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CHAD: REGIME A OF THE INVESTMENT CODE

Assessment and Proposal for Reforms

Submitted to:

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and

The IRIS CENTER of the University of Maryland

Submitted by:

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ABBREVIATIONS AND SYMBOLS

AMTT	Agricultural Marketing and Technology Transfer Project
APB	Association Professionel de Banques (Professional Bankers Association)
ATC	Agreement Technical Committee
BDT	Banque de Développement du Tchad (Development Bank of Chad)
BEAC	Central Bank of Central African States
BIEP	Bureau Interministeriel d'Etudes et de Projects
CAPAGRI	AMTT Agribusiness Support Component
CFA	African Financial Community (Francophone Currency)
CFD	French Development Fund
CFPB	Contribution Foncière sur les Propriétés Bâties
CFPNB	Contribution Foncière sur les Propriétés Non Bâties
CIF	Cost Insurance Freight
CNPT	Confédération National du Patronat Tchadien
CST	Conseil Supérieur de la Transition
CTA	Cellule Technique d'Appui
EIA	Environmental Impact Assessment
FADE	Fonds d'Appui Direct aux Entreprises Privées
FOB	Free on Board
GDP	Gross Domestic Product
GOC	Government of Chad
ICAI	Impôt sur le Chiffre d'Affaires Intérieur
IPRCM	Impôt sur les Distributions, intérêts (tax on dividends and interest)
IRIS	Institutional Reform and the Informal Sector
NIC	Newly Industrialized Countries
ONDR	Office National du Développement Rural
OPIT	Office de Promotion des Investissements au Tchad
PAFE	Programme d'Appui et Financement des Entreprises
PASPT	Project d'Appui au Secteur Privé Tchadien
RCS	Registre de Commerce et des Sociétés
ROI	Return on Investment
SODELAC	Société de Développement du Lac Tchad
SMEs	Small and Medium Enterprises
TEC	Tarif Extérieur Commun
TDC	Taxe sur la Distribution de Crédit
TGR	Taux Global Réduit (Reduced Tariff Rate)
TP	Tarif Préférentiel
TU	Taxe Unique (Single Tax)
UDEAC	Union Douanière et Economique des Etats de l'Afrique Centrale
UNDP	United Nations Development Programme
USD	US Dollar
USAID	United States Agency for International Development
VI/VL	Valeur Imposable/Locative
VITA	Volunteers in Technical Assistance

FORWARD

This paper was prepared–at the request of USAID/Chad for its Agricultural Marketing and Technology Transfer (AMTT) project and under a sub-contract of the IRIS CENTER of the University of Maryland–by Roger B. Jantio and with the assistance of Joanne Fungaroli of Sterling International Group, Inc.

In order to promote private enterprise in Chad, USAID/Chad and the Government of Chad (GOC) have given a special focus to agricultural marketing services through the AMTT project. To that end, USAID contracted with the IRIS CENTER of the University of Maryland at College Park to provide technical assistance toward assessing and simplifying Regime A of the Investment Code (which covers Small and Medium Enterprises).

The simplification of the process for access to the benefits of Regime A of the Investment Code is part of a conditionality to be fulfilled by the Government of Chad under the AMTT Grant Agreement.

The opinions expressed here are those solely of the author, and do not reflect the positions of either USAID, the AMTT project or the IRIS CENTER.

EXECUTIVE SUMMARY

The Investment Code of the Republic of Chad contains several preferential treatment regimes for investors who can qualify for their benefits. These preferences include lower taxes and lower import or export duty levels. Although these investment regimes are available to Chadian investors, foreign investors in Chad often negotiate a set-up agreement or "convention d'établissement" that grants them similar benefits.

The idea of these preferences is to attract or induce investment which would otherwise not take place. Regime A is the part of the Investment Code applicable to Small and Medium Sized Enterprises (SMEs). For reasons which are discussed in this report, SME access to the benefits of Regime A is to be simplified. This report contains recommendations for that simplification. The main recommendations are to simplify and limit the amount of information an SME applicant must provide to streamline government consideration of the applications.

There is a broader context to these recommendations, however. It is appropriate to ask why there should be any preferential regimes for investment at all, or whether they can achieve much in Chad's present circumstances.

As discussed later in this report, and as has been demonstrated in materials prepared for the 1991 Private Sector Seminar and the 1992 Private Sector Donor Roundtable, Chad lacks the basic institutions conducive to beneficial private economic exchange and the investment that exchange brings. Chad lacks secure property rights, a system to enforce private contracts, and is otherwise missing important features of the rule of law.

This report also notes that many successful developing countries have abandoned preferential investment regimes in favor of simplified tax and duty structures applicable to all investment regardless of size, or domestic or foreign ownership. This removes the government from unnecessary interference in private decisions, and also eliminates the extensive discretion exercised by government bureaucracies under preferential investment regimes. The opportunity to exercise this type of discretion is also the opportunity for widespread corruption.

The task at hand is to simplify the administration of Regime A so that it will be more accessible to small private businesses in Chad. This will be of some benefit. But the greater challenges are to rewrite the Chadian investment Code to establish a sensible "droit commun" where there will be no need for preferential investment regimes, and to bring about the broad institutional changes in Chad which will encourage private sector development as no scheme of preferences and privileges doled out by government bureaucracies can.

I. INTRODUCTION

PURPOSE OF THE MISSION

Participants in the 1991 Private Sector Seminar and the 1992 Donor Roundtable on the Promotion of the Private Sector in Chad recommended simplifying access to Regime A of the Investment Code, which accords certain preferential treatment aimed at promoting domestic investment by small and medium size enterprises.

This request was already embodied in the Agricultural Marketing and Technology Transfer (AMTT) Grant Agreement signed by USAID/Chad and the GOC, as one condition precedent which requires evidence that procedures for applying to the Regime A of the Investment Code have been revised so as to broaden its access.

The Chad Investment Code is governed by an ordinance that mainly defines the various preferential plans and their related advantages. The application procedures, on the other hand, are governed by a decree that subjects a Regime A applicant to the same procedures as any other applicant for one of the Investment Code's temporary preferential treatment plans. Overall the application process can be complex, time consuming, and expensive for a small or a medium size enterprise and even for literate entrepreneurs familiar with modern business practices. It has probably prevented private sector businesses from applying to this regime. Indeed, since its inception in 1987, only eight (8) firms have applied to Regime A (five (5) were granted).

The present study has been carried out on the basis of observations made over a three-week field mission to N'Djamena (September 5 to 27, 1993). Drawing upon knowledge and understanding of Chad's private sector based upon direct involvement at various stages of the preparation of the Private Sector Seminar and Private Sector Roundtable, as well as the findings of the aforementioned field mission, the consultant was in a position to assess Regime A and to make recommendations for reforms.

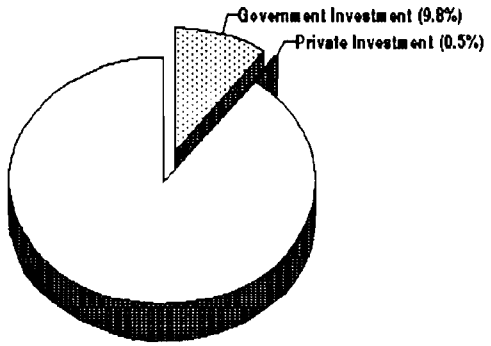
This consultancy is aimed at assisting USAID/Chad and the Government of Chad (GOC) in revising the process of applying for the benefits of Regime A of the Investment Code under the assumption that an increased utilization of this regime will boost SMEs' ability to grow and create jobs.

OBJECTIVES OF THE NATIONAL ECONOMIC PLAN

One of the most important results of the 1991 National Seminar on the Private Sector was the recognition by the GOC of the leading role this sector must play in Chad's economic development process. This opinion has since been confirmed by the Private Sector Roundtable. It is now widely accepted that reliance on private sector investment is essential to economic growth.

Unfortunately private and public sectors investment rates in Chad are low. Gross domestic investment was 10.3% of GDP in 1990, and of the total, an overriding majority (95.2% of gross domestic investment), was invested by the public sector, with the private sector contributing a minuscule 4.8% (versus 70% in Senegal, 81.2% in Gabon, 29.2% in Equatorial Guinea, 74.1% in Côte d'Ivoire, and 46.2% in Burkina Faso for example).

Graph 1: Public and Private Investment in Chad In 1990 as a Percentage of GDP

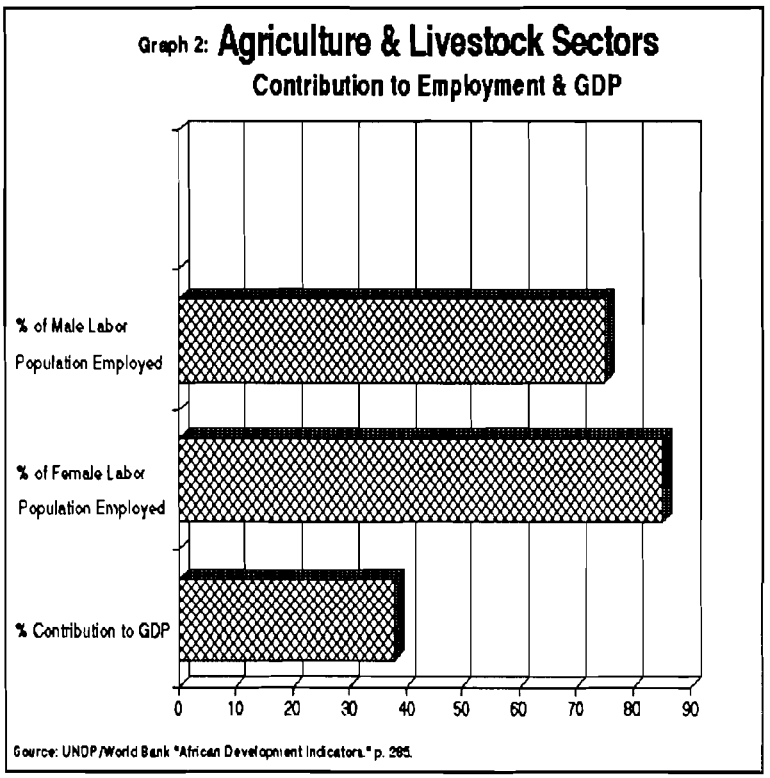


Note: GDP in 1990 was USD 993 million.

Source: UNDP/World Bank, African Development Indicators

Within the private sector, a large number of existing organizations fall into the SME and informal sub-sectors as it is more lucrative and efficient to be economically active outside the purview of the government legal, regulatory, and institutional net. Indeed, some studies indicate that the informal sector contributes the lion's share to the economy, better than two-thirds of the GDP.[1]

Furthermore, from a sectoral point of view, agriculture (production, processing and related activities) and livestock are the primary foci of the private sector in Chad, contributing 38% of GDP in 1990, and employing 75% of the male labor population and some 85% of the female labor population. Even within the industrial sector, agricultural processing and related activities account for almost all production – items such as sugar, textiles, soap & cooking oils, tobacco products, soft drinks, beer, meat & hides, and agricultural equipment.



[1] See Jean-François Hennart, "The Informal Sector in Chad", IRIS CENTER and USAID/Chad, June 1991.

As a result, any growth in the agriculture sector has a multiplying effect (in terms of job creation, increase in value added, increase in exports of non-traditional products, etc.) on the economy as a whole and on the competitiveness of Chadian products. The latter is of increasing importance in light of the UDEAC Common Market organization and of increased pressure from Nigerian cost and currency advantages. This explains USAID's determination in designing and implementing a project to improve private sector investment, markets and the efficiency of the marketing system in Chad, through the Agricultural Marketing and Technology Transfer (AMTT) project

To succeed in this endeavor, the AMTT project needs an improved regulatory environment, and most specifically a simplified business registration process, a simplified process for access to the benefits of Regime A of the Investment Code and a revision of the "patente."[2] All of these measures are aimed at promoting SMEs.

FACTORS FOR A GOOD INVESTMENT CLIMATE

For the reform of Regime A of the Investment Code to have a sustainable impact, the government must address key constraints (policies, laws, regulations, operating legal systems and quality of implementing institutions) that negatively impact the overall investment outlook in Chad. Most of these constraints have been addressed in various forums (Private Sector Seminar and Donor Roundtable, or their preparatory meetings for example). Following are some aspects of the operating environment that any investor, small, medium or large, considers when making an investment decision:

- a stable political environment with few uncertainties;
- disciplined economic management with consistent adherence to a highly disciplined program of economic reform;
- liberalized and broad-based trade and financial policies;

[2] The "patente" is not easliy translated. The "patente" consists of a variety of different taxes including a rural intervention fund tax, Consular Chamber tax, Social Security Fund tax, rental property tax, and many other varied taxes. Some of these taxes are based on a sliding scale, which the author was unable to obtain from government officials. Hotel la Palmeraie, a Regime A company, should have paid approximately 1.5 million CFA francs in "patente."

