PN-ABD-845

NIGER: REFORM OF FOREIGN TRADE LAWS AND REGULATIONS

FINAL REPORT

Bureau for Private Enterprise
U.S. Agency for International Development

Prepared for: *Ministry of Commerce*
Republic of Niger
and
USAID/Niger

Prepared by: *Benjamin H. Hardy, Director*
Multinational Strategies, Inc.

Sponsored by: *Private Enterprise Development Support Project II*
Project Number 940-2028.03
Prime Contractor: Ernst & Young

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FOREWORD

This project would not have been possible without close cooperation between the Ministry of Commerce of the Republic of Niger and the United States Agency for International Development. Their cordial relations, developed over a period of many years, prepared the way for this consultancy.

In response to a request from the Ministry of Commerce, USAID/Niger requested technical assistance through the PEDS Project for a fifteen week period from February 5 to May 20, 1989. The aim of the consultancy was to collaborate Ministry officials and several specialists based in Niamey to conduct preliminary analyses leading toward presentation of a draft Code of External Commerce to officials of the Ministry of Commerce, and eventually to a projet de loi to be promulgated by Niger's Supreme Military Council. I wish to express my appreciation to Mr. Michael Kerst for arranging my living accommodations and other material support, but also for serving as a source of advice on Niger's economy and the Government of Niger's economic policy choices, and as a source of information concerning USAID/Niger's economic policy reform program. My thanks also to Messrs. Jack Slattery, Frank Martin, and George Callen for their comments on a draft of the paper.

Officials of the Ministry of Commerce provided office space and documentary information for the consultancy. They also patiently answered my questions, from the elementary to the esoteric, about Niger's external commerce and the laws and regulations governing it. I owe special thanks to M. Idrissa Mahamadou, Secretary General of the Ministry of Commerce, Mme Gamatier Fati, until recently Director of External Commerce, Mme Ali Fatouma, Acting Director of External Commerce, M. Rabo Goudia, Director of the External Commerce Licensing Service, and M. Ekoye Mahamadou Malam, who generously shared his office and his time over a period of many weeks.

I especially wish to thank the members of the study team which examined Niger's foreign trade laws and regulations: M. Joachim Lama, Mr. Marcellin Mouskoura, and M. Jean-Louis Mouralis. Without their contributions, the attached report could not have been written, and the preparation of a draft Code of External Commerce would have little prospect for success. Long after my departure from Niamey, they will be available to the Ministry and to USAID for further counsel concerning the evolution of Niger's policies governing external commerce.

Finally, I wish to express my appreciation to the many economic operators and government officials in Niamey, Maradi, Abidjan, and Lome who provided information useful to my analysis. In Niamey, M. Marcellin Mouskoura was kind enough to include me as an active participant in all of the interviews he conducted with private sector economic operators for the first part of his study. In Maradi, I had the enthusiastic interest and help of the American Embassy Economic Officer, Mr. Douglas Van Treeck, and his able Commercial Assistant, M. Boubacar Salifou.

None of the above, of course, is responsible for any shortcomings of the attached paper.

Benjamin H. Hardy
Niamey, Republic of Niger
May 1989

SUMMARY AND RECOMMENDATIONS

The reform of Niger's foreign trade laws and regulations, a task confided to the Ministry of Commerce, can make notable contributions to Niger's economic development. The reform proposals provided here are the result of studies conducted by a team of specialists funded by contracts with USAID/Niger. The specialists are:

- -- Benjamin H. Hardy, project coordinator
- -- Joachim Lama, specialist in international finance
- -- Marcellin Mouskoura, private sector specialist
- -- Jean-Louis Mouralis, jurist

Like the other team members, the project coordinator followed terms of reference provided by the Ministry of Commerce in conducting the study and making recommendations. The revisions to Niger's laws and regulations governing external commerce are part of an economic policy reform program intended to liberalize the economy; that is, to reduce the role of government as an economic operator and controller and to encourage greater private sector participation in all economic activities, including external commerce. Thus, progress in reforming the laws and regulations requires an understanding of liberal economic philosophy. Applying liberal economic concepts in the context of Niger, a very difficult economic environment, likewise requires a sympathetic understanding of the special problems facing government officials and economic operators. The concepts of economic liberalism and their relevance in the Nigerien context receive attention in the paper.

On order to conduct a thoroughgoing reform of external commerce, the following programs are essential:

(A) The Government of Niger should nullify the existing laws and regulations governing external commerce, replacing them with a new Code of External Commerce and leaving in force only those treaties and conventions that affect Niger's economic and financial relations with other nations and international institutions;

(B) The government should de-emphasize police and other controls and instead emphasize the concept of official services to economic operators, concentrating on clear policy choices, public information, and training to carry the service concept to every facet of external commerce;

(C) The Government of Niger may wish to consult with donors concerning funding and technical assistance to help with the transition from economic control to public services for economic operators.

The new Code of External Commerce will provide important opportunities to simplify and lighten the administrative burdens on economic operators who engage in foreign trade. Elimination of certain economic control activities will also free Ministry of Commerce (and perhaps Ministry of Finance) resources for provision of information, training, and other services to economic operators. Although the Government of Niger will continue to exercise control over external commerce, there are things the government can do immediately to help stimulate new foreign trade activities.

Chief among these will be steps to reduce the number of trade transactions subject to licenses, taxes, and fees:

1) Abolish or phase out the statistical tax on foreign trade, in favor of a fee for processing customs declarations;

2) Raise the ceiling on trade shipments exempt from licensing from FCFA 500,000 to FCFA 2,000,000--and possibly to FCFA 5,000,000;

3) Abolish export licenses for agro-pastoral products;

4) Abolish export licenses for industrial products, and simplify procedures for repatriating foreign exchange;

5) Make no effort to repatriate foreign exchange earnings from exports of agro-pastoral products;

6) Specify an expiration date for any emergency control over external commerce;

7) Develop a clear policy toward use of tariffs to protect domestic industries;

8) Eliminate tariffs on imports of inputs to the agro-pastoral sector;

9) Provide tax credits or tariff rebates on imports of inputs that the industrial sector uses to produce exports;

10) Limit special exonerations of import tariffs and fees;

11) Limit prohibitions or non-tariff controls over imports to non-economic policy objectives;

12) Replace import quotas with tariffs;

13) Issue import licenses for general product categories;

14) Consolidate processing of inmport license applications;

15) Reduce the number of copies of the license;

16) Re-examine policy toward transit of products imported illegally from Niger by traders in neighboring countries;

17) Abolish the <u>carte professionelle</u> for importers and exporters.

Reform of the laws and regulations governing external commerce is not enough, however, to make much difference to economic operators. Only if the Government of Niger continues the reform process to the stage of <u>application</u> will the benefits of a new Code of External Commerce become apparent in the economic life of the country. The stages to follow promulgation of the new Code should include new roles for the Ministry of Commerce, including the following:

(a) strengthening capacity to define and decide key policy issues;

(b) promotion of economic justice by specifying the rights and responsibilities of economic operators; and

(c) greatly increased information services to economic operators.

Along with new information activities the Ministry of Commerce and the Ministry of Finance should expand the training of officials involved in external commerce, to include in-service training on an annual or semi-annual basis. Since many officials work at posts distant from Niamey, experienced officials should travel to key towns and frontier posts to provide the training where the problems are. In addition, the Government of Niger may wish to consider advanced education and training in economics and business administration for officials of the Ministry of Commerce.

Beyond these major steps toward assuring effective application of the new Code of External Commerce, there are several less urgent tasks mentioned at the end of the study. These largely concern the international aspects of Niger's trade reform: effects on neighboring countries, and the implications of diverse donor policies on economic conditions in Niger, its subregion, and region.

INTRODUCTION

This paper, written under contract to the United States Agency for International Development, summarizes studies and recommends actions in response to a request by the Ministry of Commerce of the Republic of Niger for a critical analysis of Niger's foreign trade laws and regulations. Many of the recommendations for improvements will be incorporated into a draft Code of External Commerce; others will address follow-up measures to help assure proper administration of the new Code and related regulations.

Senior officials of the Ministry intend to analyze this paper and the accompanying studies, including the draft Code of External Commerce, in conjunction with parallel studies undertaken separately within the Ministry in order to draft revisions to the laws and regulations governing domestic commerce. In addition, a draft Investment Code already has been prepared. In effect these documents, when promulgated, will together constitute a revised commercial code for Niger.

The Government of Niger is pursuing a revision of its rules governing external commerce as an integral part of a liberalization of the economy. This fundamental economic policy redirection aims to reduce the role of government and to encourage the growth of private activity in most areas of the economy. It is noteworthy that, although revisions to the foreign trade rules have been urged upon the Government by representatives of the International Monetary Fund, the Government is responding also to requests by Nigerien economic operators for a simplification and loosening of the existing trade controls, which they find confusing and onerous.

In carrying out the request of the Ministry of Commerce, USAID/ Niger contracted the services of several specialists who have met as a team to discuss progress on the project among themselves and with representatives of the Ministry and USAID. Each specialist has also had specific responsibility for a separate study or studies. The studies, with this covering report, constitute USAID's response to the Ministry's request.

The team comprised the following members:

Benjamin H. HARDY, American, economist, team coordinator; author of this overview with recommendations;

LAMA Joachim, Guineen, professor of finance, University of Niamey; author of studies on Niger's (a) international banking practices and (b) foreign exchange regulations.

MARCELLIN Mouskoura, Nigerien, businessman; author of (a) case studies of private sector problems with foreign trade, and (b) case studies of step by step processes involved in importing into and exporting from Niger;

Jean-Louis MOURALIS, French, professor of law, University of Niamey; author of (a) bibliography of existing laws and regulations governing foreign commerce, (b) overview of same, (c) framework for reforms, and (d) draft Code of External Commerce.

The present overview paper consists of four parts:

1) An examination of the study's terms of reference and a general discussion of the reasons for reforming the foreign trade regime;

2) A discussion of aspects of Niger's foreign trade regime that either cannot or should not be revised (largely those controlled by international treaties and conventions, particularly those governing tariffs, banking, and foreign exchange);

3) Proposed revisions to Niger's foreign trade policies, laws, regulations, and administration;

4) Proposals for follow-up to the new Code of External Commerce.

The proposals under (4) are absolutely necessary, for as the paper and accompanying studies will show, the laws and regulations in themselves, while in need of revision and simplification, are by no means the whole problem. The new Code of External Commerce must be administered within a reformed foreign trade policy involving an enlightened cooperation between officials of the government and the various economic operators who participate in Niger's foreign trade. This is a matter for ongoing efforts, to be undertaken by the Ministry of Finance, the Ministry of Commerce, the Chamber of Commerce, and the various syndicates representing private economic operators. The Government of Niger may wish to avail itself of support for these efforts by foreign aid donors, including USAID. Specific recommendations for Government of Niger efforts are included in this paper. Those shown in **bold type** in the text are directly relevant to the revision of laws and regulations governing external commerce.

PART ONE

GENERAL OVERVIEW

A. Terms of Reference

Prior to making its request of USAID, the Ministry of Commerce had prepared terms of reference for a study of and revisions to the foreign trade regime, copies of which were made available to the team members. A copy of the terms of reference is included with this paper as Appendix A.

It is noteworthy that this is a Ministry of Commerce effort, not a joint effort of that ministry with the other major actors in Niger's international trade. Among the other institutions with important roles are, most notably:

- The Ministry of Finance, which has responsibility not only for foreign exchange matters through the Directorate of External Finance but also for tariff collections through the Customs Service, the most important entity in the administration of foreign trade.

- The central bank (Banque Centrale des Etats de l'Afrique Occidentale, or BCEAO), which has overall authority over money and banking; it has an important role because it is an international institution, the bank of issue for all states which belong to the West African Monetary Union (Union Monetaire Ouest Africaine, or UMOA), which is in turn closely aligned with the French franc zone, its currency being guaranteed convertibility into French francs at a fixed rate.

