade and investment policy positions for the Department of Commerce and participates in negotiations on trade and investment agreements with African governments, also assists U.S. firms in identifying markets for their products, services, and investments in Africa. Individual country desk officers maintain up-to-date information on trade regulations, tariffs, business practices, economic and political developments, trade data and trends, and market size on the various countries in sub-Saharan Africa.

⁵ *Id.*

⁶ AMERICAN EMBASSY (YAOUNDE), CAMEROON - COMMERCIAL ACTIVITIES REPORT '90 (Aug. 1990).

1. *Advantages of Joint Venture Arrangements*

Transnational business activities take a wide variety of forms, including transfer agreements (such as for licensing and technology), export transactions, joint ventures, and the establishment of both foreign branches and subsidiaries.⁷ It is not uncommon for companies entering into developing countries to seek out, or in some cases to be required by law to use, local joint venture partners.

An international joint venture contemplates the pooling of resources, the sharing of risks, the exchange of expert knowledge, the exploitation of business opportunity, and the uniting into a single entity for the achievement of common objectives that could not otherwise be accomplished by any one of the participants acting independently. Accordingly, it has been noted that

[a] joint venture creates a synergistic effect: each enterprise in a joint venture can make up for its partner's deficiencies and the marriage of the enterprises in a joint venture can create a new entity whose power is greater than the sum of the powers of the separate enterprises. The formation of a joint venture enables each parent company to gain instant access to key technology, new markets, distribution systems, cheap production methods, or major customers faster and less expensively than if the corporation attempted a take-over or independent development of these assets.

Because a joint venture may bring together companies with different interests, management styles and goals, it creates a potential risk that the parent companies will not be able to cooperate on a practical level as business partners. Conflicts of interest arising from self-dealing, corporate opportunities, and disclosure may cause friction

⁷ See generally JAMES DOBKIN ET AL., *INTERNATIONAL JOINT VENTURES* 2-9 (2d ed. 1988)[hereinafter DOBKIN]:

Generally, U.S. courts have defined a joint venture as an association of two or more persons (whether corporate, individual, or otherwise) combining property and expertise to carry out a single business enterprise and having a joint proprietary interest, a joint right to control, and a sharing of profits and losses.

Although joint ventures normally are governed by the substantive law of partnerships under U.S. law, they differ from partnerships in that partnerships contemplate the operation of a general business, not a specific undertaking. The joint venture need not be formally organized as a corporation or other business entity, but in more substantial undertakings, it is customary to do so. What form the association takes — partnership, general business corporation, or closed corporation — depends on several factors, including the objective of the parties.

Id. See also Joseph F. Brodley, *Joint Venture and Antitrust Policy*, 95 HARV. L. REV. 1521, 1526 (1982). A joint venture is defined as:

an integration of operations between two or more separate firms, in which the following conditions are present: (1) the enterprise is under the joint control of the parent firms, which are not under related control; (2) each parent makes a substantial contribution to the joint enterprise; (3) the enterprise exists as a business entity separate from its parents; and (4) the joint venture creates significant new enterprise capability in terms of new productive capacity, new technology, a new product, or entry into a new market.

Id.

between parent companies.⁸

2. *Requirements for Successful Implementation*

Forming a successful international joint venture requires, at a minimum, that the participants agree from the outset on the fundamental objectives to be achieved, develop an appropriate strategy, and select a form for the joint venture entity that is well tailored to their specific needs. The participants need to study *all* relevant laws and regulations, including tax laws, *in both countries* that may affect the legal rights and obligations of the joint venture partners, and they need to execute the necessary transfers in a manner that adequately protects the intellectual property rights of the patent or trademark owner. Finally, participants should structure a comprehensive and effective mechanism for resolving disputes.

One consequence of the "internationalization" of trade and business has been an increase in the use of the joint venture as a form of business enterprise. "[M]any view joint ventures as a means of breaking down trade barriers and lowering the cost of production, research and development of projects."⁹ Establishing a joint venture entity in the host country could alleviate some of the perceived "headaches" that are commonly associated with doing business in developing countries.¹⁰

II. Opportunities in Seven West African Countries

There are a total of sixteen countries in West Africa.¹¹ In this

⁸ Zenichi Shishido, *Conflicts of Interest and Fiduciary Duties in the Operation of a Joint Venture*, 39 HASTINGS L.J. 63 (1987); see also DOBKIN, *supra* note 7, at 2-10:

[t]he primary advantage and hallmark of the joint venture form of association [is] the ability to combine the strengths, expertise, technology, and know-how of separate businesses with the concomitant benefit of sharing investment costs and risks. . . . One of the primary advantages of the joint venture is that it can allow the participants to undertake potentially speculative and high-risk endeavors without exposing assets to unlimited liability. Accordingly, a company can experiment with larger projects or enter into new areas without making a permanent commitment or risking capital beyond its means.

Id.

⁹ Adam B. Weissburg, *Reviewing the Law on Joint Ventures With an Eye on the Future*, 63 S. CAL. L. REV. 487, 487 (1990).

¹⁰ M. AYO AJOMO, *NEW DIMENSIONS IN NIGERIAN LAW* 8-11 (1989).

The type of joint venture recommended for a country like Nigeria for obvious reasons is the one with the following characteristics: (i) a separately incorporated enterprise in which (ii) investors from two or more countries outside, (iii) commit capital and/or technological assets, (iv) share some degree of management, (v) participate jointly in all risks of the enterprise, and (vi) share in the earnings in the ratio of their contributions to the equity of the enterprise.

Id. at 12. Ajomo gives as an example the ongoing LNG joint venture project between the Nigerian National Petroleum Company, Shell, Elf, Agip/Phillips, Gulf, Mobil, Texaco, and Pan Ocean. *Id.* at 18 n. 35.

¹¹ These countries are Benin, Cameroon, Cape Verde, Cote D'Ivoire, Equatorial

section, investment profiles are provided for seven West African countries: Nigeria, Ghana, Cameroon, Cote D'Ivoire, Togo, Cape Verde, and Gambia. All of these countries are in the process of restructuring their trade and investment laws in an effort to attract foreign direct investment from the United States, the European Community, and Japan.

The seven countries profiled in this Article reflect the diversity of opportunities in West Africa. For example, the larger economies in the region, Nigeria, Ghana, Cameroon, and Cote D'Ivoire, have abundant natural resources. Cameroon, Togo, and Cape Verde have developed or are in the process of developing Free Trade Zones that will provide greater access to the entire West African market for the goods and services of firms interested in manufacturing, processing, or assembling their products in the host country for export into or out of West Africa. Finally, in terms of developing a tourist industry to attract Europeans and Americans who increasingly seek "exotic" new places to spend the cold winter months, several of the profiled countries, particularly Cote D'Ivoire, Togo, and Gambia, offer relatively developed infrastructures, beautiful landscapes and beaches, rich indigenous cultures, and friendly populaces.

A. Nigeria

1. General History and Background

Nigeria¹² sits on the west coast of Africa, approximately 400 miles north of the equator, and has a total land area of approximately 356,700 square miles, which is roughly equivalent to that of California, Nevada, and Utah combined. Nigeria is bounded on the south by the Gulf of Guinea, on the east by Cameroon and Chad, on the north by Niger, and on the west by Benin. The climate is tropical, with some variation between the south, which is hot and wet, and the north, which is hot and dry.

Today, Nigeria is made up of thirty states and the Federal Capital Territory of Abuja.¹³ The latest U.S. Department of Commerce

Guinea, Gambia, Ghana, Guinea, Guinea-Bassau, Liberia, Mali, Nigeria, Sao Tome & Principe, Senegal, Sierra Leone, and Togo.

¹² U.S. DEP'T OF STATE, BACKGROUND NOTES NIGERIA (Aug. 1987)[hereinafter BACKGROUND NOTES].

Area: 923,768 sq. km. (356,700 sq. mi.). Capital: Lagos. Languages: English (official), Ibo, Yoruba, Hausa, and others. Independence: October 1, 1960. Type of Government: Military. Flag: Three vertical bands — green, white, and green. Natural resources: Petroleum, tin, columbite, iron ore, coal, limestone, lead, zinc, and natural gas.

¹³ See generally NIGERIAN HISTORY AND CULTURE (R. Olaniyan ed., 1985); AREA HANDBOOK SERIES, NIGERIA: A COUNTRY STUDY (4th ed. 1982); A. OYEWOLE, HISTORICAL DICTIONARY OF NIGERIA (1987). See also BACKGROUND NOTES, *supra* note 12, at 3:

Before the colonial period, the area which comprises modern Nigeria already had a long, eventful history. More than 2000 years ago, the Nok culture in the present Plateau state worked iron and produced sophisticated terra cotta

report, prepared by the American Embassy in Lagos, estimates the 1990 population at 118 million.¹⁴ With a population growth rate of over 3% per annum, it is estimated that by the year 2000 Nigeria's population will reach 159.5 million.¹⁵ The three dominant languages in Nigeria are Hausa, Yoruba, and Igbo, with English as the official language. The predominant religion is Muslim, primarily in the north. In the south, the majority of people are Christian and the primary sects are Anglican, Baptist, and Catholic. Additionally, many Nigerians practice indigenous religions.

Nigeria gained her independence from Great Britain on October 1, 1960.¹⁶ For the following five years, Nigeria had a parliamentary

sculpture. In the northern cities of Kano and Katsina, recorded history dates back to approximately 1000 A.D. In the centuries that followed, these Hausa kingdoms and the Bornu Empire near Lake Chad prospered as important terminals of trans-Saharan caravan routes. In the southwest, the Yoruba kingdom of Oyo was founded about 1400, and at its height—from the 17th to 19th centuries—attained a high level of political organization. It encompassed a domain extending as far as modern Togo. In the south-central part of present-day Nigeria, as early as the 15th and 16th centuries, the kingdom of Benin had developed an efficient army, an elaborate ceremonial court, and artisans whose works in ivory, wood, bronze, and brass are prized throughout the world today. From the 17th through 19th centuries, the region was drawn into the web of the rapidly growing slave trade and other forms of trade with the European world.

In the early 19th century, the Fulani leader Usman dan Fodio launched an Islamic crusade that brought most of the Hausa states and other areas in the north under the loose control of an empire centered in Sokoto.

Following the Napoleonic wars, the British expanded their trade with the Nigerian interior. In 1885, British claims to a sphere of influence in that area received international recognition, and in the following year the Royal Niger Company was chartered. In 1900, the company's territory came under the control of the British Government. In 1914, the area was formally united as the Colony and Protectorate of Nigeria.

¹⁴ See generally I.A. GAMBARI, *PARTY POLITICS AND FOREIGN POLICY: NIGERIA UNDER THE FIRST REPUBLIC* (1980).

¹⁵ See generally A.H.M. KIRK-GREENE, *CRISIS AND CONFLICT IN NIGERIA* (1971); J. DE ST. JORRE, *THE NIGERIAN CIVIL WAR* (1972); EUROPA PUBLICATIONS LTD., *AFRICA SOUTH OF THE SAHARA 1990 762-74* (19th ed. 1990) [hereinafter EUROPA].

¹⁶ EUROPA, *supra* note 15, at 765.

The war was undoubtedly prolonged by the attitude of "Biafra" and the involvement of major powers. . . . Ojukwu's followers regarded the conflict as a total war for actual physical survival, and this attitude was confirmed by federal military atrocities. As the war progressed, major powers began to become directly involved. Thus, the federal government received material support from the United Kingdom and the USSR, while the "Biafrans" were the beneficiaries of French military and "technical" aid. . . . By December 1969, however, the "Biafrans" succumbed to the unrelenting federal pressure. The town of Owerri was captured, and the vital remaining "Biafran" airstrip—the secessionists' lifeline to supplies from outside—came within range of federal artillery. In January 1970 Ojukwu went into exile in Cote d'Ivoire, and his deputy, Lt-Col Philip Effiong, was left to negotiate terms for peace. . . . Military casualties reached an estimated 100,000, but the majority of deaths, most of them in horrifying circumstances, occurred among Ibo civilians. The federal government's military policy was basically one of slow strangulation by blockade and starvation. It has been variously estimated that between 500,000 and 2m. "Biafran" civilians died in the war, chiefly from starvation. At the close of this bitter conflict, Gowon's SMC [Supreme

democratic government, modeled after that of Britain.¹⁷ On January 15, 1966, the civilian government was toppled in a military coup which placed Nigeria under military rule until 1979. Maj.-Gen. Johnson Aguiyi-Ironsi, an Ibo, assumed control of the government following the 1966 coup. Six months later, on July 29, 1966, Gen. Ironsi was killed in a counter-coup staged by Northern Nigerians. In the midst of mass killings of Ibos throughout Nigeria, then 31-year-old Lt.-Col. Yakubu Gowon, a northerner, emerged as the new leader of Nigeria.

By mid-1967, Nigeria was embroiled in a bitter civil war that pitted the Ibos in the southeast region, led by Oxford educated Lt.-Col. Chukwuemeka Oduemegwu-Ojukwu, in their struggle to create an independent nation, Biafra, against the Federal Government of Nigeria.¹⁸ The Biafran War came to an end on January 12, 1970.¹⁹ After the war, Gen. Gowon announced his plan for Nigeria's socio-economic reconstruction. Nigerians waited anxiously for the promised return of the government to civilian rule. However, Gen. Gowon announced that the military would remain in power for at least another six years in order to ensure a complete return to "peace and political stability."²⁰

However, Gen. Gowon did not remain in power long enough to follow through on his pledge to return Nigeria to civilian rule by 1976. While attending an Organization for African Unity (OAU) conference in Kampala, Uganda, Gowon's government was overthrown in a bloodless coup on July 29, 1975.²¹ Nigeria's new leader was Brig. (later Gen.) Murtala Ramat Muhammed. Gen. Muhammed's reign was brief. On February 13, 1976, Gen. Muhammed was assassinated and his deputy, Lt.-Gen. Olusegun Obasanjo, assumed power.²² Lt.-Gen. Obasanjo immediately assured Nigerians of his

Military Council], and Nigeria in general, faced a difficult and extremely problematic future.

Id.

¹⁷ *Id.*

¹⁸ *Id.* at 766.

¹⁹ *Id.* ("Gen. Muhammed was assassinated in Lagos by a disaffected army officer, Lt.-Col. Bukar Dimka, and a number of associates.").

²⁰ See generally T. FALOLA & J. IHONVBERE, *THE RISE & FALL OF NIGERIA'S SECOND REPUBLIC, 1979-84* (1985).

²¹ THE ECONOMIST INTELLIGENCE UNIT, *NIGERIA COUNTRY PROFILE 1991-1992* 7-8 (1991)[hereinafter *EIU NIGERIA*] ("President Babangida has consistently maintained that his military government will be only a passing phenomenon. . . . [T]he deadline for handover to civilian rule is still set for October 1992 and the government appears committed to the schedule."); see also L. Diamond, *Nigeria's Third Quest for Democracy*, 90 *CURRENT HISTORY* 201 (May 1991).

²² See *EMBASSY OF NIGERIA, PRESS RELEASE* (August 28, 1991). General Babangida announced the creation of nine new states, bringing the total number of states in Nigeria to 30.

General Babangida said the creation, redesignation and re-alignment of the boundaries of the new states and the affected old states as approved by the Armed Forces Ruling Counsel takes immediate effect beginning from August

intention to follow through with the late Gen. Muhammed's pledge to return Nigeria to civilian rule in 1979. On October 1, 1979, the military government relinquished power to the civilians, and this new civilian government was based on the United States' presidential system. Having won the presidential elections held in August 1979, Shehu Shagari was sworn in as president of Nigeria on October 1, 1979.

On October 1, 1983, President Shagari was sworn in for a second term, after capturing 47 percent of the total votes cast in the August-September election. On December 31, 1983, the armed forces seized power, placing Nigeria once again under military rule, which remains today.²³ However, the December 1983 overthrow, which placed Nigeria under the leadership of Maj.-Gen. Muhammadu Buhari, was not to be the last. On August 27, 1985, Maj.-Gen. Buhari was quietly deposed by Maj.-Gen. (later Gen.) Ibrahim Babangida, who has retained power to date as the President and Commander-in-Chief of the Armed Forces of Nigeria.

One of the many challenges facing the new president, after seizing power of a nation in the midst of severe economic depression, was how to allay the fears of potential foreign investors that Nigeria was much too politically risky for investment. President Babangida pledged, as did his military predecessors, to voluntarily return Nigeria to civilian rule in October 1992. By all indications, President Babangida remains committed to handing over power on schedule.²⁴

2. *The Nigerian Economy*

In the 1970's, Nigeria, which had previously been a relatively

27, 1991 . . . [H]e assured that the creation of new states would not extend the lifespan of the Transition to Civil Rule Programme.

Id. at 2.

The 30 states and their capital cities are: Abia (Umuahia), Adamawa (Yola), Akwa Ibom (Uyo), Anambra (Awka), Bauchi (Bauchi), Benue (Makurdi), Borno (Maiduguri), Cross River (Calabar), Delta (Asaba), Edo (Benin City), Enugu (Enugu), Imo (Owerri), Jigawa (Dutse), Kaduna (Kaduna), Kano (Kano), Katsina (Katsina), Kebbi (Birnin Kebbi), Kogi (Lokoja), Kwara (Ilorin), Lagos (Ikeja), Niger (Minna), Ogun (Abeokuta), Ondo (Akure), Osun (Oshogbo), Oyo (Ibadan), Plateau (Jos), Rivers (Port Harcourt), Sokoto (Sokoto), Taraba (Jilingo), Yobe (Damatura).

Id.

²³ See U.S. DEP'T OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: NIGERIA (July 1991); U.S. DEP'T OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: NIGERIA (June 1990)[hereinafter FOREIGN ECONOMIC TRENDS NIGERIA 1990]; see also OVERSEAS PRIVATE INVESTMENT CORPORATION, COUNTRY INFORMATION FOR NIGERIA (1990)(1990 pop. 118.7 million; growth rate 3%)[hereinafter OPIC NIGERIA]; EUROPA, *supra* note 15, at 775 (stating that Nigeria has the largest population of any country in Africa).

²⁴ OPIC NIGERIA, *supra* note 23, at 2. According to a 1990 World Bank publication, Nigeria's population growth rate, estimated at 3.4 percent per annum, and the crude birth rate of 50 per thousand, are among the highest in the globe. See WORLD BANK, TRENDS IN DEVELOPING ECONOMIES 1989 (1990).

poor country exporting several agricultural products, became a relatively wealthy country exporting crude oil. During that decade, the Nigerian economy experienced a major boom as the price of crude oil soared.²⁵ Nigeria's new wealth allowed it to become a donor country, supporting the development of other African countries. Unfortunately, however, the oil boom of the seventies was soon followed by the oil bust of the eighties, and Nigeria saw her oil revenues plummet from a high of \$25 billion in 1980 to a low of \$6 billion in 1986.²⁶ Although Nigeria has a great deal of untapped potential and vast reserves of petroleum, natural gas, and unexploited minerals, it remains a relatively poor nation. Its Gross National Product (GNP) per capita is \$340,²⁷ down from \$1000 in 1980.²⁸ This decline is due primarily to Nigeria's escalating population and the volatile international oil market.

Nigeria is the fifth largest crude petroleum producer in the Organization of Petroleum Exporting Countries (OPEC), making it about eighth in the world.²⁹ Nigeria is the second largest supplier of crude petroleum to the United States.³⁰ Because petroleum accounts for approximately ninety percent of Nigeria's export earnings and most of the government's revenues, the country's economic well-being is highly dependent upon the volatile international oil market. For example, the recent war in the Persian Gulf caused oil prices to rise, which, in turn, immediately had a positive impact on the Nigerian economy.³¹ A key component of Nigeria's plans for economic recovery is to reduce the nation's almost total dependence

²⁵ OPEC NIGERIA, *supra* note 23, at 2.

²⁶ U.S. DEP'T OF STATE, INVESTMENT CLIMATE STATEMENT: NIGERIA I (April 1990)[hereinafter INVESTMENT CLIMATE: NIGERIA].

²⁷ EIU NIGERIA, *supra* note 21, at 25.

The rapid growth of Nigeria's oil industry in the 1960s and 1970s was facilitated by two important advantages. First, the country's oil is of high quality, with a low sulphur content and light gravity (370 API in the case of BonnyLight). Second, it has greater proximity than Middle Eastern oil to markets in Western Europe and North America. Consequently, Nigerian oil obtains premium prices. . . . [However,] Nigerian oil in particular has come under strong competitive pressure due to the emergence of the North Sea producers. North Sea crude is of equally high quality and has a proximity advantage over Nigerian oil. In addition, advances in refinery technology have improved the competitiveness of heavier crudes.

Id.

²⁸ INVESTMENT CLIMATE: NIGERIA, *supra* note 26, at 1.

²⁹ EUROPA, *supra* note 15, at 777 ("According to the latest official estimates, Nigeria possesses 20,000m. barrels of petroleum reserves—sufficient to maintain output at current rate of extraction for another 40-45 years.").

³⁰ FOREIGN ECONOMIC TRENDS NIGERIA 1990, *supra* note 23, at 11.

³¹ BANK OF AMERICA, WORLD INFORMATION SERVICES: COUNTRY OUTLOOKS - NIGERIA (April 1991). Nigeria's oil output rose from 1.7 million barrels per day to 1.9 million barrels per day during the Persian Gulf War. At the OPEC meeting held on March 12, 1991, shortly after Kuwait's liberalization, Nigeria agreed to reduce its oil production to 1.8 million barrels per day, and will likely further reduce production to 1.7 million barrels per day as the cartel accommodates increased output from war-ravaged Kuwait and Iraq. Nigeria's pre-gulf crisis OPEC quota was 1.6 million barrels per day. *Id.*

on petroleum production and to revitalize the once export-oriented agricultural sector.

a. *Petroleum*

In 1971, Nigeria became the eleventh member of OPEC.³² In crude oil production, Nigeria ranks fifth among the thirteen countries that currently comprise OPEC.³³ With predictions that after the late 1990's non-OPEC production levels will begin to decline, the Nigerian government plans to increase the country's proven reserves from 16 billion barrels to 20 billion barrels by 1995 and to increase production capacity, which stood at 1.9 million barrels per day in early 1991, to 2.5 million barrels per day by 1995.³⁴

b. *Natural Gas*

In addition to its proven reserves of crude petroleum, Nigeria is a nation of considerable mineral wealth, with vast reserves of unexploited natural gas.³⁵ According to *Nigeria Country Profile 1991-92*, prepared by the London-based Economist Intelligence Unit (EIU) which analyzes economic and political trends in over 165 countries,

³² NIGERIA'S EXTERNAL RELATIONS: THE FIRST TWENTY-FIVE YEARS 111 (G.O. Olusanya & R.A. Akindele eds., 1986).

The reduction in the international price of oil prompted the formation of OPEC by Venezuela, Iran and Saudi Arabia in 1960. Its objective was to bring about an increase in the price of oil back to the pre-1959 level, and to ensure stable and remunerative prices for producer-countries. In this, however, OPEC proved particularly unsuccessful in the 1960's. The marked surplus in world oil supply continued to depress prices, and the OPEC countries could not agree among themselves on an amicable formula for rationing output in order to limit supply. Venezuela, then the largest OPEC producer, felt that this should be based on historical production levels; Iran, as the most populous, favoured the criterion of national population; and Saudi Arabia, with the largest oil stock, argued that it should be based on proven reserves.

However, by the beginning of the 1970s, a new constellation of factors was emerging in the international oil market, largely to the advantage of OPEC control. As a result of the transition of the United States from an oil-sufficient to an oil-importing country, and with massive increases in the requirements of the Japanese, there occurred a major increase in the world demand for oil.

It was in this context that Nigeria joined OPEC as its eleventh member in 1971.

Id. at 111-12.

³³ The following is a list of the thirteen countries that currently comprise OPEC, indicating in brackets each country's crude oil production for the period July-December 1990 (in thousand barrels per day): Saudi Arabia [7,288], Iran [3,192], Venezuela [2,186], United Arab Emirate [2,110], Nigeria [1,842], Libya [1,433], Indonesia [1,321], Iraq [1,033] (down from 2,992 the previous six month period, due to the Persian Gulf War), Algeria [780], Qatar [390], Kuwait [379] (down from 1,970 the previous six month period, due to the Persian Gulf War), Ecuador [290], and Gabon [286].

³⁴ SUN EDITION, LTD. (Luxemborg), *MADE IN NIGERIA INVESTMENT AND BUSINESS GUIDE 75* (4th ed. 1990/91)[hereinafter *SUN EDITION*].

³⁵ U.S. DEP'T OF COMMERCE, *MARKETING IN NIGERIA 7* (Feb. 1991)[hereinafter *MARKETING IN NIGERIA*]. Nigeria's mineral resources include coal, iron ore, tin, uranium (as yet unexploited), phosphates, limestone, lead, zinc, columbite, tantalite, and marble. *Id.*

Nigeria's proven gas reserves, both associated with oil and non-associated, total 2.4 trillion m³, with additional reserves of 1.84 trillion m³ estimated.³⁶

There are three potential uses of this gas: reinjection to maintain oilfield pressure, domestic power generation and liquefaction for export. The second of these is a clearly viable way to utilize a significant volume of Nigeria's output. Gas reinjection in oilfields is limited by technical factors and high costs, although, nevertheless, usage for this end rose by over 30 per cent in 1988 and 1989³⁷

The Nigerian government is hopeful that in coming years the country will generate considerable export earnings from its Liquefied Natural Gas (LNG) project,³⁸ particularly as the global energy market is showing an increasing preference for natural gas to serve as fuel for industries. The government is pursuing a program for the more effective utilization of natural gas through liquefaction for export, transmission for industrial consumption, and reinjection for conservation.³⁹

c. Nigeria's Petrochemical Sector

The U.S. Department of Commerce has projected that "[b]y far the brightest star on Nigeria's investment horizon is the growing petrochemical sector."⁴⁰ The Nigerian government has named the establishment of a petrochemicals industry as one of Nigeria's top priorities for the 1990s.⁴¹ Growth in this sector will in turn lead to investment opportunities in plastics, fertilizers, and other petrochemical ventures to supply Nigeria's massive population. Growth in the petrochemical sector is also expected to be a source of considerable export earnings.