- reduced tax burden that provides personal and corporate tax relief as well as improved overall revenue-collection capabilities, and that stimulates private initiative;
- an independent judicial system, an unbreakable and unequivocal respect for the rule of law, and a legal framework necessary for a good investment climate, including property rights (ownership, transfer and bankruptcy), banking secrecy, contractual rights, law of associations, satisfactory dispute settlement mechanisms, impartial enforcement of laws, etc)[3];
- good infrastructure that reduces bottlenecks (in transport, energy, and telecommunications sectors principally);
- improved availability of domestic financing[4];
- reduced bureaucratic hurdles and delays; and,
- increased availability of human resources with the knowledge and skills necessary to effectively produce and market products.

Since the 1991 Private Sector Seminar much has been said by the GOC, but little has been done to address the above-mentioned issues. The Sovereign National Conference (CNS) was a commendable step forward, thought it cannot in itself improve the climate for private investment and boost the local private sector's confidence in government investment policies.

For private investment to significantly increase, the overall investment outlook must be more encouraging. Regime A is only one of many requirements needed for SMEs to successfully play a "pull and push" development role in Chad.

This report outlines the key characteristics, and assesses constraints and opportunities presented by the Regime A. Recommendations and an implementation plan are in sections 3 and 4.

[3] Professor Louis Aucoin, IRIS CENTER and USAID/Chad, August 1992.

[4] See Roger Jantio, "Chad Financial Sector and Private Sector Financing", IRIS CENTER and USAID/Chad, June 1991.

II. OVERVIEW OF THE CHAD INVESTMENT CODE

A. The Chad Investment Code

1. General Overview of the Investment Code and Regime A

The Chad Investment Code is based on the December 8, 1987 Ordinance Nº 025/PR/87 and the decree Nº 446/PR/MCI/87 that establishes the key benefits of the code and the application process. Investments in Chad can be governed by general terms ("regime de droit commun"), or by four preferential treatments or by a set-up agreement ("convention d'établissement") that give tax advantages to businesses fulfilling certain conditions. The preferential treatments or Regimes are:

- Regime A—applies to small and medium-sized enterprises;
- Regime B—applies to enterprises whose activities are limited to the domestic market;
- Regime C—applies to enterprises whose markets include at least two or more UDEAC countries;
- Regime D—applies to large companies that are important to the economic and social development of the country and that have invested substantially.
- Reduced Global Tariff (TGR or "Tarif Global Réduit") is part of the general terms ("droit commun") but is not, in itself, a regime. The TGR reduces import taxes to 5% on any equipment and machinery (not raw materials, furniture, and parts) needed for production and processing.

A regime offers fiscal and non-fiscal advantages. To appreciate the advantages of Regime A and assess its drawbacks, it is important to determine the characteristics of its potential beneficiaries and the conditions for applying to the regime.

2. Current Status of Regime A

a) Investment Code Definition of an SME

A firm is considered a "small or medium-sized business" (SME) under Regime A if the following requirements are cumulatively fulfilled:

(1) Chadian nationals hold a majority of the capital and have a deciding voice in its management; and,

(2) net asset value used for its operations is under 100 million CFA francs (or approximately $360,000); and,

(3) short-term debt is under 100 million CFA francs. With the financial system being more and more reluctant to extend term loans to SMEs, this condition is easily met by a large majority of Chadian firms, especially agribusiness firms.

b) Conditions for Applying for Regime A Status

Regime A status can be granted for a maximum of ten (10) years to businesses located in high industrial zones (mainly N'Djamena) and up to fifteen (15) years for those that are in other areas. Under the Investment Code, a firm can apply for Regime A status if:

(1) at the time of its registration, it had an investment program[5] in fixed assets of 15 to 500 million CFA francs (approximately $54,000 to $1.8 million);

(2) at the time of its expansion, it had gross fixed assets of less than 1 billion CFA francs;

(3) it reduces the cost of job creation and guarantees continuous professional training; and,

(4) it uses, as a first priority, local raw materials and those imported from UDEAC countries.

[5] There is a potential misunderstanding of the term "investment program." An investment program is the planning of the investments to be completed throughout the exemption period. It should not be confused with "investment", the capital expenditure to be made in year one.

c) Advantages Granted by Regime A

Regime A is one of the most advantageous preferential treatments in the Investment Code.[6] Set-up agreements between the government and a big company sometimes offer similar or better treatment depending on the bargaining power of the parent company of the firm to be set up in Chad. Businesses that have been approved for Regime A enjoy the following advantages, most of which also apply to agribusiness firms as well as to companies in other sectors (e.g. transport, tourism, etc.):

(1) import duties and taxes limited to 5% (the TGR) on fixed assets needed for production and processing[7];

(2) export taxes reduced or abolished[8];

(3) the agreement decree shall specify the amount of land, mine or forest rental fee;

(4) preferential treatment shall be given to Regime A bidders for government contracts (if price is the same as non-Regime A bidders);

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[6] In absolute terms, Regime B could also give many advantages since the TGR applies on a higher level of fixed assets (up to two (2) billion CFA francs or approximately $7.2 million).

[7] Normally import taxes vary depending on the classification of the products. In an effort to create a common market in Central Africa, members of UDEAC have been negotiating a common tax on non-UDEAC imported goods. Member countries reached a consensus to replace all import taxes currently in use (i.e. customs tax, entry levy, complementary tax, statistic tax and preferential regimes) by a simplified common tax ("Taxe Unique" or "Tarif Extérieur Commun, TEC") with only four product categories: necessity items (5%), raw material and equipment (15%), semi-finished items and others (35%), and consumer goods (70% to be gradually reduced to 35% in five years). For UDEAC imported goods, there is a Preferential Tax (TP) equal to half of the respective TEC. This TP is to be gradually reduced to zero (0) in five years.

[8] In accordance with the UDEAC Management Committee's 1992 decisions on fiscal/tariff reforms, member countries shall eliminate all export taxes. Presently, there are Chadian export taxes on agricultural products, manufactured goods, livestock and livestock by-products, fish and other seafood products.

(5) tax holiday: exemption from payment of personal tax, corporate tax, minimum flat-rate tax, "patente" (including tax on the rental value of professional offices) for a period of five (5) or ten (10) years depending on whether or not the applicant is located in an industrial zone;

(6) exemption from the tax on credit contracted at the time of registration and modernization of fixed assets;

(7) amortizations normally and regularly computed during the exemption period are deducted during the next three (3) or five (5) fiscal years (depending on whether or not the company is located in an industrial zone) following the end of the preferential treatment;

(8) deduction of half of the profit reinvested in Chad through purchase of land, buildings and other fixed assets, and raw materials; and,

(9) five (5) to ten (10) year land tax exemption for companies located in industrial zones and ten (10) years exemption in the case of companies located in low industry concentration zones.

Table 2 puts into perspective the comparative advantages of the Regime A and the "droit commun." As detailed below, to get these benefits an SME has to follow a highly regulated application procedure.

d. Table 2: Conceptual Comparative Advantage: Regime A vs "Droit Commun"

Advantages	Regime A	"Droit Commun"
1. Import duties and tax relief on fixed assets needed for production and processing.	The TGR (5%) on imports.	Depends on products. See footnote 7.
2. Export taxes reduced or abolished, with the possibility of benefitting from UDEAC unified tax regime.	Reduced or abolished depending on Investment Committee action.	3% on FOB value + 1% stat. tax + 1 to 3% rural dev. tax + other taxes.
3. Land rental fee (per acre) Mine rental fee Forest rental fee	Investment Committee determines an exact amount.	Approx. 25,000 CFA.
4. Government contracts	Preference given, if bid price is the same.	Competition and no set aside.
5. * Personal tax * Corporate tax * Minimum flat-rate tax * "Patente" * Tax on the rental value of professional offices	Tax Exemption for a period of 5 years (10 if located in industrial zones).	Up to 65% 45% to 50% Average 1.5% Depends on activity 15% rental value
6. Tax on credit (TDC) contracted at the time of registration and modernization of fixed assets.	Exemption.	2%
7. Amortization normally and regularly entered into the books during the exemption period.	Deductible the next 3 years (5 if located in low industrial zones) after the end of the Regime.	Deducted as it is entered into the books.
8. Profit reinvested in Chad in buildings (including land), purchasing raw materials and other fixed assets.	50% deduction.	20% tax on dividends and interest (IPRCM)
9. Land tax	5-10 years exemption (10 if located in low industrial zones).	• 12% rental value when built. • 10% when not built.

B. Institutional and Regulatory Framework of Regime A

1. APPLICATION AND APPROVAL PROCEDURES

The application for and approval procedures for Regime A are determined by decree Nº 446/PR/MC/87.

a) Composition of Dossiers

The application for Regime A approval is made to the Ministry of Commerce and Industry. Thirty copies must be submitted and they must include, in addition to the documents and information listed in the application form, a legal background document ("dossier juridique"), a technical study and a summary feasibility study on project investments. These requirements are so onerous that even some Regime A applications which technically have not met all the requirements have been granted.

The application must contain the following information:

1. Presentation of the Company

A general presentation of the company must include such information as:

- name, status and headquarters of the company;
- different legal identification numbers (statistics and registration);
- name and nationality of the shareholders including the structure of the capital, a breakdown of share ownership by foreign nationals and by Chadians;
- the exact address of the company (P.O. Box, phone, telex);
- power of attorney authorizing the signature; and,
- if any, a contract of technical assistance duly signed by the parties

2. Market Study

Normally, the elements of the market study vary depending on such factors as the amount of investment, the type of industry, etc. The decree, however, describes six elements that the market study must address:

- number of affiliates and their locations;
- evaluation of the competition and the overall supply, including locally produced and imported substitutes;
- evaluation of the demand, both domestic and export;
- analysis of the evolution of the market, stressing the growth rate of supply and demand, estimation of the market potential, and market share to be captured;
- a competitive analysis of substitute products or similar imported products including price comparisons (before tax prices, CIF prices, wholesale prices, and consumer prices); and,
- a description of the value chain or the distribution channel in place or to be developed.

3. Description of the Applicant's Activities

The decree specifies that the applicant must:

- list all products with their respective commercial and tariff classification[9];
- list raw materials, semi-finished products to be used and their countries of origin;
- briefly describe the production process of all the products and eventually give the technical qualifications of the technical partner as well as the origin of the technology to be used;
- for each type of product, specify the production capacity of the equipment to be used; and,

[9] UDEAC Import Tariff Handbook has over 10,000 product classes. This should change with the harmonization of tariffs within the zone.

- specify environmental impacts and measures taken to alleviate, nullify or limit industrial hazards.

4. Investment and Funding Sources

The applicant must specify:

- the cumulated amount of investment to be made throughout the duration of the regime and the implementation schedule of the said investments, including the foreign exchange component; and,

- funding sources of the investment including both self-financing and external funding sources. In the case of external funding, the applicant should specify the interest rate, the terms, the currency, the payment schedule, etc.

5. Pro-forma Financial Statement

The applicant must provide a 5-year pro-forma financial statement, including:

- main ratios (as defined by UDEAC accounting standards) under the general terms ("droit commun") and the Regime A scenarios;

- breakdown of the calculation of the cost structure assuming the general terms and Regime A; and, breakdown of the export sales price to UDEAC countries assuming the "Taxe Unique" (see footnote 7); and,

- cash flow analysis under the general terms and the Regime A scenarios.

6. Personnel

The applicant must specify:

- for the first five years of the Regime's validity, the number of jobs to be created, distinguishing the gross salary to be paid both to Chadian nationals as well as to expatriates, the number of jobs (for Chadians and expatriates), and the number of senior managers, middle managers and skilled and non-skilled labor;

- the training program and a plan of action to "Chadianize" technical and managerial positions; and,
- the job description of managers and middle managers.

7. List of Equipment

The applicant must provide a list of:

- machinery and plant equipment
- raw and semi-processed materials
- packaging, etc.

The application must include the UDEAC customs classification, and identify the equipment to be imported (specifying the country of origin) from that to be bought locally.