- The Chamber of Commerce of Niger, a government agency, which has official functions bearing on the administration and encouragement of foreign trade; for example, it issues the forms used by economic operators to obtain permission for official trade transactions.

- The regional authorities, heads of departments and prefectures, and their local committees of advisers, who have authority to issue trade permits under decentralized procedures that have been in effect for the past several years.

The terms of reference call for making contacts with these important actors, who, however, have no authority over the study and thus have had no stake in participating in it. This omission will need to be rectified through close coordination with these institutions in implementing the results of the study. In particular, it will be necessary to consult with the Ministry of Finance, which, for Niger as for most countries, is the most important government institution in economic matters, including foreign trade. No amount of reformulation of the foreign trade laws and regulations can alter this. However, the Ministry of Commerce should continue to have a key role in foreign trade, as will be discussed below.

The terms of reference are useful as a preliminary statement of the problem. The document is frank in admitting the inability of government officials and economic operators (many of the latter illiterate) to understand, administer, and comply with antiquated laws and regulations, much amended and subjected to special ad hoc stipulations intended in many cases to respond to emergency conditions. Thus, there are gaps in the regime, giving officials no guidance to cover many situations in which they have to render decisions; these gaps create opportunities for arbitrary or preferential treatment. In other cases there are specific requirements that no longer serve any rational purpose, the conditions that gave rise to them having been overtaken by events. Thus, the terms of reference call for analysis to show whether particular measures remain valid or should be eliminated as obsolete.

In addition, the terms of reference look for an orderly statement of the international treaties in force, and of the laws and regulations suited to the country's own socio-economic context, which includes national, sub-regional, regional, and international aspects. They call for a new approach to Niger's rules of external commerce, involving structure as well as functional procedures. The reform is to be embodied in new regulations better adapted to the national interests and able to facilitate actions that serve those interests.

B. Niger's Economic Situation

During the nearly three decades of Niger's independence, the government has considered intervention in economic life to be vital to the national interests. This is true in large measure because of the very difficult physical, financial, and social constraints on economic activity in the country. In addition, there are constraints imposed by the very fact of government intervention in the economy.

1. Physical and Geographical

Some of the constraints are fixed. Niger is a landlocked, sprawling territory, ninety percent of it desert, woefully short of natural resources, at the end of long lines of communication and transportation. It has a southern border of some 2000 kilometers separating its most densely populated areas from neighboring (and ethnically similar) populations in Nigeria, Benin, and Burkina Faso--countries active as trading partners with Niger. Being very difficult to police, this frontier is very porous to trade of all kinds, both legal and illegal. The longest stretch of southern frontier borders on Nigeria, whose population, some fifteen times Niger's, represents markets and productive capacities that dwarf those of Niger.

Other constraints are variable, perhaps too mild a term for a climate harsh under ideal conditions but capable of sudden, catastrophic changes that may be predictable--in the sense that they seem inevitable and perhaps irreversible (e.g., environmental degradation through desertification)--but certainly cannot be forecast with any precision.

2. Legal and Banking

The variable forces are not solely "natural" phenomena, witness the destructive effects of falling international prices for uranium, the collapse of the Nigerian naira, the Government of Nigeria's erratic economic policies, and foreign competition against Niger's few industrial products as well as its rice, onions, cowpeas, livestock, hides and skins, and off-season fruits and vegetables--products in which Niger might hope to possess some local comparative advantages.

Uranium prices are a special case, governed by the conventions established with foreign investors at the time the mining enterprises were created, and by purchasing agreements negotiated from time to time with consumers. It appears that under present conditions, with world uranium prices at low levels in comparison with those obtained during the late 1970s and early 1980s, Niger has succeeded in negotiating reasonably advantageous agreements for the sale of its uranium production. While the outlook for uranium price increases is poor for the foreseeable future, into the next decade, it appears that Niger can count on steady, if unspectacular, revenues from uranium sales, given its proven reserves and the willingness of purchasers to pay a modest premium over the world price.

As for its other export products, which are largely agro-pastoral, Niger suffers from the inability to adjust the value of its currency in response to changing economic conditions at home and abroad. As a result of overvaluation of the CFA franc, its competitive position for such exports has deteriorated considerably during the past several years. This is true in a global sense; for example, Nigerien livestock exporters find strong competition from Argentine and Australian producers, who can sell at low prices because of the relatively low value of their currencies in comparison with the CFA franc.

It is particularly true, moreover, with regard to Niger's important markets in Nigeria, a country whose economy has undergone major structural adjustments during the mid-1980s in the face of severely diminished revenues from petroleum exports. As the Nigerian economy has shrunk, the Central Bank of Nigeria has allowed the value of the naira to fall. This makes Nigeria's imports much more expensive; as a result, the Government of Nigeria has succeeded in reducing the country's import purchases, thus conserving foreign exchange needed for debt service. The Central Bank of Nigeria's naira devaluation policy has sharply curtailed Nigerian demand for Niger's traditional exports of agro-pastoral products.

At the same time, the naira devaluation has made Nigerian goods much less expensive; therefore, Nigeria's exports are much more attractive to foreign buyers. Many of these goods are sold to purchasers in neighboring countries where the currency is the CFA franc, a currency with considerable purchasing power because of its high fixed value, not to mention its ready convertibility into French francs, a hard currency.

The Government of Niger finds these problems difficult to confront because of severe constraints on the monetary policies available to it: it cannot unilaterally adjust the value of its currency. This is not to say that franc zone membership is, on balance, inimical to Niger's national interests; the benefits of franc zone membership are manifest, and this report makes no recommendation whatever with regard to that relationship, which in any case is a matter of solemn treaties with France and Niger's West African neighbors. The fact remains, however, that an overvalued franc CFA places stringent limits on the Government of Niger's ability to respond effectively to adverse economic changes, especially those in Nigeria.

3. Social

Niger is a nation of dedicated workers, inured to harsh conditions and convinced of the moral value as well as the economic necessity of labor. The average Nigerien, however, works very hard for very little gain, for the Nigerien economy provides him (and her) insufficient means to increase productivity. This results in a very low rate of economic growth, especially of growth per capita. Niger's population, just over seven million, constitutes a market too small for modern industrial economies of scale, but the rate of population growth, more than three percent per year, easily outstrips increases in production.

Some eighty percent of the population is illiterate, and lacks the technical and managerial skills necessary in order to have effective institutional structures, administrative processes, and production technologies which are taken for granted in many developing countries elsewhere in the world. It is not too much to say that Niger's most critical development need is literacy and basic skills of the sort learned in the primary schools; without these, there is no hope for long term solutions to such challenges as public health, agricultural production, and desertification. The government and donors should work together to give as many children as possible a head start on learning--for example, by providing educational television programs in national languages for pre-school children (via the national television broadcasting facilities or via videotape cassettes); these programs should introduce children to learning games and play using the alphabet and elementary French words and phrases, as a way to facilitate their entry into formal primary school education. The Government of Niger should consider approaching donors who can help develop audiovisual materials for primary education by providing equipment and technical training.

Ignorance is very different from lack of intelligence, and Niger has many people who demonstrate ample intelligence despite their lack of formal education. There are those who have acquired education in the informal, traditional way, by learning from their elders in the villages. There are others who have acquired education in the formal, modern way, through the schools and universities, in Niger and abroad. These divergent educational paths have created in Niger two economies, the informal and the formal, which constitute a special challenge to a government seeking to encourage economic activity and stimulate economic development. (Economic development, as used here, means per capita increases in capacity to add value.)

The informal sector is by far the largest, since it includes subsistence farming, the occupation of most Nigeriens. It also includes most of commercial trade, which has flourished in Niger for centuries, as well as micro-enterprises of all kinds producing both goods and services. The informal sector appears to be far more dynamic than the formal sector. The Government of Niger needs and values its informal sector, but nonetheless seeks to control it, with little success. At the same time, the Government of Niger is in league with the informal sector, and gives its silent approval to all manner of informal economic activities. This is eminently rational behavior on the part of the government, for an active commerce is in the best interests of society. The dilemma lies in getting the government's just share of the proceeds of economic activity. On the one hand, if it fails to collect revenue, the budget is in deficit, and governmental responsibilities go unmet. On the other, if it attempts to tax arbitrarily or too heavily, it risks driving informal sector economic operators across the border into neighboring countries such as Nigeria.

4. Economic Policies

To the physical/geographical, legal/financial, and social constraints one must add the injuries Niger has inflicted upon itself through the government's efforts to be the main engine of economic development, creating expensive and inefficient state-owned enterprises and accumulating foreign debts it now finds very difficult to repay. The government has also tried to be the central stimulus and controller of economic activity, which has led to oppressive regulation, pervasive interference in production and commerce, and a progressive strangulation of economic life. This statist (dirigiste) economic philosophy has prevailed in Niger from the time of independence until very recently, and its advocates remain numerous today.

In an attempt to gain better control over the economy (and to increase fiscal revenues), the government has tried to bring the informal sector into the formal sector, either by persuasion or coercion. The informal sector economic operators have thus far successfully resisted, with good reason. They have done quite well as informal operators, while the formal sector enterprises struggle for survival; many have shown continuing losses, and a number have had to cease operating. Why, then, join the formal sector as a matter of choice?

C. Economic Policy Reform

Unavoidable constraints, unfavorable events, and internal economic policy deficiencies have led to stagnation of the economy despite strenuous efforts to surmount recurrent crises and to generate economic development. The Government of Niger has chosen to look to the outside world, to multilateral financial institutions, bilateral technical assistance agencies, and private voluntary organizations for help in solving these severe difficulties.

In exchange for foreign economic assistance, the government has had to accept the industrial world's prescription for Niger's current economic situation: liberalization, a series of policy reforms intended to diminish the economic role of government and to encourage private economic operators. Economic liberalism and statism are not so much antithetical as they are at opposite ends of a continuum: both liberals and statists agree there should be economic roles for both private activity and government; where they disagree is on the relative influence given one or the other.

It will take time for the Nigerien economy to recover even if liberalized, because of the overwhelmingly depressant effect of the constraints and converging circumstances already described. Liberalization can be implemented virtually overnight simply by abolishing governmental economic interventions, but private investors will not rush in to increase production and commerce immediately; in a difficult economic environment, the risks are high, and wise entrepreneurs do not take risks rashly.

There will be a lag of some years between the end of the statist economy and the emergence of a flourishing private sector. Therefore, the donors must count on supporting the liberalization process over the medium term, perhaps ten or more years. Long term economic development, which is heavily dependent upon educational levels as well as other complex factors, will take longer; both the government and the donors know this.

The donors are not, however, prepared to underwrite Nigerien national budget deficits for more than a few years, and certainly only to replace revenues lost because of tariff and other tax reductions due to economic policy reforms, including those involving foreign trade. Therefore, the Government of Niger must begin now to look for new sources of revenue. One of the promises of economic liberalization is economic growth. In a growing economy, the government can increase revenues without increasing tax rates, since the growth itself creates a larger tax base.

1. Economic Liberalism

Although Nigeriens, in public and private life alike, are willing to give economic policy reform a chance, (e.g., liberalize markets, including foreign trade), many of them are dubious that it can make a difference in an economy such as the one existing in Niger. The businessman who told M. MARCELLIN that liberalization is ruining the economy is not alone in his opinion. Therefore, a review of the concept of economic liberalism, and an examination of its application in the context of Niger's special economic circumstances, is worthwhile.

From the perspective of Nigerien policy makers and economic operators, it certainly appears that liberalization is causing Niger's economic problems. While the idea arises in part from coincidence--early economic policy reforms of the mid-1980s occurred at the same time as a drought and a recession in Niger's major markets (continuing today in the case of uranium sales and markedly increasing in the case of agro-pastoral products sales into Nigeria), the fact remains that Niger must contend with many economic handicaps that make policy choices difficult, improvements slow to manifest themselves, and results hard to measure.

