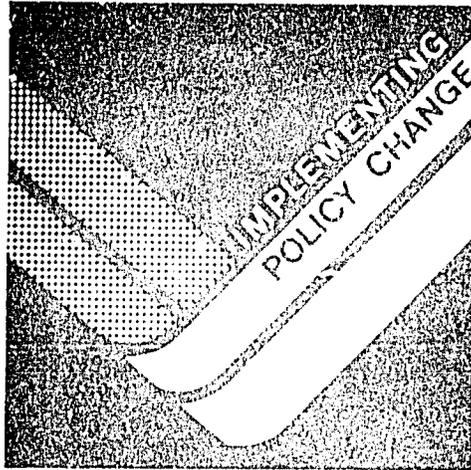


---

# THE IMPACT OF LEGISLATION AND REGULATIONS ON PRIVATE SECTOR TRADE AND INVESTMENT

---

July 1993



Contractor Team:

**Management Systems International**  
(lead contractor)

**Abt Associates Inc.**

**Development Alternatives, Inc.**

United States Agency for International Development  
Bureau for Research & Development  
Project #936-5451

PN-ABQ-633

USAID

Implementing Policy Change (IPC)

REPORT:

**THE IMPACT OF LEGISLATION AND REGULATIONS ON  
PRIVATE SECTOR TRADE AND INVESTMENT**

Identification and Analysis of Trade Legislation  
of the Ministry of Commerce and Industry

by Carlos Atafde Garcia, Consultant,  
Management Systems International

Bissau, July 2, 1993

## ACRONYMS

USAID - United States Agency for International Development  
IPC - Implementing Policy Change  
DGC - Director General of Commerce  
MCI - Minister of Commerce and Industry  
MSI - Management Systems International  
C&I - Commerce and Investment  
INEP - National Institute of Studies and Research  
CEDEAO - Economic Community of West African States  
CCIA - Chamber of Commerce, Industry and Agriculture  
DCI - Director General of Industry  
ISO - International Standard Organization  
CCI - Center of International Commerce

## **CONSULTING TEAM**

This activity was undertaken by a group from the Ministry of Commerce and Industry, comprised of:

Dr. Munira Jauad Ribeiro, Director General of External Commerce  
Dr. Abdu Mane, Legal Assistant to the Ministry of Commerce and Industry  
Dr. Mamado Embalo, Director of the Planning and Studies Cabinet

and the MSI consultant, Carlos Ataide Garcia.

The following week the group was accompanied by the director of the project, Ambassador John Blacken.

## TABLE OF CONTENTS

	<b>Page</b>
1. EXECUTIVE SUMMARY	1
2. BACKGROUND	2
3. GOALS	3
4. THE WORK TEAM AND THE WORK PLAN	3
5. PLACE AND DATES	4
6. ENTITIES CONTACTED	4
7. DOCUMENTS CONSULTED	6
8. COMMERCIAL ACTIVITY ANALYSIS	6
8.1 Ministry of Commerce and Industry	6
8.2 Trade Sector	9
8.3 Chamber of Commerce, Industry, and Agriculture	12
9. LEGISLATION IDENTIFICATION	15
10. REVISION OF AND RECOMMENDATION ON THE LEGISLATION	16
a) Dec. 29/88	16
b) Dec. 22/86	28
c) O.M. 2/87	29
d) Disp. 26/87	30
e) Dec. 23/86	31
f) Draft Organic Law	32
11. ASSISTANCE TO THE WORKING TEAM	34
Annex 1: Organizational Structure for the DGC (MCI proposal)	
Annex 2: Organizational Structure for the DGC (alternative)	

## 1. EXECUTIVE SUMMARY

The scope of work for this project consisted of supporting the efforts of the Ministry of Commerce and Industry (MCI) towards the review of the legislation governing the activities of the Ministry. This entailed, in addition to daily meetings with the Working Team, a number of contacts with the formal and informal sectors, namely with the Chamber of Commerce and its delegations in Gabu and Bofata; with the informal sector, and with the Provincial Commerce Delegate for Gabu. Generally, these activities resulted in the identification of some areas of concern shared by the entities contacted.

Decree Nº 29/88 regulating trade licensing as it pertains to License Titles, as well as access to commercial activities, was thoroughly assessed. A thorough assessment was considered necessary because the decree represents the first area of contact of the public with the Ministry of Commerce and Industry, and because of the existence of a large and growing informal sector whose formal licensing terms should also be eased.

Other major contact points include that of import/export permits through the *Boletins de Registro Previo* (Preregistration Bulletins), whose regulatory framework, albeit limited, was also analyzed. Other legislation was also analyzed, as specified on paragraph 9. We would like to stress that upon completion of the review of all legislation texts, the relevant findings should be submitted to a legal expert team for a discussion on the legislative issues.

This work was assigned to the Commerce Department. However, as the Ministry includes a Industry General Department, and bearing in mind that some joint activities could be performed in the areas of licensing and License Titles, a number of meetings were held with the Director and other officers of the Industry General Department.

Supplementing the document analysis, and reflecting the ongoing review of the Organic Law of the Ministry, the latter was subjected to a summary analysis regarding the Commerce General Department. Another output was an alternative organ chart, based on the functional analysis of the CGD.

The statistical data presented should be considered indicative and be included for a better understanding of the actual situation of the commercial sector of Guinea-Bissau.

This data was gathered through various interviews. With the exception of information about the Bandim market gathered by an individual very familiar with this sector, Bemba Djau, all the other data was assessed on on-site visits and it is the opinion of the consultant that the data does not differ much from the actual situation. Some data differ according to the source of information and is presented thusly, not to indicate contradiction but to reflect the reality in Guinea-Bissau.

Beyond the recommendations presented in chapter 10 and which were the objectives of this study, also listed are other recommendations suggested while the work was being performed and which are considered equally pertinent:

1. Lack of training. The majority of MCI officers should be trained in the areas of external and domestic trade. Private operators should also be trained. Exporters, for instance, are not always familiar with the export contract terms.
2. In order to expedite the trade legislation review, the Chamber of Commerce should be invited to set up a Consultative Committee, so as to institutionalize a practical and efficient dialogue with the Commerce and Industry Ministry.
3. Policy definition and international marketing of the leading export commodities would be enhanced by fostering or developing sectoral studies on such commodities.
4. People should be made familiar with the statutes' texts, which should be reviewed as needed.
5. Both formal and informal sectors should be regulated, so that they are able to perform their activities free from mutual prejudice.
6. The procedures for the issuance of Import/Export Preregistration Bulletins should be streamlined.
7. It is necessary to have a report which studies the improvement of the conditions favorable to the creation and development of industrial firms.
8. It is necessary to do a thorough study of the informal economy which will lead to a concrete proposal of how or what to do with the informal economy, taking into consideration the important socio-economic role that it plays. This study should include either the regions or the capital. There is already a very interesting study by Rui Ribeiro, INEP, about trade in the border zones.

## **2. BACKGROUND**

In the framework of the Implementing Policy Change (IPC) project, direct cooperation with the Ministry of Commerce and Industry has recently been started. In cooperation with a working team of such Ministry, a commerce and investment (C&I) plan is being developed, for the strengthening and support of the Ministry of Commerce and Industry, trade expansion, and the development of private sector investments.

The components of the Action Plan for C&I include the identification of potential impairments/barriers to potential private sector trade and investments stemming from statutes, regulations and/or procedures enforced by the Ministry of Commerce and Industry.

The scope of the activities of this mission involves the implementation of this component of the Action Plan, which focuses on the interaction between the Ministry and the private sector. The conclusions and recommendations of the USAID/CECCHI report were taken into account for the development and design of the above-referred component.

### **3. GOALS**

Three broad goals have been set for this task:

1. To identify those statutes/regulations/procedures of the Ministry of Commerce and Industry with greater --positive or negative-- impact on the private sector's C&I.
2. To make recommendations regarding the revision of those statutes/regulations/procedures of the Ministry of Commerce and Industry that can improve the private sector's commerce and investment environment.
3. To help the Ministry of Commerce and Industry Working Team enhance its own research and analysis capabilities.

### **4. THE WORKING TEAM AND THE WORK PLAN**

The Ministry of Commerce and Industry includes two General Departments: the Commerce General Department, and the Industry General Department.

While this paper mainly deals with the Commerce General Department, a number of contacts have been developed with the Industry General Department.

Responsibility for the study was allotted to the Ministry's Working Team, whose members are:

Dr. Munira Jauad Ribeiro, External Trade Director,  
Dr. Abdu Mané, General Counsel, Minister's Office,  
Dr. Mamadu Embaló, Director, Research and Technical Matters Department

as well as the MSI Consultant, Eng. Carlos Garcia.