The Nigerian government has a three-phase petrochemical development program. The first phase is directed at using by-products from oil refineries for the production of plastics, fibers, carbon black

³⁶ EIU NIGERIA, *supra* note 21, at 27. Production rose sharply in 1988 and 1989, by 18.6 and 23.7 percent respectively, reaching 25.1 bn m³ in 1989, of which 3.5 bn m³ was sold to local industry, 2.7 bn m³ was utilized by oil companies and the balance, 75 percent of the total, was flared at the well head. *Id.*

³⁷ *Id.*

³⁸ *Id.* A planned LNG export scheme was scrapped in the early 1980s when the appointed operator, Phillips Petroleum of the U.S., pulled out. The Nigerian National Petroleum Corporation (NNPC) has reached agreement with Shell, Agip, and Elf (in a 60:20:10:10 equity sharing joint venture arrangement) for preliminary investigations on the development of a smaller LNG project than originally planned with Phillips Petroleum, to which additional units could be added in the future. *Id.* Construction of the LNG plant, with an estimated cost of \$2 billion at 1986 prices, is expected to be completed by October 1994. The NNPC is engaged in negotiations with West European gas companies over long term supply contracts, and the government hopes to begin exporting LNG to Europe by January 1995. *Id.*

³⁹ SUN EDITION, *supra* note 34, at 75.

⁴⁰ U.S. DEP'T OF COMMERCE, NIGERIA COUNTRY MARKETING PLAN 3 (May 1991)[hereinafter NIGERIA MARKETING PLAN].

⁴¹ SUN EDITION, *supra* note 34, at 75.

for tires, detergents, and solvents for paints. The second phase will be based on gas and other petroleum products. In the third phase, more advanced petrochemicals, based on simple aromatics of the xylene type, will be produced. The products from the third phase will then be used to produce upstream products, such as fibers, more sophisticated plastics, and fine chemicals.⁴²

Development of Nigeria's petrochemical sector will stimulate development of other important industries, such as household goods, apparels, automobiles, plastics, and pharmaceuticals, among others. For example, the greatest obstacle to the development of Nigeria's plastics industry is that high density polyethylene in granulated form, the major raw material, is not available locally. In order to overcome this impediment, this raw material will have to be produced by Nigeria's own petrochemical industry.

3. *Economic Recovery: The Structural Adjustment Program (SAP)*

When President Babangida took over the leadership of Nigeria in 1985, the Nigerian economy was in a state of crisis, precipitated largely by the drastic decline in oil revenues. President Babangida initiated a nationwide debate as to whether it was in the best interest of the country to continue the then suspended negotiations for a loan from the International Monetary Fund (IMF). Responding to the public's overwhelming opposition to accepting the terms of the IMF loan, President Babangida declined the loan and instead initiated Nigeria's Structural Adjustment Program (SAP) in 1986. Nigerians were called upon to tighten their belts and make the necessary sacrifices to get the country back on the road to economic prosperity as:

[t]he theme of the 1986 budget speech was Economic Reconstruction, Social Justice and Self-Reliance. To attain these objectives the budget outlined specific proposals for moving the economy out from the woods of a long recession through increased agricultural production and increased capacity utilization in industry while keeping inflation down to a level that will not threaten the gains of the economic reconstruction effort. The budget proposals were specifically designed . . . to (a) restructure and diversify the productive base of the economy in order to reduce dependence on oil export and imported goods; (b) achieve a fiscal and balance of payments viability; and (c) lay the basis for non-inflationary growth over the medium and long-term.⁴³

⁴² *Id.* at 85.

⁴³ O. OLASHORE, CHALLENGES OF NIGERIA'S ECONOMIC REFORM 70 (1991).

The general economic policies associated with the SAP were:

- (a) Exchange Rate Adjustment: President Babangida announced that "government will continue its policy of realistic adjustment of the external value of the Naira with a view to reducing the overvaluation, correcting past structural distortions, discourag-

The SAP represents a courageous effort by President Babangida's regime to first stabilize the Nigerian economy and then diversify the country's productive base, thereby reducing its dependence on oil. The goal of the SAP is to reduce the country's dependence on petroleum through an incentive program that stresses other resources, such as Nigeria's large, inexpensive labor force and its abundant, arable land. The specific objectives of the SAP have been to promote growth in the agricultural and manufacturing sectors, to reduce fiscal imbalances, to control inflationary pressures, and to depreciate the naira to a realistic rate (as the government has devalued the naira by eighty-five percent with respect to the U.S. dollar since the inception of the SAP in 1986).

President Babangida has won widespread international support and praise for his ambitious and courageous effort at economic reform. The international donor community has supported the Nigerian initiative. For example, the Paris and London Clubs rescheduled \$6.4 billion and \$5.5 billion, respectively in 1989, and the World Bank provides over \$1 billion a year in loans to support the Nigerian Government.⁴⁴ According to a recent Department of Commerce progress report, the

Nigerian economy is beginning to see some positive results from nearly five years of efforts to restructure the economy under a structural adjustment program (SAP) Slow but steady progress on policy initiatives to control inflation has brought about the orderly depreciation of the naira to a realistic, less than 10 percent, rate.

ing import propensity and strengthening the International competitiveness of Nigerian producers." The president also announced that while Nigeria would remain committed to honoring its obligations to clearly established creditors, the government would not devote more than 30 percent of foreign earnings to servicing foreign debt. *Id.* at 71.

- (b) Export Promotion: The government sought to achieve balance of payments equilibrium through promoting exports. The President announced a package of export incentives, such as import duty rebates on raw materials and components imported for use in manufacture for export, and retention of 25 percent of foreign exchange earnings for use of the exporter. *Id.*
- (c) Imports Policy: The President announced that Nigeria would move towards removing administrative abuses in the import licensing scheme. *Id.* at 73.
- (d) Incomes Guidelines: Measures were taken to limit the disposable income of Nigerians and curtailment in fringe benefits. *Id.* at 75.
- (e) Oil Subsidy: President Babangida announced that "Government has come to the conclusion that the nation cannot continue to support such great financial losses (resulting from consuming at home what could be sold abroad) and uneconomic consumption of a valuable but irreplaceable wasting asset. With effect from 1st January 1986, therefore, only 20 percent of the present level of subsidy on domestic crude oil, calculated at the point of refinery, will be provided." *Id.* at 76.
- (f) Other Important Features of the SAP: (1) privatization and/or commercialization of government parastatals; and (2) introduction of the Second Tier Foreign Exchange Market (SFEM). *Id.*

⁴⁴ FOREIGN ECONOMIC TRENDS NIGERIA 1990, *supra* note 23, at 7.

The Government has taken specific steps to reduce fiscal imbalances and to promote growth in the agricultural and manufacturing sectors. With these efforts Nigeria has gained international support for its economic reform program and for its determination to overcome the high transitional costs of adjustment.⁴⁵

As a key part of the SAP, over ninety parastatals have been privatized or commercialized, and the investment laws of Nigeria have been liberalized. As a result of these efforts, the overall economy grew approximately four percent in 1989, slightly larger than the growth in population.⁴⁶

4. *The Key To Nigeria's Near-Term Economic Recovery*

a. *The Agricultural Sector*

President Babangida continues to encourage a revitalization of Nigeria's agricultural sector, which employs over fifty-four percent of the labor force. Thus, agriculture remains the key to Nigeria's near-term economic recovery. While most of Nigeria's agricultural production is by traditional small-scale subsistence farmers who account for approximately two-thirds of total agricultural production, the government is attempting to introduce large-scale mechanized farming. By providing various incentive programs, the government hopes to encourage more Nigerians to take advantage of the tremendous potential of the agricultural sector in both traditional and mechanized farming.

The Department of Commerce has a bright forecast for Nigeria's agricultural sector as, "Nigeria's agriculture possesses great potential. There are 71 million hectares of arable land, or about double the area currently cultivated. There are substantial water resources, and the country spans several ecological zones, thus permitting a diversified crop pattern."⁴⁷

Prior to the oil boom of the seventies, Nigeria was a net exporter of traditional crops such as cocoa, peanuts, palm produce, rubber, cotton, timber, and wood products. However, by the 1980s Nigeria had become a net importer of these products.

Agriculture suffered greatly from neglect during the oil boom years. Its share of GDP fell from 45 percent in 1970 to 27 percent in 1982. Today, only 30 percent of Nigeria's GDP is produced in the agricultural sector, despite the fact that over two-thirds of Nigeria's labor force is employed on the land. Prior to the boom, Nigeria was a major world exporter of several commodities (cocoa, groundnuts, cotton, rubber and palm oil). Today only cocoa is exported in sizable quantities.⁴⁸

Nigeria must increase agricultural production not only to provide

⁴⁵ NIGERIA MARKETING PLAN, *supra* note 40, at 3.

⁴⁶ *Id.*

⁴⁷ FOREIGN ECONOMIC TRENDS NIGERIA 1990, *supra* note 23, at 8.

⁴⁸ *Id.* See generally M. WATTS, ET AL., STATE, OIL, AND AGRICULTURE IN NIGERIA (1987).

jobs for its growing population, but also to provide food at affordable prices. There is tremendous potential in the agricultural sector, particularly as Nigeria's arable land is double the area currently cultivated. Major cash crops include cocoa, sugar, cotton, tobacco, and palm oil. Staple crops primarily comprise rice, wheat, cassava, cocoyams, sweet potatoes, guinea corn, and millet.⁴⁹ As part of the SAP, the Nigerian government is providing various incentives designed to stimulate both domestic and foreign investment in the agri-business sector.

b. Manufacturing and Construction

An important component of Nigeria's SAP is the stimulation of growth in the manufacturing and construction sectors. When Gen. Babangida launched the SAP in 1986, the manufacturing sector accounted for about eight percent of GDP, and the construction sector accounted for about five percent of GDP.⁵⁰ The government recognized that the manufacturing sector's heavy reliance on imported raw materials and components was a serious liability to the national economy as Nigeria's foreign exchange earnings had declined dramatically.⁵¹ Through the SAP, the government sought to reappraise the regulatory environment for industry, to restructure the protection afforded local industries, and to reaccess the package of incentives available to local and foreign investors in industry.⁵²

In an effort to make the industrial sector "the prime mover of the economy," the government initiated a program designed to accelerate the pace of industrial development in Nigeria.⁵³ The goals under this initiative included: (1) providing greater employment opportunities; (2) increasing the export of goods manufactured in Nigeria; (3) diversifying industries; (4) improving technological skills and capability in the country; (5) increasing the local content of in-

⁴⁹ See *MARKETING IN NIGERIA*, *supra* note 35, at 9.

Opportunities for developing the fertilizer industry remain particularly attractive since Nigeria has an inordinately low average usage of 7 kilograms of nutrient per hectare. M.W. Kellogg Corporation of Houston, Texas recently put Nigeria's largest fertilizer facility on stream at Onne. [This is a 1988 report.] That facility will meet 60 to 70 percent of the country's fertilizer requirements.

Id.

⁵⁰ *EUROPA*, *supra* note 15, at 779.

⁵¹ See *MINISTRY OF INDUSTRIES, INDUSTRIAL POLICY OF NIGERIA (POLICIES, INCENTIVES, GUIDELINES AND INSTITUTIONAL FRAMEWORK) I* (July 1990)[hereinafter *MINISTRY OF INDUSTRIES*](“By the late 1970's, a clear picture of the structure of the manufacturing sector had emerged. The sector was characterised by: (a) high geographical concentration; (b) high production costs; (c) low value-added; (d) serious underutilization of capacity; (e) high import content of industrial output; and (f) low level of foreign investment in manufacturing.”) *Id.*

⁵² *Id.* at 2 (“SAP thus marks a watershed in the evolution of the manufacturing sector in this country.”) *Id.*

⁵³ *Id.* at 3.

dustrial output; (6) attracting foreign capital; and (7) increasing private sector participation in the manufacturing sector.⁵⁴ In undertaking this initiative, the government has been well aware that these ambitious goals cannot be achieved without foreign capital inflow. It has been projected that:

[a]ccelerating the pace of industrial development will require enormous capital investments. While government welcomes domestic private capital investments, it also recognises that such investment may not be available in the required volume.

Government therefore welcomes foreign capital into the manufacturing sector. Indeed, the Structural Adjustment Programme was embarked upon with the prospect of increased inflow of foreign capital.

The main component of government strategy for attracting foreign capital is the liberalisation of access to foreign exchange for individuals and companies provided throughout the foreign exchange market (FEM). Easier capital and dividend repatriation through less cumbersome procedures is a by-product of recent changes in the regulations.

Another element of government strategy consists of amendments to the Nigerian Enterprises Promotion Decree 1977 (NEPD). These amendments are designed to open up more areas for foreign investment. . . . Government will continue to cultivate and improve bilateral trade links with other countries as a means of encouraging foreign capital investment in the economy.⁵⁵

The Nigerian government completely divested itself of holdings in sixty-seven companies and fully commercialized eleven companies.⁵⁶ Those companies which the government considered to be "strategic" will be partially privatized or commercialized.⁵⁷

⁵⁴ *Id.* at 3-6.

In pursuit of the central objective of accelerated industrial development, government shall take a number of steps, involving: (a) encouraging increased private sector participation in the industrial sector, and privatising and commercialising holdings, in certain existing industrial enterprises; (b) playing a catalytic role in establishing new core industries; (c) providing and improving infrastructural facilities; (d) improving the regulatory environment; (e) improving the investment climate prevailing in the country; (f) establishing a clear set of industrial priorities, and (g) harmonising industrial policies at Federal, State and Local Government levels.

Id. at 5.

⁵⁵ *Id.* at 11.

⁵⁶ *Id.* at 12-15; *see also* Privatisation and Commercialisation Decree (no. 25) 1988. Industries pegged for full commercialisation include, *inter alia*, Nigerian National Petroleum Corporation (NNPC), Nigeria Telecommunication Limited (NITEL), Nigerian Mining Corporation, Nigerian Coal Corporation, and National Insurance Corporation of Nigeria.

⁵⁷ MINISTRY OF INDUSTRIES, *supra* note 51, at 15-16. Strategic industries that will be partially commercialized include, *inter alia*, Nigerian Railway Corporation, Nigerian Airport Authority, National Electric Power Authority, Nigerian Security Printing and Minting Company Limited, two steel companies (Ajaokuta and Delta), Federal Housing Authority, Federal Radio Corporation, and Nigerian Television Authority. Industries that will be partially privatized, with the maximum government participation as a percent of equity after privatization ranging from 5 percent to 60 percent, are commercial and merchant banks, agricultural, co-operative and development banks (70% equity retained by the Federal Government and its agencies), Oil marketing companies (40% equity retained by the

The Nigerian government hopes that these liberalization efforts will not only stimulate internal growth within the manufacturing sector, but will also attract much needed foreign direct investment in Nigeria. Recently, General Motors Corporation (G.M.) announced an agreement with one of Nigeria's largest private companies, UAC of Nigeria P.L.C., to build approximately 1,500 vehicles annually.⁵⁸ General Motors will own thirty percent of the partnership, which will begin operations in 1992.⁵⁹ The Nigerian government hopes to encourage other such partnerships through the continued implementation of the SAP.

5. *Nigeria's Investment Climate*

a. *In General*

Like so many developing countries in South America and Asia, Nigeria has come to realize that it cannot attract its much desired direct foreign investment without liberalizing its trade and investment laws. Nigeria knows that it must attract investment capital from Europe, the United States, and Japan in order to stimulate economic growth. In addition to bringing about an infusion of capital into Nigeria, foreign investors can also bring new technology, as well as management and marketing expertise, to Nigeria. In turn, as the Nigerian economy continues to improve, foreign investors will have access to the massive population for their products and services.

In the past, Nigeria, like so many other developing countries, placed prohibitive restrictions on foreign direct investment in an effort to protect the economy from the perceived rapaciousness of many large multinational corporations. Furthermore, given the history of colonialism, foreign presence was viewed with some degree of suspicion. Faced with crippling economic problems that began in the early 1980s, the Nigerian government has sought to encourage foreign investment by repealing the onerous restrictions placed on foreign investors. Such measures included ceilings on both foreign equity ownership and employment of expatriates, unfavorable tax laws, and restrictions on repatriation of capital and profits.

government), steel rolling mills (40% equity retained), air and sea travel companies (40% equity retained), fertilizer companies (40% equity retained), paper mills (40% equity retained), sugar companies (40% equity retained), cement companies (30% equity retained), and motor vehicles and truck assembly companies (35% equity retained). *Id.*

⁵⁸ *Nigerian Venture By General Motors*, N.Y. TIMES, August 8, 1991, at D4.

⁵⁹ *Id.*

Initial production will involve a range of light commercial vehicles, heavy trucks and buses designed by G.M. do Brasil. Most of the vehicles will be used in small business and by the Nigerian Government . . . G.M. said it has been involved with UAC of Nigeria since 1952, when the Lagos-based company began assembling heavy-duty trucks for sale in Nigeria.

Id.

b. Nigeria's New Investment Law

The major law governing foreign investment in Nigeria was, until recently, the Nigerian Enterprises Promotion Decree of 1977. The Act limited foreign ownership in Nigerian companies according to three categories: (1) enterprises in Schedule I must be one hundred percent Nigerian owned (thus covering smaller scale enterprises that require low-tech manufacturing); (2) Schedule II enterprises could have up to forty percent foreign equity (thus covering most medium-tech manufacturing, construction, and processing industries, as well as banking, business management, and consulting services); (3) Schedule III enterprises could be sixty percent owned by foreigners (thus covering most high-tech manufacturing and industry sectors that are not sufficiently developed in Nigeria).

In an effort to encourage foreign capital inflow, the Nigerian Government amended the 1977 Decree.⁶⁰ For example, in 1985 the law was amended to permit up to eighty percent foreign ownership in agricultural enterprises. Today, there exists only one list of scheduled enterprises exclusively reserved for Nigerians. The Schedule includes a list of forty low-tech industries, including *inter alia*, advertising and public relations businesses, all aspects of betting and lottery businesses, assembly of radios, bottling of alcoholic drinks, bread and cake making, film distribution, hairdressing, laundry, and dry-cleaning. In other words, these are businesses that Nigerians are capable of handling successfully, that the government would like to keep indigenous, and in which large foreign companies are unlikely to be interested.

All other businesses not contained in the Schedule are now open

⁶⁰ See MINISTRY OF INDUSTRIES, *supra* note 51, at 43-45. The complete list of scheduled enterprises consists of the following industries: Advertising and public relations business; All aspects of pool betting and lotteries; Assembly of radios, radiograms, television sets, tape recorders, and other electric domestic appliances not combined with manufacture of components; Blending and bottling of alcoholic drinks; Blocks and ordinary tile manufacture for building and construction works; Bread and cake making; Candle manufacture; Casinos and gaming centres; Cinemas and other places of entertainment; Commercial transportation (wet and dry cargo and fuel); Commission agents; Departmental stores and supermarkets having an annual turnover of less than N2m; Distribution agencies excluding motor vehicles, machines and equipment, and spare parts; Electrical repair shops other than repair shops associated with distribution of electrical goods; Estate Agency; Film distribution (including cinema films); Hairdressing; Ice-cream making when not associated with the manufacture of other dairy products; Indenting and confirming; Laundry and dry-cleaning; Manufacturers' representatives; Manufacture of suitcases, brief cases, hand-bags, purses, etc.; Municipal bus services and taxis; Newspaper publishing and printing; Office Cleaning; Passenger bus services of any kind; Poultry farming; Printing of stationery (when not associated with printing of books); Protective agencies; Radio and television broadcasting; Retail trade (except by or within departmental stores and supermarkets); Singlet manufacture; Stevedoring and shorehandling; Tyre retreading; Travel agencies; Wholesale distribution of local manufactures and other locally produced goods; Establishments specialized in the repair of watches, clocks, and jewelry including imitation jewelry for the general public; Garment manufacture; Grain mill products including rice milling; and Manufacture of jewelry and related articles including imitation jewelry. *Id.*

for one hundred percent Nigerian *or* foreign participation, except in the areas of banking, insurance, petroleum prospecting, and mining, all of which retain prior restrictions. Nigerians and foreigners alike are now free to negotiate levels of equity participation in all unscheduled enterprises. Foreigners are permitted to participate in scheduled businesses, provided that such participation involves equity capital not less than twenty million naira (the recent official exchange rate for the naira was 7.90 naira per U.S. dollar) and prior approval is obtained from the Industrial Development Coordination Committee (IDCC).⁶¹

Several other incentives to industry have been introduced in Nigeria. In the area of taxation, incentives include tax holidays and tax concessions, which range from five to seven years and include deductions for research and development and allow for tax free dividends. These incentives are enhanced further for agri-business. As far as export promotion is concerned, there are specific measures applicable to manufacturers, ranging from the provision of export insurance to grants for export oriented industries. The Foreign Exchange Facility provides for easier movement of investable funds, goods and services in and out of Nigeria through the foreign exchange market (FEM), repatriation of imported capital, payment of technology fees, and foreign currency domiciliary accounts. Industrial development banks have been set up at both the federal and state levels to offer specialized services, such as soft loans and advances on concessionary terms through facilities such as the Nigerian Bank for Commerce and Industry (NBCI) and the Nigerian Industrial Development Bank (NIDB).⁶²

c. Opportunities For United States Investors

In a May 1991 report, the Department of Commerce listed

⁶¹ See *id.* at 36-37. The IDCC was established in 1990 to facilitate the internal changes implemented under the SAP and to coordinate foreign direct investment by providing a one approval center for foreign investors. It is composed of ministers from the Ministries of Finance, Internal Affairs, Trade, Science and Technology, Agriculture, Industries, Employment, Labour, and Productivity. According to the Ministry of Industries publication,

[t]he main objectives for setting up the Committee are to: (a) obviate the delays in granting approvals for the establishment of new industries; (b) create one approval centre instead of the [previous] situation where there is a multiplicity of approving centres with unnecessary costs to prospective investors in terms of time and financial resources; (c) obviate the lack of co-ordination among approving ministries; (d) remove the present conflicting and duplicated demands by ministries before approvals are granted; (e) advise on policy review proposals on tariffs, excise duties, various incentive schemes and commodity pricing, as they relate to industrial development; and (f) ensure adequate co-ordination and objectivity in the nations industrial development efforts.

Id.

⁶² *Id.* at 21-31.

twelve sectors that provide the "best prospects" for United States investors in Nigeria. The first five, in descending order, were microcomputer systems, food processing machinery, telephone network equipment, medical instruments, and commercial refrigeration equipment.⁶³ The last seven sectors, also in descending order, were commercial printing machinery, oil drilling machinery, cosmetics, industrial instruments, air traffic control equipment, civilian jet aircraft, and civil engineering services.⁶⁴

6. Conclusion

In this decade, as the twenty-first century approaches, Nigeria has the potential to turn around the negative economic trends of the 1980s. While economic recovery is by no means complete, Nigeria entered the decade of the 1990s with positive changes, both politically and economically. Those who have followed Nigeria's develop-

⁶³ NIGERIA MARKETING PLAN, *supra* note 40.

As far as *microcomputer systems* are concerned, the DOC reports that "[c]ontinued awareness of business equipment by both the public and private sectors of the Nigerian economy has given rise to increase in the demand for computers/peripherals. Imports fill 100 percent of total demand as there is no domestic manufacture of computers." The DOC estimates that total imports for 1990 was \$27 million, of which imports from the United States totalled approximately \$8.8 million. The estimated annual growth rate of total imports is 25 percent; 18 percent for imports from the United States. On a scale from 1 to 5 (5 the highest), Nigeria's receptivity to U.S. imports was rated a 5.

Regarding *food processing machinery*, the DOC reports that "[a] large and growing urban population of two-wage earner families has been a great boom to prepared foods, particularly traditional items." Estimated imports for 1990 was \$64.2 million, with the United States supplying only \$9.8 million. The estimated growth rate of total imports for the period 1990-92 is 33 percent, with an annual growth rate for U.S. imports of 33 percent. United States products received a receptivity rating of 4.

Regarding *telephone network equipment*, the DOC reports that "the telecommunications sector has been funded in excess of USD 1 billion over the next five years for upgrade and expansion. The national network is moving from analog to digital which should favor U.S. technologies. Excellent prospects exist for U.S. products." Total imports for 1990 is estimated to be \$75 million, with \$19.5 from the United States. The estimated annual average growth rate for total imports and U.S. imports is 20 percent. U.S. products received a receptivity rating of 4.

As far as *medical instruments* are concerned, the DOC reports that the Nigerian government "continues to accelerate funding for the medical sector in keeping with its plans to make health facilities accessible to all by the year 2000. Target areas for mass procurement of medical equipment are the nation's teaching hospitals. Significant supplementary financing from multilateral organizations help to execute planned medical projects. Very good prospects exist for increased U.S. sales." Total imports for 1990 in this sector was \$42 million, with \$5.5 million supplied from the U.S. It is estimated that total imports will grow at an average annual rate of 15 percent, 10 percent for U.S. imports. U.S. products received a receptivity rating of 4.

Regarding *commercial refrigeration equipment*, the DOC reports that "[t]he expansion of the food processing industry, particularly the seafood industry, and growth of smaller industries such as hospitals, schools, hotels, and food services are increasing demand for these products. U.S. projects enjoy a good reputation and should find favorable acceptance." Imports for 1990 is estimated to be \$18.9 million, with \$4 million supplied from the United States. The average annual growth rate for imports is 20 percent. U.S. products received a receptivity rating of 4.

⁶⁴ *Id.*

ment since the country gained independence from Britain in 1960 will no doubt agree on one thing — Nigeria has tremendous potential. However, many factors have contributed to the failure of Nigeria even to begin to approach her full potential, including problems of tribalism, poor management, corruption, and a general (although improving) lack of nationalism among the population.