2. INSTITUTIONS

The application decree of the Investment Code creates two centralized (and N'Djamena-based) institutions to evaluate an application for granting Regime A preferential treatment as well as other preference plans: an Agreement Technical Committee (ATC) and an Investment Commission. Applications from small companies outside of N'Djamena have to be evaluated in N'Djamena.

a. Agreement Technical Committee

This committee is a working group chaired by the Director of Industry and Cooperatives of the Ministry of Commerce and Industrial Promotion, who is also the executive secretary of the Committee. It is composed of representatives of eleven other ministries or institutions, and three (3) private or "quasi-private" sector representatives (representatives of the Consular Chamber[10], the Bankers' Professional Association and the Chadian Development Bank)(see annex 1 for the list of members).

[10] This is sometimes translated as Chamber of Commerce. In Francophone Africa, the Consular Chamber is a quasi-governmental body.

The ATC meets on an as-needed basis, at least one month after receiving any application that has been transmitted to the Executive Secretary by the Minister of Commerce and Industrial Promotion. The Committee can only meet if a quorum (at least 8 members) is reached, and it has an advisory role vis-à-vis the Investment Commission.[11]

b. Investment Commission

The Investment Commission, chaired by the Minister of Commerce and Industrial Promotion, is composed of five other ministers, the National Director of the central bank (BEAC), and a representative of the Transition Council (CST).[12]

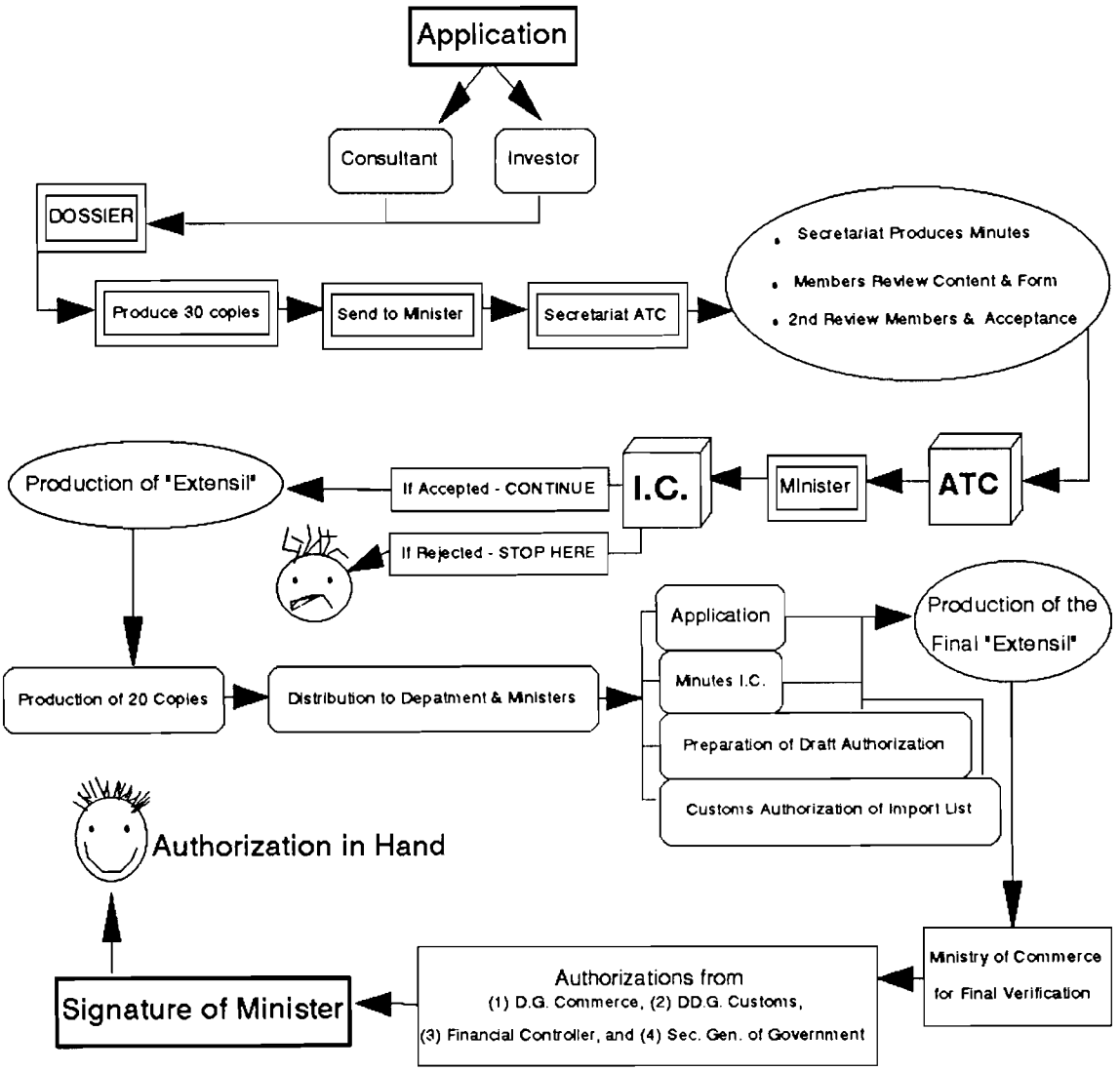
If there is a quorum of six, the Minister of Commerce and Industrial Promotion can convene a meeting at least once a quarter to evaluate applications pre-screened and submitted by the ATC. In 1993, there has been one meeting to examine applications for Regime B and no Minister (other than the chair) has attended it.

The Investment Commission is both the judge and the "appeal judge." In the event of a denial of an application for a preferential treatment, the applicant may request within fifteen (15) days that the application be reconsidered by the Investment Commission.

[11] The Committee can be convened fairly quickly by its Chair, the Director of Industry and Cooperatives, and has power to grant access to a Reduced Tariff Rate (5%).

[12] See list of members in annex 1.

Figure 1: THE REGIME A APPLICANT'S BATTLEGROUND
Decision Making Flowchart



Note: I.C. = Investment Commission; ATC = Agreement Technical Committee

III. ASSESSMENT OF REGIME A

There are many deficiencies in the Chad Investment Code. A steering committee has been formed within the Ministry of Commerce and Industrial Promotion to draft a new investment code, on the basis of the Chadian macroeconomic environment, the GOC's specific economic policy objectives, the general operating environment for business, and Chad's natural resources. Donor agencies should consider assisting this committee by providing it with consultants experienced in investment code and investment climate matters.

Although the study presented here may be helpful to the steering committee, it will focus on Regime A and will not attempt to evaluate the Chad Investment Code in its entirety. The study will rather point out the reasons why this regime has not yielded the results expected.

A. Regime A: An Underwhelming Record

Few applicants have successfully used Regime A. In five years, only five (5) applicants[13] have been approved under the Regime A plan, with only two (2) remotely related to agribusiness:

- Hotel la Palmeraie (1989)
- Meuble Dogocho (Project abandoned)
- Boulangerie Ahmat Guedi (1989)
- Boulangerie ISSEILY (Sahr)
- Société Tchadienne de Convoiyage, de Transport et de Transit (STCTT).

Three other applications are pending or have been rejected:

- Sud Transport (positive recommendation by the ATC)
- Cabinet Dentaire Acropolis (positive recommendation by the ATC)
- Société Tchadienne de Restauration (rejected by the ATC)

[13] The reliability of these figures is not clear. The Secretariat of the Agreement Technical Committee does not have a good record keeping system. At the beginning of this research, the Secretariat mentioned one applicant to Regime A. This figure was later increased to 6 before the author uncovered two additional successful applicants. It appears that there may be other applicants: Mégisserie du Tchad (1991), Boulangerie Ahmat Altidjemi Habib, and Jardin du Chari.

In addition to Regime A, there have been thirty-six (36) applications for the Reduced Tariff Rate (TGR) and all have been approved. Application for TGR status is less burdensome (with minimum paperwork when there is no external financing) and needs only a positive opinion of the Agreement Technical Committee.

B. Key Positive Features of Regime A

- The special advantages of this privileged regime are competitive with what is available in many other African countries, particularly for projects that fit the economic strategies of the countries.

- The Investment Code attempts to balance "cost" in terms of lost government revenues generated by all the tax, customs and duties exemptions that are granted to successful applicants of the code, with the "economic and social benefits" of the proposed investment program. This cost-benefit analysis and the desire to get the highest return on government "investment" (lost revenues) are used to justify the elaborate bureaucratic process. This process in turn generates the deficiencies outlined below. This includes extensive bureaucratic evaluation of the likely success of the project. An institutional question one can ask is who is more able than the investor to evaluate his/her project?

- The conditions for benefitting from Regime A are reasonable by other African investment code standards (Article 19 of the Investment Code law). One of the conditions pertains to the level of the investment program in fixed assets (between 15 to 500 million CFA francs or approximately $54,000 to $1.8 million) to be implemented throughout the exemption period. The ATC accepts that land, plant, buildings, equipment, pre-registration expenses, and working capital can be counted in this program. The floor level of 15 million CFA francs is thus easily attainable.

  The spread between the floor and the ceiling levels of the investment program is one of the highest in Africa, with a multiple of 33.33 (500 divided by 15). It does not seem that the 15 million CFA franc floor is a constraint to an SME with a reasonable investment plan. Guinea's Investment Code sets the value of the assets between 15 and 300 million Guinean

francs or approximately $18,466 to $369,326[14] (a 20.0 multiple).

C. Deficiencies of the Regime A Provisions

In light of the difficulties in getting Regime A status and the heavy burden on the Chad private sector under the current fiscal system, it is not worthwhile for most SMEs even to apply for Regime A benefits. Indeed, high taxes and burdensome bureaucracy make for informal or illicit markets. With high taxes, goods sold on legal and formal markets in Chad are priced at comparatively high levels, with huge multiples over the marginal cost of those goods. The resulting high prices in formal markets create conditions for obtaining huge gains from trade in informal, illegal or illicit markets. In these markets, any SME can become a "de facto" Regime A company (avoiding taxes, etc.) and get most (if not more) of the advantages offered to a "de jure" Regime A.

In addition to the implication of the broad institutional framework affecting the Regime A, there are three key areas of Regime A deficiency that are addressed below.

1. Deficiencies in the Investment Code

A deficiency in the Investment Code comes from its separate limitations on the level of owner capital and the size of the investment program.

To be eligible for Regime A status, Articles 18 and 19 of the Investment Code state that an applicant must have (1) an owner equity base of less than 100 million CFA francs (approximately $360,000), (2) short-term loan portfolio of under 100 million CFA francs, and (3) an investment program of 15 to 500 million CFA francs.

Thus, owner equity must not be more than 20% (100 million CFA franc maximum equity out of 500 million CFA franc maximum investment program) of the investment program.[15] However, an applicant may not want any leverage, much less a leverage of 4:1. Indeed some will prefer to self-

[14] An exchange rate of 812.29 Guinean francs per 1 US Dollar was taken from the 10/1/93 Wall Street Journal.

[15] These conditions are similar to those the Central Bank of Central African States (BEAC) applies to applicants for a preferential interest rate.

finance their capital expenditure rather than leave the equity in a bank at a low real interest rate.[16] Furthermore, except for the Chadian Development Bank (BDT) and VITA, few Chadian financial institutions fund investment programs, and even when they do, they require secure collateral[17] and a low debt to equity ratio[18] for the financing.

2. Deficiencies in the Application Process

- Businesses requesting approval for Regime A status must provide detailed information which then must be compiled in a complicated, long and costly seven-step process to be submitted to the Ministry of Commerce and Industrial Promotion. Since projects rarely follow exactly the blueprint laid out in the feasibility study stage, the Code seems to leave the door open for discretionary findings on non-compliance and leaves an investor uncertain about what degree of deviation from plans in the original dossier need to be cleared formally by the Ministry. Overall, a local banker summarizes the application by a simple statement, "The ATC and the Investment Commission request more information from applicants than the bankers who have taken financial risks in financing the applicant." Civil servants justify this system by saying that, "They have to protect the private sector against itself."

- The applicant must provide its registration I.D. As soon as a business is registered, it must start paying an assortment of taxes, some of which are based on its capital, and paid before the beginning of production. The decree does not recognize a project as an applicant. This is an unfair treatment since large and foreign companies that seek a "convention d'établissement" come in with a project, and kick off the registration only when the agreement has been signed.

[16] With total financial and banking related charges (cost of debt including taxes) also reaching 30% per annum (interest charges, tax on credit distributed, ICAI, bank charges, etc.) , it is hardly surprising that an entrepreneur (of the formal sector) might not want to be leveraged, if s/he can help it.