Advocates can point to concrete examples of economic liberalism's success at promoting economic development in North America, Western Europe, Japan, and recently in several other Asian nations. However, liberalism is more than just a means of economic stimulation, it is also an ideology, in the sense that it involves a system of beliefs, a way of looking at economic problems and organizing their solutions. It is not an ideology easily accepted by Nigeriens, who have had to take on faith the foreign advice that they should adopt and implement it, and they have strong misgivings about it today, inasmuch as few positive results have been forthcoming thus far.

Donors argue that the Government of Niger has placed so many controls on the economy that it has virtually ceased to function except outside the law. Of necessity, the government has accepted this argument, but sees the issue in terms of lightening and simplifying control only to the point where activity can resume, and in terms of continuing to intervene, henceforth in positive ways that stimulate and encourage economic operators.

Essentially, the government's position is that Niger's economy is a special case whose unusual constraints, mentioned above, require state intervention in order to minimize any ill effects upon the people. Given the state's responsibilities for political (security and justice) as well as social welfare (health, education, transport, communications, and--critically important--nourishment) in the face of an inadequate economic base, the government must intervene to manipulate economic forces even at the cost of introducing production inefficiencies.

The statists believe that when resources become available, as they did during the uranium boom, the state must direct them toward meeting society's critical needs; if market economics were allowed free play, perhaps in the long term production would be more efficient, but in the short term the money would likely be concentrated in a few hands and squandered on consumer goods, especially luxury items. Among the reasons for this are the following: (a) an ill-educated population would lack the skills to put capital to use in productive enterprises, (b) an impoverished people's pent-up demand for consumer goods would receive priority over savings and investment, and (c) since economic flows within Nigerien society follow feudal rather than modern channels, the greater part of resources would quickly flow into the hands of a wealthy few who, by tradition, must consume ostentatiously in order to establish and maintain their status in society.

Liberals respond that all of the government's arguments are true, but free markets nevertheless offer the best solutions to economic problems everywhere. Indeed, Niger's economic conditions are already so severe that the state cannot afford to intervene. Interventions inherently distort economic behavior and add to the costs of production, costs ultimately paid by consumers--people who, in the Nigerien economy, are mostly peasants and villagers.

Yes, Niger's people lack the skills to create and operate complex, technically demanding enterprises; this is precisely why so many state-owned enterprises were ill-conceived and ill-managed, why so many of them are unlikely to become competitive despite privatization and special measures to protect their markets artificially.

Yes, consumer goods receive priority over savings and investment; since the government's efforts to control consumption have been so destructive, the parallel market has grown up to meet the people's needs; besides, constraints on the banks make saving difficult.

Yes, although the informal, feudal economy has built-in inequities, at least it works: it satisfies the people's needs more effectively than does the formal, especially the state-owned, sector.

These conflicting analyses are based on ideologies that produce sharply differing conceptions of reality. On the one hand, there is the reality of the way things work in Niger. It is a reality of tradition, overlaid with an administrative structure and procedure received from the hands of the colonial power, whose commercial representatives benefitted from the colonial economic system and who continue to benefit from its successor, although the policies adopted in very recent times make them pessimistic about their future role in Niger.

It must be said in all fairness to the government that there is no ideological dispute between officials and the Nigerien private economic operators. Nigeriens, regardless of profession, share a preference for order and hierarchy. The informal sector trader, like the parastatal executive, complains that in recent years the economy has become disagreeably disorganized, that anyone can go into business regardless of credentials, can engage in several types of business at once, can choose freely among suppliers, and can set prices at will, whereas in the past only serious economic operators were allowed to participate. This meant that everyone got a fair share of the market, prices changed infrequently, and one knew that one's suppliers and customers could be counted on for the future.

The liberal view of reality is that economic principles operate the same way everywhere, free markets encourage competition, competition increases prices paid to producers and reduces prices charged to consumers, and Nigerien economic operators, being statists at heart, do not want to be liberal businessmen, that is, they do not want to have to compete. Theirs is a nostalgia for monopoly, fixed prices, and state subsidies to cover poor planning, wasted investment, inadequate management, insufficient operating capital, and continual operation at a loss. The subsidies must be paid for, and in the absence of economic surpluses--uranium tax revenues, for example--they have been paid for by borrowing abroad.

Fondness for restraint of competition appears to characterize not only the formal sector enterprise managers, but also large informal sector traders. Traditional commerce in Niger has a pyramidal structure, with a few wealthy traders, dealing in large quantities, controlling a number of middlemen, who in turn control many small traders. Because the traditional traders have social as well as economic obligations and exercise economic influence in part because of their social status, trade involves more than cost, margin, and profit in a competitive market. It is noteworthy that when wealthy, informal sector traders become investors in formal sector enterprises (including privatized firms), the firms have generally been as unprofitable as the state-owned enterprises run by appointed officials.

Liberal economic theory says the great hope of Niger today lies in its small informal sector enterprises, the micro-enterprises, because there the entrepreneur personally adds substantial value to his output, whether goods (cowpeas, metal furniture) or services (taxi driving), and offers it at a competitive price. The government should not worry about the small operator who, in the orderly confusion of the free market, exceeds his reach in competing with established businessmen, because anyone who cannot give value for money, who cannot calculate operating costs, margins, and prices, will not remain in business very long. It should simply make the markets as free and competitive as possible.

The response of Nigeriens, especially of the Government of Niger, however, is to continue wanting to structure the economy, to organize commerce in such a way that only serious economic operators take part, each at a level appropriate to his financial means and business experience. This reveals attitudes at variance with the liberal conception of the proper functions of government officials and of economic operators.

From the liberal perspective, government exists to serve the people, primarily by protecting the weak against the strong. Against foreign strength, it provides defense; against internal strength, it provides justice. Beyond these, good government has no responsibilities other than what the people choose to establish for it; for the vast majority of everyday decisions in people's lives, including economic decisions, it has no role save as protector and there it does as little as necessary. It does not structure the economy, nor does it organize commerce; it controls economic operators as little as possible, and only to protect the people.

Government leaders make policy choices from among a range of options, frequently having to choose between alternative benefits; one cannot have more of one without having less of the other. (This point will recur in defining choices on specific foreign trade policies, below.) In a liberal society, the people choose to have government do little rather than much, leaving the people free to do for themselves. Forced to choose between control and economic development, they choose development.

This leaves the people great responsibilities as well as great freedom, but it is a fundamental tenet of the liberal ideology that ordinary people are the best judges of their own interests, and that left to themselves they generally make sound decisions. The next step in this thought process, which admittedly takes a leap of faith, is that in the aggregate, countless decisions of millions of ordinary people serve the best interests of the whole society. This is the essence of liberal politics, and it finds one of its most effective demonstrations in the operation of free economies.

The economic operator in a liberal economy has responsibilities to himself and to his community, for economic efficiency requires specialization of labor, and only through cooperation can specialization yield economic surpluses and increasing capacity to add value. In order for his enterprise to succeed, he must conduct himself honestly and openly, and he must make his just share of contributions to the government and the community. Normally, this means paying taxes; in exchange, the taxpayer is entitled to a government that serves his needs.

The people, including economic operators, are in partnership with the government, but in a liberal society the people are the senior partners. The honest citizen who works hard, pays his taxes, and meets his obligations to his family and community, always stands above the public servant acting in his official capacity. Of course, in his private capacity, the public official has the same rights and obligations as any other citizen.

2. Implications For External Commerce

From a liberal perspective, Niger needs more than revised and simplified foreign trade rules; much more urgently, Niger needs government officials who see themselves as public servants. It needs economic operators who have a strong code of ethics and a sense of responsibility for supporting their government. Finally, it needs a sense of cooperation rather than conflict between public servants and economic operators.

Too often in Niger, the relationship between government and economic operators is one of mutual distrust, antagonism, and conflict. In the interest of economic progress, officials must stop thinking of economic operators as amoral exploiters, selfishly and irresponsibly seeking to evade the government's control. Economic operators must stop thinking of government officials as arbitrary, meddlesome policemen who use the powers of the state to penalize useful, even essential commerce. They must all begin to think of themselves as allies rather than enemies.

A very effective way to change other people's thinking is by changing one's own behavior: economic operators must temper their desire for profits by recognizing their obligations to the state, while officials must apply the laws impartially in order to serve, not control, the people. Nigeriens are basically honest and honorable. Excessive, unnecessary regulation drives some outside the law, while complexity causes honest men to make mistakes when they try to comply with the laws--in paying their taxes, for example. If economic operators are free to pursue their business, officials can concentrate their efforts on those few who deliberately break the law for evil purposes.

The Ministry of Commerce has asked the team to reorganize, simplify, and make more flexible the country's foreign trade laws.

In doing so, we have heard the views of many participants, officials as well as economic operators. Our principle in carrying out our task is elementary: make no rule that does not serve some necessary and useful purpose. In revising rules, it is essential to justify every control that is kept; any rule failing such a test can be eliminated.

Since this report is advisory, the Government of Niger may accept or reject its recommendations, either in whole or in particulars. However, when judging whether to keep or abandon any control over foreign commerce, the government should itself apply the same standard: What necessity demands this control? What essential service does it provide the people?

Foreign advisers, whose time in Niger is short and whose knowledge of the people and their needs is understandably incomplete, may err in deciding whether one control or another is truly necessary. In this the government has the final judgment, and rightly so, but the government best serves the people in judging its controls in terms of their necessity. There should be no economic control for the sake of control; rather, there should be economic freedom for the sake of freedom.

Thus, the government should stop seeking to formalize the informal sector. It should begin to informalize the formal sector. Instead of trying to drag the informal sector into the formal sector, the government should stop controlling and reduce its policing. It should get out of the way of society's truly efficient economic operators, and let the formal sector adopt, legally, the means already employed illegally by the informal sector.

The only way to find out whether the formal sector can compete effectively against the informal is to level the playing field by removing the government's artificial strictures on the formal sector. Then everyone will be legal, in a free economy that formerly was illegal. The cost of this reform will be a medium term loss of revenues to the state, which can be covered in part by cutting budgeted expenditures (not by reducing support to education or public health, but by eliminating the Economic Police and other expensive attempts to control the economy) and in part by prevailing upon the donors for further temporary subventions.

This is particularly true with respect to obtaining tax revenues. There is a host of laws and regulations for the collection of taxes on informal sector activities, including foreign trade, and officials spend a great deal of effort chasing informal sector economic operators to collect small fees and taxes and to penalize them for infractions of every sort. Usually the penalties for infractions are severe, perhaps on the assumption that all economic operators are evading so many fiscal responsibilities to the state that whenever an official manages to catch one in violation, the violator should also pay heavily for his other, undetected sins.

With respect to foreign trade, the infractions have to do with traffic in prohibited goods and evasion of tariffs and fees for otherwise legal imports and exports.

Where it is politically inexpedient to do so, the government declines to pursue economic operators who evade paying taxes and fees: the wealthiest and most powerful of the country's informal sector economic operators are obvious to all, and their property is readily identifiable. It is disingenuous of the government to claim that these operators escape their just responsibilities simply because they are illiterate and keep no written financial records. The Ministry of Finance need only send tax collectors to the warehouses of wealthy economic operators and estimate the business volume and profits for the tax year. It should also simply mandate that all economic operators of a certain size must keep written financial records, and it should subject violators to substantial penalties. Even if the economic operator is illiterate, surely there are literate clerks who can be hired to set up and maintain financial records.

Thus, had the Government of Niger the political will, it could collect revenues from economic operators who now escape their responsibilities; lacking that will, the Government of Niger instead encourages its officials to pursue petty taxes and fees. Unwilling to strike at those who should be paying, these officials instead strike at those who are within reach. Thus, it is usually the small, informal sector economic operator who loses. Alternatively, it is the modern industrial enterprise, which operates in the formal sector and maintains written financial records, which carries the burden that should be shared by wealthy informal sector economic operators.