Earlier campaigns on the part of past and present Nigerian leaders to instill a stronger sense of discipline and nationalism in the population, to break down the crippling effects of tribalism, to reduce (and if possible, to eradicate) the scourge on Nigeria's economy resulting from rampant corruption, as well as the current structural adjustment program, have all contributed a great deal to putting Nigeria back on the path to economic prosperity. However, such internal changes must be accompanied by foreign capital inflow in order for the country to have sustainable economic growth, since:

Nigeria is at a critical point in its structural adjustment program where it needs investment, both foreign and domestic to encourage economic growth. Recently there have been few major new investments in Nigeria and it is not possible to identify any trends or pinpoint the impact of the new policies on investors. However, as a result of implementation of new industrial policy permitting 100 percent foreign ownership, Coca-Cola received approval in January 1990 to set up a plant to manufacture its concentrate.⁶⁵

Whether West Africa is to assume a significant role in the global trading environment in future decades depends on continued political reform and real economic growth, particularly in Nigeria, which has the region's largest economy. As the European Community strengthens its position as the world's largest trading bloc, as the United States, Canada, and Mexico come closer to making the North American Free Trade Area (NAFTA) a reality, and as the newly industrialized nations in South East Asia solidify ties with each other and to Japan, Nigeria and her neighbors must work together to make the Economic Community of West African States (ECOWAS) an achievable goal.⁶⁶

⁶⁵ INVESTMENT CLIMATE: NIGERIA, *supra* note 26, at 13.

⁶⁶ See CHIA-JUI CHENG, BASIC DOCUMENTS ON INTERNATIONAL TRADE LAW 71 (2d ed. 1990)[hereinafter CHENG]; see also U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, CRITICAL ISSUES FOR AMERICAN INVESTORS IN TOGO 30 (November 1990)[hereinafter USAID TOGO]; see also EIU NIGERIA, *supra* note 21, at 52. ECOWAS established in 1975 by 15 West African countries: Benin, Burkina Faso, Ivory Coast, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Cape Verde joined in 1977. The ultimate goal of ECOWAS is to create "a full common market in order to promote 'horizontal' trade within West Africa and so change the north-south trade pattern dominated by the industrialized countries." EIU NIGERIA, *supra* note 21, at 52.

Article 2 of the ECOWAS Treaty states that the objective is "to promote co-operation and development in all fields of economic activity." Towards this end, the treaty calls for the creation of a customs union in different stages: first, eliminating customs duties and quantitative restrictions among member nations; second, establishing a common customs

B. Republic of Ghana

1. General History and Background

Ghana⁶⁷ is situated on the Gulf of Guinea in West Africa, a few

tariff, common commercial policy towards non-member nations and abolishing all impediments to the free movement of persons, services and capital; and finally, harmonization of economic and industrial policies, particularly in the agriculture, industry, transport, and communications sectors.

Pursuant to article 5 of the treaty, five institutions are established: the Authority of Heads of State, the Council of Ministers, the Executive Secretariat, the Tribunal of the Community and Specialized Commissions. Article 6 prescribes the functions of these institutions: the Authority of Heads of State and Government is the governing institution which sets the general policies of the Community; the Council of Ministers is responsible for the functioning and development of the Community, in accordance with the provisions of the Treaty; the Executive Secretariat is the executive organ of the Community; the Tribunal ensures common interpretation of the Treaty provisions; and the Specialized Commissions assist the other institutions in developing Community policies in areas such as trade, immigration, Monetary matters, etc.

Under the terms of the ECOWAS Treaty, upon the advice of the Trade, Customs, Immigration, Monetary and Payments Commission, member states must implement the necessary measures to harmonize and standardize their customs regulations and procedures in order to facilitate the movement of goods and services across their borders. ECOWAS also undertakes the preparation of protocols on the regime applicable to ECOWAS enterprises and on transit trade and transit facilities. *See* CHENG, at 71.

A Fund for Cooperation, Compensation and Development was set up in Lome, Togo. (Article 38, 50 ECOWAS Treaty). The purpose of the Fund is to compensate member states that suffer losses as a result of ECOWAS operations, to finance community projects in member states, particularly the poorer ones, and to guarantee foreign investment in member states. The Fund "is the most concrete evidence of the community's concern with promoting an equitable distribution of the benefits of economic cooperation and with eliminating disparities in the levels of development of its members." EIU NIGERIA, *supra* note 21, at 52. In 1988, the Fund was opened up to non-regional governments and institutions such as the African Development Bank and the World Bank. Several projects, particularly in the area of transport and telecommunications, have been financed by the Fund. *Id.*

ECOWAS plays an important role in the development of a monetary union among West African States. The disparity in exchange rates has proved to be a restrictive factor in inter-African trade. Prior to the creation of ECOWAS, the currencies of member states were not convertible. In 1976, ECOWAS set up the West African Clearing House in order to facilitate payments among member nations.

ECOWAS has faced several difficulties, caused by, *inter alia*, the disparity between the economies of member states, rival trading interests, existence of several other regional organizations with similar goals, multiplicity of currencies, and delays in payment of subscriptions by member states. U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, CRITICAL ISSUES FOR AMERICAN INVESTORS IN TOGO 31-32 (1990)[Hereinafter USAID TOGO]. Delays in implementation of ECOWAS policies resulted also from the financial difficulties facing the member nations, especially its largest member, Nigeria.

Thus, while to date ECOWAS has not significantly impacted the trading patterns of its members, as member nations recover from the devastating economic slump of the 1980s, ECOWAS can indeed become a much more significant factor in bolstering the economic strength of West Africa as a trading bloc.

⁶⁷ U.S. DEP'T OF STATE, BACKGROUND NOTES GHANA (February 1990)[hereinafter BACKGROUND NOTES GHANA].

Area: 238,538 sq. km. (92,100 sq. mi.). Capital: Accra (pop. 953,500). Languages: English (official), Akan 44%, Mole-Dagbani 16%, Ewe 13%, Ga-Adangbe 8%. Independence: March 6, 1957. Type of Government: Authoritarian. Flag: Three horizontal stripes of red, gold, and green, with a black star in the center of the gold stripe. Natural resources: Gold, timber, diamonds, bauxite, manganese, fish. Agricultural products: Cocoa, coco-

degrees north of the Equator. Ghana is bordered on the west by the Ivory Coast, on the north by Burkina-Faso, and on the east by Togo. It has a land area of 238,538 square kilometers (92,100 square miles), which makes it roughly the size of Illinois and Indiana combined.⁶⁸ Ghana's 1990 population is estimated to be 15.2 million, and with a growth rate of 2.92%, the population should reach an estimated 20.28 million by the year 2000.⁶⁹

Ghana gained her independence from Great Britain on March 6, 1957.⁷⁰ Following independence, Ghana was led by the charismatic

nuts, coffee, food crops, rubber. Industries: mining, lumber, light manufacturing, fishing, aluminum.

⁶⁸ U.S. DEP'T OF STATE, GHANA POST REPORT (June 1986).

The 334-mile coastline is mostly a low, sandy shore backed by plains and scrub and intersected by several rivers and streams, most of which are navigable only by canoe. A tropical rain forest belt, broken by heavily forested hills and many streams and rivers, extends northward from the shore, near the Ivory Coast frontier. This area, known as the Ashanti, produces most of Ghana's cocoa, minerals, and timber. North of this belt, the country varies from 300 to 1,300 feet above sea level and is covered by low bush, park-like savanna and grassy plains.

A feature of the country's geography is the Volta Lake, one of the largest manmade lakes in the world (3,500 square miles), which extends from the Akosombo Dam (completed in 1966) in southeastern Ghana to the town of Yapei, 325 miles to the north. The lake is used to generate electricity and provide inland navigation and is a potentially valuable resource for irrigation and fish farming.

The climate is tropical with temperatures generally between 21C and 32C (70F-90F). There is annual rainfall of up to 80 inches on the coast, decreasing inland. . . . Rainy seasons extend from April/May to July (heavy rains) and from September to November (light rains). . . . It is coolest from May until October. In December the harmattan—a dry, dusty wind from the Sahara—covers the country and may last through February. This desert wind reduces the humidity and early mornings and nights are relatively cool.

Id. at 1.

⁶⁹ OVERSEAS PRIVATE INVESTMENT CORPORATION, COUNTRY INFORMATION FOR GHANA I (1990).

⁷⁰ See BACKGROUND NOTES GHANA, *supra* note 67, at 3.

The history of the Gold Coast before the last quarter of the 15th century is derived primarily from oral tradition that refers to migrations from the ancient kingdoms of the western Soudan (the area of Mauritania and Mali). The Gold Coast was renamed Ghana upon independence in 1957 because of indications that present-day inhabitants descended from migrants who moved south from the ancient kingdom of Ghana.

The first contact between Europe and the Gold Coast dates from 1470, when a party of Portuguese landed. In 1482, the Portuguese built Elmina Castle as a permanent trading base. The first recorded English trading voyage to the coast was made by Thomas Windham in 1553. During the next three centuries, the English, Danes, Dutch, Germans, and Portuguese controlled various parts of the coastal areas.

In 1821, the British Government took control of the British trading forts on the Gold Coast. In 1844, Fanti chiefs in the area signed an agreement with the British that became the legal stepping stone to colonial status for the coastal area.

From 1826 to 1900, the British fought a series of campaigns against the Ashantis, whose kingdom was located inland. In 1902, they succeeded in colonizing the Ashanti region and making the northern territories a protectorate. British Togoland, the fourth territorial element eventually to form the nation, was part of a former German colony administered by the United Kingdom from Accra as a League of Nations mandate after 1922. In Decem-

Kwame Nkrumah until his overthrow by the Ghanaian Army on February 24, 1966.⁷¹ Ghana remained under military rule until October 1969, when the government was returned to the civilians as pledged by the leaders of the February 24, 1966, coup. The civilian government was short-lived, however. On January 13, 1972, military officers, led by Col. I.K. Acheampong, seized power in a bloodless coup.

For the next seven years, Ghana's political scene was marred by instability and civil unrest as the economic situation continued to deteriorate. On June 4, 1979, the government was overthrown in a violent coup by the Armed Forces Revolutionary Council (AFRC), under the leadership of Flight Lt. Jerry John Rawlings. The AFRC handed over power to an elected government on September 24, 1979. Again, the civilian government was short-lived.

On December 21, 1981, the government was overthrown for a second time by Jerry Rawlings, who presently remains as the leader of Ghana.⁷² In the second overthrow, Rawlings made no promises of a return to civilian rule in Ghana. This time, he waged an ideological revolution "espousing a self-sufficiency programme which [was] called the 'Green Revolution.'" ⁷³ The first few years of the government under Rawlings was marked by steady decline of the Ghanaian economy. In response, Rawlings implemented stringent economic policies.

2. Economic Conditions

Ghana's economy is based principally on agriculture. The main cash crops are cocoa and cocoa products. Agriculture, including for-

ber 1946, British Togoland became a UN Trust Territory, and in 1957, following a 1956 plebiscite, the United Nations agreed that the territory would become part of Ghana when the Gold Coast achieved independence.

Id.

⁷¹ See K. NKUMAH GHANA: THE AUTOBIOGRAPHY OF KWAME NKUMAH (1957); see also EUROPA, *supra* note 15, at 506-07.

The first [reason for Nkrumah's overthrow] was undoubtedly Nkrumah's drift towards the USSR and the Eastern bloc, which was anathema to the Ghanaian army's cadre of mainly British-trained officers. The second was the parlous state of the cocoa-dependent economy. Since the mid-1950s the world cocoa price had fallen by over 75%, leading to increases in the cost of living and import shortages. There was, in fact, nothing that Nkrumah could have done about this, but the promise of new economic beginning, together with the end of repression and party privilege, ensured that the 1966 coup was widely welcomed.

⁷² EUROPA, *supra* note 15, at 509-15 ([Rawlings] cited corruption and the continuing economic *malaise* as the reasons for his action. The constitution was abolished, parliament dissolved, and civilian political parties proscribed. Rawlings assumed chairmanship of a Provisional National Defence Council (PNDC), comprising four military personnel and three civilians.)

⁷³ *Id.* at 512. "Its [the PNDC] economic recovery programme emphasized four points: the reduction of costly food imports, the rehabilitation of foreign exchange earners, fiscal reform, and energy conservation." *Id.*

estry, and fishing accounted for forty-eight percent of GDP, sixty percent of the labor force, and two-thirds of exports in 1988.⁷⁴ Cocoa production has increased significantly in recent years. However, the impact on Ghana's cocoa-dependent economy has been modest due to the decline in world cocoa prices.

Ghana has abundant mineral resources including diamonds,⁷⁵ manganese,⁷⁶ bauxite,⁷⁷ and gold. The former "Gold Coast" is among the world's top potential gold producers, although its output has decreased considerably over the years.⁷⁸ After reaching an output peak of over 900,000 ounces of gold per year in the 1960s, dropping to 285,000 oz. by 1983, and climbing to 374,051 oz. in 1988, it is projected that gold production will continue to increase as the mines undergo rehabilitation work.⁷⁹ According to a June 1990 Department of Commerce report, "[o]ver 50 (including several U.S.) companies are surveying or prospecting, 5 have obtained mining licenses and 2 have started production."⁸⁰ Diamond production

⁷⁴ U.S. DEP'T OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: GHANA 5 (June 1990)[hereinafter FOREIGN ECONOMIC TRENDS GHANA].

⁷⁵ ECONOMIST INTELLIGENCE UNIT, GHANA COUNTRY PROFILE 1991-92 24 (1991)[hereinafter EIU GHANA]. Diamond deposits, mainly of industrial grade, have been recovered from alluvial gravels in Ghana since the 1920s. "Recent studies revealed that Ghana had enough reserves to produce 1mn carats of diamonds a year for the next 15 years. But the investment needed to achieve this level of output (\$28 mn over four years) has not yet been secured." *Id.*

⁷⁶ *Id.* Ghana is one of the world's largest exporters of manganese. At peak in 1974/75, 638,000 tons were produced, but production has declined significantly since then. Recent geological studies suggest reserves of 49mn tons. "The industry has suffered from the familiar problems of lack of capital equipment, shortage of spares and foreign exchange, and transport difficulties." *Id.* The industry, which has a single mine, is wholly owned by government's Ghana National Manganese Corporation. "Rehabilitation of the mine and infrastructure helped raise production from a low of 159,000 tons in 1982 to 316,000 tons in 1985, but there was a drop in 1986, 1987 and 1988. Production levels of 334,000 tons and 168,000 tons in the first six months of 1990 suggest that a recovery is under way." *Id.*

⁷⁷ *Id.* at 25. Only a small proportion of Ghana's bauxite is currently mined. "Production in 1988 reached 287,000 tons, nearly six times 1984 levels but still below those of 1979-80, as transport bottlenecks had been largely overcome with the rehabilitation of the Western railway. By 1987 plans were moving ahead to open up mining operations at Kibi in conjunction with proposals for construction of a bauxite alumina complex near the mine, which is estimated to hold reserves of 120mn tons. By 1989 production had risen to 347,000." *Id.*

⁷⁸ FOREIGN ECONOMIC TRENDS GHANA, *supra* note 74, at 7. Annual output of gold peaked at over 900,000 oz. per year in the early 1960s, but by 1983 had dropped to just 285,000 oz. In 1987, after rehabilitation work began at large mines, output increased to 328,000 oz.; in 1988, it reached 374,051 oz. Ashanti Goldfields Corporation (AGC), a joint venture with Britain's Lonrho, produced 83 percent of the 1988 output; the rest came from the parastatal State Gold Mines Corporation (SGMC) and a new joint venture mine. Facilities at SGMS and AGC are under rehabilitation. *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*; see also EIU GHANA, *supra* note 75, at 23.

Ghana is currently engaged in a massive effort to increase its gold production and exports. In the most optimistic scenario, some 2.7mn oz will be exported by 1992. In pursuit of this aim both large and small-scale producers

peaked in 1971 at 2.6 million carats (cts.), but fell to 225,200 cts. by 1988.⁸¹ With new investment and rehabilitation of the mines, Ghana Consolidated Diamond Mines hopes to raise production to 1 million cts.⁸² In 1978, Ghana became a petroleum producer, when Agri-Petco, a U.S. company, began extracting petroleum in limited amounts.⁸³

3. *Economic Recovery: The Economic Recovery Program (ERP)*

In 1981, Flt. Lt. Rawlings seized power of a nation on the verge of economic collapse.⁸⁴ Consequently, in April 1983 Rawlings launched the most stringent reform program, supported by IMF Standby Arrangements, of any in sub-Saharan Africa. The "Economic Recovery Program" (ERP), which was initially scheduled to last for four years, called for a number of drastic measures. These measures included adopting a realistic exchange rate,⁸⁵ restructuring

are being encouraged. The response has been positive. AGC [Ashanti Goldfield Corporation, owned jointly by the government and the Lonrho of the U.K., who produces over 80 percent of current output] easily met its interim target of 400,000 oz in 1990 and is planning to produce 521,000 oz by the end of the 1990/91 financial year. A number of mining companies saw their investments come on stream in 1990. Notable among them are the Canadian company, Bogosu Resources, which poured its first gold bar in October 1990. Goldenrae Mining, a joint venture involving Luxembourg's ITM International, Canada's Sikaman Gold Resources and the Ghana government also announced the start of gold production on its two leases at Kwabeng and Pameng in October 1990. Tebereble Goldfields also began production during the last quarter of 1990 and expects to produce 100,000 oz within 12 months. Support for the drive to increase gold output has come from a number of institutions, notably the World Bank's International Finance Corporation and the European Investment Bank. New legislation passed in 1989 legalised unregistered gold mining, known as *galamsey*. In response an estimated \$380,000 in increased gold sales from small-scale miners materialized almost overnight. Until then gold losses from such mining were estimated at 20 percent of total output.

⁸¹ FOREIGN ECONOMIC TRENDS GHANA, *supra* note 74, at 7.

⁸² *Id.*

⁸³ EUROPA, *supra* note 15, at 519.

⁸⁴ *Id.* at 515. See notes 72-73 and accompanying text.

[A]t the time of the second Rawlings coup in December 1981, economic activity had come to virtual standstill. Inflation was more than 100% per year, and world cocoa prices had fallen to their lowest level for 10 years. The situation worsened in 1982, owing to the effects of a severe drought and chronic shortages of foreign exchange.

Id. See also THE AFRICAN-AMERICAN INSTITUTE, REPORT OF THE CONFERENCE: GHANA - ECONOMIC DEVELOPMENT AND THE ROLE OF THE PRIVATE SECTOR (June 1988)[hereinafter AFRICAN-AMERICAN INST.] In the 1970s, there was persistent economic decline, due to falling commodity prices as well as economic mismanagement. This was accompanied by political instability, which frightened the few external investors away. Further shocks came in the 1980s - prolonged drought, bush fires, and the unexpected return of one million Ghanians from Nigeria. AFRICAN-AMERICAN INST.

⁸⁵ EIU GHANA, *supra* note 75, at 10:

The unit of currency is the cedi, which is divided into 100 pesewas. Its value, C362=\$1 in early May 1991, stands at less than one per cent of its 1978 value of C2.75=\$1. 15 months after the PNDC came to power, in April 1983, a system of surcharges on imports and bonuses on exports was introduced. This was effectively a devaluation of the cedi, since the surcharges on

the country's economic institutions, providing incentives to stimulate production, relaxing controls and liberalizing trade, reducing inflation and arrears in debt payments, rehabilitating infrastructure, and rehabilitating the national principal foreign exchange earning sectors.⁸⁶

In the second phase of the ERP (1986-88), the government concentrated on the financial, agricultural, energy, industrial, educational, and health sectors.⁸⁷ The initial results from the ERP were impressive as "economic growth recovered to an average of almost 6 percent per year from 1983-87. Inflation moderated, and the balance-of-payments position improved from a sizable deficit to surpluses in 1987-88."⁸⁸ The government has indicated that during the third phase of the ERP (1991-92), emphasis will be placed on development of the private sector, civil services reforms, state enterprise reforms, reduction of public expenditures, alleviation of poverty, tax policy changes, and cocoa sector reforms.⁸⁹

Ghana's economic health, however, is still heavily reliant on world prices for the key exports of cocoa, timber, and gold. Because Ghana's economy is dependent on the agricultural sector, the weather plays a significant role in the country's well-being. Thus, in 1988, favorable rains resulted in a large cocoa harvest, which significantly contributed to the rise in real GDP growth for that year to 6.2 percent.⁹⁰ Economic recovery in Ghana is stimulated largely by foreign capital inflow.⁹¹ Additionally, "aid inflows in 1988 of \$482 million, expected to continue at similar levels, should help to support GDP growth of at least 5 percent."⁹²

4. Trade and Investment Climate

a. Trade

Britain, which once held Ghana as a colony, is the largest sup-

imports amounted to 750 per cent of the amount being spent and the discounts on exports amounted to 990 per cent, but a real devaluation was avoided for fear of political repercussions. The devaluation proper began in October 1983, when the exchange rate of C2.75=\$1 was taken, in a number of rapid stages to C90=\$1 by January 1986. In September 1986, the government finally relinquished its direct role in the determination of the exchange rate and introduced a fortnightly (later weekly) auction, wherein the rate was determined by market forces. The two tier exchange rate system, one rate for essentials and another for non-essentials, was maintained.

Id.

⁸⁶ See EIU GHANA, *supra* note 75, at 11-12.

⁸⁷ *Id.* at 12.

⁸⁸ FOREIGN ECONOMIC TRENDS GHANA, *supra* note 74, at 3.

⁸⁹ EIU GHANA, *supra* note 75, at 13.

⁹⁰ FOREIGN ECONOMIC TRENDS GHANA, *supra* note 74, at 3.

⁹¹ *Id.* at 4 ("The recovery effort has been supported by International Monetary Fund (IMF) standby agreements and an Enhanced Structural Adjustment Facility (ESAF); World Bank structural adjustment loans; and aid from bilateral donors."). *Id.* at 4-5.

⁹² *Id.* at 10.

plier of Ghana's non-oil imports.⁹³ Other important suppliers are West Germany and France.⁹⁴ Japan and Korea are increasing their share of Ghana's market.⁹⁵ Due principally to exports of aluminum to the United States from the U.S.-owned Volta Aluminum Company (VALCO),⁹⁶ the U.S. is one of Ghana's major trading partners.⁹⁷

b. Investment Climate

Prior to launching the ERP, the Rawlings government leaned towards a centrally planned economy and a redistribution of Ghana's wealth. However, with the economy in a devastated state, the government moved to reduce the state's role and moved towards a market driven economy through the ERP. The government also sought to attract foreign direct investment from the West. Under the new recovery program, the government promulgated the Investment Code of 1985,⁹⁸ which recognizes the vital role that private enterprise plays in national economic development. The Preamble of this new investment law states that:

[I]t is considered vital to encourage investment in the Ghanaian economy to enable increased production and productivity for national development, and to enable the exploitation of the immense natural resources of Ghana in a manner conducive to the mutual benefit of investors and the nation, to promote effective employment

⁹³ *Id.* at 11.

⁹⁴ *Id.*

⁹⁵ *Id.*

Japanese exports tied to aid are rising rapidly. EC members and the United States are the principal suppliers of machinery and equipment, commercial vehicles, industrial inputs, processed foods and beverages, and consumer goods, while Japan and South Korea dominate autos, utility vehicles and consumer electronics. Ghana has barter agreements for cocoa with many countries in Eastern Europe, plus China, North Korea and Cuba; East Germany is the largest supplier under the countertrade arrangements.

Id.

⁹⁶ One of Nkrumah's great economic accomplishments was the Volta River Project with the United States — a massive hydroelectric venture which was designed to manufacture alumina from Ghana's bauxite. See EIU GHANA, *supra* note 75, at 26.

⁹⁷ FOREIGN ECONOMIC TRENDS GHANA, *supra* note 74, at 11. Including aluminum from VALCO (which accounted for 32 percent of total), U.S. exports to Ghana in 1988 reached \$117.3 million. The most important exports were agricultural commodities (rice and wheat), earthmoving equipment, used clothing, machinery, and consumer goods. *Id.* U.S. imports from Ghana the same year totalled \$209.6 million, of which approximately 61 percent was aluminum. Other leading imports were cocoa beans and butter, tuna (canned in Puerto Rico), gold, fuel oil (produced at Ghana's sole refinery in excess of domestic needs), diamonds, and lumber. *Id.*

⁹⁸ Investment Code, P.N.D.C.L. 116 (1985)[hereinafter Investment Code]. The mining industry in Ghana is governed under a separate law, the Minerals and Mining Law, P.N.D.C.L. 153 (1986).

Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water-courses throughout Ghana the exclusive economic zone and any area covered by territorial waters or continental shelf is the property of the Republic of Ghana and shall be vested in the Provisional National Defence Council for and on behalf of the people of Ghana.

P.N.D.C.L. 153 (1986).

and the development of skills and technology requisite for the progress of Ghana.⁹⁹

Article 1 of the Code, which became operational in 1986, established the Ghana Investments Centre (GIC) as a central agency "for the encouragement, promotion and co-ordination of investments."¹⁰⁰ The GIC is intended "to serve as a one-stop center for investment facilitation and approvals."¹⁰¹ Accordingly, the Investment Code provides various benefits and incentive packages to both local and foreign investors. These include the grant of foreign exchange retention accounts, tax deductions and deferrals for the provision of infrastructure and basic research, duty-free import of capital goods, and assurances to foreign investors regarding repatriation of profits and guarantees against expropriation.

Additionally, article 22 of the Code provides that the GIC shall not approve any enterprise without "due appraisal" of the capacity of the enterprise to contribute to nine enumerated objectives: (1) development of the productive sectors of the national economy; (2) efficient utilization, expansion, and diversification of the productive capacity of existing enterprises; (3) utilization of local materials, supplies, and services; (4) creation of employment opportunities in Ghana; (5) real increase in national export earnings; (6) real savings on national imports; (7) development and transfer of advanced technology, including the upgrading of indigenous technology; (8) country-wide distribution of viable enterprises; and (9) other objectives as the Center may consider relevant for achieving the objects of the Code.¹⁰²

Pursuant to article 26 of the Code, the GIC, in granting approval

⁹⁹ Investment Code, *supra* note 98, preamble.

¹⁰⁰ *Id.* art. 1.

¹⁰¹ U.S. DEP'T OF STATE, INVESTMENT CLIMATE STATEMENT FOR GHANA 5 (April 1990)[hereinafter INVESTMENT CLIMATE GHANA].

The Center interprets the Investment Code and provides written materials on other regulations that apply to new projects. GIC receives applications from prospective investors; issues manufacturing or establishment licenses to approved projects; assists in securing necessary licenses, approvals and permits; and is intended to maintain liaison between investors and Ministries, government departments, agencies, institutional lenders and other authorities concerned with investment. Applications for projects worth less than [sic] \$500,000 are supposed to be considered by GIC within one month; they may be approved by the Chief Executive if recommended by the appraisal staff. For projects worth over \$500,000, the GIC Board of Directors must vote approval; in theory, the process takes three months. The GIC appraisal staff then submits a written report to a committee empowered to recommend projects to the Board. This process often takes longer than the allotted three months. In 1989 GIC began to issue the prospective investor an establishment or manufacturing license in advance of formal approval, enabling him to begin loan negotiations. After six more weeks, the GIC final project approval is supposed to be granted. The two-tier approval procedure is expected to streamline the application process.