[17] Short of a guarantee fund requested by the Chadian private sector, the only sources of collateral are fixed assets and land. Property title appears to be hard to get for land.

[18] BDT only finances projects with a debt to equity ratio of at least 70:30, which disqualifies them from Regime A benefits. The French Development Fund (CFD) requires a ratio of 80:20 and commercial banks are said to require 75:25 to 70:30. The equity portion of the project financing can be in cash or in kind.

- Some elements of the general presentation of the company are repetitive, hard to get and sometimes illegal (e.g. requesting a power of attorney proving that one has the signature to act on behalf a project (that is not yet a corporation) is not legal. Other required elements from the applicant have been identified for reform in the IRIS study of the simplification of the business registration (one identification number[19] for example).

- The decision making process is long and bureaucratic. The ATC usually waits to have about 3 applications to call for a meeting. The Investment Committee, on the other hand, should meet quarterly. Consider the number of government changes that have taken place in Chad: thus far in 1993 alone, there have been three (3) Ministers of Commerce–the Chair of the Investment Committee. This "musical chairs" at the presidency of the Investment Committee slows down the review of all applications. There have been rumors of applications getting lost in the process.

- The application calls for a comprehensive industry and competitive analysis. This is hardly feasible by an SME with total assets of less than $350,000. Drafters of the Investment Code should have made a clear distinction between the process to be followed by SMEs (Regime A applicants) and larger firms or applicants to other regimes. While a big company may be able to afford a big consultancy fee, a small firm cannot. Even big firms do not always pay for consulting services received; instead, they arrange access to subsidized services provided by OPIT[20] or by donor assisted projects (BDT[21];Chad Private Sector Support Project[22]; etc.).

  With the assistance of the AMTT Agribusiness Support Component (CAPAGRI), an

[19] See Ben Hardy: System and Implementation Schedule for Simplifying Business Registration in Chad, IRIS CENTER, University of Maryland at College Park (for USAID/Chad).

[20] OPIT charges an extremely low retainer fee (50,000 CFA francs or approximately $180 plus 0.3 to 2% of the financing obtained if any, as only one such deal has taken place with the SIPT project).

[21] The BDT often spends two (2) months to structure an important client's application to the Investment Code.

[22] This project prepares the feasibility study and raises the financing (mostly through the CFD-supported funds such as the AIPD or the FADEP). It charges no flat retainer fee but has a success fee of 3 to 5% of the financing and an annual monitoring fee of 1% of the estimated revenue.

informal survey of the fee and the level of effort needed to prepare the Regime A application has been carried out, and the results are summarized as follows:

Sample	Fee Structure			Level of Effort
	Fee in CFA francs	% Mini. Asset	% Maxi. asset	
Firm 1	50,000 + 5% Invt.	5.33%	5.00%	2 mos
Firm 2	540,000 to 660,000	3.60-4.40%	0.11-0.13%	4-5 mos
Firm 3	250,000 to 500,000	1.70-3.33%	0.05-0.10%	3 mos
Firm 4	50,000 + 5% Invt	5.33%	5.00%	3 mos
Firm 5	150,000	1.00%	0.03%	2 mos
AVERAGE	Over 350,000	3.53%	1.49%	3.2 mos

On average, Chadian consultants stated that they would charge 350,000 CFA francs to assist a small business in the Regime A application process.

- Thus, the transaction and opportunity costs of applying for Regime A are very high (time, money, frustration, and diversion from business activities). An application that follows all the required conditions would have to be at least 75-100 pages, and must be submitted in 30 copies. For example, a successful application submitted by the "Boulangerie Ahmat Mahamat Guedi" had 60 pages. Photocopy costs alone could top 300,000 CFA francs (approximately $1,100), or about 2% of the minimum investment program of an SME.

- Information requested in the application package is normally highly confidential for any company (pricing strategy, technical assistance contract, distribution system, marketing strategy, sources of financing, etc). In light of the delay in the decision making process, an investor risks seeing his/her ideas "stolen" by either competitors or unscrupulous "copycats" before the fruit of the idea is harvested. Moreover, this bureaucracy-directed market study misses a lot of points that are often important to private sector operators (e.g. time, confidentiality, cost, etc.).

- The obligation of conducting an Environmental Impact Assessment (EIA) can be too

difficult for an SME.[23] This exercise requires specific and very tailored skills. In agribusiness activities, environmental impact studies are even more difficult as this sector more directly affects the environment. It is commendable that it has to be done in the case of big projects. But a 15 million CFA franc investment program can hardly carry out an EIA without the expensive technical assistance of someone who is familiar with the intricacies of these studies.

3. Deficiencies in the Post-Approval Phase

The Investment Commission should normally give a semi-annual report to the President of the Republic on the evaluation of its activities and those of the Agreement Technical Committee. As of September, 1993, there has not been any report for 1993.

From an institutional point of view, there is no real follow-up instrument or organization to assist successful applicants after the approval phase. After an approval is granted neither the Agreement Technical Committee nor the Investment Commission do anything to monitor the activities of successful applicants.

[23] Even before such studies are required in international project finance, the Chad Investment Code requires it from applicants.

IV. PROPOSAL FOR REFORMS

A. SHORT-TERM ACTION PLAN

1. Revision of the Applicable Decree of the Investment Code

The Chad Investment Code is a law (an ordinance) passed in 1987. As in many other developing countries, there is now a need to revamp this code so as to encourage both domestic and foreign investment. Unfortunately, the overhauling process will take time (studies, proposals, debates at the CST, adoption of the law, etc.). Additionally, although the Investment Code sections relevant to Regime A generally offer some good advantages, not all applicants can qualify for all of the advantages, and some applicants can only qualify for TGR.

Under the AMTT Grant Agreement between the Government of Chad and USAID, the Government is required to revise procedures relating to Regime A of the Investment Code to facilitate access to its preferential treatment by SME. This is one of the conditions that the GOC was initially supposed to fulfill by April 1992 to get disbursement of funds. Two amendments have since been made to the Project Agreement to extend this deadline; first to October 1993 and then to July 29, 1994.

To abide by this agreement, the GOC could either change the law or issue a decree modifying some sections of the application decree Nº 446/PR/MCI/87 of December 1987. The second route is the better one to meet the deadline.

In the Chadian context, it is important to recognize that there are a number of factors under the current Chadian system that make it difficult for investors to weigh the benefits of Regime A against the costs of entering the formal economy. Chad's ultimate growth depends on addressing these fundamental issues. At the same time, for those firms that do utilize it, there are important changes in the Regime A design and operation which will affect an investor's calculation in this regard.

If the political will exists (i.e by the Minister of Commerce and Industrial Promotion), a decree can be prepared and signed in about 2-3 months (under "normal" functioning of the GOC apparatus). To facilitate this process, the following suggestions for reform of the application decree are aimed at designing a reasonable, clear, simple framework and procedural application guidelines for a renewed Regime A. They are based on experiences in other African countries, on views expressed by both private sector and government officials, and on the research carried out in preparation for the Private Sector Seminar and the Private Sector Roundtable.

a. Changes in the Request for Admission to Regime A

Any business entity that meets the SME definition as specified in the Investment Code ordinance or any project that qualifies as an SME should be able to request admission to Regime A without waiting for the creation of a company and/or its registration to the Commerce Registry (RCS). This would change the present system which first requires creation of a company and its registration.

Eligibility for Regime A status should be simply defined by the level of investment, but this would require some change of law. However, until the law is changed, the ATC should waive this requirement. All reference to the maximum capital base an applicant should have to qualify as an SME should be removed. In most African countries, the law defines an SME based on the value of the assets used and on the permanent work force. In Guinea, for example, an SME must have at least five (5) workers.

b. Revamped Agreement Technical Committee

There is no need to create a new governmental entity as doing so would be costly. For Regime A, the revamped ATC, presided over by the Director General of the Ministry of Commerce and Industrial Promotion, instead of the Director of Industry and Cooperatives, should be the principal regulatory and screening body and have the ultimate authority for granting Regime A status. An SME application for Regime A need not be re-evaluated by the Investment Commission, as is the case under the current decree[24].

In other African countries, the functions of the Agreement Technical Committee have been assigned to an Investment Center and Board with regulatory, screening and investment promotion functions (e.g. the Kenya Investment Centre, the Zimbabwe Investment Centre, etc.).

The Secretariat of the Agreement Technical Committee should continue to be under the authority of the Director of Industry and Cooperatives. This Secretariat is an administrative service that reports to the Committee and to its Chair.

[24] Currently, the Agreement Technical Committee is the ultimate decision maker for the TGR (import tax reduced to 5%). Although CotonTchad has a regime that regulates its access to preferential treatment, in 1990-1992, the Technical Committee has authorized TGRs on a cumulated import amount of over 6 billion CFA francs. There is no reason why the same institution should not regulate the process for SMEs.

The quality of management by the implementors of the investment promotion policies, laws and regulations (Agreement Technical Committee and its Secretariat) is key. Later they could become the core of an Investment Promotion Center, with the assistance of donors and donor-sponsored projects such as VITA, PASPT, and AMTT.

There are training needs in:

- record keeping
- computers
- project evaluation
- financial analysis
- file/data processing and management
- general management concepts.

AMTT should consider structuring a training package for the ATC and its Secretariat. This training could be in the form of seminars, roundtables, presentations and study tours to countries with similar experiences such as Guinea, Senegal, Burkina Faso and Burundi.

c. Composition of the Agreement Technical Committee

There should be more private sector representation on the Agreement Technical Committee as civil servants left alone might not be able to fully grasp the full scope of entrepreneurship opportunities.[25] While this could lead to the formation of private sector interest groups, the risk of this could be eliminated by: (1) not allowing the private sector to vote on applications relating to their sector's industry, and (2) not requiring proprietary or confidential information in the application.

Overall, there should be equivalence between the private and public sectors within the Agreement Technical Committee. Although the Chadian Employers Organization (CNPT) is technically a union, it ought to be represented. Currently there are three private sector representatives on the Agreement Technical Committee (Professional Bankers Association, Chadian Development Bank and the Consular Chamber).

[25] More private sector representation is increasingly common and essential in investment boards as it provides some oversight to the screening body's operation and effectiveness (e.g. Kenya, Zimbabwe, etc.).

The Professional Bankers Association (APB) is theoretically a member though more often than not it does not send a representative to the ATC. This might be partly due to the fact that the banking system is not interested in extended term loans, and that the presidency of APB has been held by the same bank since 1983. With two new banks in the operation (Financial Bank and the Arab Libyan Bank), APB representation should be able to change once in a while.

Government representation should be reduced. There is no need to have the General Secretary of the Government and the General Secretary of the Presidency represented.

Contrary to the provisions of the current decree, the Committee should meet once a month or within 30 calendar days of submission of an application. The Committee should reach its decisions by a majority of the votes cast, and its proceedings should be valid if a majority of the members are present.

d. Duties of the Agreement Technical Committee

For Regime A applicants, the Agreement Technical Committee is responsible for:

- reviewing the applications for approval submitted by persons who wish to benefit from Regime A advantages provided by the Investment Code, and granting or denying these applications; and,
- revoking all or part of the benefit of approval for Regime A for businesses that have not carried out their investments according to the plans approved by the Committee.

There should be an explicit reference to prosecution for unauthorized use of privileged information, which is important to this type of body as it has prior information on investment projects. All members of the Agreement Technical Committee should be bound by the "professional secrecy" law of the Civil Code that regulates any breach of confidentiality. Other countries have had problems with information in investment project applications being given to competitors. It is therefore important that the scope of information requested in the application form be reduced to limit this "insider copying" risk.

e. Application Procedures

Any Chadian business entity or person seeking to enjoy the advantages granted by Regime A must submit an application for approval to the Secretariat (Director of Industry and Cooperatives at the Ministry of Commerce) of the Agreement Technical Committee. Receipt of said application should be acknowledged.

The application for approval, to be submitted in 10 copies, must include, in addition to the documents and information listed below (see composition of dossiers) a letter by the investor(s) summarizing the data in the application file that demonstrates that the applicant satisfies all requirements.

In the absence of any comment from the Secretariat within 30 calendar days after receipt of the application, the file will be considered complete.

Within 30 calendar days from receipt of a completed application for approval, or of any required supplementary information (assuming the request for such information was made within the indicated time limit) the Secretariat shall review the application and prepare a memorandum for the members of the Committee.