During the first week, the team's efforts were monitored by the project director, Ambassador John Blacken.

The Working Team decided to request the participation of the Chamber of Commerce, in a consultant capacity, with respect to the legislation to be revised. The authorities of the Chamber were contacted as such, and they demonstrated their interest in participating and held several meetings with the Consultant.

The Working Team made available to the Consultant the legislation and documents governing the operation of the Commerce Department. In order to maximize the amount of information available on this Department, research was done, using the data bank of the Government Printing Office for confirmation.

The meetings with the Working Team and the Chamber's officers recommended by the USAID/CECCHI report led to the conclusion that the most urgent part of the legislation review was the one involving:

- Decree 29/88 regulating access to commercial activities;
- Decree 22/86 regulating import/export operations;
- Decree 23/86 regulating product pricing and marketing.

These and other pieces of legislation were analyzed by the Working Team.

Towards a more thorough analysis of trade activities by the Consultant, additional meetings were held with the Provincial Commerce Delegation for the Province of LESTE, and the Regional Delegations of the Chamber of Commerce in Bafata, and Gabu, as well as with representatives of the formal and informal sectors. The Working Team also analyzed the MCI draft Organic Law provisions on the Commerce General Department.

## **5. PLACE AND DATES**

The work was performed in Bissau. Meetings were held in the Leste region, specifically in Bafata and Gabu. The mission performed its functions between June 7th and July 3rd, 1993.

## **6. ENTITIES CONTACTED**

### Ministry of Commerce and Industry:

- Dr. Assumane Mané, Minister
- Eng. Anastácio Furtado, General Director for Industry
- Dr. Teresa António Veiga, IGD
- Eng. Vitor Baldê, IGD, Director for Planning and Industrial Legislation
- Eng. Carlos Nhatê, IGD, Director for Administrative and Financial Coordination Services

### Provincial Commerce Delegation for the Province of Leste:

- António Alaje Bamba

### Chamber of Commerce, Industry, and Agriculture

- Dr. Mário Vaz, President of the Chamber of Commerce
- Henrique Rosa, Vice President
- Dr. João Sequeira, General Secretary of the Chamber of Commerce
- Carlos Gomes Júnior, Head, Commerce Board
- Daniel Vaz, member of the Board, Chamber of Commerce

- Lino Duarte, Coordinator of the Service Committee
- Fernando Flamengo, Coordinator of the Civil Affairs Committee

Gabu Regional Delegation of the Chamber of Commerce:

- José Adramane Jalo, Secretary
- Francisco Garcia
- Salime

Delegation of the Bafata Chamber of Commerce:

- Mr. Marcelino, Chairman
- Eleven members

Law School, Bissau

- Professor Paulo Mendes, Scientific Advisor

INEP:

- Dr. Rui Ribeiro

Informal sector:

- Mr. Bemba Djau, merchant and farmer,  
Chairman, Markets of Guinea-Bissau,  
formerly, informal sector

Formal sector:

- Eng. Manuel dos Santos, former Commerce and Tourism Minister

Forest Product Industries Association:

- Dr. Faustino Silva, Chairman

Government Printing Office:

- Augusto Cesar Tolentino, Director

USAID:

- Michael Lukomski, Director
- Robert Mitchell, Project Officer
- Rufino Mendes
- Carmen

(USAID, Labat Anderson):

- Neil Curry
- Badji

## **7. DOCUMENTS CONSULTED**

- USAID/CHECCHI Report
- IPC Assistance for Judicial Reform - Report of IPC visit to Guinea-Bissau
- Guinea-Bissau - Legal Sector Assessment  
USAID, LABAT & ERSON, INC.
- Estatísticas e Listagens dos Estabelecimentos comerciais licenciados ao abrigo do Dec. 29/88 ("Statistics and Listing of Commercial Firms Licenced under Decree 29/88"), MCI
- Estudo de pré-viabilidade da promoção e fomento da microempresa em Bissau ("Prefeasibility study, promotion and development of microenterprises in Bissau"), INEP
- Estudo sobre o comércio nas zonas da fronteira ("Study on Trade at Border Areas"), INEP

## **8. COMMERCIAL ACTIVITY ANALYSIS**

This part of the analysis covers the information gathered, and a summary of the activities performed in cooperation with:

- 1-The Ministry of Commerce and Industry;
- 2-the commercial sector, and
- 3-the Chamber of Commerce, Industry, and Agriculture

This general-type information also includes a listing of a number of issues and constraints to commerce activity dynamization and normalization, as well as some ideas for possible correction.

### **8.1 MINISTRY OF COMMERCE AND INDUSTRY**

In order to facilitate an assessment of the legislation in force, a listing of the decrees, statutes, dispatches, and office memoranda in force regarding the responsibilities of the MCI was developed. Consultations were held with the Government Printing Office, which has a data base of all statutes, decrees, and dispatches from 1900, including those still unpublished.

In 1986, the economic planning system was replaced by a market economy. Since then, a number of statutes have been passed to implement a market system, but more remains to be done in that area, and some of these statutes have already been revoked or are no longer enforced.

Portuguese legislation in force at the time of independence, 1973, remains enforceable in the nation unless openly inconsistent with the Constitution or the statutes of Guinea-Bissau. This includes the Portuguese colonial trade legislation, which is inadequate and insufficient for the conduct of commercial activities in a market economy such as the one being implemented in Guinea-Bissau.

Guinea-Bissau is a member of ECOWAS, which is designed to become a part of an African economic community with free circulation of goods, persons, and capitals. A new ECOWAS draft treaty was recently completed, whereby an African economic community would be established by the year 2000, on the basis of the regional economic communities existing under the April 1980 Final Act of Lagos, and the ECOWAS would be an integral part of such community. This integration process will have a major impact on the country's legislation. During the present phase, Trade Legislation has made an impact on trade policies, external trade, merchant licensing, public enterprise privatization, and the (national and foreign) Investment Code. Trade legislation is needed to normalize domestic and external trade and help the MCI establish a supportive environment for national and local businessmen.

Note: In Guinea-Bissau, product quality and quantity are verified by Lloyds' representative in the country. Normally, quality control is required in cases of private operators' use of funds from the world community.

By and large, the rules enforced are those of the International Standard Organization (ISO), and the External Trade Department has been supported by the Geneva-based Center for International Trade (CIT).

As a result of lack of surveillance and coordination with other Ministries, namely with fiscal and customs services, over 50 percent of the country's total imports and exports take place without the jurisdiction of the MCI. This limits the Ministry's sphere of action and allows improper equality between those who abide by the law and those who do not. One may begin to question whether the MCI knows in which direction it is moving. The activities of the Ministry of Commerce and other ministries, including the Finance Ministry, must be coordinated.

Flaws in the legislation in force, and lack of surveillance, are a source of problems the authorities are trying to eliminate. Economic liberalization policies have included almost complete elimination of surveillance activities by the Ministry of Commerce, which, at that time, were considered a surrogate of "planned economy" controls. Today's state of affairs demonstrates, however, that this omission is a serious encumbrance, and mechanisms are needed to enforce the law and punish violators.

While the Working Team assessed the legislation on a case-by-case basis, in a number of cases a broad legislation revision showed advisable so as to prevent recurrent problems.

(i) Being registered as industrialists, a number of traders pay lower customs duties for their imports from neighboring countries -- mostly Senegal. This unfair practice harms other members of the trade community.

(ii) Foreign-language signs borne by a large number of imported goods cannot be easily read by local consumers.

(iii) Lack of business health control legislation, both for license titling and Health and Sanitation periodic controls, primarily for foodstuff-marketing firms.

The MCI integrates three Provincial Delegations -- those of Leste (Gabu), North (Bissora), and South (Buba).

Note: A review of the case of the Bissora Delegation has been suggested, for possible transfer of this Delegation to the Farim or S. Domingos border areas, where trade is more active, as are merchandise in- and outflows.

Provincial Delegations report directly to the Minister. Provincial Delegates' formal education does not go beyond the 6th school grade. They do not appear to be familiar with the statutes, regulations, dispatches, etc. governing their responsibilities.

Note: In 1992, the Delegates attended a one-week workshop organized by ICEP. The workshop covered general material on International Trade, and was not suited to the specific needs of the Delegates. Besides the Commerce Delegates, the workshop was attended by staff members of the Finance Ministry, the Planning Office, the Central Bank, and Customs. Apparent from the relevant documents I was supplied was the mismatch between the Delegates' basic skills and the subject matter of the workshops.