The Government of Niger should begin now, with the help of donors, to collect taxes more effectively. Domestic production offers more promise as a tax base than tariffs and fees on imports and exports. Also, given that the Government of Niger seeks to stimulate foreign trade in the short term, taxes and other constraints on foreign commerce should be reduced or eliminated as quickly as possible.

At present, much of the trade is illegal; traders make acceptable profit margins (otherwise they would not trade at all) and pay various fees, such as bribes and other illicit payments, and higher costs of doing business, such as transportation costs of moving goods longer distances over unimproved roads by inefficient carriers. In this case, the extra costs represent losses not only to economic operators, but also to the government. To the extent that the government's foreign trade laws and regulations are arbitrary and inequitable, traders prefer illegal to legal channels. Through its foreign trade regime, the government has been subsidizing fraudulent trade at its own expense.

In the interest of promoting foreign trade, the Government of Niger should do everything possible to facilitate trade through legal channels. It can help by eliminating onerous laws and regulations, and also by reducing tariffs and fees to modest rates while taxing domestic economic activity more effectively.

D. Ways to Proceed

The Government of Niger has to chose to revise its foreign trade laws and regulations. As noted above, this should be only the first step toward a comprehensive reform of foreign trade administration. In any country, especially in a developing country, policy may be stated in official documents, but it is truly expressed through administration: application is policy. Only if the government has the resources and skills to carry its reformed laws and regulations to the economy, changing the behavior of officials and economic operators alike, will it achieve its objectives. Donors have an opportunity to help provide the needed resources and skills. The creation of a new foreign trade regime can proceed in three ways:

- First, since the existing foreign trade laws and regulations are excessively restrictive, thoroughly confused, inappropriate, and outdated, they should be declared null and void. In its new Code of External Commerce, the Government of Niger should declare that participation in foreign commerce is a right available to all Nigeriens. The government may reserve the right, where overriding national interest demands, to intervene in foreign commerce; however, it will minimize its interventions as a matter of policy. The new Code thus broadly defined will supersede all previous legislation and administrative regulation, but will remain subordinate to Niger's Constitution (presently in suspension, but still Niger's fundamental law) as well as all international treaties and conventions such as those with other sovereign states and with multilateral institutions.

- Second, the Government of Niger should place heavy emphasis on service to economic operators. It can do so by reorganizing the Ministry of Commerce and by redeploying and increasing the resources of the Ministries of Finance and Commerce, enabling them to provide more information to economic operators and training to officials. The object of information and training must be to facilitate, not control, trade.

- Third, donors should be prepared to provide resources to carry out the refocusing of effort on information and training. New laws and regulations will be useless unless the means exist to apply them effectively. This cannot be a short-term program.

PART TWO

RECOMMENDED CHANGES IN THE RULES GOVERNING EXTERNAL COMMERCE

This part outlines specific ways the Government of Niger can revise its laws and clarify or simplify procedures so as to facilitate the flow of external commerce. The revisions pertain primarily to the Ministry of Commerce, but also the Ministry of Finance, since they affect tariff rates and the activities of the Customs Service. The recommended changes are arranged in three groups, according to their effects upon exports, imports, and foreign trade administration. (Specific recommendations to the Government of Niger are also excerpted and repeated as Appendix B to this report.)

It need scarcely be emphasized that all governments control external commerce; by so doing, they serve important national political, social, and economic interests. Since international trade contributes to economic development, a liberal economic policy places a minimum of controls on foreign trade so as to allow the domestic economy to grow. For political reasons, many governments prohibit or restrict certain forms of trade (for example, trade with the Republic of South Africa, or private trade in military equipment). For social policy reasons, many prohibit or strictly control the import of firearms, narcotic drugs, toxic chemicals, or toxic wastes. Some control the export of endangered wildlife species, or products such as ivory and wild animal skins; others also control export of archeological or artistic treasures. Many control trade in gold, which can form a part of a country's foreign exchange reserves. Many also control imports that compete with local industries judged essential to economic development. The new Code of External Commerce should provide such controls.

Finally, many use external commerce as a source of revenue, through tariffs and fees. While this is legitimate, the taxing of international commerce acts as a brake on economic development, such that in recent decades governments have made strong efforts to reduce the use of tariffs as barriers to the free movement of goods. International agreements such as GATT, CEAO, CDEAO, and the Lome Conventions, to which the Republic of Niger is a solemn party, aim at reducing tariffs to manageable levels without entirely eliminating them as revenue sources.

For every exercise of government control, there should be a countervailing right on the part of economic operators to have their opinions heard. The new Nigerien Code of External Commerce should provide means for economic operators to communicate their views to officials, as well as boards of appeal, with clearly established procedures, against adverse rulings and penalties for infractions. It should also require a delay before any law or regulation governing external commerce can take effect. Only decrees of the Supreme Military Council, declaring a national emergency, should be authorized to take effect immediately. This recommendation extends also to the Ministry of Finance; specific points with reference to appeals of Customs Service decisions are discussed below.

Every country's imports are some other country's exports, and vigorous international commerce serves the economic interests of all countries. A liberal economic policy, therefore, places as few constraints as possible on commerce, in order to encourage the importation of goods useful for economic production, and to export goods that are competitive in foreign markets. It also allows importation of consumer goods that can be produced at low cost in foreign countries, thus assuring the people lower prices for their needs.

This is particularly important because of Niger's difficult economic environment. On the export side, the economic depression in Nigeria, Niger's largest potential export market, means that selling goods there requires strenuous efforts and supportive government policies. Certainly Niger should do away with every legal impediment, administrative hindrance, or nonessential cost affecting export trade. In particular, **the Government of Niger should eliminate the three percent statistical tax on foreign trade, beginning at once with the tax on exports.** The government should study statistical tax revenues to determine their importance to the national budget. If the tax cannot be abolished forthwith, the tax should be phased out over the short term, perhaps three years; a recommended timetable would be as follows:

Exercise 1990: 2.0% tax on imports, 1.5% tax on exports;
Exercise 1991: 1.0% tax on imports, 0.5% tax on exports;
Exercise 1992: 0.5% tax on imports, 0.0% tax on exports;
Exercise 1993: no statistical tax on trade.

In place of the statistical tax, the Customs Service might charge fixed fees for processing customs declarations, whether for exports, imports, or transit goods. This would be a service fee, not a tax, related to the amount of time and effort expended on the service--perhaps FCFA 3000 per declaration.

The exemption of foreign trade shipments from licensing requirements if they total less than FCFA 500,000 in value is an example of the positive steps the Government of Niger can take to lighten and simplify the regulation of external commerce. **The government should raise the ceiling to FCFA 2,000,000, evaluate the impact upon trade flows and tax receipts, and consider raising the ceiling to FCFA 5,000,000 if it appears feasible.**

Economic operators complain that when they cooperate among themselves by loading their separate shipments onto a single truck, the Customs Service officials often demand that they produce a license, the aggregate value of the truckload having exceeded FCFA 500,000. The increase in the ceiling should help eliminate this problem, but if the individual traders can document their ownership of the goods being shipped, there appears to be no reason why a license should be required. This appears to be a matter to be worked out between the Customs Service and economic operators in a spirit of mutual cooperation.

A. Exports

Exports are Niger's best hope to stimulate economic growth in such a way as to earn foreign exchange, which is sorely needed for purchasing goods not produced in Niger, and for servicing the country's foreign debt. Since Niger possesses comparative advantages in certain products, it can maximize its foreign exchange revenues by concentrating on those export products. This is not to say that production for domestic consumption is not important. Still, it should be the Government of Niger's policy to encourage exports in every way at its disposal.

As commerce begins to move freely, increases in export revenues also produce benefits for the domestic economy, which, as fiscal administration improves, can serve as a broader tax base and thus improve the government's revenue income over the long term.

Officials of the Ministry of Commerce have expressed interest in creating export incentives such as pre-export finance or export insurance. Many industrial nations, as well as some of Niger's African neighbors, use export incentives as a way of giving their producers a competitive edge in international markets. Perhaps such incentives can have a place in Niger's future trade policy; however, it must be borne in mind that they are expensive, often costing more than is gained by increased trade. The Government of Niger might consider sending an official to Paris to consult with COFACE concerning possible technical assistance in creating export insurance programs in Niger; alternatively, it might ask USAID to obtain technical assistance from Eximbank.

At present, however, Niger needs to reduce government expenses rather than add to them. If the Government of Niger wishes to consider providing export incentives at such time as revenue surpluses permit, it should confine their use to industrial products benefitting from protective tariffs. The rationale for providing export subsidies for such products lies in the artificially high prices created behind protective barriers, prices that may render the products noncompetitive in foreign markets. The cost of providing protective barriers for industrial products is discussed further in the section on imports, below.

Niger's exports fall roughly into three categories: minerals, agro-pastoral products, and manufactured goods.

1. Minerals

Mineral exports at present consist almost entirely of uranium, the country's production of cement, gypsum, phosphates, tin, and artisanal gold being largely consumed domestically; since uranium exports are governed by conventions between foreign investors and the Government of Niger (itself an investor in the mines), there is no need to propose revisions to the laws and regulations governing uranium exports.

2. Agro-pastoral Products

Next to uranium, Niger's most important source of foreign exchange and of access to imported goods is its exports of livestock, skins and hides, cowpeas, onions, peanuts, and perhaps cotton. Although in the past Niger has exported some off-season market garden produce (green beans) to European markets, opportunities in this area are largely unexplored; competition from North Africa, the Middle East, Kenya, and Niger's neighbors is intense, but there may be market niches thus far unidentified (e.g., markets other than Paris/Rungis, such as Britain, West Germany, Scandinavia, Eastern Europe, etc.). Since Niger has diplomatic relations with a number of these countries, the government should discuss such possibilities with other governments as part of a continuing effort to identify and exploit foreign markets for its export products.

In the past, particularly during emergencies involving drought, the Government of Niger has imposed export controls in an attempt to assure food sufficiency. During recent droughts (e.g., in 1973, 1974, and 1984), however, Niger has also received substantial amounts of foreign emergency help in the form of food, transport, and technical assistance. There is no reason to believe the international community, having responded to Niger's past appeals for aid, will fail to do so in any future emergency. In recent decades world food production has reached a degree of efficiency that generates surpluses virtually every growing season despite continuing rapid population growth. Baring a global famine or other disaster affecting all mankind, it appears Niger can anticipate adequate food supplies despite adverse seasons locally.

Therefore, economic policy reforms adopted in Niger during recent years have refocused policy goals on food security rather than self-sufficiency. It is not necessary that Niger be able to grow everything its people eat; it suffices that Niger be productive enough to be able to grow locally and purchase abroad enough to feed all the people. Efforts to control the export of livestock during times of drought, in order to preserve breeding stock needed to rebuild the national herd, have proven unsuccessful, for if means exist to feed and water breeding stock, the herder will retain them, and if means do not exist, they will die anyway; better to sell animals at a low price than have them starve or die of thirst.