Id.

¹⁰² Investment Code, *supra* note 98, art. 22.

for investment, may stipulate certain conditions to be complied with by the investor regarding: (1) the amount and source of capital; (2) the nationality and number of shareholders; (3) the project size; (4) the training of Ghanaians in administrative, technical, managerial, and other skills related to operation of the enterprise; (5) the time within which to commence implementation of the enterprise; (6) the reporting on implementation of the project and its operation; (7) the prevention and control of any damage to the environment; (8) the utilization of local raw materials; and (9) any other matter deemed appropriate having regard to the objectives of the Code.¹⁰³

In February 1990, the GIC and the Multilateral Investment Guarantee Agency (MIGA) co-sponsored the Ghana Investment Promotion Conference in Accra, Ghana. During that conference, the 1988 increase in foreign direct investment in Ghana was attributed almost entirely to new investments in gold mining.¹⁰⁴ Accordingly, the Ghanaian government has adopted a pragmatic approach to application of the Investment Code as "[d]iscussions and negotiations with prospective investors have caused the government to make modifications to existing legislation upon occasion, or to interpret flexibly some of its provisions."¹⁰⁵ The government is currently reviewing the legislation for possible revisions or modifications. Participants in a February 1990 Ghana Investment Promotion Conference in Accra made several suggestions for changes to the Code.¹⁰⁶

¹⁰³ *Id.* art. 26(2).

¹⁰⁴ INVESTMENT CLIMATE GHANA, *supra* note 101, at 11.

According to the U.S. Department of Commerce, in 1983 U.S. direct investment in Ghana was valued at \$181 million. The replacement value of such investments undoubtedly is well over \$500 million. The largest percentage is represented by the Volta Aluminum Company (VALCO) smelter, a Kaiser/Reynolds subsidiary. Other significant U.S. investments are by Mobil (petroleum product imports/distribution); Eveready Battery (Ralston-Purina); Johnson's Wax (insecticides); Sterling Products and A.H. Robins (pharmaceuticals); Star-Kist foods; NCR; IBM; Pioneer Group (gold mining); and a handful of accounting/service firms (low equity investment).

Rivaling, if not exceeding, the stock of U.S. investment is that from the United Kingdom. It is led by Lonrho's joint venture with the government in West Africa's largest gold mine, Ashanti Goldfields Corporation Ltd., by the multitudinous undertakings of Unilever's United African Company (UAC), and by Barclay's and Standard Chartered Banks. Other substantial U.K. investments include BP, Shell (with the Netherlands), British-American Tobacco, and Cadbury-Fry. Investments by other countries in Ghana include Nestle and UTC (Switzerland) and SCOA and CFAO (France). Lebanese nationals (some with Ghanaian citizenship) own a wide range of manufacturing, timber, construction and commercial operations.

Id.

¹⁰⁵ INVESTMENT CLIMATE GHANA, *supra* note 101, at 8.

¹⁰⁶ *Id.* These suggestions included the following proposals:

- Review the investment incentives for clarification of eligibility criteria and to ensure that the incentives be consistent with ongoing economic liberalization;
- Reduce corporate taxation and taxes on dividends;
- Refine the requirements for the separate tax clearance certificates, which

The government hopes that these liberalizations will encourage commercially profitable projects, preferably under a joint venture arrangement, in the "priority" sectors of the economy, including tourist hotels and services, processing of agricultural produce and natural rubber, production of charcoal briquettes, production of brick, floor, wall, and roofing tiles, wood processing, pulp and paper production, housing projects and industrial estates, fish processing, and petroleum and mineral exploitation.¹⁰⁷

5. Conclusion

After more than seven years of adherence to a stringent reform program, the Ghanaian economy is showing remarkable recovery. The process is far from complete, but there are positive indications that in the not too distant future Ghana will resume her place as one of the dominant economies in the region.

are necessary for importation of goods, access to foreign exchange auction, and vehicle registration;

- Rationalize and simplify the regulatory framework for the private sector, and improve transparency;
- Streamline further the GIC approval procedures;
- Review and amend all the laws governing investment activities to underscore liberalization of the economic environment that has occurred since 1983, and clarify the role of key institutions;
- Liberalize the expatriate quota system;
- Reduce or eliminate differential treatment of foreign investors vis-a-vis domestic investors (foreign firms are treated differently from domestic firms in several respects: (a) the minimum equity for foreign investors is \$60,000 (joint venture) or \$100,000 (wholly owned), (b) projects in the wholly owned category must be net earners of hard currency, (c) a wholly owned foreign firm or a joint venture must have explicit approval from the central bank to access the domestic capital market and (d) twenty economic activities identified in Schedule 16 of the Investment Code are closed to foreign investors or are subject to a higher minimum investment);
- Review the role of the GIC in approving technology transfer agreements between Ghanaian and foreign firms to permit a greater role for market forces in setting the terms;
- Restructure the GIC to transform it into an effective agency for investment promotion and investor support services.

¹⁰⁷ Embassy of Ghana, Press Release: The Investment Climate in Ghana 4.

The response to the new investment policies and measures has, so far, been very positive. During the first year of the operation of the Investment Code, in 1986, the Ghana Investments Centre, for instance, received for consideration a total of 163 projects, of which 154 were approved - 95 new enterprises and 59 for expansion and/or rehabilitation. Of the total, 16.2% were agricultural in scope, 75.9% manufacturing activities, with tourism and building and construction accounting for 5.2% and 2.0% respectively. During the same period, foreign capital accounted for about 62.6% of the total capital outlay, with the remaining 37.4% being local currency component. Of these, the foreign loans/credits share of the total investment was 53.6%, while foreign equity capital accounted for about 9.0%.

C. *The Republic of Cameroon*

1. *General History and Background*

The Republic of Cameroon¹⁰⁸ is located on the Gulf of Guinea. The country, which enjoys about 200 miles of coastline, is bounded on the north by Lake Chad, on the west by Nigeria, on the east by Chad and the Central African Republic, and on the south by the Congo, Gabon, and Equatorial Guinea. Cameroon, often referred to as the "hinge" of Africa, has an area of 475,439 square kilometers (183,568 square miles) and is roughly the size of California.¹⁰⁹ The climate is tropical to arid, as it is generally warm to hot while being usually cool in the highlands.¹¹⁰

Cameroon is inhabited by 10.5 million Cameroonians,¹¹¹ approximately 20,000 Europeans (mostly French), and 800 U.S. citizens.¹¹² Cameroon is the only African nation where both French and English have been given official status.¹¹³ Approximately four-fifths

¹⁰⁸ OFFICE OF PUBLIC COMMUNICATIONS, U.S. DEP'T OF STATE, BACKGROUND NOTES: CAMEROON (1988). Area: 475,439 sq. kms (183,568 sq. mi.). Capital: Yaounde (pop. 700,000), other cities Douala (850,000), Nkongsamba (110,000), Bafoussam (95,000), Garoua (85,000). Population: 1988 est. 10.532 million. Languages: French and English (official), more than 80 African. Independence: January 1, 1960. Type of Government: Independent republic. Flag: Three vertical stripes from left to right—green, red, and yellow—with one yellow star centered in red stripe. Natural resources: Petroleum, Natural Gas, Bauxite, Iron Ore, Timber.

¹⁰⁹ *Id.*

¹¹⁰ See U.S. DEP'T OF STATE, CAMEROON POST REPORT, 1 (Dec. 1987)[hereinafter CAMEROON POST REPORT].

A country of striking contrasts, Cameroon has four distinct topographical regions. The low coastal plains of the southwest are blanketed with equatorial rain forests extending to the Sanaga River. In central Cameroon, the rain forest yields to the Adamaoua Plateau—a vast, sparsely vegetated region serving as a transitional zone between the forested south and arid north. Stretching northward from the foot of this plateau to Lake Chad are the great northern plains. The northern terrain is dry and barren. Low rolling savannas contrast starkly with shapely peaks called the "Kapsiki Candles," of the Mandara Mountains. To the west and northwest are rolling hills and volcanic mountains cloaked in lush vegetation reminiscent of Europe. Here lies Mount Cameroon at 13,000 feet, the loftiest peak in sub-Saharan West Africa.

Id.

¹¹¹ OVERSEAS PRIVATE INVESTMENT CORPORATION, COUNTRY INFORMATION FOR CAMEROON (1990). According to the information provided by the OPIC Investor Information Service, Cameroon's population in 1988 was 10,532,000. With a population growth rate of 2.67%, Cameroon's population for the year 2000 is estimated at 14,449,000. The population density is 57 sq. mi. and the GNP per capita is \$1,059. *Id.*

¹¹² Tovias, *supra* note 2.

¹¹³ CAMEROON POST REPORT, *supra* note 110, at 2.

The dual official language policy enables Cameroon to attract business and foreign assistance from both Francophone and English-speaking countries, as well as creating a special political role in institutions such as the Organization of African Unity. However, French is the dominant language, spoken by about 75% of the population, while English is dominant only in the northwest and southwest provinces. Arabic is spoken in the north. Throughout the country numerous and diverse tribal languages are spoken—24 major African languages plus assorted dialects.

of Cameroonians live in the French-speaking eastern part of the country.¹¹⁴ Christianity and Islam are practiced in addition to traditional religions.

On January 1, 1960, the Federal Republic of Cameroon became an independent nation. From 1961 until the spring of 1972, Cameroon was governed as a federation, with East (formerly French) Cameroon and West (formerly British) Cameroon, each having a separate parliamentary government. On June 2, 1972, a decree proclaiming the birth of the United Republic of Cameroon was enacted. Ahmadou Ahidjo, leader of East Cameroon, remained as the president of the new republic.¹¹⁵

President Ahidjo was re-elected in 1975 and again in 1980. However, in November 1982, following twenty-two years of autocratic rule, President Ahidjo resigned the presidency and handed power to his prime minister, Paul Biya.¹¹⁶ President Biya, as the sole candidate, was reelected to two more terms of office in 1984 and 1988, and remains to date as the President of Cameroon.

2. *Economic Conditions*

From the beginning of her independence in 1960 until 1985, Cameroon enjoyed economic growth at an average rate of eight percent per annum in the 1970s and early 1980s.¹¹⁷ In the years following her independence, the Cameroonian government emphasized the country's rich agricultural base, but "growth really soared when petroleum production commenced in 1978 from the country's small offshore fields."¹¹⁸ As a result of the surge in petroleum production, and despite the country's high population growth, Cameroon's 1987 GDP per capita reached \$1,239, ranking her in the World Bank's "middle income" category of developing countries.¹¹⁹

Id.

¹¹⁴ Tovias, *supra* note 2, at 3.

¹¹⁵ See generally MARK W. DELANCEY, CAMEROON: DEPENDENCE AND INDEPENDENCE (1989).

¹¹⁶ EUROPA, *supra* note 15, at 319.

No official reasons for his resignation were given. . . . Some sources alleged that Ahidjo had been tricked into resignation by his French doctors, who had told him (wrongly) that he was a dying man and had persuaded him to hand over power. . . . On 22 August [1983] Biya announced that a coup plot had been uncovered and that two close aides of Ahidjo had been arrested. . . . [Later] Ahidjo retired to the south of France. . . . At the end of February 1984, the men who had been implicated in the coup attempt . . . were placed on trial, together with Ahidjo, who was tried *in absentia* and officially deemed to have "fled abroad."

Id.

¹¹⁷ U.S. DEP'T OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: CAMEROON 4 (May 1990) [hereinafter FOREIGN ECONOMIC TRENDS CAMEROON].

¹¹⁸ *Id.*

¹¹⁹ *Id.* For background, see W. A. NDONGKO & F. VIVEKANANDA, AFRICA - THE AWAKENING GIANT: ECONOMIC DEVELOPMENT OF CAMEROON (1989).

Cameroon's bright economic future was disrupted in 1986, when world prices for the nation's major export commodities — coffee, cocoa, and petroleum — virtually collapsed.¹²⁰ Consequently, Cameroon's GDP declined by 2.8 percent in 1987, by 8.6 percent in 1988, and by 6.0 percent in 1989.¹²¹ Because Cameroon's exports are dollar denominated while the country's currency, the CFA franc,¹²² is tied to the French franc at a fixed exchange rate of fifty to one, the dramatic depreciation of the U.S. dollar in the mid-1980s further exacerbated the country's economic problems and adversely impacted Cameroon's trade position.¹²³ "World prices for Cameroon's chief agricultural exports, coffee and cocoa, declined again in 1989, darkening the country's already gloomy economic picture. The world price for Cameroon's other major export, petroleum, climbed, but the country's production fell."¹²⁴

3. *The Road To Economic Recovery*

a. *Cameroon's Structural Adjustment Program*

In response to the devastating blow to the country's economy in 1986 and ensuing years, the Cameroonian government implemented "an austerity program to restore budgetary and economic balance,"¹²⁵ known as the Structural Adjustment Program (SAP). The four mid-term goals of this ambitious program were to reestablish economic growth, eliminate impediments to business activity, minimize direct government involvement in the production and distribution network, and redirect public services toward those designed to improve the social well-being and general economic productivity of the country.¹²⁶

The government has taken positive steps to dramatically reduce expenditures by limiting hiring, freezing wages, suspending promo-

¹²⁰ FOREIGN ECONOMIC TRENDS CAMEROON, *supra* note 117, at 4 ("Over three years, from 1986-89, the price of Cameroon's chief exports declined nearly 45 percent. Between 1985 and 1987, the country's export earnings were halved and tax receipts slid sharply. Prices for coffee and cocoa continued to slide in 1989.") *Id.*

¹²¹ *Id.*

¹²² See ECONOMIST INTELLIGENCE UNIT, CAMEROON, CAR, CHAD COUNTRY PROFILE 1989-90 12 (October 1989). CFA is the acronym for the African Financial Community. Cameroon is a member of the Franc Zone, which has a currency tied to the French franc at a fixed exchange rate of CFAfr50 per French franc. The CFA franc is issued by the Banque des Etats de l'Afrique Centrale (Beac), a regional central bank of which the Cameroon, the Central African Republic, Chad, Congo, Gabon and Equatorial Guinea are members. Members of the Franc Zone must hold 65 percent of their reserves in Paris. The Banque de France guarantees the free convertibility of the CFA franc against the French franc, in return members undertake to implement stipulated monetary, credit and exchange control policies. *Id.*

¹²³ FOREIGN ECONOMIC TRENDS CAMEROON, *supra*, note 117, at 4.

¹²⁴ *Id.* at 3.

¹²⁵ *Id.* at 5.

¹²⁶ U.S. DEP'T OF COMMERCE, OVERSEAS BUSINESS REPORTS: MARKETING IN CAMEROON 5 (Sept. 1990)[hereinafter MARKETING IN CAMEROON].

tions, and enforcing retirement requirements.¹²⁷ On the revenue side, the government is introducing new taxes, reforming its tax administration, and cracking down on the insidious customs fraud problem.¹²⁸ The government is beginning the process of eliminating, privatizing, or rehabilitating the approximately 150 state-owned enterprises.¹²⁹ The government is also implementing reforms in the banking and agricultural sectors of the economy. Reforms are also underway to reduce non-tariff barriers to trade, including revisions to the investment and labor codes. Additionally, quantitative restrictions on many imports have already been lifted, with more eliminations expected. Except for limited items subject to quantitative controls, import licensing has been abolished. Price controls have been eliminated, except for a small number of "essential" items.¹³⁰

b. Agricultural Reform

Nearly seventy-five percent of all Cameroonians are employed by the agricultural sector. The primary cash crops — coffee, cocoa, cotton, cane sugar, timber, rubber, and tobacco — account for about forty-five percent of the country's export earnings and fifteen percent of GDP.¹³¹ With the decline of the petroleum sector as a source of export revenue, the Cameroonian government is giving special attention to revitalization and diversification of agricultural exports. As world prices for the country's principal products decline, the government is establishing pricing mechanisms that more realistically reflect global price fluctuations. Assisted by U.S.A.I.D., the Cameroonian government is gradually phasing out subsidies on fertilizers and privatizing their distribution systems.¹³²

Cameroon has the potential to reduce its dependence on coffee and cocoa and to increase production of other food crops, including bananas, beans, maize, manioc, paddy rice, pineapples, millet, sorghum, and wheat. Presently, the country is largely self-sufficient in food production. Food processing is in great demand in Cameroon because of limited storage capacity for fresh produce. Future plans include the creation of a \$3 million plant to produce pineapple juice and canned pineapples and a \$2 million tomato canning plant.¹³³

According to the U.S. Department of Commerce, the "best sales prospects [for U.S. companies] exist for agricultural machinery for the processing of coffee, cocoa, cotton and food canning; and small-

¹²⁷ *Id.*

¹²⁸ *Id.* at 5. The government contracted Swiss preshipment inspection firms to combat customs fraud. *Id.*

¹²⁹ *Id.*

¹³⁰ *See id.* at 5-6.

¹³¹ *Id.* at 8.

¹³² FOREIGN ECONOMIC TRENDS CAMEROON, *supra* note 117, at 8-9.

¹³³ *Id.* at 8-10.

scale harvesting and dairy machinery."¹³⁴ Other potentially good markets for U.S. exports include agricultural pesticides and fertilizers for the cocoa and coffee sectors, as well as foodstuffs and major livestock development, including poultry production.¹³⁵

c. *Free Trade Zone*

i. *Advantages of a Free Trade Zone*

United States and European companies interested in establishing joint venture companies to produce their products in West Africa for sale in the region or for reexport to the United States or Europe will welcome the establishment of free trade zones in several West African countries.

[F]ree zone may be defined as an isolated, enclosed, and policed area in or adjacent to a port of entry, without resident population, furnished with the necessary facilities for lading and unlading . . . without the payment of duties and without the intervention of customs officials. It is subject a little within adjacent regions to all the laws relating to public health, vessel inspection, and indeed everything except the customs. The purpose of the free zone is to encourage and expedite that part of a nation's foreign trade which its government wishes to free from the restrictions instituted by customs duties.¹³⁶

There are currently over 542 tax-free trade zones, free ports, and similarly designated areas in the world.¹³⁷ By taking advantage of the custom-free and tax-free haven provided in areas demarcated as free trade zones, "companies engaged in processing and assembling can . . . save on taxes and trim costs, including transportation expenses, plant rental, wages, finance charges and insurance premiums."¹³⁸

¹³⁴ *Id.* at 10.

¹³⁵ *Id.* at 10-11.

¹³⁶ 78 Cong. Rec. 9,853 (1934)(testimony of Rep. Emanuel Celler, author and primary sponsor of the U.S. Foreign Trade Zones Act of 1934 (then called the Free Port Bill)).

¹³⁷ WALTER H. DIAMOND & DOROTHY B. DIAMOND, *TAX-FREE TRADE ZONES OF THE WORLD 1* (1991)[hereinafter *DIAMOND*].

Historically a tool for aggressive commercial powers, the free trade zone dates back to the times of the ancient Phoenicians, when safe passage was the chief guarantee offered foreign traders visiting Tyre and Carthage. The developing countries neglected to focus on free trade zones until after the United Nations' Economic and Social Council (1506th plenary meeting, 4th August, 1967) adopted a resolution suggesting that one of the fundamental avenues of export expansion was for the developing countries to improve port, customs and trade zone facilities. Soon afterwards the United Nations Industrial Development Organization (UNIDO) drew up a plan for a model free trade zone. Several governments have adopted UNIDO's provisions for zone administration, infrastructure, tax holidays, and other investment incentives.

Id. at 2.

¹³⁸ *Id.*

Today thousands of imported products, from delicate caviar to sophisticated electronics and machinery, are lodged in free trade zones located in 92 countries. Domestic or foreign enterprises buying products from abroad find that

ii. *Cameroon's Industrial Free Zones*

In early 1990, the Cameroonian government enacted a free zone law,¹³⁹ which provides a package of fiscal, regulatory, and customs incentives to firms engaged in export processing and manufacturing.¹⁴⁰ The Free Zone Regime was established to "promote new investments, facilitate export development and create new jobs" in Cameroon.¹⁴¹ The Free Zone Regime applies to any part of Cameroon which, by regulations, is designated as "Industrial Free Zone" (IFZ).¹⁴² An IFZ is defined as "a demarcated and fenced geographic area, with controlled access, wherein the Free Zone Regime shall apply both to the said zone as an entity and to the enterprises established therein."¹⁴³ Included in the package as incentives to potential investors in Cameroon are zero or low tariffs on imports (of primary, intermediate, and capital goods) used in the production of exported products, tax advantages (including tax holidays and the tax-free transfer of dividends and of original inward investment), and reductions in legal and regulatory burdens including liberalized application of the Labor Code.¹⁴⁴

Cameroon's Free Trade Zone regime is expected to be a major impetus to increased investment and trade in the region. In its literature, the Cameroonian Embassy in Washington markets the Free Zone Regime as "Africa's New Gateway to World Markets." Internationally, the government has been praised for its efforts in implementing the Free Zone Law. "In one of the most encouraging developments of 1989, the GRC moved with startling speed to lay the groundwork for creation of an Industrial Free Zone."¹⁴⁵

d. *Trade and Investment Climate*

While foreign investment is primarily dominated by the French,

storing goods in a customs-free facility prior to shipment into the country where the zone is located can mean substantial savings in financing charges and increased cash flows. Other importers depend upon free trade zones to package, label, sort, assemble, process or manufacture finished goods prior to reexporting their duty-exempt finished products.

Id.

¹³⁹ Ordinance No. 90/001 (Jan. 29, 1990) (establishing the Free Zone Regime in Cameroon). The law lays the groundwork for the creation of an industrial free zone (IFZ), or free trade zone. It was drafted with the assistance of the U.S. Overseas Private Investment Corporation (OPIC) and the U.S. Agency for International Development (USAID) with the intention of allowing Cameroon to develop export-oriented industries which are internationally competitive. See generally *MARKETING IN CAMEROON*, *supra* note 126, at 40.

¹⁴⁰ EMBASSY OF CAMEROON (U.S.A.), *THE CAMEROON FREE ZONE REGIME: AFRICA'S NEW GATEWAY TO WORLD MARKETS 1* (undated).

¹⁴¹ Ordinance No. 90/001, *supra* note 139, art. 1(a).

¹⁴² *Id.* art. 1(b).

¹⁴³ *Id.* art. 2(a).

¹⁴⁴ *MARKETING IN CAMEROON*, *supra* note 126, at 40; see also *FOREIGN ECONOMIC TRENDS CAMEROON*, *supra* note 117, at 7-8.

¹⁴⁵ *FOREIGN ECONOMIC TRENDS CAMEROON*, *supra* note 117, at 7.

there are about two dozen U.S. companies located in Cameroon, while over forty local agents and distributors market U.S. products.¹⁴⁶ In 1989, U.S. exports to Cameroon totaled \$35.8 million, approximately thirteen percent above the 1988 level.¹⁴⁷ U.S. imports, primarily petroleum, from Cameroon in 1989 amounted to \$414.8 million.¹⁴⁸

Similarly, U.S. direct investment in Cameroon, totalling approximately \$1 billion in 1989, is concentrated in the oil and services sectors.¹⁴⁹ In 1989, the United States and Cameroon ratified a bilateral investment treaty, which guarantees U.S. firms the same treatment as local firms, protects investors against expropriations, and provides for binding third party arbitration in the event of an investment dispute.¹⁵⁰ Investment opportunities for U.S. companies appear to be increasingly more favorable.¹⁵¹

Cameroon, like Nigeria, is a country with a great deal of potential. Like Nigeria, if Cameroon successfully follows through with the current structural adjustment program, much of her potential can be realized. Because of the country's "substantial and diverse natural and agricultural resources, one of the best-educated work forces in Sub-Saharan Africa, a per capita income high enough to provide a sizable market for U.S. products, and a government increasingly committed to the free market, Cameroon offers a variety of prospects for U.S. firms looking for opportunities in the developing world."¹⁵²

D. Cote d'Ivoire

1. General History and Background

Cote d'Ivoire, or the Ivory Coast,¹⁵³ like Cameroon, is located

¹⁴⁶ MARKETING IN CAMEROON, *supra* note 126, at 4. During the oil boom, there were nearly double the number of U.S. firms resident in Cameroon, including three commercial banks. With the oil bust, these firms sold their operations to local entrepreneurs. *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

Bilateral commercial relations have been fostered by trade and investment missions between Cameroon and the United States at both the federal and state levels. Catalog and video catalog exhibits have appeared in Douala with the support of the Commerce Department's U.S. and Foreign Commercial Service (US&FCS) and the commercial section of the American consulate.

Id. at 4-5.

¹⁵² AMERICAN EMBASSY (YAOUNDE), CAMEROON - COMMERCIAL ACTIVITIES REPORT '90 (August 1990).

¹⁵³ U.S. DEP'T OF COMMERCE, BACKGROUND NOTES: COTE D'IVOIRE 1 (April 1990)[hereinafter BACKGROUND NOTES COTE D'IVOIRE]. Area: 322,500 sq. km. (124,500 sq. mi.). Capital: Yamoussoukro; Other cities: Abidjan, Bouake, Daloa, Gagnoa, Korhogo, Man. Population: 11.5 million. Languages: French (official), tribal dialects. Independence: August 7, 1960. Type of Government: Republic. National Holiday: December 7. Flag: Three vertical bands—orange, white, green. Natural resources: Petroleum. *Id.*

on the Gulf of Guinea. The Ivory Coast covers 322,500 square kilometers (124,500 square miles), making it slightly larger than New Mexico.¹⁵⁴ The Ivory Coast is bounded on the west by Liberia and Guinea, on the north by Mali and Burkina Faso, on the east by Ghana, and on the south by 340 miles of Atlantic coastline.¹⁵⁵ The Ivory Coast had a 1988 population of 11.185 million, and with a growth rate of 3.81 percent, the estimated population for the year 2000 is 17.520 million.¹⁵⁶ There are more than five million non-Ivorian Africans resident in the Ivory Coast — one third or more are from Burkina Faso and the rest are from Ghana, Guinea, Mali, Nigeria, Benin, Senegal, Liberia, and Mauritania. The non-African expatriate residents include over 20,000 French and at least 100,000 Lebanese.¹⁵⁷ The country's GDP per capita is \$712.¹⁵⁸

The Ivory Coast gained her independence from France on August 7, 1960, after more than sixty years of colonial rule.¹⁵⁹ Unlike many of her neighbors, the Ivory Coast has enjoyed relative political stability since independence.¹⁶⁰ The Ivory Coast has remained

¹⁵⁴ *Id.*

¹⁵⁵ U.S. DEP'T OF STATE, IVORY COAST POST REPORT (Dec. 1985).