The functions of the Province Delegation are being revised. Foreseen changes are the following:

- To follow and record the evolution of staple prices in the regional market, and submit price charts to the Research and Technical Matters Cabinet of the Ministry of Commerce and Industry.
- To issue land/sea regional product Import- and Export Preregistration Bulletins, up to a certain value. Rice, fuels, flour, sugar, and chemicals are excepted.
- To facilitate the Licensing and License Titling processes to be submitted, upon completion, to the Domestic Trade Department.
- To follow price evolution for the rice, caju nut, mancarra, and coconut harvests.  
Note: now only for the caju nut harvest.

Note: The Gabu Delegation, which also includes Bafata, is staffed by only the Delegate and a driver, which significantly constrains its activities, given the responsibilities entrusted to it.

A review was made of a proposal being considered by the Research Cabinet, for the assignment of legal surveillance activities to the Ministry of Commerce. We requested the opinion of the Law School of Bissau on this matter, and they responded that the proposal mainly involves economic surveillance and inspection functions, which fall within the jurisdiction of the

Economic Penal Procedural Legislation, and cannot be exercised by the Ministry of Commerce and Industry.

The report stated, moreover, that the Administrative Ministries, such as the Ministry of Commerce and Industry, may only assess administrative fees and administrative violation duties. Only the courts and the Justice Ministry may impose penalties and fines.

Note: Fines can be turned into prison terms, while administrative fees cannot.

At the present time, the Industry General Department follows the Trade Licensing Regulations, Ministerial Decree N° 2401, published in the Official Bulletin N° 52, 12/30/71.

The Industry General Department is preparing draft legislation for industrial firm licensing, based on Decree 29/88. This decree was analyzed by the Working Team for possible application to the trade sector, and it was recommended that the only difference between both licensing regimes be the specifics of trade and industry. Hence, a proposal was made, for cooperation by the IGD technicians in a future revision exercise of Decree 29/88.

The Working Team analyzed a draft Organic Law for the Ministry of Commerce and Industry. The Team had actively participated in the development of such draft, and the team's members were more interested in integrating viewpoints different from their own ones, rather than reviewing their own work. The final alternative submitted was prepared only by the Consultant, on the basis, however, of the analysis performed with the Team.

## 8.2 TRADE SECTOR

The study on the informal sector in the border areas showed that 40 percent of the country's imports and exports are made by the informal sector, fail to be recorded, and escape Government controls.

In Gabu, for instance, there is a triangular market with Gambia, Senegal, and Guinea-Conakry. Involved in this triangle are goods bought at a neighboring country and shipped in transit through Guinea-Bissau, their final destination being a third country. This transit market is not taken into account by trade statistics. Some goods targeted for a third nation often end up by being marketed in Guinea-Bissau.

At border "lumas" (traditional markets), products from several countries are freely transacted from one side of the border to the other. In Gabu, the informal sector already represents 80 percent of the commercial activities. These activities are anarchic in nature, as peddlers make their sales even at house porches or right in front of licensed stores.

In Bafata, the informal sector represents 70 percent (indicated value) of the commercial activities.

Taxes are collected from the informal sector by the Revenue Service, and this sector has to pay daily or monthly duties to the Municipal Chamber or to the State Committee. These taxes are a major revenue source for such entities and represent a step toward legalization of the activities of the informal sector.

One of the reasons behind the development of the informal sector is avoidance of customs duties, which are much higher when goods are cleared at Bissau. The informal sector imports products through land border points, where the import/export process is largely made outside the control of the MCI, with reduced customs duties, which, however, appear to fluctuate widely.

Over 50 percent of all imports arrive by sea (port of Bissau), including those of rice, fuels, soap, table oil, wine and beers. Tobacco, flour, sugar, sweet potatoes, onions, and margarine are imported by land. Land imports from Gambia, Guinea-Conakry, and Senegal are largely made by or through the informal sector, without any controls whatsoever by the MCI. The informal sector --both in Guinea and its neighboring countries-- seek the most attractive markets and deviates some products among countries, a fact that can reduce the supply at the domestic level.

A number of products, such as *manga*, honey, *abóbora*, and caju nut, are exported by land without any control by the Ministry of Commerce. Costs at the port of Bissau are very high, and some sea imports have been made through the ports of Banjul, Gambia, and Dakar that enter Bissau by ground transport (land). These are also used for export operations, including wood sold to Senegal. This trade also entails tax/custom-duty evasion.

The transition from the informal sector to the formal one is hard. Informal sector operations do not involve payment of water, electricity, or even telephone services, and this entails serious overhead increases to the firms with water, power, and telephone contracts, which have to pay the full costs. At customs level, the formal sector has to pay taxes; the informal traders, on the other hand, elude both customs controls and taxes.

In accordance with the information obtained in interviews, 80 percent of import business is made with credit from the Bandim market, and a mere 20 percent with bank credit. This is one of the reasons behind reduction of bank liquidity, as a large proportion of money does not circulate through banks.

At the market of Bandim, Bissau, the daily volume of merchandise transactions is close to 8 billion pesos, or US\$800,000, according to information gathered, but not confirmed. The exchange activity in this market is 3-4 times larger than that of the commercial banks. As a result of this informal activities, and also because of lack of confidence in the banks, the latter find themselves short of liquidity (pesos), which, in turn, increases such mistrust.

Borrowing costs are another hardship for the commercial activities of the formal sector. Very high bank rates of interest, together with other finance charges, make credit virtually inaccessible. Bank lending operations are thus subjected to the following terms (as reported to us, without bank corroboration):

- Real collaterals, for example, a home
- Loan deed - 20 percent costs
- Loan registration - 10 percent costs
- Letter - 8 percent costs
- Pick-up money charges - 2%-5% costs

- Interest - 68 percent
- Term - 90 days

Requirement of collaterals by the banks is one of the reasons why the informal sector shows no interest in becoming formal, as it lacks real estate --houses, for example-- that could be accepted as collateral.

Banks implement tight loan policies, as operations are normally approved for 90 days at the most, with active rates above 67 percent.

The basis for determination of the existing inflation is open to criticism; all indications are that the official inflation rate is many times higher than the real one. This has to do with tight policies in connection to the outstanding money base, whose rate of growth was significantly higher, in the last few years, than that of national inflation.

Traders are undercapitalized for want of acceptable bank loan terms. They are no longer able to borrow 50 percent of their needs, as they used to. The crisis of the formal trade business sector is not only an outcome of the activities of the informal sector, but also a limitation created by current bank loan terms. Lack of capital, moreover, hampers purchase of agricultural products by traders. Rice is available in the South, for instance, but there is no money to purchase this commodity. It is generally believed that the informal sector will expand as the formal sector is reduced, and one could wonder what the future role of the MCI will be if this trend persists.

A broad conclusion is that legalized trade has virtually stagnated as a result of the activities of the informal sector. Such is the impression of over 95 percent of the formal traders from Bafata and from Gabu. The common belief is there is no use in requesting License Titles, as the informal sector makes its unfairly competitive sales right at the doors of the formal sector, with the implicit authorization involved in its paying taxes to the Chamber (State Committee) and to the Revenue Service.

The only national commercial company is that of caju nut. Until 1984 there were also the mancarra and coconut companies, which were abandoned because of diminished production, lack of personnel and lack of an attractive price.

Exporting industrial products is now necessary due to the inadequacy of the domestic market. Dyes and plastic products are examples of the above, but the main market, that of Senegal, enjoys protection under the WAEC, of which Guinea-Bissau is not a member. This country grouping belongs to the 18-country ECOWAS (Economic Community of West African States), but, reportedly, product circulation will only be free after year 2000, and the Community draft treaty is being revised.

In a general sense, it still can be detected that the majority of our people interviewed have a lack of information about the active legislation, thus making more important the promotion of dissemination among those who should be more aware.

### **8.3 CHAMBER OF COMMERCE, INDUSTRY, AND AGRICULTURE**

The Chamber of Commerce is struggling with the issue of competition by the informal sector, whose share of the economic activity, in other countries, is 20-30 percent in average. In Guinea-Bissau, however, it exceeds 50 percent and tends to grow. The Chamber of Commerce has an interest in participating in the study of the impact of the statutes and statute regulations, the legalization of a segment of the informal sector (through registration and licensing); in other words, in the existence of a environment where the informal sector can recognize the benefits of legalization and where attainment of this goal is not encumbered by any difficulties.

Such effort has also been expanded to the provinces, where branches of the Chamber of Commerce have already been founded. The Chamber believes that the informal sector transition to the formal sector can be basically effected through dialogue. The Chamber has been in existence for 4 years, but its first elections were held in February, 1993, and the Board members took possession in March, 1993.