This memorandum shall summarize the project, give the Secretariat's detailed comments concerning the project's compliance with the necessary criteria for admission to Regime A, and recommend to the Committee that approval be granted or denied.

A copy of the application and the memorandum shall be sent to each member of the Committee and to the department concerned. In order to review the files, the Secretariat shall request the assistance of the ministries concerned.

At its next meeting, but not less than fifteen (15) days after receipt by its members of the application file and the attached memorandum, the Agreement Technical Committee shall review the application and shall rule on approval or denial of Regime A.

Minutes of the proceedings of the Committee shall be drawn up by the Secretariat. In the event of a favorable decision, the Secretariat shall submit a draft decree for signature by the Minister of Commerce and Industrial Promotion and the General Secretary of the Government before going through more paperwork in other ministries. In the event of a denial, reasoned comments shall be submitted by the Secretariat for signature of the president of the Committee within the same time limit.

The decree of approval signed by the Minister of Commerce and Industrial Promotion and co-signed by the General Secretary of the Government or the notice of denial shall be transmitted to the investor within five (5) business days of signature.

If approval or denial has not been communicated to the investor within forty-five (45) calendar days of submission of a complete application file, the Agreement Technical Committee shall be obligated to provide the investor with an answer within 10 business days. If a decision by the Committee still has not been communicated to the investor at the end of this 10-day deadline, the application will be deemed approved.

f. Composition of Dossiers

Considering the high risk of "insider copying" and the expense of application preparation, a person requesting approval for Regime A SME preferential treatment plan shall furnish with his/her request for approval a simplified application containing the following information:

i) information about the project (if applicant is registered, the legal form under which the business is establish, with a copy of the identification registration to the RCS);

ii) a description of the equipment, machinery and facilities to be used for the planned activity and an indication of their cost;

iii) estimated production and sales figures for a period of at least two (2) years;

iv) a list of raw materials, semi-processed materials, furniture and spare parts necessary for production, their cost, and an indication of their origin;

v) an estimation of the number of jobs to be created, and the total payroll;

vi) a list of partners and the percentage of shares held by each (no need to mention nationality).

In addition to the information listed above, applicants for Regime A should provide information necessary to determine his/her eligibility as described in section IVA1a of this report (article 18 of the Investment Code defining SME) versus the requirements defined in section IIA2a/b. The successful applicant should be given the opportunity to make amendments to information filed in the application forms.

g. Post-Approval Phase

During the exemption period (time during which Regime A is in force), the successful applicant must communicate the following information and documentation (mostly actual figures of key projections made in the application) to the Secretariat of the Agreement Technical Committee within four (4) months of the end of each fiscal year:

- cost of equipment and facilities used for the activity;
- funding sources for investments;
- production and sales figures;
- cost of raw materials and semi-processed materials;
- number of jobs created and total payroll;
- change in ownership structure.

Reorganization of the Secretariat of the Agreement Technical Committee is needed for effective post-approval activities such as record keeping. Currently it is impossible to tell even the exact number of people who have applied for Regime A. At the beginning of my research, the Secretariat said that there had been only one applicant to the Regime. This figure was later increased as other applicants were uncovered.

Organization of an Investment Window, as proposed in this Report, would also be useful in assisting post-approval activities. This would also be an opportunity for technical assistance by the AMTT project and other donor projects (CAT/PADS/MIE, PAFE, etc.) in the structuring of a continuous promotion vehicle.

2. Investment Promotion and Facilitation Services

Investment promotion efforts should be private sector-led. As such it must be tied into the planned restructuring of the Consular Chamber through an "Investor Window."

a. Investor Window at the Restructured Consular Chamber

With a public/private board of directors, an Investor Window could play the role of an investment agency acting as a facilitator (information gathering and information dissemination) or as an intermediary on behalf of investors—mostly SMEs eligible for Regime A. This would not be a purely public agency, which investors might distrust. It would be a focal point within a private sector organization to carefully study all aspects of investment promotion. AMTT and the IRIS CENTER could play a role in providing technical assistance to such an entity.

b. Advantages of a Private Sector Investor Window

An Investor Window could have advantages of administrative freedom, such as the ability to offer competitive salaries to attract top-quality employees. Located in a revamped Consular Chamber, an Investor Window can maintain strong links with the government, provide input on the investment climate to private sector operators, and counsel them on contemplated governmental policies and actions that affect private investors, before decisions and then implementation.

It could also help investors in very practical ways, for example, by promoting Chadian SME awareness of Regime A, or by steering them through the different bureaucracies with which they must deal, and by keeping them up-to-date on changes in laws and business regulations.

Before international efforts are made to attract foreign investors (through the usual mechanisms such as trade missions abroad, international public relations, etc.), an Investor Window should first be established to serve local investors, with a focus on small investors (via Regime A).

c. Need to Restructure the Consular Chamber

Investment promotion has been initiated, with limited success, by the Industrial Promotion Office of Chad (OPIT), a state-owned business consulting service that private sector officials would like to see privatized. The 1991 Private Sector Seminar and the 1992 Private Sector Roundtable have recommended that OPIT be closed down. OPIT's investment promotion mission would better be executed by a private sector-oriented Investor Window. OPIT has published booklets aimed at educating private entrepreneurs and investors ("The Investor Guide", "Conditions for Setting up Industrial Enterprises in Chad", etc.).

The status of the Consular Chamber is relevant to reforming Regime A insofar as a private sector-

controlled Investor Window could be located there. Reform of the Consular Chamber has been proposed in a draft that for weeks has been ready for the action by the Council of Ministers. It is more or less modeled on the French system, and contains key reforms such as election of the President, appointment by the Chamber's President of the management staff, etc.

3. Developing a Good Local Consulting Industry

Developing local capacity building that can tap into and develop a consulting market niche in the local private sector is important under the current application procedure for Regime A or under a restructured system.[26]

a. Chad's Consulting Market

Traditionally the market for local Chadian consulting services has been dominated on the demand side by projects sponsored by donors (e.g. French "Project d'Appui au Secteur Privé", VITA, BDT, etc.), the government (ONDR, ONADEH, OPIT, SODELAC, BIEP, etc) and parastatals. On the supply side, local consulting firms such as BEPROCA, BEC, TBC, etc., have been formed. An informal survey of the demand for agribusiness consulting services in Chad was conducted by the AMTT Agribusiness Support Component (CAPAGRI) in September-October 1992. It confirms the existence of local demand for consulting services. Unfortunately local consultants have not always been interested in harnessing the potential demand from the Chadian private sector. This is due to: (1) the high opportunity cost generated by the relatively high fees paid by donor and government-sponsored programs; and, (2) the preference Chadian businesses give to outside consultants.

b. Donor Strategy

Donors have been active in developing a local consulting industry. AMTT Agribusiness Support Component (CAPAGRI), for example, plans to focus its strategy on:

- assisting Chadian consulting firms in expanding their market to the private agribusiness sector for services such as registration procedures, tax assistance, application to Regime A and to other preferential plans, etc.;

[26] This importance has been highlighted by Bill Dalrymple of AMTT Agribusiness Support Component (CAPAGRI) in a June 1993 study on Chadian agribusiness consulting.

- organizing workshops on developing and implementing marketing plans;
- promoting demand for local consultancies through advertising, a referral database, etc.; and,
- structuring matches between suppliers and potential buyers of consulting services via its database.

This is occurring. Virtually all applicants for preferential treatment under the Investment Code have gotten technical assistance in developing their applications. At the right price, there is definitely a market niche for aggressive consulting firms.

So far applicants have been helped by funding institutions, notably the Development Bank of Chad (BDT), which is now acclaimed as providing the best service to customers seeking Investment Code or fiscal preferential treatment. (BDT has successfully helped three (3) applicants to different regimes). This success is partly due to the competence of BDT staff in this area, their desire to help their client get the highest possible return on investment by reducing their client's cost of capital, and their inside knowledge on review of applications (a representative of the BDT is a member of the Agreement Technical Committee).[27]

The Direct Assistance to Private Enterprise Funds ("Fonds d'Appui Direct aux Entreprises Privées, FADE), a fund of funds mechanism managed by the French Development Fund, offers assistance in preparing feasibility studies, structuring projects, etc. through French technical experts, and also finances projects at 2 to 12% interest rates (three (3) projects have been funded). The FADE plans to use local consultants in the future to appraise the project.

CAPAGRI, the Technical Assistance Unit to Microenterprises (or CAT/MIE, a World Bank-financed project), VITA, private commercial banks and other financial institutions should develop similar in-house talent to help their customers. It is important that these organizations train local consultants (for a fee) in the methodology for successfully applying for preferential status, so as not to deter the expansion of private consulting firms. Consultants would in turn market their services

[27] While the BDT's presence on the ATC could be construed as a conflict of interest, a fair mechanism to designate representatives from private sector organizations that are members of the ATC would create a sub-group with enough coherence and discipline to act with an "encompassing interest" (see Mancur Olson, The Rise and Decline of Nations, 1982). This rational self-interest fosters increased production. By contrast, narrow interest inherent in an unfair mechanism to designate representatives (i.e., no election for example) only protects special interest and monopoly positions.

to potential applicants who have so far shied away from this Regime. As it is in some businesses such as investment banking, these consultants could be paid by "success fees"— a good incentive for performance and trust building. The "Programme d'Appui au Secteur Privé" offers a perfect illustration of this success-based incentive.

4. Promoting Access to the TGR

The "Reduced Global Tariff" (TGR), that reduces import taxes to 5% on any equipment and machinery (not raw materials, furniture, or parts) needed for production and processing, is the most sought after special regime of the Chad Investment Code (36 applications versus only 8 for Regime A). The TGR is part of the "Droit Commun" and thus is a preferential treatment common to any beneficiary of the Investment Code. The simplicity of the application process for assessing the TGR explains its popularity: (1) decisions are made by the Agreement Technical Committee and (2) the application package is simple and straight forward.

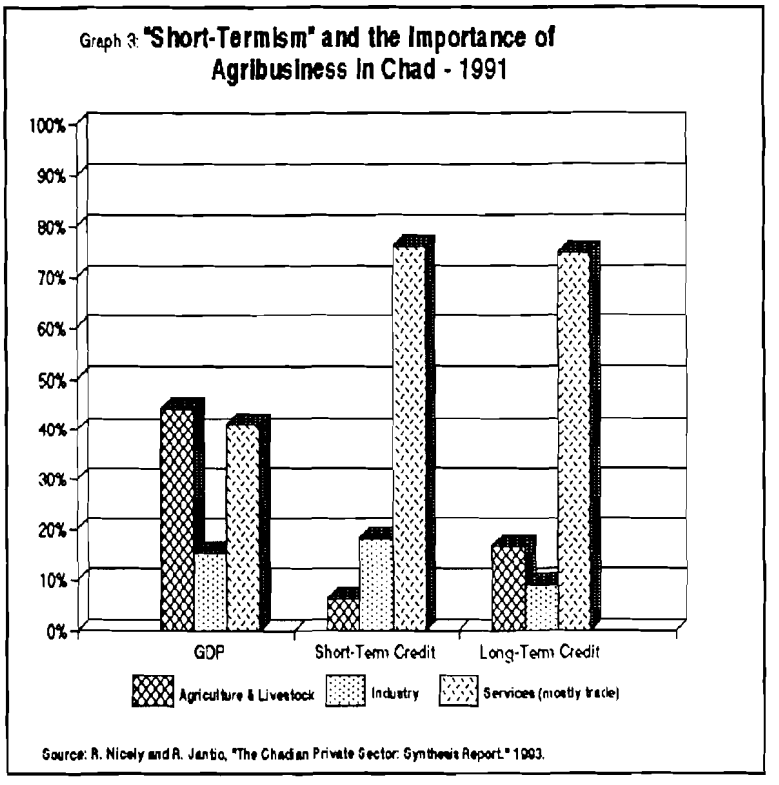
On a short-term basis, the AMTT Agribusiness Support Component should also promote the TGR as an adequate vehicle for tax relief to act as a catalyst for increasing private sector investment in agribusiness.

B. SUSTAINABLE REFORMS: A BETTER INVESTMENT CLIMATE

1. Correction of Distortions to Investment

The incentives granted in the Investment Code ordinance are intended to offset distortions or disincentives to investment; otherwise no special treatment would be necessary. Indeed, in some advanced developing countries such as the Newly Industrialized Countries (NIC), there is a trend towards eliminating investment incentives or preferential regimes in favor of tax provisions which are uniformly applied. Essentially, in those countries the regimes and the "droit commun" are applicable to everyone.