The southern third of the country is covered by tropical rainforest. A network of interconnecting lagoons parallels the coast from the Ghanaian border 200 miles westward. Important cash crops are grown in the forest belt, but to the north lies a savannah area of lateritic soil where vegetation becomes more sparse. In the northwest, the Man Mountains (4,800 feet) break the rolling inland plain which rises from the sea to about 1,000 feet in the north. Four rivers—the Cavally, Sassandra, Bandama, and Comoé—flow from north to south.

Temperatures vary in the north where there is only one rainy season, averaging 51 inches annual rainfall and 71% humidity.

In the south, the tropical climate keeps temperatures between 75F and 90F, with humidity averaging 85 percent. Two rainy seasons, April to July and September to December, are separated by a short dry season in August. Over half the annual precipitation, 82 inches in Abidjan, falls in May, June, and July, but even then the sun often shines.

Id. at 1.

¹⁵⁶ OVERSEAS PRIVATE INVESTMENT CORPORATION, COUNTRY INFORMATION FOR COTE D'IVOIRE (1990)[hereinafter OPIC COTE D'IVOIRE].

¹⁵⁷ BACKGROUND NOTES COTE D'IVOIRE, *supra* note 153, at 3.

¹⁵⁸ See OPIC COTE D'IVOIRE, *supra* note 156.

¹⁵⁹ BACKGROUND NOTES COTE D'IVOIRE, *supra* note 153, at 1. For general background, see R. E. HANDOFF, COTE D'IVOIRE: A COUNTRY STUDY (3d ed. 1991); see also EUROPA, *supra* note 15, at 410-29.

¹⁶⁰ See EMBASSY OF THE REPUBLIC OF COTE D'IVOIRE, COTE D'IVOIRE: AN ECONOMIC PROFILE 6 (Undated)[hereinafter COTE D'IVOIRE ECONOMIC PROFILE]. A constitution provides for a strong central government within a democratic framework, as well as for separation of church and state. There is only one political party — the P.D.C.I. (Parti Democratique de Cote d'Ivoire) — within which candidates are allowed to compete and run for office in a free and democratic election. A president and 175-member parliament (National Assembly) are elected for five-year terms. There is also an Economic and Social Council (120 members) which acts in a consultative capacity to the president and to the National Assembly on economic and social matters. The country is divided into 50 "Departements" (or "Prefectures") and 163 "Sous-Prefectures." Each "Prefecture" is headed by a "Prefet" appointed by the Executive Branch of the government. There are 135 municipalities with mayors elected by the people. *Id.*

under the leadership of Felix Houphouet-Boigny since independence.¹⁶¹

2. *The Economy*

The Ivory Coast enjoyed a period of rapid economic growth in the 1960s and 1970s, immediately following her independence from France, which:

was made possible by a combination of favorable prices for the country's main export products, cocoa and coffee, and by the government's deliberate choice of a market-oriented, pragmatic economic policy. In keeping with this orientation, Cote d'Ivoire chose to base its development on the encouragement of export agriculture rather than large industrial projects, and established a climate of regulation and practice that encouraged foreign investment.¹⁶²

The Ivory Coast emerged as "a financial and commercial center for Africa's west Coast with an excellent communications and transport infrastructure."¹⁶³ The Ivory Coast's rapid growth was stalled in the late 1970s by international recession and world commodity prices.¹⁶⁴ Because the Ivory Coast's economic prosperity was highly dependent on the international price for her main agricultural products, coffee and cocoa, the country was devastated by the collapse of coffee and cocoa prices in the mid-1980s. "Coffee prices fell nearly 85 percent and cocoa prices nearly 83 percent between 1986 and 1989, both contributing to a 28 percent decline in Cote d'Ivoire's export revenue."¹⁶⁵

¹⁶¹ ECONOMIST INTELLIGENCE UNIT, COUNTRY PROFILE COTE D'IVOIRE 1990-91, 3 (1990):

Mr. Houphouet-Boigny has been Cote d'Ivoire's dominant political figure for more than 40 years. Born into a chiefly Baoule family at Yamoussoukro in 1905, or up to seven years earlier by some unofficial accounts, he first came to prominence as leader of the Syndicat Agricole Africain (SAA), an African planters' association founded in 1944. Elected as Cote d'Ivoire's deputy to the French Constituent Assembly in 1945, he won enormous popularity by securing the passage of the 1946 law abolishing forced labour in France's colonies. In April 1946 he created the PDCI, which, six months later, gave birth to a regional movement, the Rassemblement Democratique Africain (RDA), of which he also became leader . . .

Rather than campaign for independence, the PDCI supported Charles de Gaulle's plans for a French Community, including the African colonies, in 1958. At the same time, the party was opposed to the creation of a unified West African federation, whether within or outside the French Community, that might oblige Cote d'Ivoire to share its wealth with its neighbours. With the French Community doomed by mid-1960, however, Mr. Houphouet-Boigny pre-empted the other French West African colonies by declaring independence on August 7, 1960, and stalled Senegal's plans for a large federated West African state by drawing Upper Volta (now Burkina), Niger and Dahomey (now Benin) into a loose regional body, the Conseil de l'Entente.

Id.

¹⁶² U.S. DEP'T OF STATE, INVESTMENT CLIMATE STATEMENT FOR COTE D'IVOIRE I (June 1990)[hereinafter INVESTMENT CLIMATE COTE D'IVOIRE].

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 2.

¹⁶⁵ U.S. DEP'T OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS

3. *Economic Recovery*

The Ivorian government based the post-independence economic development of the Ivory Coast on agriculture, where the country has a comparative advantage. In 1960, the agricultural sector accounted for ninety percent of GDP and employed more than eighty percent of the labor force.¹⁶⁶ Today, the Ivory Coast is the largest producer of cocoa in the world and the world's third largest producer of coffee (it is the largest producer of robusta coffee).¹⁶⁷ In 1986, the Ivory Coast produced 580,000 tons of cocoa and an average of 265,000 tons of coffee.¹⁶⁸ Cocoa production expanded dramatically in the late-1980s, reaching a high of 836,000 tons in the 1988-89 season before falling to 650,000 tons in the 1989-90 season.¹⁶⁹ Coffee production declined to about 211,000 tons in 1989-90 from averages of 265,000 in the mid-1980s.¹⁷⁰

The government continues to encourage the introduction of new agricultural products in an effort to reduce dependence on the two main crops. According to the U.S. Department of Commerce, such efforts "to encourage diversification into sugar, palm oil, rubber, cotton, and tropical fruits have been rewarded with impressive increases in production but have thus far not succeeded in substantially reducing Cote d'Ivoire's dependence on the two key crops."¹⁷¹ The Ivory Coast remains largely self-sufficient in food, with agriculture for domestic consumption accounting for over half of agricultural income.¹⁷² The agricultural sector employs over half of the labor force, and accounts for seventy percent of export earnings, thirty-one percent of GDP, and thirty-two percent of value added.¹⁷³ Industry and construction account for only about thirteen percent of GDP, energy for about six percent, and the remainder is composed of the trade, services, and government sectors.¹⁷⁴ The overall picture for the agricultural sector appears positive as:

Cote d'Ivoire's GDP contracted about 1 percent in 1989, the third straight year of recession, despite a strong expansion of agricultural output. Export crops grew 11 percent, led by an 8 percent and 26 percent calendar year increase in the cocoa and coffee harvests respectively but also supported by increased rubber, cotton, and wood production. Agricultural production for domestic consumption ex-

FOR THE U.S., No. 90-87, COTE D'IVOIRE, 1, 3-4 (Dec. 1990).[hereinafter FOREIGN ECONOMIC TRENDS COTE D'IVOIRE].

¹⁶⁶ COTE D'IVOIRE ECONOMIC PROFILE, *supra* note 160, at 8.

¹⁶⁷ FOREIGN ECONOMIC TRENDS COTE D'IVOIRE, *supra* note 165, at 5.

¹⁶⁸ COTE D'IVOIRE ECONOMIC PROFILE, *supra* note 160, at 8.

¹⁶⁹ FOREIGN ECONOMIC TRENDS COTE D'IVOIRE, *supra* note 165, at 5.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ INVESTMENT CLIMATE COTE D'IVOIRE, *supra* note 162, at 4.

¹⁷⁴ FOREIGN ECONOMIC TRENDS COTE D'IVOIRE, *supra* note 165, at 5.

panded a healthy 4 percent.¹⁷⁵

The current account balance-of-payments deficit of the Ivory Coast narrowed ten percent to 1.1 billion in 1989 as a result of a fifteen percent expansion of export receipts.¹⁷⁶

The surge in exports was in turn due in large part to the government's decision to abandon a restrictive cocoa sales policy. Thus, cocoa exports increased from only 393,000 tons in 1988 to 723,000 tons in 1989. Total export volume increased 18 percent while import volume contracted 5.5 percent under the impact of weak domestic demand and a shortage of foreign exchange. However, the improvement in the trade balance was mitigated by a nearly 17 percent decline in the terms of trade.¹⁷⁷

An IMF program complemented by World Bank structural adjustment loans in the agriculture, energy, and water sectors was approved in November 1989.¹⁷⁸ The total financing package for the IMF/World Bank program amounted to \$4.2 billion for 1990 alone.¹⁷⁹

Reforms are envisaged that will result in deregulation of the economy, a shift to more market-based systems in the marketing of key export crops, a streamlining and substantial privatization of public sector enterprises, and rationalization and the establishment of better control systems for public receipts and expenditures.¹⁸⁰

In December 1989, a Paris Club agreement was concluded which provides for the rescheduling of one hundred percent of eligible principal and interest arrears over fourteen years with eight year's grace.¹⁸¹

4. *Investment Climate*

Due to the Ivory Coast's financial difficulties, the investment outlook is limited. According to the Commerce Department, the best prospects for American exports are: (1) heavy earthmoving and construction equipment; (2) telecommunications equipment; (3) computer software and peripherals; (4) cosmetics and health care products; (5) agricultural and irrigation equipment; (6) pumps; (7) valves and compressors; (8) food production and processing equipment; (9) safety and security equipment; and (10) industrial and agricultural chemicals.¹⁸²

The Ivory Coast has a liberal economic policy and "generally exercises few controls over foreign private investment unless tax concessions, offered equally to foreign and domestic investors, are

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 6.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 4.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 6.

sought."¹⁸³ The Ivory Coast is a member of the General Agreement on Tariffs and Trade (GATT).¹⁸⁴ The Ivory Coast is also a member of regional arrangements such as the Lome Convention¹⁸⁵ and the Economic Community of West African States (ECOWAS).

a. Investment Incentives

The Ivorian Investment Code was drafted in 1959 and revised in 1984 to extend its benefits to small and medium sized companies (as defined in article 3 of the Code), to extend benefits to existing firms undertaking new investments or undergoing restructuring, and to add additional incentives for investments outside the Abidjan area.¹⁸⁶ The provisions of the Code apply to enterprises involved in one of the following sectors: (1) cultivation, fishing, and industrial livestock breeding, as well as related processing of products derived from vegetable or animal matter; (2) manufacturing activities, either production or processing; (3) exploration, extraction, or processing of mineral substances; (4) energy production; (5) housing construction programs of an economic and social nature; and (6) storage and processing of food and agricultural products.¹⁸⁷ Moreover, the provisions of the Code may apply to small and medium-sized enterprises if they carry out a service activity in the maintenance or assembly of industrial equipment, the processing of unfinished products, or the laboratory testing or analysis of raw materials, finished products, or semi-finished products that are used or produced by industry.¹⁸⁸

The incentives offered to investors are available to both domestic and foreign companies.¹⁸⁹ The benefits offered under the investment code include customs duty exemptions on materials and equipment necessary to the investment, if such materials and equipment cannot be purchased in the Ivory Coast at a competitive price. There are also tax exemptions, generally for a period of five years with taxes phased in beginning in the fourth year, for business income taxes, license taxes, and real estate taxes. Additionally, there is a partial exemption from the value added tax.¹⁹⁰

b. Foreign Investment and Currency

According to U.S. Department of State statistics, in 1981 total foreign investment in the Ivory Coast was 182.06 billion CFA francs

¹⁸³ See generally INVESTMENT CLIMATE COTE D'IVOIRE, *supra* note 162.

¹⁸⁴ General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

¹⁸⁵ See *infra* note 228.

¹⁸⁶ Ivory Coast Investment Code, Law No. 84-1230 (November 8, 1984).

¹⁸⁷ *Id.* art. 2.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* art. 5.

¹⁹⁰ INVESTMENT CLIMATE COTE D'IVOIRE, *supra* note 162, at 10.

or 38.2 percent of total investment. Total foreign investment rose to 43 percent of total investment, or 207.76 billion CFA francs (U.S.\$462,449,361), dropped in 1986 to 177.48 billion CFA francs, or 35.4 percent of total investment of 501.80 billion CFA francs, and held steady in 1988 to 181.68 billion francs, or 35.2 percent of the total investment of 526.89 billion CFA francs. France largely controlled the bulk of foreign investment in the Ivory Coast, despite falling slightly from 64.7 percent in 1986 to 63.1 percent in 1988 (compared to 56.9 percent in 1985).¹⁹¹ The percentage of total foreign investment in the Ivory Coast for other countries in 1988 included Great Britain (10.98%), Lebanon/Syria (6.35%), and the United States (5.46%).¹⁹² The vast majority of foreign investment is currently in industry and commerce, primarily in food processing, rubber production, and textiles. With the exception of France, virtually all investment in agriculture, public works, and transportation is controlled by Ivorians.¹⁹³

The Ivorian currency is stable. The Ivory Coast is a member of the West Africa Monetary Union (UMOA) along with six other West African countries (Benin, Burkina-Faso, Mali, Niger, Senegal, and Togo). UMOA members share a common currency, the CFA (Franc de la Communauté Financière Africaine), issued by the common Central Bank, BCEAO, headquartered in Dakar, Senegal, with branch offices in every member nation. Currency convertibility is guaranteed by France — the CFA is tied to the French franc at a fixed rate of fifty CFA to one French franc.¹⁹⁴

E. Republic of Togo

1. General History and Background

Togo¹⁹⁵ is a small country, roughly the size of West Virginia, and is bounded on the west by Ghana, on the east by Benin, on the north by Burkina-Faso, and on the south by the Bight of Benin on the Atlantic Ocean.¹⁹⁶ The estimated population of Togo in 1988

¹⁹¹ *Id.* at 16.

¹⁹² *Id.*

¹⁹³ *Id.* at 7.

¹⁹⁴ COTE D'IVOIRE ECONOMIC PROFILE, *supra* note 160, at 10.

¹⁹⁵ See U.S. DEP'T OF STATE, BACKGROUND NOTES: TOGO (February 1990). Area: 56,600 sq. km. (21,853 sq. mi.). Capital: Lome (pop. [1989 est.] 600,000). Population (1989 est.): 3.4 million. Languages: French (official), Ewe, Mina, Kabye (local). Independence: April 27, 1960. Type of government: Republic. Flag: Alternating horizontal stripes, three green and two yellow, with a white star in a red field in the upper left corner. Natural resources: Phosphates, limestone, marble.

¹⁹⁶ U.S. DEP'T OF STATE, TOGO POST REPORT I (August 1985).

The country is divided climatically into southern and northern zones. The southern tropical temperatures fluctuate between 70°F and 89°F, with February and March the hottest months, and June, July, and August the coolest. Humidity is high (80% to 90%) most of the year. The major dry season extends from the end of November to the end of March; August and early

was 3.34 million, and with a growth rate of 3.32 percent, it is projected that the population will be 4.94 million by the year 2000.¹⁹⁷

Togo's colonial history was dominated first by Germany and later by the British and French.¹⁹⁸ Prior to independence on April 27, 1960, politics in Togo was dominated by the *Comite de l'union togolaise* (CUT), under the leadership of Sylvanus Olympio, and by the *Parti de l'union togolaise* (PUT), led by Nicolas Grunitzky, Olympio's brother-in-law.¹⁹⁹ During the first autonomous government in 1956, Grunitzky held the office of prime minister. However, after a United Nations-supervised election in 1958, Grunitzky was succeeded by Olympio, who held that position when Togo gained independence from France. A year later, in April 1961, Olympio was elected president of independent Togo.²⁰⁰ Olympio faced opposition from his brother-in-law, who had gone into exile in Paris. On January 13, 1963, Olympio was assassinated in a coup led by Sgt. (later Gen.) Gnassingbe Eyadema.

September are also sometimes quite dry. The two wet seasons are from the end of March to July, with maximum rainfall in June; and September to mid-November, with the greatest rainfall in October. The coastal area receives the least rainfall; the region of Kpalime, about 65 miles inland, receives the most. Equatorial conditions in the mountains of Togo support the country's only rainforest.

Northern temperatures fluctuate between 65F and over 100F, and humidity is less severe than in the south. The northern zone has one rainy and one dry season. In December-January, a cool, dry, dust-laden "harmattan" wind from the Sahara sweeps across the land.

Id.

¹⁹⁷ OVERSEAS PRIVATE INVESTMENT CORPORATION, COUNTRY INFORMATION FOR TOGO (1990).

¹⁹⁸ See EUROPA, *supra* note 15, at 1018.

German possession of Togoland, of which modern Togo was formerly a part, was officially recognized by the other European powers at the end of the 19th century, although Germany's administration initially met with fierce resistance from the inhabitants. Nevertheless, Togoland later became known as Germany's "model" colony, owing to the progress that was achieved in social and economic development. In 1914, soon after the outbreak of the First World War, the Germans were expelled from Togoland by Franco-British forces.

At the end of the war, the League of Nations proclaimed Togoland a mandated territory, with France responsible for a larger eastern section, administered at times as a separate unit and at times with neighbouring Dahomey (now Benin), and the United Kingdom responsible for a smaller western section, which was administered as part of the Gold Coast colony and the Northern Territories of the Gold Coast [now Ghana]. The partition split the Ewe people in the south of the territory between the French and British administrations, and their chiefs demanded reunification. . . .

In May 1956 a UN-supervised plebiscite in British Togoland produced majority support for a merger with the Gold Coast, in spite of Ewe opposition. When the Gold Coast became the independent state of Ghana in March 1957, former British Togoland was an integral part of it. . . . In a separate plebiscite, held in October 1956, French Togoland had voted to become a self-governing republic within the French community.

Id.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

Eyadema invited Grunitzky back to Togo, and in May 1963 Grunitzky was confirmed as president of the country. On January 13, 1967, Lt.-Col. Eyadema seized power in a bloodless coup.²⁰¹ Grunitzky returned to exile in Paris and died there in 1969. In April 1967, Eyadema was announced as the president of the Republic of Togo. In January 1968, Eyadema proclaimed that military rule in Togo would soon come to an end, although he stayed in power.²⁰² In recent developments, President Eyadema agreed to surrender power to a prime minister selected by a national conference, bringing to an end his twenty-four year military reign.²⁰³

2. *The Economy*

The gross national product per capita is about \$400.²⁰⁴ Almost eighty percent of Togolese are employed in the agricultural sector, primarily engaged in subsistence farming. The agricultural sector generates thirty percent of GDP and accounts for approximately twenty-five percent of total exports and ten percent of government revenues.²⁰⁵

The country's principal staple crops are corn, cassava, yams, sorghum, millet, and groundnuts. The major export crops are cotton, coffee, and cocoa. Phosphates (estimated reserves of 130 million tons a year) account for a third of total exports, a fifth of government

²⁰¹ *Id.*

²⁰² *Id.* at 1019.

By 1985, Eyadema's long rule had settled into a more tranquil phase politically, with the focus of national attention shifting to the country's economic problems. Togo is, however, regarded as relatively fortunate among west African states, owing to its growing importance as a trading centre for neighbouring countries. Eyadema's improved reputation abroad enabled him to travel to the USA in 1983, and Togo has now become a favoured site for international conferences. There has been a lessening of political repression. . . . The system of dictatorship has matured, with Eyadema inviting some very competent administrators to serve in his government, and the nation-wide elections in March 1985 were the first to be open to more than one candidate per seat. . . . The first multi-candidate local elections under the Eyadma regime were held in July 1987.

Id.

²⁰³ *Togo's President Agrees to Yield Power to a Rival*, N.Y. TIMES, August 29, 1991, at A15.

As part of the wave of democratic change sweeping Africa, national conferences have stripped power from long-entrenched military leaders in Benin, Congo, Niger and Mali. A conference in Gabon forced the civilian President, Omar Bongo, to hold multiparty elections that led to power-sharing with the opposition. . . . [In Togo, Kodu Koffigoh was appointed as interim Prime Minister.] Mr. Koffigoh, a human rights leader and head of Togo's Bar Association, is to name a transitional government to organize elections for next June 14 [1992]. The conference declared Mr. Eyadema and Mr. Koffigoh ineligible to run in the election.

Id.

²⁰⁴ U.S. DEP'T OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: TOGO 3 (December 1990)[hereinafter FOREIGN ECONOMIC TRENDS TOGO].

²⁰⁵ *Id.* at 4-5.

revenues, and a tenth of GDP. Although world phosphate prices dropped in 1990, phosphate exports from Togo increased from 2.4 million metric tons in 1987 to 3.4 million metric tons in 1988 and 3.3 million metric tons in 1989. Industry, which accounts for only about six percent of GDP, plays a relatively minor role in the Togolese economy. Higher phosphate prices helped drive up export revenues from \$87.2 million in 1987 to \$122.5 million in 1988 and \$140.9 million in 1989.²⁰⁶

Due to Togo's declining economy since independence, the country is now classified by the World Bank as among the Least Developed Countries (LDC). However, with some of the best port and airport facilities, roads, and telecommunications in the region, Togo has become an important transshipment center for goods to neighboring countries, particularly Mali, Burkina Faso, and Niger, which are landlocked. Togo also has a well-developed banking sector.²⁰⁷

3. Structural Adjustment Program

In the early 1980s, Togo embarked on a program of economic reform supported by the IMF and the World Bank. The adjustment program called for reductions in the fiscal deficit, tax and tariff reforms, privatization of various state enterprises, decontrol of prices and profit margins, and the elimination of most import quotas.²⁰⁸ While Togo has experienced moderate growth and low inflation since introducing the reforms, the economy is still largely dependent on world commodity prices, exchange rates, climatic conditions, and the health of neighboring countries.²⁰⁹

4. Foreign-Trade Zones/Free Ports

As part of Togo's efforts to revitalize the national economy via the SAP, the government concluded that "the most promising area of development lay in encouraging exports and promoting new foreign investment in labor intensive industries."²¹⁰ In addition to re-

²⁰⁶ See *id.*

²⁰⁷ See generally ECONOMIST INTELLIGENCE UNIT, TOGO, BENIN COUNTRY PROFILE 1990-91 2-24 (1990); see also U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, CONGRESSIONAL PRESENTATION FISCAL YEAR 1992 412 (February 1991)[hereinafter USAID].

The major obstacle to economic growth in Togo is the inability of the economy to generate sufficient financial resources to service its external debt while maintaining investment and imports. To alleviate its economic problems, the Government of Togo underwent a seventh debt rescheduling and began a fourth structural adjustment program in 1990. Other problems, such as limited agricultural markets, low competitiveness of exports and rapid population growth have prevented the achievement of higher per capita income growth.

Id. at 412.

²⁰⁸ FOREIGN ECONOMIC TRENDS TOGO, *supra* note 204, at 4.

²⁰⁹ *Id.*

²¹⁰ USAID TOGO, *supra* note 66, at 50.

vamping its investment code, the government decided to establish Export Processing Zones (EPZs).²¹¹ Fortunately for the Togolese government, the U.S. Agency for International Development (USAID) and the Overseas Private Investment Corporation were already evolving their own EPZ blueprint for selected developing countries.²¹² Togo's EPZ proposal thus received enthusiastic support from USAID and OPIC:

Independently USAID had concluded that an EPZ could make a significant contribution to developing an industrial base and creating jobs, because of the existing favorable business climate in the country, the level of infrastructure, the supportive policy environment and basic factor cost considerations.

Further, because of its strategic location at the heart of the ECOWAS countries of West Africa, its good infrastructure and stable government made it an ideal site for an EPZ serving world and regional markets.²¹³

International reaction to Togo's EPZ program has been very encouraging: "As of late August 1990, 17 companies had submitted applications to set up an EPZ operation involving \$25 million of investment and creating 1,500 jobs."²¹⁴ Although the United States was the primary impetus behind getting the project underway, the majority of prospective operators are expected to be from Europe and Asia, a trend which is consistent with the current overall pattern

²¹¹ DIAMOND, *supra* note 137, at Togo-3. (Government Decree 68-106 of June 5, 1968, the Lome Free Trade Zone was designated, but "[b]ecause of the extensive port facilities available throughout the port complex, the free trade zone has not been as active as desirable.") *Id.* The many benefits provided by the Export Processing Zone include:

- Duty free importation and exportation;
- A tax holiday for the first ten years with a 15 percent profits tax rate from the 11th year after the registration date of the company;
- Tax exemptions on dividends for the first ten years for foreign shareholders;
- General Business tax (TGA) exemption on all work executed and services rendered for the Free Zone company;
- A charge of only 50 percent the duty rate on utility vehicles for EPZ companies;
- Free Zone companies can keep accounts in convertible currencies and freely effect transfers to foreign destinations outside the Free Zone for capital and operational needs;
- Government leases for Free Zone sites are generally for 25 years, renewable for up to 99 years; and
- Free Zone companies are free to determine prices, profit margins and rents of transactions between companies and the TEPZA or between Zone companies and foreign markets.

²¹² *Id.*

²¹³ See USAID Togo, *supra* note 66, at 50-51.