This being the case, there is no policy necessity for maintaining controls over agro-pastoral product exports. Indeed, the Government of Niger should do everything possible to stimulate such exports, as these are products in which Niger has exploitable comparative advantages; some, such as onions, cowpeas, or goatskins, command premium prices because of their reputation for high quality in regional and even world markets. **Therefore, the Government of Niger should immediately abolish all export license requirements for agro-pastoral products.**

Questions remain with regard to other necessary controls on agro-pastoral exports: certificates of origin, phyto-sanitary measures and their documentation, and measures to assure repatriation of foreign exchange. The first two are very much in the exporter's self interest: a certificate of origin is needed in order to document eligibility for preferential tariff rates in West African, franc zone, and European Community countries, while phyto-sanitary documents are demanded by frontier authorities in all neighboring countries; otherwise the exporter must have his animals revaccinated at extra expense. As for repatriation of foreign exchange (e.g., from Nigeria), the Government of Niger has in effect recognized the futility of attempting to control foreign exchange receipts for agro-pastoral exports, inasmuch as (a) the exporter has no identified buyer in the country of destination, but plans to sell his goods at market to the highest bidder; (b) the terms of the sale will be fixed at market, and cannot therefore be provided to a commercial bank in advance; and (c) in many cases the proceeds of sale are immediately converted into goods for importation into Niger, thus nullifying the foreign exchange effect. **As long as these conditions exist, the Government of Niger should make no effort to repatriate foreign exchange earnings from exports of agro-pastoral products.**

3. Industrial Products

By contrast, the export of industrial products lends itself much more readily to standard international banking procedures, and hence to foreign exchange controls. Here again, however, there appears no necessary reason why an export license is essential. As currently constituted, the export regulations require that the exporter proceed as follows:

a) Preparation of export license forms obtained from the Chamber of Commerce;

b) Domiciliation of the license at an agreed intermediary (a commercial bank);

c) Approval of the export license by the Ministry of Commerce and the Ministry of Finance;

d) Loading of the truck;

e) Customs formalities:
- preparation of customs declaration
- customs inspection
- payment of statistical tax
- customs escort to the border.

One of the prerequisites for approval of a license is the presentation of evidence that arrangements have been made for foreign exchange repatriation (step 2, above). Since this suffices to provide the Ministry of Finance means to track the transaction and verify the repatriation, there appears no reason to require an export license if the documentary credit has been established; properly trained, customs officials (who are, after all, Ministry of Finance officials) can verify a documentary credit at the point of export as readily as an export license. **Therefore, the requirement for export licenses for industrial products should also be abolished.** (Note: the Government of Togo recently abolished all export licenses for industrial products.)

4. Other export procedures

At present there are two other major requirements for documentation of exports: the export declaration at the customs post, and payment of the statistical tax. The export declaration is an essential document, as it serves as the basic information source for exports. Each export declaration should, therefore, be made available to the Ministry of Commerce for analysis and entry into the Ministry's foreign trade data bank. The Ministry of Commerce should have primary responsibility for preparation of all foreign trade statistics. It may wish to consider obtaining donor assistance in creating a national trade data reporting system, data bank, and trade publications.

B. Imports

Over the years the Government of Niger, like many others, has used a variety of means to control the flow of foreign goods into the country. Some of these measures have been reactions to emergency conditions, such as drought; others have sought to protect domestic industries, even those which have proven incapable of paying their own way despite import prohibitions or high tariff walls.

As a matter of policy, the Government of Niger should consider any emergency measure to be a temporary control to be abandoned as soon as other solutions to the problem can be put in place. Emergency measures tend to acquire a life of their own, surviving long after the reasons for their existence have ceased to be important. The government should try to eliminate emergency policies as early as possible. One way to do this is to provide each emergency measure with an expiration date operating automatically unless the responsible government authorities act deliberately to extend it, again temporarily. This assures that the emergency, and the effectiveness of the measures invoked to deal with it, are subject to frequent review. **The government should include such an expiration date and review procedure with any emergency measures affecting external commerce.**

While it is entirely legitimate to protect domestic producers--many countries do so--the Government of Niger should exercise care in choosing those areas of economic activity to be offered protection against import competition. Balancing the need to protect local producers against the need to provide inexpensive goods to consumers is one of the hard policy choices facing officials responsible for foreign trade; such choices need careful definition, clear analysis, and resolute decision, for there is no way to have maximum protection for local producers and at the same time have minimum prices for consumers.

The Government of Niger should bear in mind that foreign competition is a means to provide consumers lower costs for domestic as well as imported goods--it forces domestic producers to improve product quality and production efficiency in order to reduce costs. Domestic producers protected by high tariff barriers have little incentive to improve efficiency, preferring to pass along to consumers, via higher prices, the cost of their inefficiencies.

In the course of the study, economic operators engaged in a variety of activities repeatedly recommended that as part of its reform of external commerce, the Government of Niger should eliminate all import duties on basic foodstuffs; Niger being a poor country, they argued, it is senseless to tax ordinary people's nutritional needs. This is a sound argument, but it conflicts with the policy goal of protecting domestic producers from foreign competition. Which is better, to provide the people inexpensive rice from abroad, or to encourage greater rice production in Niger by making foreign rice more expensive?

Generally, developing countries find it difficult to protect economic activities that derive a large percentage of final product value from inputs not readily available locally. Even highly industrialized countries that lack extensive local natural resources, such as Japan, add most of final product value through local inputs, notably technology and highly skilled labor.

Opportunities to add substantial final product value to imported inputs exist also in Niger, but they tend to be located in the agro-pastoral sector of the economy. Thus, Niger's best targets for economic development lie in livestock and agricultural production and in industries that add value to range and farm products. In some cases, industrial production using local agro-pastoral inputs may also prove competitive, but policy makers should remember that the Nigerien market is too small for economies of scale to be practical in certain industries, and exports of such products might face competition from producers in neighboring countries. Thus, certain types of food processing (e.g., canning of fruits and vegetables and bottling of juices and syrups) might prove unprofitable because economic operators would not be able to market sufficient quantities to achieve competitiveness through economies of scale, even if they tried to export to neighboring countries. The government might want to consider providing tariff protection and export subsidies to such firms. **In any case, the Government of Niger should develop a clear policy toward the use of tariffs to protect domestic producers.**

1. Agro-pastoral Inputs

In the interest of maximizing Niger's comparative advantages in the agro-pastoral sector, the government should eliminate all tariffs and controls on inputs to economic activity in that sector: seeds, fertilizers, insecticides, tools, machines, spare parts, veterinary equipment and supplies, and so forth. If a livestock breeder or herder, or an onion or cowpeas farmer uses it, its import should be duty free. Since almost all agro-pastoral producers are in the informal sector, controls over inputs for domestic versus export production will be impossible to control, but it is in the Government of Niger's interest to stimulate production for domestic consumption as well; therefore, no attempt should be make to distinguish between the two. **It follows that all inputs for agro-pastoral production should be duty free.**

There is a limit to the variety of goods used in the agro-pastoral sector that can be exempted, of course; for example, since gasoline and motor oil are used for all kinds of activities, including private consumption, they should continue to be taxed. Perhaps at some time when administrative machinery and skill permit, economic operators in the agro-pastoral sector should be authorized to receive rebates on taxes paid for such products, in proportion to their export receipts.

2. Industrial Inputs

Most of Niger's industrial enterprises operate in the modern sector, using modern accounting techniques and dealing with foreign suppliers through established importers or through direct imports from abroad. Thus, accurate records of input importations are available. Examples of such imported industrial inputs include tanning chemicals, textile fibers, dyes, fragrances, biscuit flour, oleomargarine, and glucose. **The Government of Niger should collect the import tariffs on inputs to industrial production, granting the enterprise a rebate or drawback on its import taxes in direct proportion to its exports.**

The principle should be the same as that with regard to agro-pastoral products: imports used to generate exports should not be taxed. The mechanism can be different because the formal sector is better able to record its input imports and to justify to the Ministry of Finance the amount of tax that should be rebated at the point of export. The Ministry of Finance may wish to ask donors to provide information about procedures for rebating import taxes to exporters in industrial countries.

3. Import Procedures

At various times the Government of Niger has used import prohibitions, quotas, and tariffs as controls over imports. In turn, it has from time to time used special authorizations to provide exonerations from controls to certain economic operators. Special exonerations lead to special abuses. **Therefore, they should be kept to the absolute minimum; control over them should be held at high levels.** For exonerations to the Code of Foreign Commerce and its regulations, only the Minister of Commerce should have issuing authority, and he should be accountable to higher authority without delay; perhaps he should be required to report any such exoneration within fifteen days to the Prime Minister or the Supreme Military Council.

Prohibitions should be used only to achieve political or social (i.e., non-economic) objectives, for example to prevent the importation of narcotic drugs or toxic wastes. Quotas should be eliminated as a tool of trade control; normally used to protect domestic industries whose output is insufficient to satisfy national needs, **quotas should be replaced by tariffs set high enough to create a clearly distinguishable price differential between the domestic and the imported product.**

For example, instead of requiring rice importers to purchase Nigerien rice in order to qualify for rice import licenses, the Ministry of Finance should set the rice tariff high enough to make consumers think about the difference in price as well as quality, and to calculate whether the imported product is worth the extra expense. The Government of Niger has apparently changed its rice quota policy during 1989, eliminating the requirement that importers buy local rice in order to receive import licenses, but the enabling legislation and regulations have not yet been published in the Journal Officiel. Certain economic operators argue that foreign producers, for example in Pakistan and Thailand, subsidize rice exports, making it difficult for Niger to compete. Given the efficiency of Asian rice producers, this argument appears to be doubtful. The Government of Niger might ask the Governments of Pakistan and Thailand for detailed information about the incentive programs and subsidies they provide rice producers.

Tariff rates are also the most effective way to tax luxury items. If a consumer in Niger wishes to consume luxury items such as alcohol or cigarettes, the privilege of diverting scarce foreign exchange from more productive uses should be given a price tag.

Through the use of tariff rates, variable assessed values, and fixed markups, the government can adjust tax rates on luxury goods with considerable flexibility. Information about such fluctuations, however, must be given wide distribution so that officials such as customs officers will have the latest information on tax rates. Some economists question the utility of internal tax rate adjustments using assessed values and mark-up rates, preferring direct manipulation of tariff rates instead; however, given international constraints on tariff rates (from GATT, CDEAO, etc.), these other means may give fiscal officials greater ability to fine-tune luxury import levels and tax revenues.

Of all the import procedures, licensing is the most important. In the team's study of private sector attitudes toward the foreign trade laws and regulations (MARCELLIN I), licensing received the greatest attention. Interestingly, the study elicited two sets of views, depending upon the kind of activity an economic operator engaged in: large wholesale importers handling limited product lines tended to report that licensing procedures were satisfactory, while smaller importers, or those handling diverse lines of goods, complained about the amount of time, effort, and expense involved in the licensing paperwork. It soon became apparent that this was because each category of import requires a separate license: a large order for cotton cloth, enough to satisfy the importer's requirements for several months, requires one license, while an order for a few boxes of pencils, pads, erasers, and paper clips may involve four licenses.

As a means of aiding the importer of varied merchandise, **the Ministries of Finance and Commerce should issue licenses for general product categories**, such as office supplies or hardware, rather than specific items; perhaps the section headings of the tariff schedule could be used as general categories. Such licenses should be valid for extended periods (perhaps six or twelve months), such that an importer may bring in several shipments under the same license. In this way the importer may need only one license, or at most several licenses, during the course of a business year.

Importers also complained of the amount of time spent awaiting license approvals; the Ministry of Commerce appears to take considerably longer to approve a license application than does the Ministry of Finance. This is puzzling, given that the license is particularly important because country of origin and provenance affect tariff rates and foreign exchange requirements. Country of origin determines which of several international conventions governs the tariff rate applied, and country of provenance--franc zone, European Community, and other foreign countries--has foreign exchange implications. International treaties require that these distinctions remain in effect.

In Niamey, license applications are reviewed at the Ministry of

Commerce, forwarded to the Ministry of Finance for review and approval, and returned to the Ministry of Commerce for formal issuance. **In the interest of improving service to economic operators, this process should be consolidated within a single office, perhaps by co-locating licensing officials of both ministries in a single office** (perhaps at the Chamber of Commerce, where the blank forms and tax stamps are initially obtained). In any case, the license should not have to make a round trip from Commerce to Finance to Commerce; let the applicant retrieve the approved license from the Ministry of Finance, if that is the last stop in the approval process.