However, in Chad, the general climate generated by the lack of rule of law (political, military and social instability) and by the lack of respect for legal processes has increased business risk to an extraordinarily high level, pushing small and large enterprises to seek very high returns on investment in order to offset risk (returns of 100 to 1,200 per cent are said to be possible). As a result, the Chadian economic structure is oriented toward short-term trade related activities with limited industrial or agribusiness exposure.



That is why the GOC, like many developing countries, still finds it necessary or desirable to have a code or law which grants incentives to investors.

2. Beyond the Investment Code: Chad as a General Reduced Tax Zone

There is a general climate among developing countries to encourage local private investment and to attract foreign direct investment. The Chadian Orientation Plan of the 1990s has made the promotion of private investment a GOC strategic focus.

Given the GOC's chronic deficit, its overall limited endowment in natural resources, Chad's landlockedness, and Nigeria's competitive pressure, there is little short-term potential for increasing national income and creating new jobs in the public sector. Moreover, the prevailing customs fraud in Chad (both external or commercial corruption, and internal smuggling) diverts much needed resources from the government. Under these conditions, it is conceivable that sustainable economic growth in Chad can be created only if the country is free from many of the serious policy and institutional constraints that affect the private sector.

Some Chadian entrepreneurs have suggested, with good reasons, that the GOC will gain more revenue by making the whole country a General Reduced Tax Zone, with low taxes and a competitive cost structure. Promoting Chad's competitiveness (mainly through lower taxes) is the idea; a good first step would be to make Regime A the "droit commum." Without doing so customs fraud will continue to be a lucrative business and no "Mixte Brigade" will succeed in eliminating it.

For entrepreneurs, a General Reduced Tax Zone would reduce a portion of the price set at a high level (taxes), and thus lead to possible gains and social surplus, including increases in government revenues and cheaper prices.

V. IMPLEMENTATION PLAN AND CONCLUSION

A. Direction for Change

GOC has set up a study group at the Ministry of Commerce and Industrial Promotion to consider Investment Code reforms. There is a danger that a reform decree that only targets Regime A will be delayed, especially since the AMTT Project Agreement deadline has been extended to July 1994. Instead there may be some effort to postpone Regime A reform while the entire investment code is overhauled.

A general overhaul of the Investment Code (ordinance and decree) takes time. The GOC should be encouraged to go ahead and adopt a decree that only addresses Regime A reforms as this can be done fairly quickly.

Many policy constraints have been identified in this report. However this implementation plan only addresses ways to carry out Regime A reforms, and does not deal with other recommendations made.

There are many persons and entities in Chad that have a major say in any reform of the Investment Code (Commerce, Customs, Indirect Tax Departments, Development Bank, etc.) – and from among them the Minister of Commerce and Industrial Promotion should receive the most attention. Implementation of the short-term recommendations made here would require that they have the full support of the Minister

Implementing reforms in Chad is a lengthy endeavor (with constant changes in governments). For example, the proposed reforms for simplifying business registration studied in September 1992 still have not been enacted by the government.

Following is a short-term action plan:

- AMTT and the IRIS CENTER should organize informal (and low-key) seminar discussions on portions of this report and share it with GOC officials, members of the Economic Commission of the CST, representatives of the private sector, local consultants and other donors active in Chad. Specific topics of these informal discussions could include:

    - the investment code in Mauritius
    - appropriate investment climate in Chad
    - characteristics of a well functioning Investor Window
    - supply and demand of consulting services in Chad
    - donor-funded financing mechanisms

- The Steering Committee set up at the Ministry of Commerce should be assisted in drafting a decree related to Regime A, so as to have it ready to be signed.

- This Steering Committee should have private sector representatives.

- The Steering Committee should be assisted in designing and developing a Regime A explanatory and step by step booklet, in both French and Arabic.

- The proposed Regime A decree should be put together with the decree on simplifying business registration, both should be considered together by the Government. Focus should be given to public bodies which have a direct impact on the investment code and the investment climate in general:

  . Ministry of Trade and Industrial Promotion
  . Ministry of Finance (Direct Taxation Department, Customs, and Treasury)
  . Ministry of Labor
  . Department of Mines
  . Department of Water and Forestry
  . Sector ministries such as agriculture, water, forestry, transport, etc. that receive license fees.

B. Conclusion

Regime A of the Chad Investment Code has performed poorly considering the number of potential applicants for the Regime. This is due to deficiencies in the Investment Code itself and to the failure to align existing laws, regulations and institutions with the Code's provisions.

A complex application process administered for bureaucratic entities is a major constraint on small and medium enterprises applying for the Regime. Thus, priority should be given to the earliest possible elimination of these regulatory impediments, both formal and informal, inhibiting new investments from SMEs.

Immediate steps should be taken to implement the four recommendations identified in this report.

This action has to be consistent with the ongoing revamping of the Investment Code. It is also important that a review of sector-specific legislation governing certain ministries which continue to conflict with the Code be carried out. Based on this review, such legislation should be abrogated or amended so that the processing of investment approvals can be smooth.

Finally the effort to revise Regime A should be consistent with the ongoing reform being developed to harmonize tariff and taxes within the UDEAC zone. Participants in the UDEAC negotiations state (although there is no explicit documents that support this) that export taxes will be eliminated. In

addition, all import taxes currently used by the country members would be consolidated into four categories with four rates. Raw materials and equipment, for example, will be subject to a 15% import tax.

The proposed UDEAC reform will directly affect two major advantages of Regime A, and specifically the TGR. UDEAC is also urging member countries to renegotiate all investment set-up agreements and special regimes in order to realign them to the "UDEAC droit commun."

Any immediate revision of the Regime A decree and long-term revision of the Regime A law should consider ways to counterbalance the effect of the UDEAC measures. In light of Chad's current investment climate, there are other fiscal and regulatory advantages that a revised Regime A can provide. For example:

- abatement of the 14% on transport costs paid to the BNF
- deductibility of internal sales tax (ICAI) by producers and distributors
- no limit on the timeframe of the deductibility of amortizations computed during the exemption period.

ANNEX 1

LIST OF AGREEMENT TECHNICAL COMMITTEE MEMBERS

Chair: Director of Industry and Cooperatives

Members: Director of Planification, Development and Reconstruction
Director of Customs and Indirect Taxes
Director of the Industrial Promotion Office (OPIT)
Director of Taxes
Director of Land Titles, Estates,"Stamps" and Land Conservation
Legal Director at the Secretary General of the Government Representative of the Secretary General of the Presidency
Representative of the Consular Chamber
Representative of the Bankers Professional Association (APB)
Representative of the Chad Development Bank (BDT)
Representative of the Applicable Technical Ministry

LIST OF INVESTMENT COMMISSION MEMBERS

Chair: Minister of Commerce and Industrial Promotion

Vice Chair: Minister of Finance

Members: Minister under whom falls the activities of the applicant (technical ministries such as Agriculture, etc)
Minister of Plan and Cooperation
Secretary General of the Government
Secretary General of the Presidency
Representative of the Transition High Council (CST)
National Director of the Central Bank of Central African States (BEAC)
President of the Consular Chamber

ANNEX II

THE CHAD INVESTMENT CODE

REPUBLIQUE DU TCHAD

Unité - Travail - Progrès

Code d'Investissement

- ORDONNANCE N° 025/PR/87 DU 08 DECEMBRE 1987 PORTANT CODE DES INVESTISSEMENTS DANS LA REPUBLIQUE DU TCHAD.

- DECRET N° 446/PR/MCI/87 DU 08 DECEMBRE 1987 FIXANT LA PROCEDURE D'OCTROI DES AVANTAGES DU CODE DES INVESTISSEMENTS.

REPUBLIQUE DU TCHAD
PRESIDENCE DE LA REPUBLIQUE

M.P.
UNITE - TRAVAIL - PROGRES

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VISA : SGG

()RØONNANCE N° 025 /PR/87
PORTANT CODE DES INVESTISSEMENTS DANS LA REPUBLIQUE DU TCHAD.

LE PRESIDENT DE LA REPUBLIQUE,
CHEF DE L'ETAT,
PRESIDENT DU CONSEIL DES MINISTRES.

VU l'Acte Fondamental de la République ;

VU le Décret n° 025/P.CE/SGCE/82 du 18 Octobre 1982 portant publication de l'Acte Fondamental de la République ;

VU le Décret n° 144/PR/CAB/87 du 10 Août 1987 portant remaniement ministériel ;

VU la Loi-Organique n° 11-62 du 11 Mai 1962, relative aux Lois de Finances et instituant la nomenclature de la Codification des Ressources et Charges du Budget de l'Etat, modifiée par Ordonnance n° 023/PR/85 du 30 Octobre 1985 ;

VU la Loi n° 30/68 du 28 Décembre 1968, relative aux prix, aux interventions économiques et à la repression des infractions économiques ;

VU le Code Général des Impôts ;

VU le Code des Douanes ;

SUR PROPOSITION du Ministre du Commerce et de l'Industrie ;

LE CONSEIL DES MINISTRES entendu en sa séance du 21 Novembre 1987 ;

() R Ø O N N E :

ARTICLE 1er.- Les investissements privés bénéficient dans la République du Tchad :

- d'un régime de droit commun ;
- des Régimes Privilégiés :

1. Un régime "A", accordé aux petites et moyennes entreprises à Capital Social National majoritaire ;

2. Un régime "B", applicable aux entreprises dont l'activité est limitée au territoire national ;

3. Un régime "C", applicable aux entreprises et établissements installés au Tchad et dont le marché s'étend aux territoires de deux ou plusieurs Etats de l'U.D.E.A.C. ;

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4. Un régime "D", réservé aux entreprises d'une grande importance pour le développement économique et social de la République du Tchad, et qui mettent en jeu des investissements très élevés.

En outre des Conventions d'Etablissement peuvent être conclues entre le Gouvernement et les Entreprises agréées.

LIVRE I : REGIME DU DROIT COMMUN

TITRE I : DES GARANTIES GENERALES

ARTICLE 2°.- Les investissements privés sont librement effectués au Tchad sous réserve des dispositions spécifiques visant en particulier à assurer la protection de la santé et de la salubrité publique, la protection sociale ou l'ordre public économique.

ARTICLE 3°.- Les droits acquis de toute nature sont garantis aux entreprises régulièrement installées au Tchad.

ARTICLE 4°.- Dans le cadre de la réglementation des changes, l'Etat garantit la liberté de transfert de capitaux, notamment :

- des bénéfices régulièrement comptabilisés ;
- des fonds provenant de cession ou de liquidation.

ARTICLE 5°.- Les entreprises dont les capitaux proviennent d'autres pays ainsi que les succursales d'entreprises ressortissant d'autres pays que le Tchad, ont la faculté d'acquérir les droits de toute nature, utiles à l'exercice de leurs activités : droits immobiliers, droits industriels, concessions, autorisations et permissions administratives, participation aux marchés publics dans les mêmes conditions que les entreprises tchadiennes. Toutefois les marchés de l'Administration, des Etablissements Para-Publics et des collectivités publiques dont le montant est inférieur ou égal à 60 millions de francs CFA et qui portent en tout ou partie sur des prestations ou fournitures susceptibles d'être exécutées ou livrées par des petites et moyennes entreprises (PME) nationales doivent être en priorité réservées à ces dernières.

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ARTICLE 6°.- Les entreprises visées à l'article 5 ci-dessus ou leurs dirigeants sont représentés dans les mêmes conditions que les entreprises tchadiennes ou les nationaux dans les assemblées consulaires et dans les organismes assurant la représentation des intérêts professionnels et économiques.

ARTICLE 7°.- Dans l'exercice de leurs activités professionnelles, les employeurs et les travailleurs étrangers sont assimilés aux nationaux. Ils bénéficient de la législation du travail et des lois sociales dans les mêmes conditions que les nationaux. Ils peuvent participer aux activités syndicales et faire partie des organismes de défense professionnelle.

ARTICLE 8°.- Les employeurs et travailleurs étrangers ne peuvent être assujettis à titre personnel à des droits, taxes et contributions autres plus élevés que ceux perçus sur les nationaux.

ARTICLE 9°.- Les dispositions prévues aux articles 5 à 8 ci-dessus s'appliquent sous réserve de réciprocité.