The draft law No. 89-14 governing the status of export processing zones was passed in September 1989 and gazetted as Decree No. 90-40 in April 1990. The government examined relevant legislation from [sic] other countries hosting free zone programs, and benefitted from technical assistance provided by OPIC/USAID in order to define a comprehensive legal regime which places Togo at the forefront of the free zone initiatives worldwide.

Id. at 51.

²¹⁴ *Id.* at 51.

of foreign investment in Africa.²¹⁵

While specific sites have been targeted for the establishment of industrial parks, the Free Zone Regime is to apply to all of the Togolese territory.²¹⁶ The Port of Lome functions both as a commercial free zone and transshipment center. Both OPIC and USAID have allocated substantial funds to provide technical assistance for the implementation of the zone and, in addition, have "made funds available for contributions to the pre-investment costs of the developer and financing for up to 50 percent of the development costs."²¹⁷ Over the long term, OPIC and USAID are providing for funding plans to find a private promoter to take over the running of the EPZ.²¹⁸

The key condition for EPZ eligibility is that a minimum of eighty percent of production must be exported. Already established companies interested in reverting to EPZ status must demonstrate that at least seventy-five percent of their production from the previous three years was exported.²¹⁹ Companies that export their goods from the EPZ into the local market must pay duties and taxes as if physically exporting their products into Togo.²²⁰ Furthermore, registered

²¹⁵ *Id.* See DIAMOND, *supra* note 137, at Togo-3.

[A]s an Associate Member of the European Economic Community and a full-fledged member of the Economic Community of West African States formed in 1975, the Lome Free Trade Zone is in a favorable position to benefit from increased trade and investment in the future. . . . The major companies using the Free Port of Lome and/or the Lome Free Trade Zone are mainly of French or Togolese ownership.

Id.

²¹⁶ USAID Togo, *supra* note 66, at 51. Two sites have been set aside for development as industrial free zones. One site of approximately 35 hectares has been partially improved by the Port Authority and is awaiting the selection of a private developer (as of November 1990)—"Located approximately 5 kilometers from Lome adjacent to the EPZ area within the port, it will cater for industrial and service enterprises." *Id.* A second site of approximately 72 hectares, less than a mile from the port, is also located in the Port Industrial Zone. *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.* As of August 1990, three U.S. promoters had visited Lome and three more were due to visit with the OPIC/USAID September 1990 mission. *Id.*

²¹⁹ *Id.* at 53. Companies eligible for EPZ status are: (1) labor-intensive companies; (2) advanced technology companies with a local raw material base; (3) export-oriented companies engaged in international subcontracting; (4) companies producing inputs for the above mentioned entities; (5) service companies, such as banks; insurance companies; industrial hardware maintenance companies; support service companies; shipping companies; or any companies whose activities complement and facilitate those of export-oriented companies; (6) EPZ developers or any individual or company responsible for attracting companies into the zone. Precluded are international trading companies, brokerage companies and companies engaged in warehousing packaging or reconditioning; however, companies for which warehousing is an integral part of their industrial activities are eligible.

²²⁰ *Id.*

Products obtained from raw materials imported into the free zone from a member state of ECOWAS pay only the General Business tax (TGA) at the rate corresponding to the category exclusive of other tax and duties that may be applicable for goods imported from the free zone into the national terri-

companies also benefit from reduced rates for port services, local PTT services, and electricity (the rate mooted is twenty percent plus cost or CFAfr35 per kWh).²²¹

Additionally, it should be noted that Free Zone companies are free to employ and dismiss Togolese or expatriate personnel, provided that preference is given to equally qualified Togolese nationals when hiring. The Labor Code, however, applies to the regulatory provisions regarding contracts, salary, apprenticeship contracts, hygiene and safety, savings, and social obligations. Working conditions are freely negotiable between employers and employees, provided that internationally recognized workers' rights are respected. Social insurance policies should be provided by employers to their staffs. Free Zone firms are not subject to the provisions of the Labor Code concerning recruitment and lay-offs. All foreign nationals are required to have work visas and residency permits.²²²

5. *Tourism*

Developing the tourism sector constitutes an important component of Togo's economic reform program. The government has placed a high priority on attracting visitors, as tourists and for international conferences. Indeed, citizens of the United States, Canada, and the European Community do not need visas to visit Togo.²²³

6. *Investment Climate*

As part of Togo's third Structural Adjustment Program, the Investment Code was substantially revised in October 1989.²²⁴ The primary objectives of the new Code include encouraging export oriented investments, increasing employment of Togolese nationals, promoting the establishment of Togolese small-scale and medium-scale enterprises, and developing local resources.²²⁵

According to the U.S. Department of Commerce, the new investment code and EPZ law give Togo "one of the most favorable investment climates in Africa."²²⁶ It has been reported that:

[t]he U.S.-owned steel mill, Societe Togolaise de Siderurgie (STS) has already demonstrated that U.S. investors can make a profit on industrial projects in Togo. The list of investments approved under

tory. To be eligible for this concession, goods must be made from ECOWAS raw materials to more than 60% by quantity or 40% by value added; otherwise the duties on raw materials are assessed at the rate for the finished product and not that of the constituent materials.

Id.

²²¹ *Id.* at 53.

²²² *Id.* at 52-54.

²²³ FOREIGN ECONOMIC TRENDS TOGO, *supra* note 204, at 6.

²²⁴ The Investment Code, Law No. 89-22 (October 31, 1989).

²²⁵ USAID TOGO, *supra* note 66, app. at 3.

²²⁶ FOREIGN ECONOMIC TRENDS TOGO, *supra* note 204, at 8.

the EPZ law gives an indication of other sectors of interest to foreign investors: clothing, buses, dehydrated fruits, metal containers, pylones, fences, glue and derivatives, cosmetics, veterinary products, seafood (three separate projects), ship repair, shoes, car seats, a floating steel products market, salt, carved wood products, [and] airplane servicing.²²⁷

The Commerce Department report indicates that the majority of these investments are directed at the West African regional market. However, exports from Togo also enjoy preferential entry into the United States under the Generalized System of Preferences (GSP)²²⁸ and into the European Community under the Lome Convention.²²⁹

²²⁷ *Id.*

²²⁸ The Generalized System of Preferences, providing favorable treatment to developing countries, is clearly inconsistent with article I of the General Agreement on Tariffs and Trade (GATT), which imposes a Most-Favored-Nation (MFN) treatment requirement on all GATT signatories. General Agreement on Tariffs and Trade, Oct. 30, 1947, art. I, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

With respect to customs duties and charges of any kind . . . , any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

GATT, *Generalized System of Preferences*, BASIC INSTRUMENTS AND SELECTED DOCUMENTS 24 (18th Supp. 1970-71). The U.S. GSP system was established by the Trade Act of 1974, amended by Pub. L. 98-573, title V, § 502, 98 Stat. 3019 (1984) (codified as 19 U.S.C. §§ 2461-2465 (1984)(authorizing the President to provide duty-free treatment for any eligible article from any beneficiary developing country)).

A GATT waiver from the MFN requirement was granted in 1971, authorizing each industrial country to establish its own GSP program, provided that each program benefited all "developing countries."

²²⁹ See USAID TOGO, *supra* note 66, at 35; see also EIU NIGERIA, *supra* note 21, at 53.

The Lome Convention is a trade and aid agreement between the European Community and 66 [68] African, Caribbean and Pacific (APC) countries, including 45 African countries. Member countries are guaranteed duty free entry to the European Community for some commodities they produce. With the exception of South Africa (there is provision for Namibia to join), all sub-Saharan African countries are members of the Lome Convention. The third convention (Lome III) was signed in December 1984, and replaced the conventions signed in Lome in 1975 and 1979. Lome IV was signed in Lome in December 1989, which, while maintaining the long term development aims of previous conventions, placed new emphasis on economic policy reform in member nations. Aid totalling Ecu12 billion (Ecu10.8 bn to the European Development Fund (EDF) and Ecu1.2 bn to the European Investment Bank (EIB), which lends on a commercial basis) was allocated over five years under Lome IV (approximately 25% more than was available under Lome III).

The stabilization of export earnings scheme (Stabex), which was set up to cover losses of earnings caused by a drop in prices or production of the main ACP agricultural exports, now includes better risk coverage and expanded the number of listed products by 3 to a total of 48 products. The financial resources allocated to Stabex was increased by 62-66% (totalling about Ecu925mn to Ecu1.5bn). Sysmin, a special financing facility for minerals, including copper, phosphates, manganese, bauxite, tin, uranium and iron ore, also saw increases to its financial resources. The primary objective of Sysmin is "to contribute to the creation of more solid basis for the development of the ACP states whose economies are dependent on the mining sectors, and in particular towards helping them avoid a decline in their capacity to export mining products to the Community."

EIU NIGERIA, *supra* note 24, at 53.

F. *Republic of Cape Verde*

1. *General History and Background*

The Cape Verde Islands²³⁰ consists of ten islands and five insets (roughly the size of Rhode Island), divided into windward (Barlavento) and leeward (Sotavento) groups, located in the central Atlantic Ocean off the west coast of Africa. Santo Antao, Sao Vincente, Santa Luzia, Sao Nicolau, Sal, and Boa Vista comprise the six islands in the Barlavento group. The islands in the Sotavento group are Maio, Santiago, Fogo, and Brava. All the islands are inhabited, with the exception of Santa Luzia.²³¹ Sal, Boa Vista, and Maio are level and lack natural water supplies, while mountains higher than 1,280 meters (4,200 feet) are found on the islands of Santiago, Fogo, Santo Antao, and Sao Nicolau.²³² The islands are of volcanic origin, but the only active crater is Fogo, which had its most recent eruption in 1951.²³³

Cape Verdeans are of mixed African and Portuguese origins. The population of Cape Verde was 364,000 in 1989 and, at a growth rate of 2.88 percent, it is estimated that the population will be 498,000 by the year 2000. According to 1989 U.S. Department of State statistics, of the one million people of Cape Verdean ancestry in the world, only about one-third actually live on the islands.²³⁴ Emigration of Cape Verdeans is due largely to the fact that the islands have few natural resources. Portuguese is the official language, but most Cape Verdeans speak Crioulo, a Creole dialect which consists of archaic Portuguese mixed with African and other European languages.²³⁵

Cape Verde obtained independence from Portugal on July 5, 1975. During that month, Aristides Pereira, one of the founders of the Partido Africano da Independencia do Guine e Cabo Verde (PAIGC), was elected president of the national assembly.²³⁶ In Sep-

²³⁰ See U.S. DEP'T OF STATE, BACKGROUND NOTES: CAPE VERDE (November 1989)[hereinafter CAPE VERDE BACKGROUND NOTES]. Area: 4,033 sq. km. (1,557 sq. mi.). Capital: Praia (pop. 55,000). Population: 364,207 (1989). Languages: Portuguese (official), Crioulo (national). Independence: July 5, 1975. Type of government: Republic. Flag: Three equal-sized stripes: vertical red band on staff side and horizontal yellow (upper) and green (lower) bands. On the red band is a black star surrounded by two corn-stalks emerging from a seashell. Natural resources: Salt, pozzolana, limestone. *Id.*

²³¹ *Id.* at 2; see also U.S. DEP'T OF STATE, CAPE VERDE POST REPORT 1 (March 1986)[hereinafter CAPE VERDE POST REPORT].

²³² *Id.*

²³³ CAPE VERDE POST REPORT, *supra* note 231, at 1.

²³⁴ CAPE VERDE BACKGROUND NOTES, *supra* note 230, at 2. It is estimated that about 350,000 people of Cape Verdean ancestry live in the United States, mainly in New England; Portugal, Senegal, and Angola each have about 40,000 Cape Verdean emigrants; and the Netherlands, France, Italy, Brazil, Argentina (and other Latin American countries), Scandinavia, and Guinea-Bissau each have between 5,000 and 20,000 Cape Verdeans. *Id.*

²³⁵ *Id.*

²³⁶ EUROPA, *supra* note 15, at 337.

tember 1980, Cape Verde's first post-independence constitution was adopted by the national assembly. In 1981, after having abandoned any hopes of unifying Cape Verde with Guinea-Bissau, the PAIGC was renamed Partido Africano da Independencia de Cabo Verde (PAICV), bringing diplomatic relations between the two former Portuguese colonies to a halt.²³⁷ In February of that year and again in 1986, President Pereira was reelected to the presidency of Cape Verde.

2. *Economic Condition*

Due to its being approximately 400 miles off the coast of West Africa, Cape Verde is used as an international transit point.²³⁸ The Cape Verdean economy is stimulated by remittances from its large emigrant communities, which amounts to ten to twenty percent of its GNP.²³⁹ However, dependency on external sources leaves the country vulnerable to fluctuations in the world economy.

Cape Verde has initiated a development program to stimulate export-related activities and liberalize economic policies. The government has been assisted in its attempt at new economic reforms by several members of the international donor community. The United States Agency for International Development (USAID) and the World Bank have played leading roles in the development of the private sector:

USAID and Cape Verde began implementing an Export Development Services Project [in 1990]. This project, with target disbursements of \$4 million over four years, is designed to provide support to Cape Verde's private sector by reducing constraints to expanding export-oriented production, trade and private sector participation, and by establishing a foreign investment center. The center is intended to serve as a one-stop shop for marketing promotion, research and policy analysis, investor advisory services and training.²⁴⁰

Other commitments from the international donor community have included a 1985 World Bank and United Nations Development Program (UNDP) \$5 million credit to strengthen Cape Verde's capability for the identification, preparation, and promotion of industrial projects. The World Bank has extended a \$3.9 million credit line to assist small-scale industrial projects, such as a gas-bottling plant, bakeries, and fish processing. Furthermore, a two-year project of the UNDP and United Nations Committee on Trade and Development (UNCTAD) was concluded in conjunction with the Ministry of

²³⁷ *Id.* at 338.

²³⁸ See U.S. DEP'T OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: CAPE VERDE 6 (December 1990)[hereinafter FOREIGN ECONOMIC TRENDS CAPE VERDE].

²³⁹ *Id.* at 3.

²⁴⁰ *Id.* at 4.

Transportation, Commerce, and Tourism to encourage exports by training local officials in nontraditional export activities, such as export processing zones, teleport and information services, tourism, and transshipment services.²⁴¹

As a member of the Multilateral Investment Guarantee Fund (MIGA), insurance will be available to protect foreign investors in Cape Verde against noncommercial risks and volatile economic conditions.²⁴² Cape Verde has also received bilateral commitments from several donor countries. For example, the Dutch government has supported infrastructure development, "including the expansion of the port of Mindelo, Sao Vicente (along with the World Bank), the shipyard of Mindelo, small industries development, and water desalination."²⁴³

3. *Free Trade Zone and Tourism*

a. *Free Trade Zone*

In an effort to take advantage of the country's strategic location, Cape Verdean officials have made investments in both sea and air transportation infrastructures on the three principal islands. In 1986 a study, commissioned by a Brazilian firm, concentrated on developing an entrepot in Mindelo. In the United States, efforts are already underway to evaluate the concept of *Africaport*, an initiative to develop export services and international trade, including processing zones, air and sea transport, tourism, and related fields.²⁴⁴

A May 1990 government decree created the legal basis for a free trade zone, noting that:

[e]ntrepot activities can be undertaken, such as the storage of goods without payment of duties, with storage periods ranging up to four years, depending on the type of goods. The decree also authorizes the establishment of bonded and warranted private warehouses. Export industries will be able to import raw, semi-finished, or finished materials without payment of customs duty.²⁴⁵

Cape Verde also adopted a formal investment code.²⁴⁶

b. *Tourism*

Cape Verde's location and climate²⁴⁷ offer excellent possibilities for tourism development. Although there is considerable tourism

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.* at 5.

²⁴⁴ Philip Michelini, U.S. Dep't of Commerce, *Three West African Mini-Markets: Cape Verde, The Gambia, Guinea-Bissau*, BUS. AM., June 20, 1988, at 9.

²⁴⁵ FOREIGN ECONOMIC TRENDS CAPE VERDE, *supra* note 238, at 4.

²⁴⁶ *Id.*

²⁴⁷ CAPE VERDE POST REPORT, *supra* note 231, at 1. Temperatures and humidity vary with altitude, but the climate is warm, dry, and windy. The average temperature in Praia is 75°F (24.4°C). The hottest month, September, has an average temperature of 79°F

potential, the industry currently is little developed. "Cape Verde has few known exploitable attributes, aside from an attractive climate, a hardworking population and a strategically placed geographic position. Tourism and the free trade zone activities seem to hold the greatest potential for economic development."²⁴⁸ The islands of Sal and Boa Vista "have attractive beaches with great conditions for water sports, [and] [t]he two islands have developed facilities for diving, wind surfing, and sport fishing; they are slowly becoming successful beach resorts."²⁴⁹

Thus, there is a significant potential for companies with joint venture capital to participate in making the country an important gateway for the inflow of goods and services into the larger markets in the region. Additionally, with foreign investment, Cape Verde can also develop a lucrative tourist trade.

G. Republic Of Gambia

1. General History and Background

The Republic of Gambia,²⁵⁰ with an area of 11,275 square kilometers (4,361 square miles), roughly four-fifths the size of Connecticut, is the smallest country on the African continent.²⁵¹ Gambia is situated on the western coast of Africa between the Equator and the Tropic of Cancer. Except for its western border which is on the Atlantic Ocean, Gambia is surrounded by the Republic of Senegal.²⁵²

(26°C); the coolest month, February, averages 72°F (22.2°C). The ocean stabilizes the temperatures.

²⁴⁸ FOREIGN ECONOMIC TRENDS CAPE VERDE, *supra* note 238, at 5.

²⁴⁹ *Id.* at 6.

²⁵⁰ OVERSEAS PRIVATE INVESTMENT CORPORATION, COUNTRY INFORMATION FOR THE GAMBIA (1990)[hereinafter OPIC, THE GAMBIA]; see also BUREAU OF PUB. AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTES THE GAMBIA (October 1986)[hereinafter BACKGROUND NOTES THE GAMBIA]. Area: 11,295 sq. km. (4,361 sq. mi.). Capital: Banjul (pop. 44,000). Population: 779,000 (1988). Languages: English (official), Mandinka, Wolof, Fula, and other indigenous languages. Independence: February 18, 1965. Type of government: Republic. Flag: Three horizontal bands of red, blue, and green, with blue center bordered by two white stripes. Natural Resources: Fish.

²⁵¹ BACKGROUND NOTES THE GAMBIA, *supra* note 250, at 1.

²⁵² U.S. DEP'T OF COMMERCE, THE GAMBIA POST REPORT 1 (November 1984).

The Gambia is vulnerable to periodic drought because it is part of the arid Sahel zone between the Sahara desert and the coastal rain forest. Vegetation is savanna woodlands, grass, and shrubs with sandy soils low in plant nutrients. Palm trees are present in coastal and riverine areas, and baobab and kapok trees are found throughout the country. Climate is subtropical with a distinct hot and rainy season from June to October, and a cooler dry season from November to May. The beginning and end of the rains are marked by high temperatures and high humidity, whereas the dry season is noted for the dusty and dry Northeast Trades (Harmattan) blowing in from the central Sahara. Temperatures range from a low of 48F (9C) in January to a high of 110F (43C) in October. Because of the cooling effect of the ocean, temperatures are lower along the coast than in the interior. Rainfall can vary widely from year to year but ranges from an annual mean of 48 inches in the west to 34 inches upriver.

Id.

Ninety-five percent of Gambia's population of under one million is Muslim. About eighty to eighty-five percent of Gambians live in rural areas.²⁵³ Although English is the official language, most Gambians speak their native language.

Gambia gained her independence from Great Britain in February 1965 and became a Republic on April 24, 1970. Sir Dawda Jawara of the People's Progressive Party (PPP) was the first president of Gambia.²⁵⁴ In 1982 and 1986, Sir Dawda Jawara was reelected as president.

2. *The Economy*

Agriculture accounts for approximately twenty-five percent of Gambia's GDP (1989 \$197 million), industry accounts for twenty-seven percent of GDP, and services account for forty-eight percent of GDP.²⁵⁵ Agricultural products include peanuts, rice, millet, sorghum, palm kernels, and livestock.²⁵⁶ Major industries include peanut products, brewing, soft drinks, machinery assembly, wood products, metallurgy, garments, and tourism.²⁵⁷ Gambia's major imports are textiles, foodstuffs, machinery, oil products, and chemicals. The major exports are peanuts, fish, palm kernels, hides, and skins.²⁵⁸

3. *Tourism*

Gambia has no important mineral or other natural resources. However, tourism has begun to attract more private investment. Tourism is the country's second largest source of foreign exchange earnings and represents approximately ten percent of the gross domestic product.²⁵⁹ The number of tourists visiting Gambia increased from 31,613 in 1977-78 to 96,603 in 1987-88.²⁶⁰ The largest number of visitors are from Britain, followed by Sweden.²⁶¹ The Gambian government considers tourism to be among the priority sectors of the economy and issues development certificates to investors, entitling them to certain incentives under the Development Act of 1988.²⁶² Such investment incentives include the following: (1) duty relief on all imported construction materials and capital equipment; (2) relief from payment of tax on capital products bought lo-

²⁵³ BACKGROUND NOTES THE GAMBIA, *supra* note 250, at 1.

²⁵⁴ EUROPA, *supra* note 15, at 495-97.

²⁵⁵ See OPIC, THE GAMBIA, *supra* note 250.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ EMBASSY OF THE GAMBIA, INVESTMENT OPPORTUNITIES IN THE GAMBIA: THE TOURISM SECTOR (July 1990).

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

cally and a refund of up to ninety percent of duty elements on capital products bought locally; (3) an income tax holiday up to a maximum period of eight years; (4) after the expiration of the tax holiday period, Development Certificate holders may carry forward and set off any income for six succeeding years; (5) repatriation of capital and transfer of dividends and profits is guaranteed; (6) assurance of an expatriate quota, pending the required skills are essential to the successful operation of the project and cannot be filled by Gambians; and (7) land is allocated (free) to the project and the required area is determined by the magnitude and nature of the planned investment.²⁶³

There are several places of historic interest to potential visitors to Gambia. For example, Jufureh Village is the birth place of Kunta Kinteh, the heroic African captured and sold into slavery in Alex Haley's best seller *Roots*. Alex Haley traced his ancestry all the way to Jufureh. "People from all over the world visit the village and chat with the great grand children of Kunta Kinteh and at the same time watch the famous mysterious tree in the middle of the sea. Legend has it that this tree is a source of inspiration for many visitors."²⁶⁴ Auko Nature Park is a five square mile park which provides sanctuary for wild animals and birds. Stone Circles at Wassu is the location where as far back as the Neolithic period, inhabitants of Wassu buried their dead in a special tomb characterized by a protruding stone three feet high. The stones surround the graves.²⁶⁵ James Island, located in the mouth of River Gambia, was the first capital of Gambia. "It was vacated in the 1960s as a result of the advancing river and is now a sanctuary for birds. Trips to the island are organized daily during the tourism season; off-season trips can be conducted upon request."²⁶⁶

Investment opportunities in the tourism sector exist for U.S. firms in the following areas: (1) hotels, in that according to the Embassy of The Gambia, "additional hotels and motels of a higher class would be required especially given the emphasis on high spending tourists from the United States, Germany, etc.;"²⁶⁷ (2) cleaning and disinfection services; (3) tour operations; (4) ground operations, such as evening tours, river cruising, city tours, village tours, safari and bush tours, and bird watching; (5) sports facilities; (6) island resorts; and (7) excursions by river, as Gambia "is endowed with a river that runs in the heart of the country and is navigable about 370 kilometers. It provides a tantalizing glimpse of singing birds, chattering monkeys and traditional singing and dancing, welcoming

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

tourists as they cruise along the river."²⁶⁸

III. Financing Investment In West Africa: Where to Look for Funds

A. Introduction

The purpose of this section is to introduce the potential investor in West Africa to various United States, multilateral, and foreign bilateral programs that should be considered when seeking financing to market goods and services in the region. The intention is not to provide an exhaustive list, but rather to give a brief background on some of the major programs that are available to U.S. companies desiring to include West Africa in their global marketing strategy. The U.S. Department of Commerce, International Trade Administration's *Guide to Business Finance For U.S. Firms* was prepared in recognition of the fact that although "[t]here is significant business for American companies in Africa . . . too few companies realize this, partly because of a misconception that finance is not available for African trade and investment."²⁶⁹ As noted by the guide, there are many financing programs available to U.S. firms that seek additional funds to finance, or government-backed guarantees to protect, their ventures in sub-Saharan Africa.

B. United States Programs

1. Africa Growth Fund (AGF)

The Africa Growth Fund (AGF), developed by OPIC, is owned by a select group of major U.S. corporations. The AGF "is a privately owned, privately funded, privately managed investment company that takes positions in highly profitable new and expanding business enterprises in sub-Saharan Africa."²⁷⁰ AGF projects are typically between \$5 million to \$50 million in size, although projects outside of this range will be considered, particularly if they provide other investment attraction, such as an unusually high return or a contractual repurchase agreement for the AGF's holdings.²⁷¹ AGF

²⁶⁸ *Id.*

²⁶⁹ INT'L TRADE ADMIN., U.S. DEP'T OF COMMERCE, AFRICA: GUIDE TO BUSINESS FINANCE FOR U.S. FIRMS v (May 1990) (the Guide was prepared as an effort on the part of the Commerce Department "[t]o demystify doing business in Africa.").

²⁷⁰ AFRICA GROWTH FUND, AFRICA GROWTH FUND: VENTURE CAPITAL FOR AFRICA 4 (1991)[hereinafter AFRICA GROWTH FUND].

²⁷¹ *Id.* at 4.

The fund seeks investment opportunities where it can provide between 20% and 45% of a project's total equity capital (the sum of its local currency and foreign currency equity in a project. As a result, the Fund may sometimes be the only source of foreign currency equity in a project). Fund investments will typically fall in the range of U.S. \$500,000 to U.S. \$3 million equivalent. Debt swaps with a nominal local currency value at this level will be considered, however, even if the actual foreign currency investment required is significantly lower.