The most pressing concern of the Chamber consists of helping its members to thrive and grow, and keeping them informed on matters of common interest, e.g. availability of credit from sources such as the EEC. The Chamber is determined to work with the Government towards softer repayment terms for the private sector. The Chamber recognizes the fact that the private sector lacks sufficient capital resources, and seeks support for investment projects, as well as financial resources for economic development.

The Chamber does not have files on legislation, but it emphasized the importance of:

- (i) Revising the legislation on issuance of Import/Export Preregistration Bulletins

Note: in order to simplify the procedures for authorization of import/export operations.

- (ii) Revising the commercial-activity licensing legislation

Note: in order to ease and widen access to the process of commercial activity licensing and License Titling.

- (iii) Efficient surveillance by the MCI.

Note: Surveillance/inspection personnel should earn wages consistent with their responsibilities; payment of percent fees could also be considered.

These controlling activities could prevent situations such as:

-Disregard for the rights of permit holders, such as caju nut traders;

-operation of Bissau operators in other areas without the relevant permits or licenses;

-transport operators' failure to confine themselves to definite areas and coverage of the whole country, with negative impacts on the organized transport industry;

-exports made, to a large proportion, without the scope of control of the MCI;

-no informal sector imports should be allowed at border areas.

Moreover, they should be made only by legalized firms in possession of importer licenses, which are the only ones eligible to apply for Preregistration Bulletins. In reality, the Customs Offices fail to demand the display of the Bulletin, and the goods cross the border without any control by the Ministry of Commerce and Industry.

Note: Legislation is needed, to improve control of this situation. Better border control would require the presence of a Ministry representative with advisory responsibilities on the policies to be implemented. Clearance by the Customs Administration should only be made based on Preregistration Bulletins issued by the Ministry of Commerce and Industry.

-A large proportion of merchandises imported in transit are deviated to the domestic market.

The Government should define what products can be sold in the informal sector market. Drug containers, for example, should be stamped, and alcoholic beverage bottles, such as whisky bottles, should bear a stamp as verification of settlement of tax obligations.

The Chamber wants to become the entity responsible for the issuance of certificates of origin, and wishes to analyze this function transfer with the MCI.

Note: Obviously, this service could become a major source of income for the Chamber. However, it remains to be seen whether this would not complicate the process of clearance of export merchandise, as this is contingent on the issuance of the Export Preregistration Bulletins by the Ministry of Commerce and Industry, to which, at the request of the interested party, a Certificate of Origin is currently attached. Therefore, one has to determine whether export processes would become more complex through issuance of Certificates of Origin by an entity other than the MCI.

Business licensing should become more selective. Import/Export traders, for example, should be required to have storage premises, and therefore hold the relevant licenses.

Note: Some export/import dealers sell the relevant documents right on the piers.

Under Decree 29/88, Article 9, registration by importers and exporters requires a 10 000 000 PG warranty deposit. Some Board members believe this amount, which has been in force since 1988, is very reduced and must be increased to a minimum of 50 000 000 PG (US\$5 200).

It should also be taken into account that the guarantees/securities demanded by the merchants be in agreement with the nature of the activity that they wish to undertake.

They also believe the MCI Provincial Delegations are understaffed, such being the case with the Provincial Commerce Delegation of LESTE, to which only the Delegate himself has been assigned. When he leaves, nobody remains to give continuity to the service. Some products become spoiled in wait for their Export Preregistration Bulletin when nobody is available to issue it, when the Delegate travels to Bafata or Bissau, or even is on vacations, or on sick leave.

Further complaints involve the agents of the Finance Ministry. Their attitude toward the businessmen is not exemplary, and sometimes even arbitrary. In cases, they demand payment of duties even during the first year of life of a firm. Mention is also made to the fact that in Gabu, as it is an area of heavy trade without any Banking Delegation, businessmen have to carry large amounts of money and run the ensuing risks.

On being asked about the Chamber of Commerce's experience regarding business activity licensing in Gabu, one of the members of the Chamber who started as an informal sector trader and ended up in the formal sector, and had got the Bafata License Title N° 1966, recalled having begun his licensing process in 1990 and having got the license only in 1992, after a series of journeys to Bissau, where he was directed to wait for several days at a time. Such delays are not attributable only to the merchant licensing process, but also to delays in commercial registration formalities.

For lack of a resident provincial delegate, the Bafata Delegation of the Chamber will define the processes of issuance of licenses and permits, later to be forwarded to the Ministry of Commerce Provincial Delegation in Gabu. On top of the difficult licensing and titling processes, there is also the issue of title cancellation. In fact, the law is not too clear in this respect, and firms are not required to notify the Revenue Service at the start, suspension or termination of their activities. Thus, faced with difficulties, many formal sector merchants simply close the doors without notifying the Ministry of Commerce, or the Revenue Service.

In such cases, the Finance Ministry continues to assess taxes and does not consent to firm termination unless all debts to the Revenue Service, including interests, have been settled. Such liabilities are thus heavily increased by the new taxes that continue to be assessed on the firms and add to the amounts payable of the original debts.

**9. IDENTIFICATION OF STATUTES, REGULATIONS, AND PROCEDURES OF THE MINISTRY OF COMMERCE AND INDUSTRY WITH GREATER (POSITIVE OR NEGATIVE) IMPACT ON PRIVATE SECTOR C&I.**

Agreement was reached with the Working Team of the Ministry and with the Project Head, for the study to focus on those areas identified as priority for review either by the Ministry Working Team or by the authorities of the Chamber of Commerce. We requested the consultative opinion of the Chamber of Commerce, which handled the task without delay and responded actively.

The following major pieces of legislation were identified for analysis by the Working Team once the opinion of the Chamber of Commerce had become available:

- a. Decree 29/88 -  
regulating the issuing of permits for the start of commercial firms and access to commercial activities upon preregistration with the Commercial Merchant Register.
- b. Decree 22/86 -  
regulating the eligibility requirements for Import/Export Preregistration Bulletins.
- c. Office Memorandum 2/87 -  
internally regulating the authorization of Preregistration Bulletins
- d. Dispatch 26/87 -  
regarding import/export operation termination.
- e. Decree 23/86 -  
establishing the price- and marketing arrangements.
- f. MCI draft Organic Law  
(Only as regards the organic structure of the CGD)

**10. RECOMMENDATIONS REGARDING REVISION OF THE STATUTES, REGULATIONS, AND PROCEDURES OF THE MINISTRY OF COMMERCE AND INDUSTRY AND OTHER MINISTRIES FOR POSSIBLE IMPROVEMENT OF THE PRIVATE SECTOR TRADE AND INVESTMENTS ENVIRONMENT.**

(Reference is made only to the articles and text items proposed for revision.)

**a. Decree 29/88**

**REGULATING THE ISSUANCE OF PERMITS FOR THE START OF COMMERCIAL FIRMS AND ACCESS TO COMMERCIAL ACTIVITIES UPON PREREGISTRATION WITH THE COMMERCIAL MERCHANT REGISTER.**

This Decree revoked Decrees Nos. 23/77, dated May 14th, and 40/77, dated December 21st, and, almost entirely, Act N° 1995-A, of December 30th, 1971. The latter's provisions on peddling have survived, without prejudice to the rules included in the Decree N° 29/88 itself regarding such activities.

Note: The violations mentioned by the Decree N° 29/88 should be regulated in detail, as well as the process of developing notifications and the legal procedures thereof.

This is one of the main pieces of legislation passed after 1986 regulating the activities and the relationship of the Ministry of Commerce and Industry, MCI --more specifically, of the Domestic Trade Department-- with the private commercial sector.

From 1986, when the economy was liberalized and economic planning was replaced by a market system, only a few legislation pieces have been passed regulating private activities within a market economic regime open to foreign participation.

Also in 1986, when the Commerce Ministry was an integral part of the Ministry of Economic Coordination and Commerce, a process was started which led to termination of all control activities by the Ministry of Commerce and Industry. This has resulted in rather anarchic competition between the informal and formal sectors. According to estimations from entities related to trade activities and to the Ministry of Commerce and Industry, the informal sector takes care of a large proportion of the country's retail product allocation, 50-80 percent of all import activities, and 60 percent of all export transactions. Such competition might soon foster the conversion of the formal sector, or at least some of its activities, to the informal sector.

Note: Under "informal sector" we include from peddlers to stores organized in disregard of the law.

A segment of the informal sector, however --that of peddlers-- has been legalized, since its members have to pay the Chamber tax and Government taxes. An exception has been defined by Decree 29/88, Article 2, para. 5:

Without prejudice to the enforcement of the current peddler legislation, all peddlers must apply for preregistration under this Decree when selling imported products as part of their activities.