TITRE II : AVANTAGES FISCAUX

CHAPITRE 1er : DOUANES ET DROITS INDIRECTS

ARTICLE 10°.- Un régime tarifaire douanier préférentiel peut être accordé à ces entreprises. Ce régime entraîne l'application d'un taux global réduit à 5 % des droits et taxes perçus à l'importation sur les matériels, à l'exception des matériaux, mobiliers et pièces détachées, sous réserve qu'ils correspondent à un programme d'équipement approuvé par le Gouvernement et que leur valeur soit supérieure ou égale à 20 millions de francs CFA.

Toutefois pour les PME, un montant minimum de 10 millions de francs CFA leur sera exigé.

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CHAPITRE 2 : IMPOTS, TAXES, CONTRIBUTIONS ET DROITS DIVERS

ARTICLE 11°.- Sont notamment applicables à toute entreprise satisfaisant aux conditions prévues par le Code Général des Impôts, les dispositions ci-après dudit Code :

1. IMPOTS SUR LE REVENU DES PERSONNES PHYSIQUES ;

IMPOTS SUR LES SOCIETES, MINIMUM FISCAL

1.1 - Exemption temporaire et réduction pour entreprises ou activités nouvelles, industrielles, agro-sylvo pastorales, minières, forestières, touristiques ou hôtelières. Exonération de l'impôt sur les bénéfices réalisés jusqu'à la fin de la 5è année civile qui suit celle du début de l'exploitation.

1.2 - exemption des plus-values réalisées à la suite de fusion des sociétés.

1.3 - Exemption des plus-values provenant de la cession en cours d'exploitation des éléments de l'actif immobilisé en cas de réinvestissement en immobilisation dans l'entreprise.

1.4 - Taxation réduite de moitié pour les plus-values de cession.

1.5 - Bénéfices provenant de l'exploitation de plantation ou de l'élevage retenus pour 80 % de leur montant.

2. IMPOTS SUR LE REVENU DES VALEURS MOBILIERES

Ne sont pas compris dans le revenu global soumis à l'impôt sur le revenu des personnes physiques.

2.1 - Les revenus provenant des caisses sociales de crédit agricole, associations agricoles et sociétés de coopératives agricoles visées dans les textes portant organisation du crédit agricole mutuel au Tchad.

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2.2 - Les revenus des sociétés de toute nature dites de coopération ainsi que les sociétés coopératives de production de consommation ou de crédit des sociétés de secours mutuel.

2.3 - Les intérêts des bons émis par le Trésor Tchadien à échéance de 5 ans au plus.

2.4 - Les lots et primes de remboursement attachés aux bons et obligations émis avec l'autorisation du Ministre des Finances et de l'Informatique.

2.5 - Les intérêts des sommes inscrites sur le livret de Caisse d'Epargne.

2.6 - Les intérêts de l'emprunt national.

3. CONTRIBUTION DES PATENTES ET LA TAXE SUR LA VALEUR LOCATIVE DES LOCAUX PROFESSIONNELS (TVLP)

3.1 - Exemption permanente des cultivateurs, éleveurs et pêcheurs.

3.2 - Exemption permanente de concessionnaires des mines et carrières.

3.3 - Exemption temporaire de 5 ans des usines nouvelles.

4. CONTRIBUTION FONCIERE DES PROPRIETES BATIES ET NON BATIES

4.1 - Exemption permanente des bâtiments servant aux exploitations rurales.

4.2 - Exemption permanente des sols des bâtiments et d'une fraction de terrain entourant les constructions, les reconstructions et les additions de construction.

4.3 - Exemption permanente de la superficie des carrières et des mines.

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4.4 - Exemption temporaire de 5 ou 10 ans des constructions nouvelles reconstructions et additions de constructions.

4.5 - Exemptions temporaires de 5 à 10 ans des terrains nouvellement utilisés pour l'élevage du gros bétail ou défrichés et ensemencés.

5. IMPOTS SUR LE CHIFFRE D'AFFAIRES INTERIEURES

5.1 - Exonération des affaires de ventes concernant les produits agricoles, forestiers,d'élevage et de pêche d'origine locale n'ayant subi aucune transformation à caractère commercial et industriel.

LIVRE II : LES REGIMES PRIVILEGIES

TITRE I : DISPOSITIONS COMMUNES

CHAPITRE 1er : OCTROI DES REGIMES PRIVILEGIES

ARTICLE 12°.- Sous réserve des conditions prévues aux articles ci-après peut bénéficier d'une décision particulière d'agrément à un régime privilégié, toute entreprise exerçant des activités industrielles ou à caractère industriel dans les secteurs spécifiques (santé, éducation ...) désireuse de créer une activité nouvelle ou de développer une activité existante dans la République du Tchad.

ARTICLE 13°.- Les entreprises susceptibles de bénéficier d'un régime privilégié doivent appartenir notamment à l'une des catégories suivantes :

1. Entreprise de culture industrielle comportant un stade de transformation ou de conditionnement des produits ;

2. Entreprises industrielles de préparation ou de transformation des produits d'origine végétale, animale ou piscicole ;

3. Industries minières d'extraction, d'enrichissement ou de transformation des substances minérales et entreprises connexes de manutention et de transport ;

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4 . Entreprises de recherches minières et pétrolières ;
5 . Entreprises de production d'énergie ;
6 . Industries de fabrication et montage d'articles ou d'objets de grande consommation ;
7 . Industries d'exploitation touristique et hôtelière;
8 . Industries de bâtiments et travaux publics ;
9 . Activité de maintenance des équipements industriels;
10 . Entreprises des activités ou secteurs spécifiques.

ARTICLE 14°.- Pour chaque entreprise agréée, l'acte d'agrément spécifie:

- la raison sociale du bénéficiaire ;
- l'objet, l'étendue, le lieu d'implantation de l'entreprise et la durée de réalisation du programme d'investissement et ses effets induits ;
- la date d'entrée en vigueur et la durée d'application du régime accordé ;
- les avantages consentis aux bénéficiaires ;
- les engagements vis-à-vis de l'Etat et le cas échéant, les autres obligations particulières ;
- les modalités et les conditions de contrôle spécifiques auquel l'entreprise est soumise ;
- les sanctions applicables en cas de non respect des engagements.

CHAPITRE 2 : AVANTAGES ECONOMIQUES

SECTION 1 : INSTALLATIONS ET APPROVISIONNEMENTS

ARTICLE 15°.- Le concours de la Banque de Développement et de toute autre institution financière est accordé de préférence aux entreprises bénéficiaires de régimes privilégiés notamment à celles qui ont obtenu leur agrément en considération du volume des apports privés et des impératifs du développement économique et social.

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ARTICLE 16°.- Dans le cadre de la réglementation des changes, les entreprises agréées pourront obtenir des dévises en vue de l'achat de biens d'équipement et matières premières, des produits et emballages nécessaires à leurs activités.

SECTION 2 : ECOULEMENT DES PRODUITS

ARTICLE 17°.- Les entreprises agréées aux régimes privilégiés peuvent éventuellement bénéficier :

- des restrictions quantitatives temporaires à l'importation des marchandises similaires concurrentes en provenance des pays autres que ceux de l'U.D.E.A.C. ;
- des tarifs préférentiels des droits et taxes de sortie.

TITRE II : DES REGIMES

CHAPITRE 3 : REGIME "A" ou REGIME DES P.M.E.

ARTICLE 18°.- Au sens de la présente Ordonnance, par PME/PMI s'entend toute entreprise industrielle ou d'appui au développement du secteur industriel, dont l'activité consiste en la fabrication des produits finis ou semi-finis ou s'exerce dans le domaine des services, répondant aux critères ci-après :

a) les capitaux et la direction doivent être majoritairement constitués et détenus par les nationaux ;

b) les fonds propres doivent être inférieurs ou égaux à 100 millions de francs CFA ;

c) les encours d'utilisation des crédits à court terme doivent être inférieurs ou égaux à 100 millions de francs CFA ;

ARTICLE 19°.- Les entreprises définies à l'article précédent susceptibles de bénéficier du régime "A" doivent remplir les conditions suivantes :

- avoir au moment de leur création, un programme d'investissement en biens d'équipement compris entre 15 millions et 500 millions de francs CFA ;

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- avoir au moment de leur extension, un programme d'investissement en biens d'équipement dont le montant, augmenté de la valeur initiale des immobilisations brutes en biens d'équipement ne dépassant pas un (1) milliards de Francs CFA ;

- réduire le coût de la création d'emploi et assurer la garantie de la formation professionnelle continue ;

- utiliser en priorité les matières premières et les produits locaux et, à défaut ceux en provenance des pays membres de l'U.D.E.A.C.

ARTICLE 20°.- Le régime "A" est accordé pour une durée maximum de 10 ans cependant, la durée peut être fixée à 15 ans pour les entreprises installées dans les zones à faible concentration industrielle.

SECTION 1 : AVANTAGES FISCAUX ET DOUANIERS

ARTICLE 21°.- L'agrément au régime "A" comporte de droit, les avantages suivants :

1. l'application d'un taux global réduit à 5 % des droits et taxes perçus à l'importation sur les matériels d'installation et d'équipement directement nécessaires à la production et à la transformation des produits

2. fixation du taux de droits de sortie qui peuvent etre réduits ou nuls, applicables aux produits préparés, manufacturés ou industrialisés exportés ;

2.1 - Ces entreprises pourraient bénéficier du régime de la taxe unique prévue par l'Acte 12/65-UDEAC du 14/12/65 et ses textes modificatifs ;

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3. L'agrément au régime "A" comporte de droit la détermination dans l'Arrêté d'agrément du montant de la redevance foncière, minière ou forestière qui peut être reduit ou nul.

4. Les marchés publics tels que définis à l'article 5 alinéa 2 leur seront réservés en priorité.

5. Une exonération pour une période de 5 ans pour les entreprises installées dans les zones industrialisées et de 10 ans pour les entreprises installées dans les zones à faible concentration industrielle :

1 - de l'impôt sur le revenu des personnes physiques ;

2 - de l'impôt sur les sociétés et du minimum fiscal ;

3 - de la contribution des patentes et de la taxe sur la valeur locative des locaux professionnels;

6. Une exonération de la taxe sur la distribution des crédits au moment de son installation ou à la modernisation de ses installations.

7. Les amortissements normalement et régulièrement comptabilisés pendant la période d'exemption pourront être fiscalement imputés sur les trois exercices suivants pour les entreprises installées dans les zones industrialisées et sur les cinq exercices suivants pour les entreprises installées dans les zones à faible concentration industrielle.

8. Déduction pour le calcul de l'impôt, de la moitié du bénéfice affecté au Tchad aux réinvestissements productifs suivants :

- construction d'immeubles à usage industriel ou agricole (prix du terrain compris) ;

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- Achats de matériels et de gros outillage neufs, industriels ou agricoles d'une durée normale d'utilisation supérieure à 3 ans.

Cette déduction sera pratiquée sur les résultats de l'exercice au cours duquel interviendront :

- l'achèvement des constructions déterminé par la date du paiement des derniers travaux ;
- le paiement des achats de matériels ou d'outillages.

Si la base taxable n'est pas suffisante pour la déduction intégrale des bénéfices investis, l'excédent est reportable sur les cinq exercices suivants.

9. Une exonération temporaire en matière de contribution foncière pour les entreprises installées dans les zones industrialisées :

- des propriétés bâties 5 ou 10 ans ;
- des propriétés non bâties 5 à 10 ans.

Ces délais sont fixés à 10 ans pour les entreprises installées dans les zones à faible concentration industrielle.

SECTION 2 : STABILISATION DU REGIME

ARTICLE 22°.- L'achèvement du programme d'investissement agréé doit être notifié par l'entreprise concernée au Ministère du Commerce et de l'Industrie. La date d'achèvement fait l'objet d'un arrêté du dit Ministère après un contrôle de la conformité des investissements au programme agréé effectué par ses services.

ARTICLE 23°.- Pendant la durée du régime "A", aucun droit ou taxe d'entrée applicable aux matériels, aucune taxe ou impôts et taxes existant à la date d'octroi de l'agrément sauf clauses contraires prévues dans le décret d'agrément, aucun texte législatif ou réglementaire prenant effet à une date postérieure à celle de l'agrément d'une entreprise au bénéfice du régime ne peut avoir pour conséquence de remettre à l'égard de ladite entreprise les dispositions ci-dessus définies.

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Toutefois, les entreprises agréées au régime "A" peuvent demander le bénéfice de toute disposition plus favorable qui pourrait intervenir dans la législation douanière ou fiscale.