Id. at 5.

can invest in any of the countries in sub-Saharan Africa where OPIC is authorized to do business.²⁷² AGF will invest only in projects which have been specifically approved by the host government, and all investments will be screened to determine if they meet acceptable environmental, labor, and public health standards.²⁷³

As it is a venture capital fund, the Africa Growth Fund does not participate in the day-to-day operations of the companies in which it invests, but does expect complete access to management information, full voting membership on the board of any enterprise in which it invests, and membership in all key sub-committees of the board.²⁷⁴ All projects must be supported by OPIC political risk insurance or similar risk mitigation policies. (OPIC insurance is routinely available for many African countries, including all of the countries profiled in this Article).²⁷⁵ AGF does not invest in real estate or commodity speculation, military projects, companies which are viewed as controlled by local governments or government agencies, or exploration-stage project development. Neither does ADF directly fund feasibility studies, but it will sometimes assist project sponsors in arranging funding for such studies.²⁷⁶

2. *Export-Import Bank of The United States (Eximbank)*

The Export-Import Bank of the United States (Eximbank) is a U.S. governmental agency that helps finance export sales of American goods and services.²⁷⁷ The stated "mission" of Eximbank is "to facilitate export financing of U.S. goods and services by neutralizing

²⁷² *Id.* Business ventures in the following countries are eligible for investment by the Africa Growth Fund: Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Congo, Cote D'Ivoire, Djibouti, Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome & Principe, Senegal, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo, Uganda, Zaire, Zambia, and Zimbabwe. *Id.*

²⁷³ *Id.* at 9 ("Responsible private sector investment in major productive enterprises is recognized as a cornerstone of successful development policy. The Africa Growth Fund makes such investments. By doing so, it both earns a return for its investors and assists African nations achieve their development objectives." *Id.* at 11.).

²⁷⁴ *Id.* at 5 ("The Fund seeks investments where the spirit of partnership will be welcomed, not simply tolerated." *Id.*).

²⁷⁵ *Id.* at 9. See *infra* note 285 and accompanying text. Where OPIC insurance is not available, the Fund will require alternative exchange risk insurance for example, insurance offered by Multilateral Investment Guarantee Agency (MIGA), corporate guaranties, or other off-shore collateral.

²⁷⁶ AFRICA GROWTH FUND, *supra* note 270, at 9. The sectors where the fund will invest include the full range of manufacturing, agricultural, financial, and service industries, "particularly those projects where strong investment returns, significant levels of locally added value, and foreign currency availability are found." *Id.* at 3-4. Projects funded should involve an established U.S. firm as the investor, licensor, technical partner, supplier, distributor, etc. *Id.* at 3.

²⁷⁷ See EXPORT IMPORT BANK OF AMERICA, PROGRAM SELECTION GUIDE (January 1991) ("In its 55 years of operation, Eximbank has used loan, guarantee and insurance programs to support nearly \$200 billion in U.S. exports.").

the effect of export credit subsidies from other governments and by absorbing reasonable credit risks that are beyond the current reach of the private sector."²⁷⁸ Eximbank attempts to accomplish this goal by offering: (1) guarantees to commercial lenders, providing repayment protection for loans to foreign purchasers of U.S. goods and services; (2) direct and intermediary loans to foreign purchasers of U.S. exports and assistance to U.S. exporters to match officially-supported foreign credit competition; (3) export credit insurance, which protects U.S. exporters against the failure of foreign purchasers to meet their credit obligations; and (4) working capital guarantees, which encourage commercial lenders to make loans to small companies that have exporting potential but need additional funds to produce or market their goods or services for export.²⁷⁹ In 1990, Eximbank directed \$735.7 million in U.S. exports to thirty-six countries in Africa and the Middle East.²⁸⁰

3. Foreign Credit Insurance Association (FCIA)

The Foreign Credit Insurance Association (FCIA) is an association of leading insurance companies which operates in cooperation with and as an agent of the Eximbank. FCIA provides export credit insurance policies to protect U.S. exporters against the risk of non-payment by foreign purchasers, thereby reducing the risks in selling abroad.²⁸¹ FCIA insurance coverage protects U.S. exporters against both political and commercial risks.

4. Overseas Private Investment Corporation (OPIC)

The Overseas Private Investment Corporation (OPIC) is a "self-sustaining U.S. government agency whose purpose is to promote economic growth in developing countries by encouraging U.S. private investment in those nations."²⁸² OPIC assistance is currently available for new business investments and expansions in 118 devel-

²⁷⁸ EXIMBANK 1990 REPORT, *supra* note 1, at 2.

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 4.

²⁸¹ See FCIA, *Your Competitive Edge In Selling Overseas* (November 1990).

In a world of high costs and fierce competition for export markets, the ability to offer attractive credit terms to an overseas customer increasingly spells the difference between winning or losing a sale. With the risk minimized, you can undertake new business with existing capital. You can compete vigorously, entering markets that you might otherwise find too risky. You can match foreign-supported selling terms.

Id. at 2.

²⁸² See OVERSEAS PRIVATE INVESTMENT CORPORATION, 1990 REPORT 16 (1991) ("In this way, OPIC can help American companies remain competitive in the international marketplace." *Id.*). OPIC was established by the U.S. Congress in 1969, and began operations in 1971. OPIC is structured like a private corporation, operating entirely out of its own earnings. Having recorded a positive net income for every year of its operation, OPIC's reserves currently stand in excess of \$1.5 billion. *Id.*

oping countries around the globe, including all seven of the profiled countries in this Article.²⁸³

OPIC provides assistance through three principal programs. The first program provides financing through direct loans and/or loan guarantees, as OPIC provides medium-term to long-term financing for overseas investment projects. This includes an all-risk loan guarantee ranging anywhere from \$2 million to \$25 million, issued to U.S. lending institutions, and direct loans ranging from \$500,000 to \$6 million, reserved for overseas investment projects involving small U.S. businesses.²⁸⁴ Second, OPIC insurance is also available against three political risks: (1) political violence, which includes war, revolution, insurrection, and civil strife which affect assets and/or business income; (2) expropriation; and (3) inconvertibility of local currency.²⁸⁵ The third program provides preinvestment services, such as the Opportunity Bank's computer data system, which matches U.S. investors' interests with specific overseas opportunities,²⁸⁶ and investment missions to developing countries.²⁸⁷

5. *Private Export Funding Corporation*

The Private Export Funding Corporation (PEFCO) is a private corporation owned by forty commercial banks, six industrial companies, and three financial services companies.²⁸⁸ PEFCO makes medium-term and long-term fixed interest rate loans, carrying the unconditional guarantee of Eximbank as to the timely payment of principal and interest (representing the full faith and credit of the United States) to foreign borrowers "when such terms are not available from traditional private sector lenders on competitive terms."²⁸⁹

PEFCO commenced operations in 1971 and has since made export loan commitments in excess of \$6 billion, mainly to borrowers

²⁸³ *Id.* at 16 ("OPIC will not provide assistance for any project that adversely affects the U.S. economy or domestic employment, is financially unsound, or does not promise significant benefits to the social and economic development of the host country." *Id.*).

²⁸⁴ *Id.* at 17.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.* ("Since the program's inception in 1975, representatives from more than 750 U.S. firms have participated in 64 missions to 95 developing countries." *Id.*).

²⁸⁸ PRIVATE EXPORT FUNDING CORPORATION, ANNUAL REPORT 1990 3 (1991).

Nearly all of PEFCO's loans have been characterized by fixed rates of interest, lengthy and uncertain disbursement periods and long repayment periods. Because these financing characteristics create a variety of funding risks, fixed interest rates may not be available from traditional lenders and investors on competitive terms, and accordingly, PEFCO's presence as a supplemental lender is of importance to U.S. exporters, borrowers and commercial banks.

Id.

²⁸⁹ *Id.*

in developing countries.²⁹⁰ PEFCO loans have financed a variety of capital goods and projects including aircraft, vessels, power generation plants and equipment, mining projects, and industrial and municipal facilities.²⁹¹

6. *United States Agency For International Development (USAID)*

The United States Agency for International Development (USAID) is the primary implementation vehicle of the United States Government's development assistance program.²⁹² One of the key missions of USAID is to assist developing countries "to realize their full national potential through the development of open and democratic societies and the dynamism of free markets and individual initiative."²⁹³ To achieve its objectives, USAID operates through a worldwide network of USAID missions in eighty developing countries.²⁹⁴ In 1989, the U.S. Government allocated approximately \$678 million to Africa in foreign economic assistance programs.²⁹⁵

USAID operates two programs to facilitate the exports of U.S. firms to Africa: Project Procurements and Commodity Import Programs (CIP). Under the Project Procurements program, USAID provides project loans or grants to various African countries to finance facilities or undertakings.²⁹⁶ USAID funds are thus available to facilitate the dollar exchange to pay the U.S. exporter that provides the materials required for the project.²⁹⁷ The U.S. supplier deals only with the recipient foreign government or agency thereof, which is responsible for procuring the materials through formal bidding procedures.²⁹⁸ Payment under this program can be made by the recipient foreign government through a letter of credit confirmed by a U.S. bank or by USAID under a U.S. Government letter of commitment. Exporters are paid upon presentation of the appropriate ship-

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² IDCA, Development Issues 1991: U.S. Actions Affecting Developing Countries - The 1991 Annual Report of the Chairman of the Development Coordination Committee (May 1991) ("We continued to fulfill the mandate of ensuring that development goals and issues were taken into account in Executive Branch decision-making processes on international finance, investment, trade, technology, and other policy areas affecting developing countries.").

²⁹³ *Id.* at 1.

²⁹⁴ *Id.*

²⁹⁵ U.S. DEP'T OF COMMERCE, GUIDE TO BUSINESS FINANCE FOR U.S. FIRMS 16 (1991).

²⁹⁶ *Id.* ("The projects include construction of irrigation systems, expanding rural health programs, equipping small farms with appropriate tools and machinery, and reorganizing various public facilities.").

²⁹⁷ *Id.* ("Generally, procurement notices are listed in COMMERCE BUSINESS DAILY and USAID PROCUREMENT INFORMATION BULLETIN," providing the procurement process complies with the provisions of USAID Handbook).

²⁹⁸ *Id.*

ping documents.²⁹⁹

Under the Commodity Import Programs, USAID provides non-project assistance to selected African countries to finance essential commodity imports from the United States. Such assistance is made on a loan or grant basis.³⁰⁰ Goods that qualify for CIP funding include agricultural machinery, construction and transportation equipment, telecommunications devices, fertilizers, chemicals, raw materials, semifinished products, and foodstuffs.³⁰¹ CIP provided approximately \$79 million in funding to sub-Saharan Africa in 1989.³⁰²

The recipient foreign government can allocate the CIP funds to either the public or private sectors.³⁰³ For public sector shipments assisted by CIP, payment is typically made directly from USAID through a letter of commitment. For private sector shipments, payment is made through a letter of credit both drawn on and confirmed by a U.S. correspondent bank.³⁰⁴

7. *United States Department of Agriculture (USDA)*

The U.S. Department of Agriculture (USDA) provides a range of services to assist the financing of U.S. exports of agricultural commodities. Among these services is the Commodity Credit Corporation Commercial Financing. Recognizing that "[f]inancing is a crucial part of every export transaction,"³⁰⁵ USDA's Foreign Agricultural Service operates two programs on behalf of the Commodity Credit Corporation (CCC) designed to "increase the willingness of the private U.S. banking system to extend credit for U.S. agricultural exports."³⁰⁶ Under these two export credit guarantee programs, the U.S. government agrees to pay U.S. exporters (U.S. banks or other financial institutions) in the event that a foreign buyer's bank breaks its promise to pay, thereby reducing the risk in selling U.S. agricul-

²⁹⁹ *Id.*

³⁰⁰ *Id.* at 17.

³⁰¹ *Id.* USAID does not finance items such as military and police equipment or luxury goods.

³⁰² *Id.*

³⁰³ *Id.*

Public sector procurements are normally conducted using formal bidding procedures while purchases by private importers are conducted through established commercial relationships. Many public and private CIP procurement notices are announced in *COMMERCE BUSINESS DAILY* and *USAID PROCUREMENT INFORMATION BULLETIN*. Transactions are handled directly between the American supplier and the foreign importer (public or private). However, in order to receive payment from USAID funds, USAID Regulation I must be complied with during the CIP Procurement process.

Id.

³⁰⁴ *Id.*

³⁰⁵ FAS, FACT SHEET: CREDIT PROTECTION FOR U.S. AGRICULTURAL EXPORTERS (December 1990).

³⁰⁶ *Id.*

tural commodities to overseas markets and making U.S. exporters and banks more willing to explore opportunities in new foreign markets.³⁰⁷

There is an eligibility requirement to qualify for USDA guarantee protection. USDA programs are generally available *only* in markets that meet the following conditions: (1) "they must offer good prospects for market development for U.S. agricultural products" and (2) "they may be in a country whose foreign exchange reserves or debt situation may make repayment prospects more 'risky' than the private U.S. banking community would like, but still offers a reasonable prospect for repayment."³⁰⁸ If these conditions are met, "USDA may decide to offer an export credit guarantee program, in order to encourage U.S. exporters to develop agricultural sales, preferably in markets which offer good long term potential."³⁰⁹

Because several of the profiled countries have named the development of their agricultural sector a priority of their respective structural adjustment programs, and because several of these countries show tremendous promise in this area, the USDA programs should be examined by U.S. companies that wish to include West Africa in their global marketing strategy for agricultural commodities.

8. *Trade and Development Program (TDP)*

The Trade and Development Program (TDP) is an independent arm of the U.S. International Development Cooperation Agency. By funding feasibility studies, consultancies, training programs, and other project planning services, TDP promotes both U.S. export potential to and economic growth in developing countries. TDP's promotional activities cover a wide range of sectors including minerals and energy development, food production, industry, transportation, communications, and technical training among others.³¹⁰

³⁰⁷ *Id.* The two programs differ primarily in the length of credit periods covered: (1) the Export Credit Guarantee Program (GSM-102) covers loans with credit terms of six months up to three years. In 1990, almost \$4 billion in guarantee coverage on U.S. agricultural export sales to 25 markets was provided under this program. The commodities covered ranged from almonds through feed grains to wheat and wood products. *Id.* (2) The Intermediate Export Credit Guarantee Program (GSM-103) covers loans made over three but not more than ten years. In 1990, over \$332 million in guarantee coverage on U.S. agricultural export sales to nine different markets was provided under this program. *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ See U.S. DEP'T OF COMMERCE, GUIDE TO BUSINESS FINANCE FOR U.S. FIRMS 20-21.

C. Multilateral Programs

1. African Development Bank Group (AFDB)

The African Development Bank Group (AFDB),³¹¹ located in Abidjan, Cote D'Ivoire, makes loans and provides technical assistance to its fifty member countries in Africa for development projects and economic adjustment programs. The membership of AFDB includes twenty-six non-African nations, including the United States. United States suppliers can thus bid on tenders for procurement of goods and services necessary for AFDB-funded projects and programs.³¹² The AFDB's lending budget for 1990 was approximately \$2 billion.³¹³

2. International Finance Corporation (IFC)

The International Finance Corporation (IFC), an affiliate of the World Bank, was established in 1956 "to further economic growth in its developing member countries by promoting productive private investment."³¹⁴ The IFC's equity capital is provided by its 135 member nations, which are both developed and developing.

IFC brings together the financing, technical assistance, and management needed to make good use of investment opportunities in the developing world. It provides long-term loans and risk capital, without government guarantees, to private enterprises that have difficulty raising funds from other sources on reasonable terms. The types of financial assistance provided by IFC are adapted to the specific requirements of its client companies. IFC mobilized additional project finance from other investors and lenders. In all of its activities, IFC seeks to ensure fair conditions for private-sector investors and employs its status as a multilateral institution to facilitate the process by which local and foreign investors, lenders, borrowers, and relevant government agencies arrive at mutually satisfactory agreements. IFC also encourages the flow of foreign and domestic private capital to developing countries through the establishment or expansion of capital markets and financial institutions. It offers technical assistance to member governments in support of their efforts to create an environment hospitable to private investment.³¹⁵

The IFC invests in productive enterprises in its developing members including, *inter alia*, agribusiness, financial institutions, gold and diamond mining, oil and gas exploration, hotels, pulp and

³¹¹ *Id.* at 25. The African Development Bank Group is comprised of the African Development Bank, the Africa Development Fund (its concessionary loan affiliate), and the Nigeria Trust Fund. Membership is made up of 50 African countries and 26 non-African countries. The United States is a member and provides 5.8 percent of AFGB's capital. *Id.*

³¹² *Id.* AFDB bids are open and are subject to international competitive bidding.

³¹³ *Id.* at 25. The AFDB made 84 loans totaling approximately \$2.2 billion in 1988. Project lending in public utilities, agriculture, industry and transport accounted for almost 73 percent of AFDB's 1988 loans. *Id.*

³¹⁴ See generally INTERNATIONAL FINANCE CORPORATION, ANNUAL REPORT 1990 1 (August 1990)[hereinafter IFC, ANNUAL REPORT 1990].

³¹⁵ *Id.*

paper, textiles, and telecommunications. Although IFC generally prefers to participate in a venture with a mix of equity and lending, it may provide one or the other. The IFC will invest up to twenty-five percent of the share capital for a venture and expects its investment partners to provide management.³¹⁶ Typically, the venture should cost at least \$4 million to \$6 million.³¹⁷ The largest IFC investment for its own account is approximately \$70 million.³¹⁸ The IFC usually provides loans at a fixed rate denominated in U.S. dollars, in other major currencies, or at variable rates in U.S. dollars.³¹⁹ The rates are determined on a commercial basis and the terms are flexible, to be serviced over a period of seven to twelve years.³²⁰

The IFC has launched several initiatives over the years which are specific to Africa, including the Africa Project Development Facility (APDF), a UNDP project of which IFC is the executing agency. APDF, created in 1986, "identifies promising African entrepreneurs and helps them prepare viable projects involving the start-up of new businesses or the expansion, privatization, or diversification of established ones."³²¹ Under this initiative, APDF does not itself finance the projects, but provides partial funding for market, technical, and other feasibility studies and works directly with the project sponsors until they have raised the necessary financing.³²² In 1990, APDF's donors decided to extend its mandate through 1995. A second initiative, the Africa Enterprise Fund (AEF), was established in 1989 to finance both small-size and medium-size projects in sub-Saharan Africa. The projects financed by AEF are generally too small to be processed directly from IFC headquarters.³²³ A third initiative, the African Management Services Company (AMSCo), was established in April 1989 to provide management training and temporary managers to African enterprises.³²⁴ The objective is to promote efficient,

³¹⁶ U.S. DEP'T OF COMMERCE, GUIDE TO BUSINESS FINANCE FOR U.S. FIRMS 30.

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ IFC, ANNUAL REPORT 1990, *supra* note 314, at 40. Funding for APDF's operating costs is provided by the African Development Bank, the IFC, UNDP, and fourteen countries: Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Italy, Japan, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom, and the United States. Brazil, India, and Israel have agreed to provide technical assistance. *Id.*

³²² *Id.*

³²³ *Id.* at 21. Investment proposals are developed and appraised by IFC's resident missions in Abidjan, Cote D'Ivoire; Nairobi, Kenya; and Lagos, Nigeria. In 1991 regional missions were opened in Douala, Cameroon and Harare, Zimbabwe, which will allow AEF to increase its assistance to businesses in central and southern Africa. By August 1990, after only 15 months in operation, there were already over 400 investment proposals from entrepreneurs in 34 member countries. By the end of 1990, AEF had approved 14 investments in 8 countries, for a total of \$7 million (over 50 projects were being seriously considered by the end of FY 1990). *Id.*

³²⁴ *Id.* at 41. AMSCo B.V. was incorporated in Amsterdam as a Dutch company. Approximately 70 percent of its shares are held by IFC and other financial institutions, in-

profitable, and competitive companies that are locally managed. When the managers provided by AMSCo complete their terms, they are succeeded by local managers who have undergone an AMSCo management training program.³²⁵

In addition to providing investment capital and loans, the IFC offers advisory services for restructuring companies experiencing difficulties and for governments or private businesses that wish to privatize parastatal enterprises. Additionally, IFC offers advisory and technical assistance to assist member nations to improve the environment and operations of their financial markets.³²⁶

3. *The Multilateral Investment Guarantee Agency (MIGA)*

The Multilateral Investment Guarantee Agency (MIGA), formally constituted in April 1988, is the newest member of the World Bank Group. MIGA's membership, which is open to all member nations of the World Bank and Switzerland, now totals fifty-eight countries.³²⁷ MIGA's primary objective is to "help overcome obstacles that may inhibit investment flows to developing countries."³²⁸ To accomplish this objective, MIGA provides both political risk insurance, through the issuance of guarantees against non-commercial risks to investors,³²⁹ and advisory and promotional services to the governments of developing countries.³³⁰

4. *The World Bank*

The World Bank is a multilateral development finance institution, owned by over 150 governments.³³¹ The primary objective of

cluding the African Development Bank, the Danish Industrialization Fund for Developing Countries (IFU), the Finnish Fund for Industrial Development Cooperation (FINNFUND), France's Caisse Centrale de Cooperation Economique, the Netherlands' Finance Company for Developing Countries (FMO), the Development Bank of Portugal (BFN), the Swedish Fund for Industrial Cooperation with Developing Countries (SWEDFUND), and the United Kingdom's Commonwealth Development Corporation (CDC). The remainder of AMSCo's shares are held by over 50 international private companies from 20 industrialized and developing countries. *Id.*

³²⁵ *Id.*

³²⁶ U.S. DEP'T OF COMMERCE, GUIDE TO BUSINESS FINANCE FOR U.S. FIRMS 30-31.

³²⁷ See MULTILATERAL INVESTMENT GUARANTEE AGENCY, ANNUAL REPORT 1990 6 (1991).

³²⁸ *Id.* at 7.

³²⁹ *Id.* at 11. MIGA's Guarantee Program protects investors from non-commercial risks of (1) currency transfer, (2) expropriation, (3) war and civil disturbance, and (4) breach of contract by the host government. There is no minimum amount of investment required to be eligible for MIGA insurance, and coverage is for new projects or for expansion of existing projects provided the project is registered with MIGA before the investment is made or irrevocably committed. *Id.* Although MIGA's standard policy covers investments for 15 years, coverage may be extended to 20 years in exceptional cases. *Id.*

³³⁰ *Id.* at 16. The Policy and Advisory Services of MIGA, which became fully operational in 1990, have as their main function promotional and research efforts directed to enhancing the flow of foreign direct investment into developing countries. *Id.*

³³¹ See WORLD BANK, THE WORLD BANK ANNUAL REPORT 1990 (1990).

the World Bank is "to help raise standards of living in developing countries by channeling financial resources from developed countries to the developing world."³³² The "World Bank Group" includes the International Bank for Reconstruction and Development (IBRD) and its affiliates, the International Development Association (IDA), the International Finance Corporation (IFC), and the Multilateral Investment Guarantee Agency (MIGA). The IBRD's charter identifies specific rules that govern its operations. For example,

[i]t must lend only for productive purposes and must stimulate economic growth in the developing countries in which it lends. It must pay due regard to the prospects of repayment. Each loan is made to a government or must be guaranteed by the government concerned. The use of loans cannot be restricted to purchases in any particular member country. And the IBRD's decisions to lend must be based on economic considerations alone.³³³

The IDA provides assistance for the same purposes as the IBRD, but primarily for the poorer developing countries "and on terms that would bear less on their balance of payments than would IBRD loans."³³⁴

The World Bank's lending programs support a wide range of projects, including agriculture, roads, dams, power stations, small-scale industry, urban development, water supply, health, and telecommunications.³³⁵ In response to the dramatic decline of the economies of many developing countries during the 1980s, the World Bank initiated a program of lending in support of structural adjustment and policy reforms. Such lending is intended to support "specific policy changes and institutional and sectoral reforms in developing countries designed to achieve a more efficient use of resources and thereby (a) contribute to a more sustainable balance of payments in the medium and long term and to the maintenance of growth in the face of severe constraints, and (b) lay the basis for regaining momentum for future growth."³³⁶

The World Bank's lending programs are designed to help the project sponsors meet the project's foreign exchange costs. Each project goes through a project cycle, which consists of identification of the project, preparation, appraisal, negotiation, approval, and implementation.³³⁷ During the implementation stage (after the bank's final approval), the procurement of goods and services occurs.³³⁸

³³² *Id.* at 3.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.* at 4.

³³⁷ See U.S. DEP'T OF COMMERCE, GUIDE TO BUSINESS FINANCE FOR U.S. FIRMS 39 ("The key to obtaining business opportunities with the World Bank lies with a firm's ability to monitor the different stages of this cycle.")

³³⁸ *Id.* ("The project is first announced during the identification stage in the World Bank's Monthly Operational Summary.")

The recipient country announces tenders and awards contracts. U.S. firms are generally eligible to compete for any contract. Generally, except where procurement follows local or limited bidding guidelines, the procurement process complies with international competitive bidding guidelines and is monitored by the World Bank for compliance.³³⁹ After the recipient country indicates that goods have been procured or services rendered by submitting completed invoices, the World Bank disburses the funds.³⁴⁰ Payment is typically made through a letter of credit opened by the payer (the World Bank or the recipient country) in favor of the supplier at the supplier's bank.³⁴¹

D. Foreign Bilateral Programs

Many developed countries maintain government agencies that promote economic growth and industrial development in developing countries by providing investors with equity and debt finance, feasibility study funding, and guarantees to local companies and joint ventures (mainly start-ups).³⁴² Equity participation ranges anywhere from ten to forty-nine percent.³⁴³ Because some of the funds are untied to procurements from the donor country, access to such financing may exist for U.S. firms.

1. Caisse Centrale de Cooperation Economique (CCCE)

The Caisse Centrale de Cooperation Economique (CCCE) of France provided approximately \$6.9 billion of bilateral development assistance to developing countries in 1988, the majority of which went to countries in sub-Saharan Africa. Because approximately fifty percent of this development assistance was untied to procurement of French products, some of those funds were available to U.S. companies.³⁴⁴

2. Overseas Economic Cooperation Fund (OECF)

The Overseas Economic Cooperation Fund (OECF) was established on March 16, 1961, "to promote Japan's overseas economic cooperation by providing funds for industrial development and the economic stability of developing countries."³⁴⁵ This is accomplished

³³⁹ *Id.* ("Procurement announcements are published in DEVELOPMENT BUSINESS and in local African and international newspapers. Procurement information is also published through World Bank's International Business Opportunities Service (IBOS).")