Another point made by economic operators concerns the large number of copies of the license application, to each of which must be affixed a tax stamp costing FCFA 1000; one economic operator claimed that if there is even a minor error on the license application a new one must be completed in multiple copies with a new set of tax stamps. If the Government of Niger accepts the recommendation that licenses be broadened to cover general categories of goods and be valid for repeated shipments over an extended period, the number of licenses applied for will surely diminish, reducing demands upon the ministries' manpower, but also reducing stamp revenues. Since the latter are already small, they are probably not worth the nuisance to economic operators, and might well be eliminated entirely.

The number of copies of the license, now totaling between seven and nine (depending upon foreign exchange considerations), seems excessive. In an age where ministerial offices have photocopy machines, it seems superfluous to demand so many copies. **The Government of Niger should reduce the number of copies of the license to four:**

Original (kept by the economic operator);
Ministry of Commerce copy;
Ministry of Finance copy (Directorate of External Finance);
Customs post copy.

All other copies--that is, those circulated within ministries--can be photocopies.

Some economic operators in Niamey complain about the issue of licenses at the departmental level outside the capital, citing abuses of licensing procedures by ignorant officials and unscrupulous economic operators. From the perspective of economic operators in Gaya, Konni, Maradi, Zinder, and smaller towns in between, who trade with Niger's neighbors (and with the rest of the world via Lome and Cotonou), reinstatement of requirements to obtain licenses in Niamey would be onerous. The government should do everything in its power to encourage and facilitate commerce rather than impede its progress. Instead, there should be heavy emphasis on providing current business information to economic operators, and on training officials outside Niamey on the reasons for each step in the licensing procedure, as well as the methods for facilitating foreign trade correctly and impartially.

4. Import Processing at the Customs Service Frontier Post

As in the case of exports, the Customs Service post plays a key role in the processing of imports. Customs officers are the government's chief protectors against importation of prohibited or controlled items, detection of fraud in the import of legal goods, and collectors of tariffs and fees. Among the monies collected are the following:

- revenue tariffs (including those on luxury goods);
- protective tariffs;
- value added tax;
- tax in lieu of business profits tax (BIC);
- statistical tax.

Revenue tariffs are commonly divided into customs taxes and revenue taxes, a device allowing governments to reduce their nominal tariff rates to meet requirements of international agreements such as GATT and the Lome conventions, while keeping real rates high for revenue purposes. The distinction subverts the intent of these international treaties, but the practice is certainly not confined to Niger, and correcting it is beyond the scope of the present study. Protective tariffs are discussed elsewhere in this paper. In countries employing value added tax, it is standard procedure to collect VAT on imports at the frontier. The tax in lieu of BIC is peculiar to Niger, and is discussed in more detail in the section on transit goods, immediately below. This report recommends elsewhere the abolishment or rapid phase-out of the three percent statistical tax, depending upon the importance of the revenues realized to the national budget.

C. Transit

Transit goods occupy an ambivalent position in Niger's foreign trade, being manufactured goods, often of non-African origin, that enter Niger for the express purpose of re-export to another country, usually Nigeria. Since Nigeria has seaports and well established transport links with many nations, goods that transit Niger on the way to Nigeria are often those prohibited import by the Nigerian authorities; thus, virtually all transit trade with Nigeria is illegal from the standpoint of Nigeria, although legal so far as Niger is concerned. Recently the transit business has begun to produce a side effect--transit goods smuggled into Nigeria, mostly British cigarettes, now reappear in Niger, smuggled back into the country untaxed by the Customs Service.

Whenever such transit goods reach their final destination, the law has been violated somewhere; however, the Government of Niger takes no action to prevent the transit trade. Instead it is an active partner, allowing transit traders to bring goods in bond into Customs Service warehouses, whence they are withdrawn, loaded onto Nigerian trucks, and depart towards the border. Nigerien customs officials profess no interest in their destination, so long as the goods actually leave Niger.

Presumably, exactly the same reasoning prevails on the Nigerian side of the border with respect to goods that the Government of Niger would prefer to keep out of the country. In essence, the each of the two governments is part of the fraudulent export system that evades taxes and violates the economic policies of the other. Since application is policy, it is the policy of the Government of Niger that transit trade in cigarettes, flour, and certain other goods toward Nigeria is more important that protection of domestic products such as rice, cotton cloth, cement, foam mattresses, plastic shoes, metal bowls and containers, paint, soap, perfume, matches, biscuits, and peanut oil, each of which is undersold by products flooding into Niger from Nigeria at very low prices because of the devalued naira. This trade in inexpensive goods with Nigeria benefits the small consumer--the peasant or villager--as well as the wealthier Nigeriens of the towns and cities. Whether deliberately or not, and despite profession to the contrary, the Government of Niger has adopted the policy of providing inexpensive imported consumer products at the price of ruining its domestic industries. **The Government of Niger should re-examine national policy toward transit of products imported illegally from Niger by traders in neighboring countries.**

During 1989 the transit trade has suffered a serious setback, perhaps one not intended by the government, as the result of a recently imposed three percent tax on all imports, including transit goods. The new tax is deductible against payments of the BIC, the tax on business profits, and was created at the request of the formal sector importers (who keep financial records and pay the BIC) as a means of forcing their informal sector competitors to share the tax burden. Informal sector economic operators (who keep no financial records and do not pay the BIC) have nothing against which to deduct the three percent import tax, and thus forfeit that amount to the government.

According to one source, a bank official at Maradi, Nigerien transit traders are forbidden to add the three percent tax to their sales margins, although this is a dubious assertion, given that the purchaser presumably is a trader in Nigeria who neither knows nor cares what the Government of Niger's tax policies may be.

In any case, Nigerien transit traders say the fallen naira has made export sales into Nigeria precarious under current conditions, their profit margins are slim enough already, and a three percent tax on the full value of the shipment (CIF plus VAT) renders the transit business, largely in cigarettes, unprofitable. Goods already ordered before the tax was imposed continue to be exported (the cost of warehousing alone means they goods must be moved as quickly as possible), but transit traders are not placing new orders.

If the Nigerien authorities wish to protect the transit trade, the three percent tax has come at a bad time, naira devaluations having made export trade into Nigeria especially difficult; an appropriate remedy would be to suspend the three percent import tax on transit goods, or at least to lower it substantially. The economic operators have met with officials of the Ministries of Commerce and Finance, and have appealed for a reduction of the tax to one percent.

It appears this request was presented by a delegation of Nigerien informal sector importers at a meeting in Niamey early in March 1989. While the transit traders may have a sound economic argument, the informal sector importers who deal in Nigerian goods do not: the same naira devaluations have sharply reduced the cost of imports from Nigeria, stimulating the market and increasing sales volume or profit margins, probably both.

D. General Considerations

The administration of foreign trade does not exist in a vacuum: domestic commerce operates alongside the foreign trade sector, and the two interact. This is especially true of commerce along Niger's southern borders.

It has been argued that Niger has too many importers and exporters, that foreign trade requires special skills as well as sufficient financial means to undertake its risks and responsibilities. This opinion reflects the attitude that a commerce restricted to a manageable number of specialists is easier to monitor and control, and that the proliferation in recent years of small, independent operators in the foreign trade sector, the result of liberalization, has somehow broken down the orderly processes of commerce. The implication is that substantial constraints on economic activity are in Niger's national interests.

The economic liberal responds that commerce organizes itself, but only to the extent that organization serves the interests of economic operators. Moreover, a certain amount of apparent disorder masks the operation of underlying economic forces that automatically allocate resources in efficient ways.

1. Restraint of External Commerce

It is beyond the scope of this study to comment on the organization or control of domestic commerce, except to emphasize once again that control inhibits economic development. However, the existing organization of commerce in Niger, including external commerce, is very thorough. Nigerien economic operators are required to obtain a variety of permits to engage in economic activities, including external commerce. As a matter of policy, there should be no such requirements specific to external commerce. That is, **the Government of Niger should abolish the requirement that economic operators obtain professional certification (i.e., carte profes-sionelle) or any similar authorization to engage in import or export business.**

At present, in order to conduct business as an importer or exporter, the economic operator must fulfill several requirements (see MARCELLIN II, pp. 4-5):

- receive prior authorization;
- if a foreigner, receive a specific authorization for the fiscal year;
- be inscribed in the Chamber of Commerce registry;
- have paid the special tax (patente) for the expected volume of foreign trade;
- have paid the current year membership fee of the Chamber of Commerce;
- have paid the membership fee of the Nigerien Transport Users' Center (essentially a road use tax).

Documentary evidence is verified by the Directorate of Foreign Commerce at the Ministry of Commerce in Niamey, although the prior authorization is provided at the departmental level by the Regional Development Councils, local advisors to the departmental heads. In practice, the Ministry's licensing service requires only the last three items, which are annual requirements paid at the beginning of the fiscal year.

The entire procedure appears to be a device for restraining trade; the prior authorization is an opportunity for favoritism, for officials to exercise their arbitrary authority to choose which economic operators shall be allowed to trade, and which shall not. Granted, dishonest economic operators must be identified and the people protected against their depredations; however, this is a cumbersome way to go about it.

With reference to foreigners, were those engaged in external commerce simply required to register with the Ministry of Commerce, rather than receive repeated authorizations, this would provide sufficient control.

If the Chamber of Commerce were a self-policing entity representing economic operators and also an information service to consumers as well as to economic operators, this cumbersome system would be unnecessary. Further, were the Chamber of Commerce to be active in furthering economic operators interests rather than the government's means of exercising control, membership would not have to be compulsory: operators would pay their membership fees as a matter of choice. The Ministry of Commerce should explore ways to reform the Chamber of Commerce to make it more representative of economic operator's interests and less a means of government intervention in the economy.

The patente is a tax on foreign trade as an occupation, and thus a disincentive in an activity that should instead receive the government's support. The Ministry of Commerce and the Ministry of Finance should determine the amount of revenue collected under the system of patentes, and seek ways to replace that revenue through taxes on domestic economic activity. It is worth noting, for example, that domestic commerce is also organized and controlled through a system of patentes issued to wholesalers, distributors, and retailers. As part of the reform of the entire Code of Commerce, this system should be redesigned to include more small traders who now escape taxation. It should not, however, be allowed to continue as a mechanism for restraint of trade; one way to intervene here would be to allow any economic operator who pays the proper patente to engage in that type of commerce at the volume level for which he has paid the fee. Individual traders as well as formal sector enterprises, by paying the appropriate patente, will thus be entitled to engage in several levels of commerce. The government will receive needed revenues, but access to economic activity will be relatively free.

2. Customs Operations at the Frontier

The Customs Service is the key organization in the administration of external commerce, for it is at the frontier that the laws and regulations receive application in specific instances. Customs should act as the government's shield against prohibited goods, and its collector of foreign trade revenues and foreign trade statistics. Prohibited goods should be denied entry and, in cases involving criminal activity, including fraud, they should be subject to seizure; in the latter instance, Customs Service officers should hand over suspected criminals to the police (as they do now, presumably).

For legal transactions, the Customs Service should act as a true service to economic operators, helping to assure that customs declarations are correctly filled out: goods should be identified according to international customs classifications, country of origin and provenance should be correctly identified, volumes and values accurately assessed, and tariffs impartially collected. Customs officers should help economic operators prepare and present correct declarations, concentrating on obtaining accurate information rather than penalties for honest errors. Since the customs declaration (for exports as well as imports) will serve as the Ministry of Commerce's chief sources of statistical data, every care should be exercised to assure that each document is complete and accurate.

These activities already fall within Customs Service purview. In the future, however, while the Customs Service should continue to detect fraud and prevent illegal transactions, it should not have final authority on penalties. Refusals to allow goods to pass, seizures of contraband, penalties for infractions, and assessments of tariffs should all be subject to appeal to higher authority.