In meetings held with the MCI Team and CCIA authorities, both entities gave priority to the analysis of this decree, given its importance and scope. Their provisions were, therefore, analyzed, and the CCIA was requested to issue an opinion. The importance was mentioned, in this regard, of efficient monitoring by the MCI, including clear definition of its goals, priority areas for intervention, types of sanctions, and operational means.

### Article 1

3. Producer activities are governed by this Decree to the extent they are export activities in nature, or when producers have one or more business establishment(s) or store(s) open to the public, or sell both their own products and products from other sources.

**Subject for revision:** Do producer associations, under this Decree, legally fulfill all exporter/importer licensing requirements? Or do they have to create a partnership or any other type of legal entity for those specific purposes?

Note: A number of producer associations have already been licensed as exporters/importers. In such cases, the associations licensed as exporters (see one) did not have to undergo the whole process of licensing; in other words, a privilege was granted to them, and this can be a case of unfair competition with legally registered and licensed partnerships or individuals.

### Article 2

2.b) Importers- Persons having adequate premises and directly purchasing, in foreign markets, products to be traded within the national territory, or reexported. This category does not include, therefore, direct importers of inputs for the operation of their factories, offices, or business establishments, or for incorporation with the goods they produce, transform, or manufacture.

**Subject for revision:** Although there is only one such exporter/importer license, in the case of importers the license should always be associated with the possession of a license for any other trade activities mentioned in this very paragraph.

Note: It seems unlikely that importers could trade their goods unless through store owners, retailers, trade agents, or even peddlers. In a number of cases the arriving merchandise is transacted right on the piers. Are these transactions legal only when made by licensed importers? Does this situation entail unfair competition against holders of exporter/importer licenses, and licensed to perform any other activities provided for in this section?

Note: 25-30 percent of the export/import licenses issued by the MCI are not linked to any other trade activities.

d) Retailers- Those who directly sell to consumers the products of their trade at adequate establishments or stores, or at fixed and permanent market spots.

**Subject for revision:** Inclusion of hotel activities in the definition of retailers does not seem to be appropriate, since the definition of a retailer is different from that of a merchant. Moreover, this inclusion determines that general visual inspections be included in the license titling requirements for such establishments, e.g. public health inspections, which are less important for merchant stores than for hotels and like business.

Note: We find more adequate the provisions of Decrees 23/77 and 40/77 (revoked by Decree 29/88), whereby the activities of retailers were differentiated from those of hotel keepers and the like.

The law does not require the identification of the types of products intended for retail sale. A general license is ultimately granted. This situation should be revised to protect consumer rights, save in the case of foodstuffs, or pharmaceutical/personal hygiene products, which should be subjected to specific licensing rules towards more efficient controls.

e) Peddlers- Persons who, by themselves or using any other appropriate means, transport the products of their trade, and sell them to consumers along the way, at specially designed areas, or at fairs or markets, and lack any fixed and permanent establishment.

Under paragraph 5 of this decree, without prejudice to the enforcement of current peddling legislation, all peddlers must apply for preregistration as provided for in this Decree when selling imported products in the course of their business activities.

**Subject for revision:** The Decree does not establish different licensing procedures for the various commercial activities mentioned by Article 2. From a total 2,096 licenses issued by the Domestic Trade Department until the end of December, 1992, only 78 were granted to peddlers - 72 in Bissau, and 6 in the Province of Leste. In fact, the DTD has followed the practice of licensing peddlers just on the basis of the applications by the interested party, without demanding any other documents.

(i) This simplified procedure should be legalized, or

(ii) paragraph 5 of Article 2 should be suppressed, and peddler licensing requirements should be replaced merely by Chamber licensing. This recommendation is based on the benefits from economic opening; on the difficulties involved in the identification and control of all sea- air- and even land-import operations by peddlers; on the goal of avoiding discrimination against peddlers, whose activities are an essential part of the country's retail business; and on avoiding harm to the final consumers of peddlers' products (over 80 percent of the population).

**Article 3**  
**(Agents, Representatives, etc.)**

1. All Agents of the entities mentioned under Article 1, N° 1; Business Representatives, all those represent them under the law in the course of their functions, and even limited partnership members, must meet the requirements in this Decree regarding registration of the individuals subjected to their provisions, with the exception of the warranty provided for by Article 9.

2. As indicated in the preceding paragraph, Managers, Partners/Managers, and Commercial Partnership Directors/Administrators of trade companies, as well as members of administrative bodies of public enterprises or cooperative governing bodies are to be deemed as Agents thereof.

3. For purposes stated in the preceding paragraphs, the individuals in question will apply for registration with the Ministry of Commerce and Tourism, attach special written verifications of their capacities, and meet the requirements specified on Article 7, paragraphs. 1(a) and 2(b), and (c) of this Decree (individual merchant registration).

**Subject for revision:** Paragraph 1 of this Article applies only to individuals; however, corporate bodies being legal entities, this paragraph should be revised and partially suppressed. Article 3 should be revised as regards the obligation by the Agents to enclose a special verification of their capacities. The latter can normally be verified by the by-laws themselves, or by the records of the partners' meetings.

Note: In fact, Agents have only been required to submit verifications as mentioned on paragraph 3 along with their applications for registration.

4. The registration requests mentioned in the preceding item must comply with all rules and procedures provided for in this Decree for the registration of individuals, with the necessary adjustments.

**Subject for revision:** This item should be revised in conformity to this Article's preceding paragraphs. The new text should be as clear as possible, in order to avoid any doubts such as the ones stemming from the phrase, "with the necessary adjustments".

## CHAPTER II

### (Commercial Registration of Merchants)

#### Article 4 (Preregistration)

2. Registration is mandatory for each of the activities mentioned on Article 2, and the DTD will issue a merchant card for the registration involved, as well as for the entities mentioned by Article 3, para. 1.

**Subject for revision:** The above text should be made consistent with revised Article

3. No cards need to be issued to promoters or partners of commerce partnerships, public enterprises, or cooperatives.

Note: There is no apparent need for nominative merchant cards for promoters, attorneys or partners of collective entities. Cards might have been useful in the past, when business firms applied directly to the Ministry of Commerce for Import/export Preregistration Bulletins. Now, however, the process of preparation and contacts with the Ministry of Commerce are done through Customs agents normally not by force of law but by agreement between MCI and the Chamber of Commerce and Industry.

#### Article 5 (Registration Renewal)

The preregistration mentioned by para. 1 of the preceding Article must be renewed, at the request of the interested parties, on each calendar year of the following five-year period from the date this Decree comes into force. Renewal requests will be governed by the procedural rules provided for in this Decree for registration, with the necessary adjustments.

**Subject for revision:** This Article should be revised, as it is not clear whether the renewal is to be made at the end of each five-year period from the date of registration, or from the date this Decree comes into force. Common belief supports the first option, i.e. at the end of each five-year period from the date of registration. Present circumstances warrant this procedure, that should be changed in the future. However, new-registration requirements should not apply to renewals --perhaps the only requirement should be a request for renewal from the company that includes the items to be updated as required by the Ministry, in a form to be provided to the applying party.

#### Article 6 (General Registration Requirements)

The following requirements apply to the preregistration mentioned by the preceding article:

a) Applicants must have legal capacity to perform commercial transactions under the legislation in force.

**Subject for revision:** The notion of capacity measures the rights a person can exercise, or the legal bonds he/she can accept. No mention is made in this article, however, to loss of such capacity, e.g. by incompatibility of the applicant's commercial activities and his/her other functions. This paragraph, therefore, should be revised.

c) If the applicant is a collective person, its definitive registration must be made with the Commercial Register's Conservancy.

**Subject for revision:** This paragraph should be revised so that provision is made for other legal individual entities, namely individually-held enterprises, which should also be governed by this paragraph.

## **Article 7 (Individual Merchant Registration)**

1. Individual merchant prior registration applications will be submitted to the Ministry of Commerce and Tourism through the DTD, and will include the following information:

c) Address and nature of the commercial unit involved (establishment, magazine, store, or office), when the activities in question presuppose the existence thereof. The owner of the relevant building will be identified, and the fact of whether the commercial unit holds a permit or not will be disclosed; if no permit has been issued to the unit, the grounds for this circumstance will be explained.

**Subject for revision:** This paragraph basically refers to Commercial Establishment License Titles, an issue belonging to Chapter III of this Decree. Therefore, it should be revised and reformed, in order that the only requirement be the disclosure of the address of the commercial unit when the activities in question presuppose the existence of physical premises.