³⁴⁰ *Id.* at 40 ("Suppliers may negotiate to be paid by the recipient country or the World Bank.")

³⁴¹ *Id.*

³⁴² *Id.* at 51.

³⁴³ *Id.*

³⁴⁴ *Id.* at 49.

³⁴⁵ See OVERSEAS ECONOMIC COOPERATION FUND, ANNUAL REPORT 1990 (1990)(report as of March 31, 1990).

by providing loans to foreign governments, government agencies, and other eligible organizations in developing countries to contribute to their economic development and by providing loans and/or equity investments in companies that are undertaking development projects in developing countries.³⁴⁶

3. *Bundesministerium Feur Wirtschaftliche Zusammenarbeit (BMZ)*

The Federal Republic of Germany's Bundesministerium Feur Wirtschaftliche Zusammenarbeit (BMZ) provided almost \$1 billion in development assistance to sub-Saharan Africa in 1988, approximately fifty percent of which was untied, as the procurement of products from West German companies was not required.³⁴⁷

4. *Other Bilateral Programs*

There are several other national agencies offering funding. Belgium's General Administration for Development Cooperation had \$600 million in bilateral official development assistance (ODA) to developing countries in 1988, concentrating on sub-Saharan Africa, with almost forty percent of the aid being untied. The Canadian International Development Agency provided \$2.3 billion in grants and loans in 1988 through bilateral and multilateral programs, approximately forty-five percent of which was untied. Denmark's Department of International Development Cooperation provided over \$300 million in bilateral ODA to sub-Saharan Africa in 1988, ap-

³⁴⁶ The vast majority of OECF's loans to foreign governments are made to governments in East Asia.

Cumulative OECF loan commitments to East Asian countries and regions as of the end of fiscal 1989 totalled Y5,523,953 million, accounting for approximately 63.7% of total OECF loan commitments worldwide. Of total loan commitments to foreign governments, five of the ASEAN nations (Indonesia, Thailand, the Philippines, Malaysia and Singapore) account for 42.8%; followed by China with 10.0%; the Republic of Korea with 5.7%; and Myanmar with 4.6%.

Id. at 33.

In addition, OECF provides loans to many countries in sub-Saharan Africa.

Total commitments of OECF loans to African countries in fiscal 1989 accounted for 10.8% (exceeding 10% for the second consecutive year) of total OECF 1989 commitments. Cumulative OECF loan commitments to countries in Africa as of March 31, 1990, amounted to approximately Y830,500 million (174 commitments), accounting for 9.6% of the worldwide cumulative total for OECF loan commitments.

Id. at 69.

The largest loan commitments in sub-Saharan Africa were to Kenya (Y123,938 million), Zaire (Y42,987 million), Ghana (Y46,957 million), Nigeria (Y42,550 million) and Zambia (Y32,227 million). *Id.* The major loan commitments in sub-Saharan Africa by sector were, transportation (32.9%), commodity loans (26.5%), telecommunications (18.6%), irrigation and flood control (5.9%), mining and manufacturing (5.0%), social services (2.7%), electric power and gas (2.3%), agriculture, forestry and fisheries (1.3%), and others (4.8%). *Id.* at 71.

³⁴⁷ *Id.* at 49.

proximately fifty percent of which was untied. The Kuwait Fund for Arab Economic Development provided approximately \$250 million in bilateral ODA to sub-Saharan Africa in 1988. The Netherlands Ministry of Development Cooperation provided \$1.6 billion in bilateral ODA to developing countries in 1988, approximately forty percent of which was untied. The Norwegian Agency for International Development (NORAD) provided approximately \$100 million in bilateral ODA to sub-Saharan Africa in 1988, about sixty percent of which was untied. Finally, the Sweden International Development Authority (SIDA) provided approximately \$600 million in bilateral ODA, almost exclusively in grants to sub-Saharan Africa in 1988, about two-thirds of which was untied.³⁴⁸

E. African Development Corporations

Many African governments operate finance and development corporations to promote and finance domestic as well as foreign investment in their countries.³⁴⁹ Such corporations generally emphasize investment projects that develop "priority" sectors such as manufacturing, agribusiness, mining, and tourism.³⁵⁰ These national development corporations typically provide equity and debt capital, as well as debt guarantees for joint venture projects with foreign partners. The development corporations normally retain a minority interest of between five and forty percent in the project.³⁵¹

The national development corporations sometimes finance feasibility studies, seminars, and other pre-project services. They also act in an advisory capacity, by (1) identifying and marketing investment opportunities; (2) providing necessary information on investment, regulatory schemes, commercial codes, foreign exchange regulations, tax issues, and appropriate vehicles for financing the project; (3) obtaining the necessary licenses and permits, including housing and work permits for expatriate personnel; (4) identifying sites and locations for industrial and business operations; and (5) recruiting local employees.³⁵² Development Corporations in the profiled countries include, Societi National D'Investissement (Cameroun), Centre de Commerce International D'Abidjan (Cote D'Ivoire), Nigerian Industrial Development Bank, Ltd. (Nigeria), and Societe National D'Investissement et Fonds Annexes (Togo).³⁵³

³⁴⁸ See generally U.S. DEP'T OF COMMERCE, GUIDE TO BUSINESS FINANCE FOR U.S. FIRMS 45-55.

³⁴⁹ *Id.* at 59.

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.* at 60-63.

F. Commercial Banks

In addition to the foregoing, the potential investor in West Africa can seek financing from commercial banks, many of which offer financial services through local branches, subsidiaries, agents, or correspondent relationships with African banks.³⁵⁴ The services offered include: export, import, stand-by, and back-to-back letters of credit (confirmed, unconfirmed, or advised); bankers' acceptances; performance bonds; and sight and time drafts.³⁵⁵ Commercial banks also provide foreign exchange services, debt and interest conversions and swaps, and co-financing and guarantees with Eximbank, the Small Business Administration, and the IFC.³⁵⁶

As illustrated by the above examples, there are many options available for corporations wishing to invest in developing countries to find capital and debt financing, to obtain loan guarantees, to minimize risk exposure, and to attain technical assistance and general advice on how to maximize the profitability of their investment in Africa.

IV. Conclusion

The attainment of substantial economic growth in West African countries is dependent, in part, on their inclusion in the business planning of large corporations based in the industrialized world.³⁵⁷

³⁵⁴ *Id.* at 67.

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ See INTERNATIONAL MONETARY FUND, WORLD ECONOMIC OUTLOOK (1991)[hereinafter IMF WORLD ECONOMIC OUTLOOK].

The Fund staff's medium-term baseline projections for the developing countries suggest that a significant improvement in growth performance is possible, though by no means certain. It is likely to occur only if investment performance strengthens, which will require policies that foster higher domestic saving, the return of flight capital, the attraction of additional inflows of foreign saving, and a more efficient allocation of resources.

Id. at 56. See also INTERNATIONAL MONETARY FUND, ANNUAL REPORT 1990 (1990). The growth rate in developing countries in 1989 was 3.5 percent, down from 5.5 percent in 1988. Most of the slowdown occurred in Asia, principally in China and in the Republic of Korea, where the growth rate fell but still remained high by international standards. The ASEAN countries continued to show robust growth. In Latin America, growth remained steady at 1.5 percent. In Africa there was slight growth, based on strong oil exports from Nigeria and Algeria. Most of sub-Saharan Africa experienced weak output performance, due to a significant decline in the prices of coffee and cocoa, crops that account for approximately 40 percent of sub-Saharan Africa agricultural exports. INTERNATIONAL MONETARY FUND, ANNUAL REPORT 1990 at 4-5.

The near-term outlook for the developing countries is mixed. In Asia, growth prospects are particularly good in Indonesia, Malaysia, and Thailand. *Id.* at 5. There is expected to be modest growth in Africa as a whole, and an average annual increase in growth of GDP from 2 percent in 1990 to 4.75 percent in 1992. IMF WORLD ECONOMIC OUTLOOK, at 14. However,

[a] key policy requirement for developing countries is to create an economic environment conducive to an improvement in saving and investment performance. The staff's medium-term projections show that stronger growth is attainable if such an improvement occurs. However, policy actions to in-

In a March 1991 report prepared by the American Embassy in Abidjan, Cote D'Ivoire, U.S. firms are advised, when assessing investment potential and opportunities in West Africa, that they should not limit themselves to individual countries, but should look at the region as a whole. To date, U.S. investment in West Africa has been limited:

[i]n the twenty-six countries of West and Francophone Africa, which is one quarter larger than the U.S. with a population of 260 million, U.S. exports amounted to \$1.4 billion. U.S. exports to all of Sub-Saharan Africa (47 countries) amounted to \$3.8 billion in 1989. *There is room for growth. For example, U.S. exports to West and Francophone Africa amount to only 6 percent of total exports to the region. The U.S. holds 5.8 percent of the \$22 billion capital of the African Development Bank (7.8 percent of the paid capital), yet less than 3 percent of the \$3 billion in project and loan funding each year goes to U.S. firms as compared to 15 percent of annual funding by the Asian Development Bank and 35 percent of annual funding by the Inter-American Development Bank. Project funding from USAID and international financing sources in the 47 countries of Sub-Saharan Africa for which U.S. firms are eligible to bid is estimated to be more than \$6 billion annually.*³⁵⁸

As several countries in West Africa begin to realize the benefits from their respective structural adjustment programs, and with continued political stability in the region, U.S. corporations should actively explore both short-term and long-term trade and investment opportunities in West Africa in particular and on the entire continent in general.

There are ample opportunities in agriculture, manufacturing, and services. The following is a general listing of the "best prospects" that have been identified by U.S. embassies in West Africa, directed to those U.S. firms interested in expanding their global marketing strategy to the twenty-six countries of West and Francophone Africa:

- Agricultural Machinery (of all sizes) — land leveling and irrigation equipment;
- Agribusiness Ventures and Services — including animal husbandry and dairy projects;

crease saving, either domestic or external, are necessary but not sufficient. Macroeconomic stabilization is also essential if investment is to increase. . . .

Industrial countries can best contribute to the developing countries adjustment efforts through measures to increase their own national saving, and by maintaining or expanding access to their markets. . . .

Finally, a successful conclusion to the Uruguay Round is of crucial importance to developing countries. Failure to agree could adversely affect developing countries' medium-term growth prospects by depriving them of the potential gains from trade liberalization and by leading to an intensification of trade friction.

Id. at 73-74.

³⁵⁸ *Cote D'Ivoire - Country Marketing Plan FY '91*, American Embassy (Abidjan), March 1991, available in LEXIS, MDEAFR Library, ALLMDE File (emphasis added).

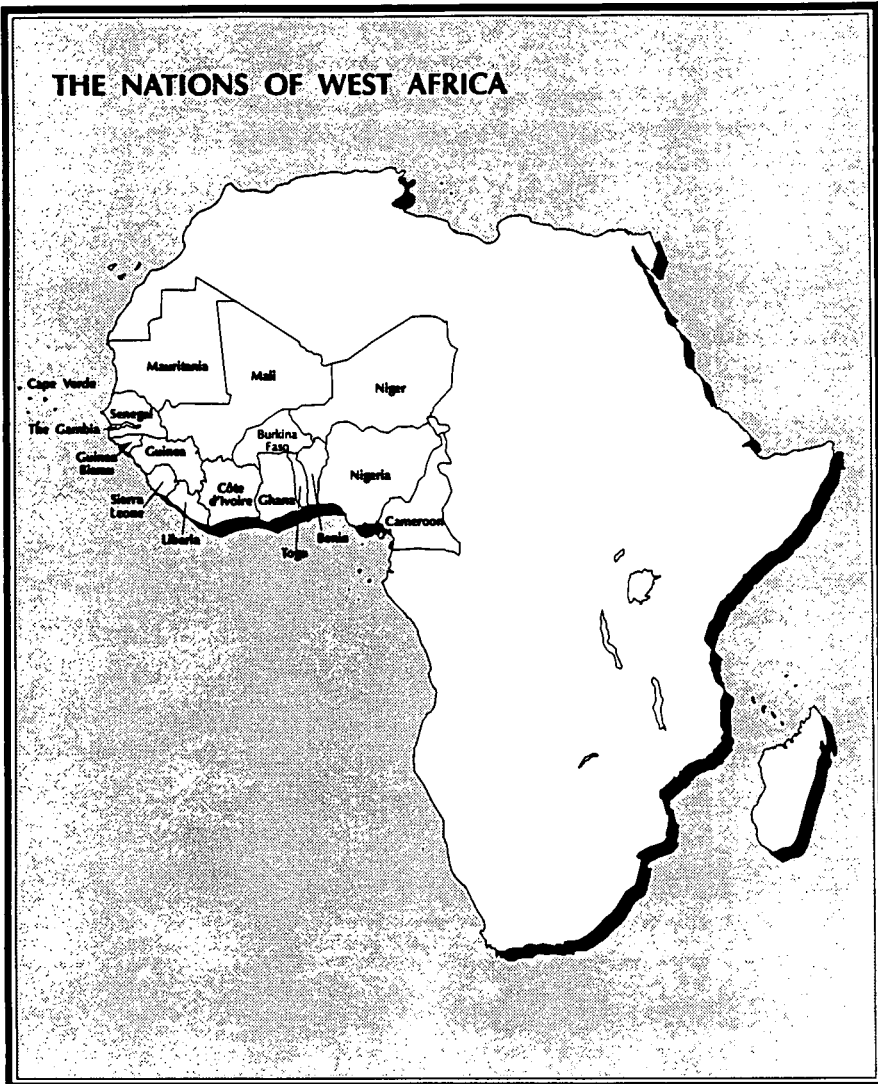
- Food Production, Storage, Processing, and Packaging Equipment;
- Fisheries Equipment and Aquaculture Ventures;
- Water Resources Technologies and Equipment;
- Computers and Peripherals;
- Office Equipment and Supplies;
- Medical Equipment, Supplies, and Services;
- Drugs and Pharmaceuticals;
- Veterinary Medicines and Equipment;
- Mining Industry Equipment, Ventures, and Services;
- Transportation Equipment — including aircraft, large trucks, buses, utility vehicles, forklifts, and port and airport handling equipment;
- Construction Equipment — building materials and tools;
- Road Construction and Earth Moving Equipment;
- Thermal and Hydroelectric Generating, Transmission, and Distribution Equipment;
- Diesel Electrical Generating Sets;
- Renewable Energy Technologies and Equipment;
- Air Conditioning and Refrigeration Equipment;
- Safety and Security Equipment and Services;
- Logging, Timber, Lumber and Wood Products, and Forest Conservation Equipment and Services;
- Craft Paper, Paper, and Pulp Products;
- Cosmetics, Toiletries, and Personal Care Products;
- Textile Equipment, Textiles, and Dyes;
- General Consumer Goods and 220 Volt Household and Kitchen Appliances;
- Jewelry, Toys, and Games;
- Hardware and Machine Tools;
- Telecommunications Equipment;
- Industrial and Agricultural Chemicals;
- Automotive After-Market Products;
- Agricultural Commodities — wheat, rice, and other cereal grains plus tobacco;
- Foodstuffs — including meats and poultry;
- Petroleum Products, Equipment, and Services;
- Pumps, Valves, and Compressors;
- Industrial Controls and Instruments;
- Banking and Financial Services;
- Leisure Products and Consumer Electronics — including cinema films, and video and cassettes;
- Tourism and Hotel/Restaurant Equipment, Supplies, and Services;
- Engineering, Architectural, Project Design, and Consulting Services.³⁵⁹

As this Article illustrates, many countries in West Africa offer potentially lucrative trade and investment opportunities for western companies. Countries in West Africa are seeking to attract foreign capital inflow, both by maintaining political stability and by implementing trade and investment liberalizations announced under their

respective structural adjustment programs.³⁶⁰ It is time for corporations in the United States, Europe, and Asia to reexamine the opportunities available in Africa.

³⁶⁰ See IMF WORLD ECONOMIC OUTLOOK, *supra* note 357, at 65 ("the most important requirement for a restoration of growth is an improvement in domestic policies.").

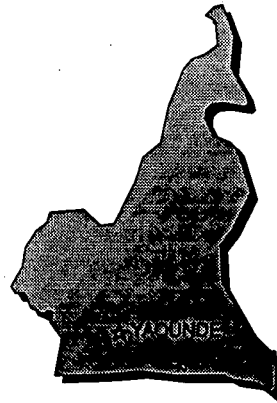
Appendix



CAMEROON

DEMOGRAPHIC DATA

Land Area:	469,440 km ²
Resources:	Crude oil, bauxite, iron ore, timber, hydropower potential
Population:	11,092,470 (1990)
Pop. Growth:	2.7%
Workforce:	NA
Unemployment:	7.0% (1985)
Government:	Unitary Republic; One party presidential regime
Currency:	CFA franc; 1US\$ = 287.99 CFAF
Industries:	Crude oil products, food processing, light manufactures (consumer goods), timber processing
Major Exports:	Petroleum products, coffee, cocoa, timber, manufactures
Major Imports:	Machines and electrical equipment, transportation equipment, chemical products, consumer goods



Source: CIA, World Factbook 1990

MAIN ECONOMIC INDICATORS

	1987	1988	1989	1990
GDP (M\$)	12,687	11,949	11,230	11,533
GDP growth rate	-2.8%	-8.6%	-8.0%	0.7%
GDP per capita	1239	1097	1003	996
Gov't Spending % GNP	n/a	n/a	n/a	n/a
CPI (1985=100)	125	131.2	133.2	135.2
Unemployment	n/a	n/a	n/a	n/a
FE Reserves (B\$)	-160	-223	-331	-259
Foreign Debt (\$)	2381	2492	3491	4382
Debt Service	32.1%	32.5%	21.7%	22.8%
U.S. Economic Assist. (M\$)	29.3	18.1	32.5	20
U.S. Military Assist. (M\$)	0.78	0.3	0.3	0.3
Exports (F.O.B.) (M\$)	2,073	2,043	1,943	2,057
Imports (F.O.B.) (M\$)	2,845	2,324	1,952	2,057
Exports to U.S. (F.A.S.) (M\$)	414	219	415	n/a
Imports to U.S. (C.I.F.) (M\$)	45	31	36	27.2
U.S. Share Exports	20%	11%	21%	n/a
U.S. Share Imports	1.7%	1.3%	1.8%	n/a

Source: Foreign Economic Trends, Cameroon, International Trade Association (DOC), Sept. 1991.

CAPE VERDE

DEMOGRAPHIC DATA

Land Area:	4,030 km ²
Resources:	Salt, basalt rock, pozzolana, limestone, kaolin, fish
Population:	374,984 (1990)
Pop. Growth:	3.0%
Workforce:	102,000 (est. 1985)
Unemployment:	25% (1988)
Government:	Republic
Currency:	Cape Verdian Escudos (CVEsc); US\$1 = 72.31 CVEsc
Industries:	Fish processing, salt mining, clothing, ship repair
Major Exports:	Fish, bananas, salt
Major Imports:	Petroleum, foodstuffs, consumer goods, industrial products
GDP	158 (M\$) (1987)
GDP Growth	6.1
GNP Per Capita	\$494

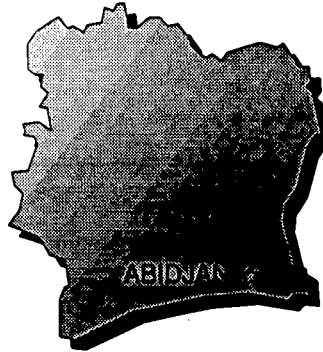


Source: CIA, World Factbook 1990.

CÔTE D'IVOIRE

DEMOGRAPHIC DATA

Land Area:	318,000 km ²
Resources:	Crude oil, diamonds, manganese, iron ore, cobalt, bauxite, copper
Population:	12,478,024 (1990)
Pop. Growth:	4.0%
Workforce:	5,718,000 (85% agricultural) (1985)
Unemployment:	14% (1985)
Government:	Republic; One party presidential regime
Currency:	CFA franc; US\$1 = 287.99 CFAF (1990)
Industries:	Foodstuffs, wood processing, oil refinery, automobile assembly, textiles, fertilizer
Major Exports:	Cocos, coffee, tropical woods, cotton, bananas, palm oil
Major Imports:	Manufactured and semifinished goods, consumer goods, raw materials, fuel



Source: CIA, World Factbook 1990

MAIN ECONOMIC INDICATORS

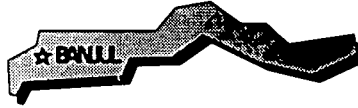
	1987	1988	1988
GDP (M\$)	10,375	9,140	9,465
GDP growth rate	-1.6%	-6.4%	-1.2%
GDP per capita	750	680	n/a
Gov't Spending % GNP	34.0%	41.0%	39.0%
Inflation	6.0%	8.2%	n/a
Unemployment	n/a	n/a	n/a
FE Reserves (B\$)	8.9	10.4	n/a
Foreign Debt (\$)	9.3	9	9.4
Debt Service	40.0%	59.0%	n/a
U.S. Economic Assist (M\$)	0.2	0.2	0.2
U.S. Military Assist (M\$)	n/a	n/a	n/a
Exports (F.A.S.) (M\$)	3,096	2,337	2,502
Imports (C.I.F.) (M\$)	1,823	1,527	1,362
Exports to U.S. (M\$)	404	313.7	156.2
Imports to U.S. (M\$)	82.1	75.1	79.2
U.S. Share Exports	13.0%	13.4%	6.2%
U.S. Share Imports	4.5%	4.9%	5.8

Source: Country Marketing Plan, U.S. and Foreign Commercial Service (DOC), June 1991.

THE GAMBIA

DEMOGRAPHIC DATA

Land Area:	10,000 km ²
Resources:	Fish
Population:	848,147 (1990)
Pop. Growth:	3.1%
Workforce:	400,000 (est. 1988) (75% agriculture)
Unemployment:	NA
Government:	Republic
Currency:	Dalasi: US\$1 = 8.3232 (D) (1989)
Industries:	Peanut processing, tourism, beverages, agricultural machinery assembly, workworking, metalworking
Major Exports:	Peanuts and peanut products, fish, cotton lint, palm kernels
Major Imports:	Foodstuffs, manufactures, raw materials, fuel, machinery and transport equipment
GDP	195 (M\$) (1989)
GDP Growth	4.6% (1989)
GDP Per Capita	\$250



Source: CIA World Factbook 1990.

GHANA

DEMOGRAPHIC DATA

Land Area:	230,020 km ²
Resources:	Gold, timber, industrial diamonds, bauxite, manganese, fish, rubber
Population:	15,165,243 (1990)
Pop. Growth:	3.2%
Workforce:	3,700,000 (18.7% Industrial)
Unemployment:	28% (1987)
Government:	Military
Currency	Cedi (C): US\$1 = 301.68 (C) (1989)
Industries:	Mining, lumber, light manufacturing, fishing, aluminum, food processing
Major Exports:	Cocoa, timber, gold, tuna, bauxite and aluminum
Major Imports:	Petroleum, consumer goods, foods, intermediate goods, capital equip.
GNP	5,585 (M\$) (1989)
GNP Growth	6%
GNP Per Capita	\$389

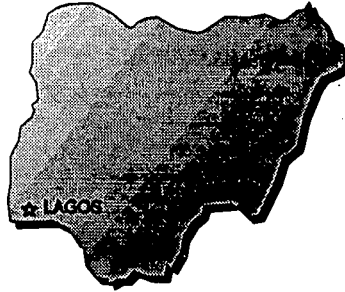


Source: CIA, World Factbook 1990, and OPIC Country Report, OPIC Information Service

NIGERIA

DEMOGRAPHIC DATA

Land Area:	910,770 km ²
Resources:	Crude oil, tin, columbite, iron ore, coal, limestone, lead, zinc, natural gas
Population:	118,819,377
Pop. Growth:	3.0%
Workforce:	42,844,000
Unemployment:	7.5% (1988 est.)
Government:	Military Government
Currency:	Naira: US\$1 = 7.3647 Naira
Industries:	Mining, textiles, cement, building materials, footwear, chemicals, printing, ceramics, petroleum, steel, palm oil, cotton, wool, rubber
Major Exports:	Oil, cocoa, palm kernels, rubber.
Major Imports:	Consumer goods, capital equipment, chemicals, raw materials.



Source: CIA, *World Factbook 1990*

MAIN ECONOMIC INDICATORS

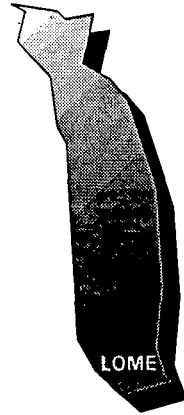
	1987	1988	1989
GDP (M\$)	24,414	28,396	23,924
GDP growth rate	-5.0%	4.2%	2.6%
GDP per capita	370	298	298
Gov't Spending as % GNP	31.0%	31.0%	30.0%
Inflation	10.2%	49.0%	45.0%
Unemployment	n/a	n/a	n/a
FE Reserves (M\$)	308	362	575
Foreign Debt (M\$)	28,233	30,600	31,000
Debt Service	21.4%	21.7%	0.257
U.S. Economic Assist (M\$)	0	0	0
U.S. Military Assist. (M\$)	0.1	0.1	0.1
Exports (F.A.S.) (M\$)	7,993	7,389	7,162
Imports (C.I.F.) (M\$)	6,709	6,507	6,756
Exports to U.S.	3,573	3,298	5,227
Imports to U.S.	295	357	491
U.S. Share Exports	45%	45%	73%
U.S. Share Imports	4%	5%	7%

Source: Country Marketing Plan, Nigeria, US & Foreign Commercial Service (DOC), March 1991

Togo

DEMOGRAPHIC DATA

Land Area:	54,930 km ²
Resources:	Phosphates, limestone, marble
Population:	3,674,355
Pop. Growth:	3.7%
Workforce:	NA
Unemployment:	2.0% (1987)
Government:	Republic, One-party Presidential Regime
Currency:	CFA franc: US\$1 = 287.99 CFAF
Industries:	Phosphate mining, agricultural processing, cement, handicrafts, textiles, beverages
Major Exports:	Phosphates, cocoa, coffee, cotton, manufactures, palm kernels
Major Imports:	Food, fuel, consumer goods, capital goods
GDP	1,350 (M\$) (1989)
GDP Growth	4.1%
GDP Per Capita	\$405



Source: CIA, *World Factbook 1995*