E. Conclusions

The measures described above respond to the terms of reference prepared by the Ministry of Commerce: they recommend specific revisions to the laws and regulations governing foreign trade transactions. Most of them have to do with import or export licensing procedures, which are the means through which the Ministry of Commerce exercises control over the flow of goods into and out of Niger. In order to simplify procedures and lighten the burden of control on economic operators, the Government of Niger can best begin by eliminating as many licensing requirements as possible. Implementation of these policies should produce immediate results for economic operators.

However, new laws and regulations will be virtually useless unless participants, officials and economic operators alike, understand the policies behind the changes and unless application of foreign trade laws and regulations is revised and improved as part of the reform process. Thus, the measures to be taken after a new Code of External Commerce has been put into operation will be, in the long run, even more important than the legislative/regulatory reforms. Specific recommendations for future action are discussed in the next section.

PART THREE

FUTURE ACTION AND DONOR SUPPORT

By taking the initiative to reform its own laws and regulations governing external commerce, the Government of Niger has taken the first step toward a comprehensive reform of foreign trade policy and procedures. In order to build upon this progress, both the Ministry of Commerce--and the donors, if the Government of Niger chooses to request the latter's assistance--should temper optimism with realism. Excessive optimism will produce grand schemes with little chance for success, while excessive emphasis on Niger's economic constraints might weaken resolve to overcome difficult obstacles. Perhaps the best approach is to plan to achieve great progress, yet proceed in easy stages, starting with activities which cost relatively little to implement or which actually conserve resources. The recommendations outlined in Part Three are intended conform to this approach.

The key areas for follow-up are commercial policy decision making, information, and training. Information and training must be paramount, widespread, continuous, and service-oriented.

A. New Roles for the Ministry of Commerce

With the relaxation of strict controls over external commerce, opportunities appear for redefining the purpose and objectives of the Ministry of Commerce. The Ministry of Commerce should be reorganized to refocus its foreign trade responsibilities away from control and punishment of infraction. For domestic as well as external commerce, the focus should be redirected toward (a) defining commercial policy choices and reaching clear policy decisions, (b) providing justice for economic operators, and (c) providing information services to economic operators.

The Ministry should become the national center of knowledge about trade issues, ideas about trade promotion, training for officials involved in external commerce (including especially those based outside Niamey), and services to economic operators interested in expanding their foreign trade activities. The Ministry already has many of these responsibilities, but its resources to meet them are limited and ineffectual; in the past, its attention has been directed elsewhere. There should be a major effort to rebuild and retrain the Ministry's external commerce staff. Even the name, "Directorate of External Commerce," is inappropriate--it should be the "Directorate of External Commercial Services" in fact, as well as name, with the emphasis on service to economic operators rather than on service to the state. In each of the areas where training will be essential, the Government of Niger may wish to explore technical assistance from donors.

1. Policy Decision Making

The Ministry of Commerce should retain and reemphasize its responsibilities concerning commercial policy. This will involve seizing the initiative, confronting difficult issues, and developing programs and procedures that provide solutions. Among the hard policy choices facing the Government of Niger, choices on which the Ministry of Commerce should take strong positions, are the following:

- Economic growth versus government revenues. The Ministry of Commerce should work with the Ministries of Finance and Plan to determine the balance point between stimulating commerce and improving revenue collection. As the representative of economic operators within the cabinet, the Minister of Commerce should seek, in a responsible fashion, to promote commercial growth wherever possible, on the grounds that a vibrant economy will provide a larger tax base and therefore higher revenues in the long run.

- Low prices versus protection of domestic producers. The Ministry should define the government's policy toward protecting Niger's productive enterprises against foreign competition. Since protective measures (which should be restricted to tariffs) inherently raise consumer prices, the Ministry must take a stand on how much consumers will be forced to pay in order to support protected domestic production.

- Stimulation of external commerce versus control over the repatriation of foreign exchange: Exports are good for the Nigerien economy, but much of Niger's best export potential lies in the informal, agro-pastoral sector, where controls over repatriation of sales revenues is very difficult to control. Although the Ministry of Finance and the Central Bank are likely to support interventions in order to recover foreign exchange, the Ministry of Commerce must take policy positions that support exporters and the growth of commerce.

- Informal versus formal sector. The government should build alliances with both. The distinction between these two sectors is essentially one of maintaining written financial records and paying taxes. While the informal sector should be pushed hard to adopt modern financial accounting methods and to pay its just share of taxes, the formal sector should be released as rapidly as possible from the onerous controls and penalties that sap its productive efficiency. Economic operators in both sectors can make profits; the Ministry of Commerce should be an active supporter of allowing economic operators to keep as much of their profits as possible, both for reinvestment and as an encouragement to others to undertake new economic activities.

2. Promotion of Economic Justice

In order to help stimulate productive economic activity, the Government of Niger should guarantee economic operators protection against unfair manipulation of markets by other economic operators, but also it should guarantee impartial administration of all measures governing commerce. In particular, it should give economic operators a chance to be heard concerning policy decisions and regulation of commercial activities of all kinds, including foreign trade. The points made in Part Three of this paper with regard to advance notice of changes, opportunity to comment, redress of objections, and appeal protection against arbitrary penalties through appeal procedures are all pertinent to this point.

In addition, however, the Government of Niger has planned a Bill of Rights for economic operators, a document setting forth the government's commitment to economic justice. Rights should always be tempered by responsibilities, however; if the government provides such a Bill of Rights, it should also call upon economic operators to develop a Code of Ethical Conduct governing their own responsibilities to one another, to the state, and to the consuming public. Representatives of the economic operators, such as the syndicats of traders and the formal sector industries should take the lead in preparing the Code of Ethical Conduct. These organizations should take care to see that the Code receives wide dissemination among affected economic operators, and that its principles become the foundation of commercial relationships.

3. Commercial Information Services

The need for accurate commercial information is so acute in Niger that virtually any initiatives by the Ministry of Commerce should have some salutary effect.

When the new Code of External Commerce takes effect, the government should mount a special effort to inform all economic operators and--equally important--all officials concerned. It should distribute brochures, posters, newspaper announcements, and news broadcasts, followed by open meetings in all major commercial centers to explain the revised Code's purposes and the expected economic results, discuss in detail the changes in government activities and official responsibilities, and publicize the anticipated benefits to economic operators. These meetings should give economic operators the opportunity to express their views, and the government should be prepared to accept suggestions that will help the new laws and regulations operate smoothly. Perhaps the Government of Niger should approach the donors to provide technical assistance and funding of information efforts attending the introduction of the reformed Code.

At present, government decisions are publicized by brief announcements in the Sahel, occasionally supplemented by news reports giving details. Certainly the Sahel could contain a great deal more economic and business news; perhaps there should be a business section of the newspaper carrying information about economic matters. This should include the following:

a) The latest government economic decisions, including those affecting external commerce and taxes; information should cover the need for and intended effects of the decision, the activities most likely to be affected, the date the decision will take effect, and ways for economic operators to express their opinions about it;

b) a review of the latest foreign prices for major exports (livestock, cowpeas, onions, etc.) and consumer products, including imports (grains, cooking oil, sugar, wheat flour, etc.);

c) weather conditions and the outlook for crops;

d) editorials about various aspects of the economy.

The dearth of published commercial news may be an entrepreneurial opportunity as well: since the information is readily available in Niger but not centralized, an energetic economic operator could collect and distribute it via the postal service to paying subscribers in the form of a newsletter. The information would be valuable to economic operators, who would therefore pay a premium to receive it with minimum delay.

Since the Sahel, the Chamber of Commerce Bulletin, and other printed news reach only a minority of economic operators, the Ministry of Commerce should have much greater recourse to radio and television for broadcasting economic news. Broadcasting time on the official radio and television is said to be very expensive, and any government agency wishing to provide public information must pay high rates. The Ministry should investigate the true production and broadcasting costs at the Nigerien Radio and Television Office (ORTN), with a view toward creating cost-effective information programming aimed at economic operators. Perhaps the Chamber of Commerce and the organizations of economic operators should contribute some of the costs, as the broadcasts will serve their interests.

There should be at least one hour each week of economic news in each major national language, in addition to French. These broadcasts should contain the economic and business information described above, as well as editorials emphasizing the services to economic operators provided by various government ministries and offices, the need for government and the private sector to cooperate, and the responsibilities of economic operators to observe the laws and regulations and to support the state through payment of their just share of taxes. The broadcasts can also serve to alert government officials in the field to the latest policies, proposed and implemented laws and regulations, and related procedures.

B. The Need for Training

Along with an increase in information for economic operators, there must be a major effort to improve the performance of government officials. Niger's public servants are the nation's elite, the product of the best and most advanced schooling available, but education cannot stop at the school door or the university gates. Officials must be kept informed of changes in policy, regulation, and application; therefore, training must continue throughout the official's career. This is especially important for officials who serve at posts distant from Niamey, where the lines of communication are long and the sense of belonging to and being supported by an elite service needs frequent reinforcement.

The key officials in external commerce are those of the Ministries of Commerce and Finance (especially the Customs Service), but they include those at the departmental and prefectural levels who have power to authorize or deny opportunities to local economic operators. Many of the complaints heard in the course of this study had to do with ignorance on the part of officials, rather than faults in the rules and regulations. Much of the dissatisfaction stems from arbitrary treatment, especially discrimination and favoritism, on the part of local officials. This stems in part from traditional norms of administrative decision making--one owes allegiance or has obligations to some people, but not to others. Decision making should continue to be decentralized to field officials, but training should be conducted in such a way as to stress impartial application of the laws and regulations. Continuing education and training are the only solution to these problems.

The Ministries of Commerce and Finance should establish annual or semi-annual training courses, lasting perhaps one to three days, to be conducted by special instructors--experienced officials of the services concerned--who travel the country visiting officials at their posts. These courses should bring field workers up to date on changes in administration (purposes, expected results, and procedures), but also they should reinforce the official's commitment to his service and understanding of the ethics and principles governing his branch of the public service. These training sessions should be for the <u>benefit</u> of field officials, <u>not</u> opportunities to inspect and find fault. Probably they will be of considerable benefit to the ministries in Niamey as well: the instructors will get firsthand experience of the problems officials have in the field, and can carry back to Niamey suggestions for improving procedures.

Inspection procedures should be separate, and should provide opportunities to reward exceptional loyalty and service as well as to identify needs for training and to unmask official misconduct. Such inspections should routinely include rewards for good performance as well as penalties to misconduct--a performance incentive program should be instituted for all officials (including the Customs Service) involved in foreign trade services to economic operators.

The evolution of Niger's external commerce will require adjustments to policy in future years. The Ministry of Commerce needs career officials with a sound grounding in economics and business administration. The Ministry should explore with donors the possibility of training programs or temporary training assignments at foreign universities for qualified officials at senior or middle levels, selecting some for appropriate degree programs.

C. Other Possible Actions

Finally, there remain several miscellaneous actions that may serve, directly or indirectly, to support economic policy reform in the area of external commerce. They do not concern urgent needs, but should be borne in mind for the future.

1. Study Effects on Other Countries

One government official at Maradi wisely pointed out that any changes in the administration of external commerce by one government produces immediate effects, sometimes political, always economic, in neighboring countries. Certainly this has been true of the major structural reforms undertaken in Nigeria during recent years, but it also applies to minor changes in tariffs and fees, and even to changes in procedure at the frontier posts. Prior to implementing the new Code of External Commerce, the Government of Niger should discuss it with representatives of affected countries, so that its provisions do not come as a surprise.

Likewise, the Ministry should study Niger-Nigeria trade relations from both sides of the border simultaneously, in order to better understand relationships between economic operators and between markets.