2. The following documents must be attached to the application:

d) The operational license title for the premises where the activities in question are to be carried out, when the applicant is not a peddler and his/her premises need a license.

**Subject for revision:** The above text should be revised as recommended for paragraph 1(c).

3. The documents specified in paragraphs 2(a), (b), and (c) must have been issued during at the most 3 months before the date they are submitted, and the DCI will be able to request for updates if considered necessary.

**Subject for revision:** While licensing procedures can be relatively fast (less than 3 months), in a number of instances they have taken almost a year for reasons not imputable to the requesting

party. Therefore, the request for updates should be done by DCI authorities only in cases that are major and approved by superiors in DCI.

### **Article 8 (Collective Person Registration)**

1. Collective person preregistration requests will be submitted to the Commerce and Tourism Minister through the DTD, and will include the following information:

b) Identification of the individuals specified by Article 3, para. 1 of this Decree, including names, addresses, and I.D. numbers, dates and places of issuance.

**Subject for revision:** As this article deals with collective persons having, as such, legal existence, there is almost no need for the identification of agents or representatives duly empowered to apply for preregistration.

d) [Same as article 7(1)(c).]

**Subject for revision:** Similar to the one mentioned for Article 7.

2. The following documents must be attached to the request:

b) Certificate of settlement of tax liabilities.

**Subject for revision:** This matter falling within the jurisdiction of the Finance Ministry, the above requirement could perhaps be omitted for the registration of collective persons, which are to register with the Commercial Register and can be more easily controlled by the Finance Ministry.

### **Article 9 (Registration of Importers and Exporters)**

2. A warranty deposit on the amount of 10 000 000 Guinea Pesos will be made to the order of the Ministry of Commerce and Tourism, consisting of insurances, warranties, bank deposits, or any other instruments authorized by such ministry.

**Subject for revision:** This amount is recognized as very low and should be 22#put on/cover/assume. Other items to be covered/assumed are interests, and the format to be followed for other commercial activities, such as those of Commercial Agents.

6. For purposes of the preceding paragraph, the cessation of activities will only be validated through notification to the DTD by a confirmed registered letter and verified by the DTD by means of a visual inspection.

**Subject for revision:** Validation requirements for cessation of activities should be limited to remittance of a confirmed registered letter to the DTD, and the requirement of a visual inspection

should be eliminated. This will not impair the ability of the DTD to conduct further inspections, when deemed appropriate.

7. Warranties becoming insufficient as per the preceding paragraphs will be reinforced or replaced by the importers/exporters within 15 days from the date of their notification of the decision by the Ministry of Commerce and Tourism and the determination of such reinforcement or replacement.

**Subject for revision:** When merchants are not liable for the insufficiency --e.g. when the Ministry requires the warranty to be reinforced under Article 2 of this Decree, in connection with a revision proposal-- consideration should be given to extending the term granted to them, which should be of at least 30, rather than 15 days as specified in this item.

### **Article 10 (Supplementary Procedures)**

1. Whenever needed for registration assessment purposes, the DTD will conduct the probes and procedures deemed appropriate under the circumstances, and request from the parties involved the display of any documents additional to those mentioned in Articles 7 and 8 of this Decree.

**Subject for revision:** The supplementary documents that can be requested from the parties involved should be individualized; otherwise, this requirement should be eliminated.

2. For purposes of the final provisions of the preceding paragraph, the DTD will request from the interested parties, at the postal address identified with their applications, the items of documents needed.

**Subject for revision:** The documents should be received by the DTD, which should rely on the help of adequate experts to immediately indicate the requesting party that any item has been omitted.

Note: According to DTD's own estimates, 35 percent of all licensing applications are dropped by the interested parties themselves.

3. If omissions in the applications mentioned by the preceding Articles are not remedied within 60 days, or if the requirement cannot be notified for lack of a mailing address, those applications will be deemed void, and subsequently filed away.

**Subject for revision:** Revision as suggested for item 2.

Note: No procedures have ever been declared void or shelved as provided for by item 3.

## **CHAPTER III Licensing**

### **Article 15 (Information from the DTD)**

1. The Minister of Commerce and Tourism will grant authorizations on the basis of evidence showing that the commerce unit involved complies with the applicable urban and sanitary regulations.

**Subject for revision:** Authorizations to be granted by the Minister should also be granted by other officers on whom such authority be delegated, such as the Domestic Trade Director himself.

2. The information mentioned by the preceding item will be given by the DTD upon consulting:

a) In the autonomous sector of Bissau, the Bissau Municipal Chamber, which, to that effect, will request the opinions of the Ministry of Public Health and the Ministry of Social Welfare, as well as the Judicial Police and the State Secretary of Tourism when the request is made under Article 2, No. 4 of this Decree.

b) In all other regions of the country, the State- and Party Committees for the regions involved. To that effect, the Committee will request the opinions of the Ministry of Public Health, the Judicial Police --if represented in the cities involved, or, if such representation is lacking, of the Public Order Police--, and also the Secretary of State for Tourism when the request involves the type of commercial units mentioned by Article 2 No. 4 of this Decree.

**Subject for revision:** Units holding a premise registration certificate specifying the type of activities that can be performed thereon should be exempt from the consultation requirement mentioned by item 2. If no mention of authorized activities is made in the premise registration certificate, the Municipal Chamber of Bissau must make a decision on the licensing. All cases involving companies dealing with foodstuffs, or health/personal hygiene products should include a more thorough inspection, and the opinion of the Ministry of Public Health should be requested.

Item (b) should also be revised for consistency with revised item (a) and with the ongoing democratic process.

### **Article 16 (Prior Visual Inspection)**

2. Visual inspections, which must be completed within 15 days, will be performed by a Commission chaired by a representative of DTD and including a representative of the Ministry of Social Welfare, a representative of the Ministry of Public Health, and a representative of the State Secretary for Tourism, when the commercial unit to be inspected is one of those mentioned by Article 2 No. 4 of this Decree.

**Subject for revision:** This text should be revised for consistency with Article 15, item 2. Having received the information mentioned by Article 15, and in fully justified cases, the Ministry itself, with a two-member team, should visit the premises of the commercial unit for which an authorization had been requested.

**Article 17  
(License Title)**

3. License Titles can only be sold or granted together with the commercial unit to which they belong.

**Subject for revision:** This item should be revised and supplemented, in order that the opposite, namely the transfer of the License Title, can be made, although only to merchants registered as such with the Domestic Trade Department.

**Article 18  
(Authorization Renewal)**

1. (In terms similar to those for registration renewals, Article 5.)

**Subject for revision:** See above considerations regarding Article 5.

**CHAPTER IV  
(Cancellations)**

**Article 21  
(Cancellation of Registrations)**

1. Prior registrations with the National Merchant Register will be canceled:

a) If activities are not started within 90 days from the date of the registration, or if activities already started are suspended for a series of 60 calendar days or for several shorter periods adding up to 90 calendar days, unless full evidence is shown, of extenuating circumstances.

**Subject for revision:** Under market economic policies, merchants should be free to exercise or suspend their activities, and start them anew at will without having to give ground for cancellation of their licenses. The deletion of this item is therefore recommended.

d) Persons mentioned by Article 3 No. 1 who lose the relevant capacities.

**Subject for revision:** This article should be revoked as regards collective persons' agents and partnership members, as quotas are regularly transferred upon the integration of new partners or replacement of agents and proxies, without any change to the obligations and responsibilities of the collective person as a legal entity.

e) By effective performance of commercial activities by an entity other than the one registered in the relevant Register.

**Subject for revision:** Provision should be made, in this item, or in a new one, for the cancellation of commercial registrations when the activities performed differ from those specified in the registration. Provision should also be made for voluntary, automatic cancellation as requested by the interested party to the Ministry of Commerce.

#### **Article 22 (Title Cancellation)**

1. License Titles will be canceled:

a) In cases of voluntary closure of the relevant commercial unit for a series of 30 days, or for shorter periods adding up to 30 days of the same calendar year, unless full evidence is shown, of extenuating circumstances.

**Subject for revision:** In conformity with the recommendation made for Article 21, item (1) (a), this item should be revised for potential revocation, in order that merchants are completely free to perform their activities at will, provided, however, that the State's interests are not violated.

c) In all other circumstances provided for by the Law.

**Subject for revision:** This article being too broad in scope, the cases envisioned by the Law should be listed, and mention should be made of the relevant legislation.

#### **Article 23 (Notifications to the DTD)**

2. In the circumstances specified by Articles 21 and 22 of this Decree, the DTD will take possession of the Merchant Card and the License Title, which will be attached to the relevant procedure files.

**Subject for revision:** This article's text should be made more objective by indicating that the seizure of the Merchant Card will only be made after legal procedures are conducted and monitored by the relevant levels of authority of the Ministry of Commerce.

#### **Article 24 (Data Updating)**

1. Whenever deemed necessary, the DTD will make inquiries with the entities mentioned by Article 1 No. 1 for updates of the data on record regarding either prior registrations with the National Merchant Register or License Titles.

**Subject for revision:** As data must be updated every 5 years, in addition to the updating of the information needed for violation procedures, the DTD should be enabled to request, when

necessary, that certain data be updated within a period that can never be shorter than 2 years from the latest update or registration.

2. The information requested must be provided to the DTD within 15 days from the date of the request.

**Subject for revision:** This period seems too short given the normal problems involved in communications and document availability. It is therefore recommended that this term be extended to at least 30 days.

## CHAPTER V

### Penalties

#### Article 25 (Penalties)

Violations to this Decree will give rise to the following penalties:

a) Performance of any of the activities mentioned by Article 22 No. 1 by any of the entities mentioned in Article 1 No. 1 which had failed to register with the National Merchant Register or whose registration had been canceled, constitutes the crime of disrespect for the law, for which the penalty of loss of merchandise is provided for by the legislation in force.

**Subject for revision:** Revise as recommended for Article 22 No. 1.

#### Article 26 (Generic Penalties)

Violations of this Decree for which no specific penalty be established will be subject to fines through the procedures and on the amounts to be determined by dispatches of the Minister of Commerce and Tourism.

**Subject for revision:** The Ministry of Commerce being an administrative ministry, may not impose fines; administrative cash charges, however, fall within its jurisdiction. The difference between the two is that penalties can be converted into prison terms, while administrative cash charges cannot. The maximum amount of fines and cash charges is now 2.000.000 Guinea Pesos, a level that seems insufficient for certain potential violations.

#### Article 30 (Specific Arrangements)

Legislation can be passed establishing specific arrangements for access to and exercise of the activities described by Article 2 of this Decree, and any segment or type thereof or in connection with certain products.

**Subject for revision:** Specific and different arrangements for the various retail activities should be created, and retail activities described by Article 2, Item 4 should be defined. Import/export licensing should also be regulated and made contingent to possession of store owner-, retailer-, or commercial agent licenses. Peddling activities should also be regulated for store owners and retailers, who often perform them without the appropriate licenses.

**Article 31**  
**(Communication to the Finance Ministry)**

By the 25th day of each month the DTD will submit to the Ministry of Finance a detailed listing of National Merchant Register registrations made and canceled during the preceding month, as well as the License Titles issued and canceled during the same period.

**Subject for revision:** This article is no longer enforced, and this communication is no longer submitted to the Finance Ministry. The article should therefore be revised.

**Note:** Continued existence of this article can be a source of problems if a firm applies for cancellation to the National Merchant Register, and the Finance Ministry, to which no information has been sent, keeps assessing fees on the merchant in question. For the sake of ease and strictness, licensed firms should be made responsible for notifying the Finance Ministry the start, suspension and cessation of their activities, thus avoiding unneeded fines or fees.

**b. Decree 22/86 -**

**REGULATING ISSUANCE OF IMPORT/EXPORT  
PRE-REGISTRATION BULLETINS**

**Article 1**

All individuals or collective entities duly licensed and registered as importers and/or exporters with the National Merchant Register can perform any import or export operations that, under the law, can only be executed by certain economic agents.

**Subject for revision:** This part should be deleted, as there no exclusive rights are now in force for any economic agents regarding import or export operations.

**Article 6**

Cereals can only be imported by public stores.

**Note:** This article was revoked by dispatch No. 6/89.

**Article 7**

All legislation to the contrary is hereby revoked.

Note: Legislation supporting the issuance of Import/export Preregistration Bulletins stems from Decree-Law 44 260, B.O. No. 24/64, Supplement I.

c. **Office Memorandum 2/87**

**INTERNAL ARRANGEMENT FOR THE ISSUANCE OF PREREGISTRATION BULLETINS**

This Office Memorandum regulates the procedure for the issuance of the Preregistration Bulletins.

**First**

Import/Export Preregistration Bulletins will be delivered to the interested parties on working days between 8:00 a.m. and 11:30 a.m.

**Subject for revision:** Under an agreement signed with the Chamber of Commerce and custom brokers in early-1993, Preregistration Bulletins applications are channeled to the Ministry of Commerce through the brokers. This article, therefore, should be revised.

**Second**

Authorizations for the import/export operations which the Bulletin respects will be granted by the Comrade Secretary General or by the Ministry of Commerce and Tourism, and the the Import or Export Office (in accordance with the case) where they will immediately be published in the monthly listing, as per the already approved model.

**Subject for revision:** As the Commerce Department will have to be made responsible for the authorization of import/export operations, the system would be made more efficient if such Department issued the authorization, while the Minister commissioned periodic audits so as to monitor the adequate performance of the services connected with such operations.

**Third**

By the 8th day of the month following the relevant month a copy of the listings mentioned in the preceding Item will be sent to the National Bank of Guinea-Bissau and to Customs.

**Subject for revision:** This procedure should be revised and reassessed, as operations are made through commercial banks, and Customs Services do not always demand the display of the Preregistration Bulletins, particularly in border areas.

**Fourth**

Preregistration Bulletins can only be submitted for authorization to Comrade Secretary General after having been signed by Comrade Dr. Munira Jauad, head of the Import Department, or by Comrade Dr. Mamadou Embalo, head of the Export Department, when the application refers to an Import Preregistration Bulletin or to an Export Preregistration Bulletin, respectively.

**Subject for revision:** This item should be revised, as these services have been restructured.

**d. Dispatch 26/87 -**

**SETTLEMENT OF IMPORT/EXPORT OPERATIONS**

This Dispatch sets a number of rules of procedure regarding import/export operations by the National Bank of Guinea-Bissau, Customs Services, and the Ministry of Commerce and Tourism.

This Dispatch is considered temporary, pending the publication of overall legislation on this matter. Several ministries having jurisdiction in this regard, such legislation should consist of a Decree setting obligations on all ministries involved.

**Subject for revision:** Overall legislation on import/export operations should be developed. The following are a few comments on this Dispatch.

**First**

Settlement of import/export operations regarding goods subjected to prior registration requirements can only be made through the National Bank of Guinea-Bissau.

**Subject for revision:** Substitute the phrase "commercial banks located in Guinea-Bissau" for "National Bank of Guinea-Bissau," as two commercial banks have been established in the country.

**Second**

a) All Import and/or Export Preregistration Bulletins must be submitted to and countersigned by the National Bank of Guinea-Bissau before customs formalities are made in connection with the relevant operation within 30 days from the date of issuance of such Bulletins. Failure to meet this requirement will result in the automatic expiration of the authorization. As an exception, the Ministry of Commerce and Tourism will extend such period provided that the interested party had so requested before the expiration of the initial term.

b) No customs formalities regarding any import- or export operation will be performed unless the requirements mentioned by the preceding paragraph have been observed, as evidenced by the relevant Bulletin.

**Subject for revision:** This article, as well as the periods it establishes should be revised with the Finance Ministry, the Chamber of Commerce, and the Commerce Ministry. It should be given statutory authority by insertion into a future Decree that be mandatory both for the Ministry of Commerce and for the Ministry of Finance.

e. **Decree 23/86 ..**

**PRICE AND MARKETING ARRANGEMENTS**

**Article 1**

1. All goods and services sold in the domestic market can be subjected to the following pricing arrangements:

- a) Maximum prices
- b) Free pricing
- c) Minimum prices

Note: Presently, no maximum price arrangements can be enforced, and the minimum price system is hardly/barely applied to one commodity -- rice.

The rice pricing arrangement can be a disincentive for domestic production of such commodity, as minimum prices are used as reference prices and normally become the ones being applied. The MCI will be able to apply the system of minimum prices to other traditional export agricultural products as the circumstances warrant.

**Article 2  
(Maximum Prices)**

**Article 4  
(Price Arrangement Enforcement)**

These two articles have been revoked.

**Article 6  
(Advance Notification)**

Solely for statistical purposes, all economic agents who produce, import or market goods or services subjected to the free pricing system are required to submit to the Ministry of Commerce and Tourism an advance notice of the intended sale prices thereof. Any further changes must also be notified.

**Subject for revision:** This article is no longer enforced, and should be revoked.

Note: The Commerce Ministry develops quarterly price lists of commodities sold in the various provinces, and in Bissau.

## **Article 7 (Marketing Margins)**

In exceptional cases affecting the paramount welfare of the nation, the Minister of Commerce and Tourism can issue dispatches setting marketing margins for certain consumer goods.