2. Coordinate Donor Policies

This is an issue that the Ministry should take up with donors. When World Bank officials deliberated the structural adjustment program for Nigeria at the executive level in Washington, did anyone speak for Niger's interests? To this observer, it appears that fundamental economic forces may be set in motion in one country through donor intervention without adequate consideration being given to their effects on other nations in equal or perhaps greater economic difficulties. Likewise, donors operating in the same country may advocate economic policy changes without regard to each other's assumptions and objectives. The lack of communication on economic matters is not solely a Government of Niger problem.

3. Study Duty Free Zones

Several officials and economic operators raised the question of creating duty free zones along Niger's southern borders. The establishment of duty free ports and zones in other African countries has proven difficult to achieve, but this does not rule out such a possibility for Niger. At present, there is not enough information to make any judgment; at some point the Ministry of Commerce may wish to investigate the subject further.

4. Study Railway Link With Nigeria

While not now economically feasible (nor administratively realistic, given the condition of Nigeria Railways), the future usefulness of completing the rail link between Nigeria and Niger may be worth study. The distance is comparatively short (about 100 kilometers in a straight line from Kaura Namoda to Maradi, but actually greater because of terrain difficulties), and an efficiently run Nigeria Railways might provide considerable savings on freight costs from the coast, always an important consideration for Niger's external commerce.

APPENDICES

REPUBLIQUE DU NIGER
MINISTERE DU COMMERCE DE L'INDUSTRIE
ET DES TRANSPORTS

DIRECTION DU COMMERCE EXTERIEUR

TERMES DE REFERENCE DE L'ETUDE SUR LA REGLEMENTATION DU COMMERCE EXTERIEUR

PLAN DE L'ETUDE

- INTRODUCTION
- OBJECTIFS DE L'ETUDE
- CHAMPS D'APPLICATION DE L'ETUDE
- METHODOLOGIE DE L'ETUDE

INTRODUCTION

Le Niger, à l'instar de nombreaux Pays, en voie de développement, afin de satisfaire les besoins de sa population et en règle générale de son économie, se tourne vers l'extérieur pour pallier les insuffisances d'une industrie naissante ou tout simplement, pour marquer son adhésion au principe de la division internationale du traivail.

Toutefois pour assurer une saine intervention des parties concernées, des règles précises ont été édictées. Ainsi, dès 1968 des Decrets, arrêtés et circulaires circonscrivaient la règlementation du Commerce Extérieur et des changes en République du Niger.

D'une manière générale, cette règlementation définissait les conditions d'importation des marchandises. Par ailleurs, elle faisait une distinction entre différentes zones géographiques en fonction essentiellement ces monnaies en cours.

A cette règle générale s'ajoutent des règles spécifiques, notamment sur le commerce de l'or, sur l'importation des substances explosives, sur l'impotation de certains produits de grande consommation, et de nombreaux autres monopoles (monopole d'exportation de niébé, cuirs et peaux, gomme arabique, etc....).

Au fil des ans, la règlementation du Commerce Extérieur et des changes a subi des modifications pour répondre aux contingences de l'heure (décentralisation de la délivrance de titres d'importation et d'exportation,

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suppression du monopole de la Copro-Niger, de la SNCP, dispense de titres pour certaines importations en provenance du Nigéria à hauteur de 500 000 Francs CFA, prohibitation d'importation de matelas mousses, de piles R 20, de poudre détergentes, assouplissemert de la notion de pays étrangers pour le Nigéria et le Ghana, etc...).

Ainsi, l'on se retrouve à ce jour avec une multitude de textes régissant le domaine, et donc pas facile à appréhender, surtout dans un Pays comme le nôtre où, la majeure partie des intervenants est analphabètes. Qui plus est, ces textes, malgré le souci d'adaptation aux exigences du moment, ne semblent non seulement pas toujours y répondre mais aussi prêchent par omission.

C'est donc pour combler ces imperfections, avec pour objectif de mettre à disposition des opérateurs une règlementation limpide qui tienne compte des préoccupations aussi bien de ces derniers que de l'économie nigérienne en général, qu'une étude sur la règlementation du commerce extérieur nous paraît utile.

I. OBJECTIFS DE L'ETUDE

Soucieux de mettre à la disposition des opérateurs économiques, une règlementation cohérente et limpide, le Gouvernement vise par cette étude la refonte et l'daptation de l'actuell règlementation du commerce extérier. A cet effet, l'étude s'efforcera de faire le point sur la réglementation et d'en proposer des alternatives. Elle contiendra plus particulièrement:

1. Un relevé exhaustif des mesures du commerce extérieur édictées de l'indépendance à ce jour et, de tous autres textes antérieurs en vigueur, ainsi que des traités, conventions et accords bilatéraux et multilatéraux;

2. Une analyse critique de la règlementation actuelle du commerce extérieur;

3. Une esquisse d'une nouvelle règlementation, tenant compte de notre environnement économique et social.

II. CHAMPS D'APPLCATION DE L'ETUDE

1°) Relevé exhaustif des mesures du commerce extérieur

De l'indépendance à ce jour, plusieurs mesures de commerce extérieur ont été prises à l'effet, soit de répondre à des préoccupations politiques nouvelles, soit tout simplement de délimiter les différents champs d'interbentions. Ces

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mesures parcellaires, répondant quelque fois à des situations ponctuelles, quoiqu'ayant eu l'effeet de règler des questions précises, n'ont pas toujours été d'un suivi aisé et, bien souvant plus comment se comporter. Dans certaines cas d'ailleurs, certaines mesures n'ont tout bonnement pas été rapportés malgré leur caducité.

D'où la nécessité de procèder à ce relevé à travers lequel seront cernées les différentes mesures weet préciser leur validité ou non.

Une telle démarche permettra de s'imprégner de l'évolution ce la règlementation et rettre à nu les objectifs successifs qui sont imprimés. Elle aura également l'avantage de favoriser la mise en confirmité juridique car, elle sera l'occasion de rapporter des textes obsolétes.

Il sera ainsi possible, pour tout un chacun, d'apprécier las efforts jusqu'alors fournis mais surtout, d'avoir une vue réelle de la règlementation du commerce extérieur et de l'analyser en toute objectivité, en tenant compte du contexte socio-économique propre au Pays.

2°) <u>Analyse de la règlementation</u>

Il s'agira ici, après s'être longuement imprègné des différents textes ayant régi et régissant la matière, de mesurer la portée des textes en vigueur par rapport aux objectifs assignés, at au contexte d'application tant national, sous-régional que régional, voire international.

Cette analyse devra notamment englober:

a) La notion de Pays étrangers et l'appartenance du Miger étrangers et l'appartenance du Niger à certaines organisations économiques;
b) La protection des industries nationales;
c) Les obligations des pays de la zonne franc;
d) Le comportement des monnaies nationales et attitudes à leur égard;
e) Règlementations particulières (or, substances explosives, matériels militaires, forêts et faures, propriétés intellectuelles, etc...);
f) Causes d'inapplicabilité des titres;
g) Duré de validité;
h) Dispenses de titres, aussi tien à l'importation qu'a l'exportation;
i) Importation et vente sur marché extérieur;
j) Titres applicables suivent ronnaie de paiement;
l) Décentralisation de la délivrance des titres du commerce extérier (importation, exportation, procédure, compétences régions et administrations centrales);
m) Degré d'application des Accords bilatéraux, sous-régionaux, régionaux et internationaux, etc...

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n) Commerce de transit (champs d'application, domaine d'intervention Ministère des Finances et Ministère chargé du Commerce).

A la lumière des differentes conclusions, une nouvelle approche de la règlementation nigérienne du commerce extérieur devra être proposée. Celle-ci devra également faire ressortir les implications d'ordre structurel et fonctionnel des nouvelles procédures.

3°) Esquisse d'une nouvelle règlementation

L'analyse devra permettre d'aboutir à des propositions concrêtes quant à la règlementation du commerce extérier la mieux adaptée, c'est à dire permettant à la fois de préserver les intérêts nationaux et de faciliter toutes actions allant dans ce sans.

III. METHODOLOGIE DE L'ETUDE

En vue d'aateindre les objectifs assignés par l'étude, contact devra être pris avec les principaux Opérateurs Economiques, le Chambre de Commerce, la Direction des Finances Extérieures, la Direction Générale des Douanes, les Autorités régionales, ainsi la perspective de proposer, une esquisse de règlementation prenant en compte nos réalités socioéconomiques.

L'étude sera conduite sur une durée de trois (3) mois; à terme un rapport provisoire sera déposé pour observations à la partie nigérienne.

La partie nigérienne disposera de 45 jours pour communiquer ses différentes remarques, en vue de la récaction du rapport définitif, qui devra être remis dans un délai d'un mois.

APPENDIX B

Recommendations to the Government of Niger

Provide specific laws and regulations governing dangerous imports (military equipment, weapons, narcotic drugs, toxic chemicals, toxic wastes, etc.).

Provide specific laws and regulations governing export of endangered wildlife and wildlife products, archeological or artistic treasures, and precious metals.

Abolish or phase out the statistical tax on imports and exports.

Investigate ways to use export finance or export insurance.

Eliminate all export license requirements for agro-pastoral products.

Formalize the exemption of agro-pastoral exports from foreign exchange repatriation requirements.

Eliminate all export license requirements for industrial products.

Develop simplified procedures for assuring repatriation of foreign exchange earned by industrial exports.

Establish expiration dates for all temporary measures affecting external commerce, as well as review procedures for extending expiration dates.

Eliminate all import tariffs, quotas, or prohibitions concerning imports of inputs to the agro-pastoral sector.

Develop a system to rebate import taxes and fees on industrial sector inputs used in the production of exports.

Reduce and restrict the exoneration of economic operators from controls over external commerce.

Use product prohibitions only to achieve political or social, not economic, objectives.

Use only tariff rates to achieve economic objectives.

Issue import licenses for broad product categories (perhaps section headings of the tariff schedule) and valid for extended periods to reduce the number of licenses require of importers.

Consolidate the processing of import license applications in order to eliminate excessive delays in issuing licenses.

Consider eliminating the tax stamp requirements for import licenses.

Reduce the number of copies of the license form.

Maintain the decentralization of licensing procedures at the department and prefectural levels.

Suspend or reduce the three percent tax in lieu of BIC on transit goods.

Help economic operators in the hides and skins business to survive in the face of market distortions resulting from the naira devaluation and Nigerian purchases of hides and skins as a capital flight process whose purpose is to obtain hard currencies in Europe.

Eliminate the carte professionelle requirements for importers and exporters.

Explore ways to make the Chamber of Commerce more representative of economic operators' interests.

Liberalize the patente system by allowing economic operators to pay more than one patente and thereby operate more than one business specialty.

Emphasize service to economic operators in training Customs Service officials.

Provide an appeal process for Customs Service decisions, including penalties.

Redefine the roles of the Ministry of Commerce, concentrating on
- (a) policy decision making;
- (b) justice for economic operators;
- (c) information services for economic operators.

Rename the "Directorate of External Commerce" as the "Directorate of External Commercial Services."

Call upon economic operators to create a Code of Ethics.

Inaugurate the new Code of External Commerce with a major information campaign to reach economic operators and officials in all parts of Niger, using print, radio, and television.

Hold public meetings with economic operators to discuss the new Code of External Commerce, and accept those suggestions that appear to be useful.

Increase economic and business coverage by the national print and electronic media, using national languages as well as French.

Provide annual or semi-annual training courses to all officials involved in external commerce, assigning experienced specialists to teach short courses at major towns throughout Niger.

Arrange for advanced training in economics and business administration for qualified officials of the Ministry of Commerce.

Discuss the new Code of External Commerce with governments of neighboring countries prior to implementing it.

Persuade multilateral donors to consider Niger's interests when developing structural adjustment programs for neighboring countries.

Investigate the possibility of establishing free trade zones in Niger.

Investigate the possibility of completing a rail link between Niger and Nigeria.