**Subject for revision:** As there is interest in the promotion of the internal production of rice and as it is a basic nutritional product, the continuation or not of application of this article (marketing margins) to rice should be analyzed.

### **f. DRAFT ORGANIC LAW OF THE MCI**

(Only the organic structure of the GTD)

At the request of the Working Team, the draft Organic Law of the Ministry of Commerce and Industry was analyzed as it refers to the General Trade Department (GTD).

Based on Order No. 1/92 regulating the process for the establishment, organization, and control of the State's Civil Services, the Ministry of Commerce and Industry developed a draft of its own Organic Law, presented to the DGC (Annex I).

Note: The Working Team participating in the development of this draft Organic Law mentioned the need for observing Order No. 1/92 and Guinea-Bissau's subregional ECOWAS membership, and the benefits of homogeneous governmental structures in the subregion's members so as to facilitate their mutual contacts.

Order No. 1/92 will probably be revised. Its present structure includes too many levels of authority, and obvious difficulties are involved in filling the relevant positions with qualified personnel. Communications among office heads are also complex. Under the Order, for example, a Service Department has to have at least 15 staff members, 8 of which at managerial level. This rather military structure does not seem to meet the functional needs of the public services, where executive tasks often need to be directly supervised by Office Heads or even Directors, rather than Section Heads.

A short functional analysis was also performed. The analysis was based on an alternative structure chart. There was no chance to go deep into this analysis, and this alternative chart should be considered as a trial, rather than as a formal proposal. The idea was to put into place an analytical and organizational methodology based on functions to be performed, human resource rationalization, and office head accountability.

The elements taken into account for the development of the alternative structure chart included Article 7 of the Ministry's Draft Organic Law. Article 7 defines the functions of the **General Trade Department**, which consist of developing the operational framework of the Ministry of Commerce and Industry, and being the instance responsible for submitting proposals for guiding sectoral strategies, and the relevant sectoral policies.

In the circumstances, and taking into account the fact that domestic trade policies are heavily dependent on their external trade counterparts, the establishment of a joint General Trade Department has been proposed, along with the elimination of both the External Trade Services Department and the Domestic Trade Services Department.

The following are the main functional areas of the **General Trade Department (GT)** of the Ministry of Commerce and Industry:

- **Research and Statistics**
- **Licensing and License Titles**
- **Import/Export Operation Authorizations through Preregistration Bulletins**
- **Controls and Visual Inspections**
- **Activity Coordination in the Regional Delegations' Functional Area**
- **External Aid Program Coordination and Implementation**

Taking into account the goal of rationalizing all services by making them consistent with actual means available, as well as the structural rules defined by Order No. 1/92 of June 30th, a new Structure Chart was explored, based on the following parameters:

- a) **Concentration of functions entailing direct services to the public where no external staff is needed.**

To this effect, recommendation is made for the creation of a **License Services Department** integrating the Preregistration Bulletin Authorization Agency, and that of Licensing and License Titles.

This concentration would add to the Ministry a functional area devoted to contact with the public and staffed with people specifically trained to assist the public.

Concentration of the services of these two agencies would also allow the development of polyvalent staff members with a high Department turnover rate. This, in turn, would result in efficiency gains by the services provided to the public by the Ministry.

- b) **Concentration of control and visual inspection functions, and research functions needing external staff.**

Update of the legislative framework of activities of the Ministry of Commerce and commerce operators should be supplemented by control services guaranteeing universal enforcement of the statutes and promoting an environment of legal and fair competition among the various economic operators.

On the other hand, the General Trade Department should have research services dealing with the major aspects of Domestic and External Trade (Imports and Exports), so as to define and propose optimal policies for the regulation and development of these sectors, including their socioeconomic conjunctural and structural aspects. This necessitates gathering and processing of information from the Ministry, from the field, or from other national and international sources, and developing sectoral studies or participating in studies with other ministries.

The creation of a **Research and Fiscal Department** is also proposed. It would include a Research and Statistics Agency, and, on the other hand, a Control and Visual Inspection Agency agglutinating all external service staff members of the Ministry.

The integration of these two agencies, by having them report to a joint supervisory level, would enhance the operational capabilities of the control function through legal support for situation analysis services provided by the Research Agency. The operational capabilities of the research function would also be enhanced by more direct information from the field.

On the other hand, the separation of the License Department from the Research and Fiscal Department would result in more impartial performance of the fiscal function.

**c) Creation of a external aid program follow-up and/or implementation service**

The CGD, being responsible for the service of follow-up and/or implementation of a large proportion of the external balance-of-payments assistance programs approved for the country, a recommendation has been made for the establishment of a specialized service in such regard. Without impairing the performance of regular services by the CGD, this new service would guarantee the adequate coordination and implementation of the external aid programs. An **International Program Department** is therefore proposed.

**d) Creation of a Regional Delegations Support Service**

The draft Organic Law includes a proposal for the decentralization of a number of functions of the central services, that would be entrusted to the three Regional Delegations of the Ministry, namely those of the Northern, Eastern, and Leste Regions.

In order to guarantee effective coordination of the services to be provided to the commercial operators throughout Guinea-Bissau under policies defined in advance, efficient two-way linkages will be needed, between the CGD's various agencies and the Regional Delegations.

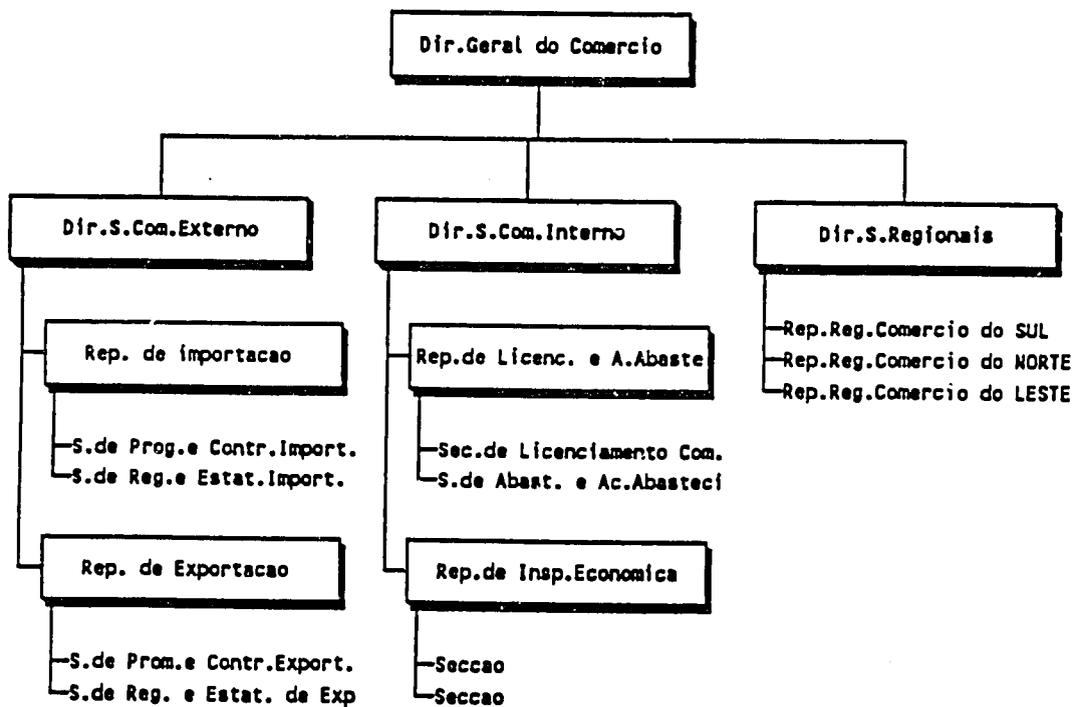
This has led to the proposal of creating a support unit, that could be named **Regional Agency** of the CGD. This unit will report directly to the General Director for Commerce.

Regional Departments integrate commercial and industrial services, and this will eventually warrant the creation of a Regional Agency within the Industry General Department.

**11. ASSISTANCE TO THE WORKING TEAM OF THE MINISTRY OF COMMERCE AND INDUSTRY FOR THE DEVELOPMENT OF RESEARCH AND ANALYSIS CAPABILITIES OF ITS OWN**

As one of the major objectives is the development of the research and analysis capabilities of the Working Team of the Ministry of Commerce and Industry, the Group has analyzed the decrees and dispatches identified, as well as the draft reorganization of the Ministry of Commerce and Industry.

Organograma (proposta do Ministerio)



## ORGANOGRAMA (estudo Junho/93)