CHAPITRE II : REGIME "B"

ARTICLE 24°.- Le régime "B" concerne les entreprises dont l'acitivité est limitée au territoire de la République du Tchad et dont le montant des investissements cumulés pendant la durée de ce régime se situe entre 500 millions et 2,5 milliards de francs CFA. Le régime "B" est accordé pour une durée déterminée ne pouvant excéder 10 ans.

ARTICLE 25°.- L'agrément au régime "B" comporte de droit les avantages douaniers suivants :

1. Application d'un taux global réduit à 5 % des droits et taxes perçus à l'importation sur les matériels d'équipement, directement nécessaires à la production et à la transformation des produits.

2. L'exonération totale pour une durée qui sera déterminée par le décret d'agrément des droits et taxes perçus à l'importation.

2.1 - Sur les matières premières et produits entrant intégralement ou pour partie de leurs éléments dans la composition des produits oeuvrés ou transformés ;

2.2 - Sur les matières premières ou produits qui, tout en ne constituant pas un outillage et n'entrant pas directement dans ces produits ouvrés ou transformés, sont détruits ou perdent leur qualité spécifique au cours des opérations directes de fabrication, ainsi que les matières premières ou produits destinés au conditionnement et à l'emballage non réutilisable et non récupérable des produits oeuvrés ou transformés.

3. Fixation du taux des droits de sortie qui peuvent être réduits ou nuls, applicables aux produits préparés, manufacturés ou industrialisés, exportés.

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ARTICLE 26°.- Les produits fabriqués par l'entreprise agréée au régime "B" vendus sur le territoire de la République du Tchad sont exonérés de la taxe sur le chiffre d'affaires intérieures.Ils sont soumis à une taxe de consommation intérieure dont le taux variable et les dates d'application sont fixés par arrêté du Ministre des Finances et de l'Informatique. Cette taxe se définit et s'applique selon les principes de la taxe unique institués par l'Acte 12/65-UDEAC du 14/12/65 et ses textes modificatifs.

L'application de la fiscalité stabilisée au régime "B" majorée de la taxe de consommation intérieure ne pourra, en aucun cas imposer à l'entreprise une charge fiscale supérieure à celle qui résulterait de l'application du droit commun.

ARTICLE 27°.- 1. L'agrément au régime "B" comporte de droit l'application des dispositions ci-après du Code Général des Impôts.

1.1 Contribution foncière de propriétés bâties :
Exemption : 5 ou 10 ans pour les constructions nouvelles ou additions de constructions.

1.2 Contribution foncière des propriétés non bâties :
Exemption temporaire : 5 à 10 ans de terrains nouvellement utilisés pour l'élevage de gros bétail, ou défrichés et ensemencés.

1.3 Contribution de patentes et TVLP :
Exemption temporaire : 5 ans pour usines nouvelles.

2. L'agrément au régime "B" comporte en outre l'application des dispositions suivantes du Code Général des Impôts :

2.1 Exemption temporaire de 5 ans en ce qui concerne :

* l'impôt sur le revenu des personnes physiques ;
* l'impôt sur les sociétés ;
* le minimum fiscal.

Les amortissements normalement et régulièrement comptabilisés pendant la période d'exemption pourront être fiscalement imputés sur les trois exercices suivants.

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2.2 Déduction pour le calcul de l'impôt, de la moitié du bénéfice affecté au Tchad aux réinvestissements productifs suivants:

- Construction d'immeubles à usage industriel ou agricole y compris le terrain ;

- Achat de matériels, de gros outillages neufs, industriels ou agricoles, d'une durée normale d'utilisation supérieure à 5 ans. Cette déduction sera pratiquée sur les résultats de l'exercice au cours duquel interviendront :

* l'achèvement des constructions déterminé par la date du paiement des derniers travaux ;

* le paiement des achats de matériels ou outillages;

Si la base taxable n'est pas suffisante pour la déduction intégrale des bénéfices investis, l'excédent est reportable sur les cinq exercices suivants.

ARTICLE 28°.- Pendant la durée du régime "B" aucun droit ou taxe d'entrée applicable aux matériels, matières premières et produits visés à l'article 25 ci-dessus, aucune taxe ou impôts et taxes existants visés à l'article 27 à la date d'octroi de l'agrément sauf clauses contraires prévues dans le Décret d'agrément, aucun texte législatif ou réglementaire prenant effet à une date postérieure à celle de l'agrément d'une entreprise au bénéfice du régime "B" ne peut avoir pour conséquence de restreindre à l'égard de ladite entreprise, les dispositions ci-dessus définies. Toutefois, les entreprises agréées au régime "B" peuvent demander le bénéfice de toute disposition plus favorable qui pourrait intervenir dans la législation douanière ou fiscale.

Ce délai est fixé à dix ans après accord du Ministre des Finances et de l'Informatique.

CHAPITRE III : REGIME "C"

ARTICLE 29°.- Les entreprises ou établissements susceptibles d'être agréés au régime "C" sont celles ou ceux installés au Tchad et dont le marché principal s'étend aux territoires de deux ou plusieurs Etats de l'U.D.E.A.C.

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Le régime "C" est accordé pour une durée déterminée qui, en tout état de cause, ne pourra excéder dix (10) ans.

Cependant, pour les entreprises installées dans les zones à faible concentration industrielle, la durée est fixée à 15 ans.

ARTICLE 30°.- L'agrément au régime "C" comporte de droit les avantages suivants :

1. L'application d'un taux global réduit à 5 % des droits et taxes perçus à l'importation sur les matériels d'installation et d'équipements ;

2. Le bénéfice du régime de la taxe unique tel que prévu par l'Acte 12/65-UDEAC-34 du 14/12/65 et ses textes modificatifs.

Le tarif et les conditions d'application de la taxe unique relatifs à l'entreprise et à la production de l'entreprise sont déterminés par l'acte d'agrément du Comité de Direction de l'U.D.E.A.C.

3. Fixation des taux des droits de sortie qui peuvent être réduits ou nuls applicables aux produits préparés, manufacturés ou industrialisés, exportés.

4. Les dispositions des articles 27 et 28 ci-dessus, valables pour le régime "B" sont applicables aux entreprises et établissements agréés au régime "C".

ARTICLE 31°.- Toutefois, le bénéfice des dispositions plus favorables qui pourraient intervenir dans la législation douanière et fiscale inter-Etats ne peut être étendu à l'entreprise après consulation du Comité de Direction.

CHAPITRE IV : REGIME "D"

ARTICLE 32°.- Le régime "D" est réservé aux entreprises d'une grande importance pour le développement économique et social de la République du Tchad mettant en jeu des investissements supérieurs à 2,5 milliards de francs CFA, et comportant l'octroi d'un régime fiscal de longue durée défini suivant les modalités précisées dans les articles ci-après.

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ARTICLE 33°.- La durée du régime "D" ne peut excéder vingt (20) ans majorés le cas échéant des délais normaux d'installation, lesquels, sauf pour des projets de réalisation exceptionnellement longue, ne peuvent dépasser cinq (5) ans.

La date de mise en application du régime "D" et sa durée sont fixées par Décret d'agrément.

ARTICLE 34°.- Pendant la période d'application fixée à l'article 33, le régime fiscal de longue durée garantit à l'entreprise à laquelle il est accordé la stabilité des impôts, contributions, taxes fiscales et droits fiscaux de toute nature qui lui sont applicables à la date de mise en application de la Convention d'Etablissement.

En outre, certains avantages prévus aux articles 25 et 27 relatifs au régime "B" et article 29 à 31 relatifs au régime "C" peuvent être étendus par le Décret d'agrément au régime "D".

ARTICLE 35°.- En cas de modification du régime fiscal de droit commun l'entreprise titulaire d'un régime fiscal de longue durée peut également demander à être replacée sous le régime de droit commun.

ARTICLE 36°.- La valeur des programmes d'investissement telle que fixée aux articles 10, 19 alinéa 1, 24 alinéa 1 et 32 alinéa 1 ainsi que la valeur des marchés publics telle que fixée à l'article 5 alinéa 2 peuvent être révisées par Décret pris en Conseil des Ministres.

TITRE III : DES CONVENTIONS D'ETABLISSEMENT

ARTICLE 37°.- Toute entreprise agréée ou considérée comme prioritaire dans le cadre du plan de développement économique et social de la République du Tchad et répondant aux conditions énoncées à l'article 13 peut passer avec le Gouvernement une convention d'établissement lui accordant certaines garanties et lui imposant certains engagements tels que définis aux articles ci-après :

ARTICLE 38°.- La convention d'établissement ne peut comporter de la part de l'Etat des engagements ayant pour effet de décharger l'entreprise de pertes, charges ou manque à gagner dus à l'évolution des techniques ou de la conjoncture économique ou à des facteurs propres à l'entreprise.

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ARTICLE 39°.- La convention d'établissement définit notamment :

- l'objet et le lieu d'implantation de l'entreprise ;
- l'étendue et la durée du programme d'investissement et ses effets induits ;
- les autres avantages accordés par l'Etat, la date de leur prise d'effets et la durée de leur application ;
- les engagements souscrits par l'entreprise ;
- les conditions dans lesquelles la convention peut être révisée ;
- les modalités et les conditions de contrôle spécifique auquel l'entreprise est soumise ;
- les sanctions applicables en cas de non-respect des engagements pris ;
- la procédure d'arbitrage en cas de litige entre les deux parties.

TITRE IV : INFRACTIONS, CONSTATATIONS ET SANCTIONS

ARTICLE 40°.- Le bénéfice d'un régime comporte des engagements et des obligations vis-à-vis de l'Etat. Ceux-ci sont prévus dans l'acte d'agrément et la convention d'établissement conformément aux articles 14 et 39 de la présente Ordonnance.

ARTICLE 41°.- Est considéré comme infraction le non-respect des dispositions des articles 14 et 39 de la présente Ordonnance.

ARTICLE 42°.- Les infractions commises par les entreprises agréées à un régime privilégié seront constatées, poursuivies et punies des peines prévues par la présente Ordonnance.

ARTICLE 43°.- Les entreprises agréées qui ne respectent pas les engagements ou obligations prévus dans l'acte d'agrément et la convention d'établissement encourent les sanctions qui peuvent aller d'une simple amende au retrait d'agrément.

Ces sanctions sont prononcées selon les modalités fixées par voie réglementaire.

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TICLE 44°.- Le paiement d'une amende a pour effet d'arrêter toute rsuite. Le montant de l'amende est versé au Trésor Public.

TICLE 45°.- 1. Est punie d'une amende allant de 0,5 à 1 % du chiffre affaires hors taxes de l'entreprise, la non communication six (6) mois rès la fin de l'exercice au Ministère du Commerce et de l'Industrie rapport annuel d'activités, du bilan et des comptes de l'entreprise.

2. Est punie d'une amende allant de 0,5 à 1 % du chiffre affaires hors taxes de l'entreprise, le non-respect des engagements nt trait aux éléments ci-après :

- le programme d'investissement ;
- la création d'emploi ;
- le programme de la formation des nationaux à des emplois alifiés assorti d'un programme de formation professionnelle continue.

3. Est punie d'une amende allant de 1 à 3 % du Chiffre affaires hors taxes de l'entreprise, le changement sans autorisation éalable du Ministère du Commerce et de l'Industrie du lieu d'implantion.

4. Est punie d'une amende de 5 % du chiffre d'affaires rs taxes de l'entreprise, le changement sans autorisation préalable Ministère du Commerce et de l'Industrie de l'objet de l'entreprise.

TICLE 46°.- Lorsque les infractions constituent à la fois des infracons à la législation douanière et toute autre législation, elles sont dépendamment des sanctions prévues à la présente Ordonnance, constatées, rsuivies et reprimées conformément à la procédure prévue par la législion à laquelle est portée atteinte.

TICLE 47°.- En cas de récidive, le retrait peut être prononcé après is de la Commission d'Investissements, pour l'une des infractions évues à l'article 45.

Le retrait d'agrément peut être également prononcé dans s mêmes conditions lorsque l'infraction constatée porte sur un engament ayant été déterminant pour l'octroi de l'agrément.

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LE 48°.- Si le retrait de l'agrément porte préjudice à l'Etat, -ci peut demander des dommages-intérêts devant les juridictions tentes.

LE 49°.- 1. L'application des sanctions prévues par la présente nance ne peut intervenir qu'après mise en demeure, conformément à glementation en vigueur par les autorités compétentes.

2. La procédure d'application des sanctions et les moda- d'exercice des voies de recours sont fixées par Décret d'applica- le la présente Ordonnance.

TITRE V : DISPOSITIONS FINALES

LE 50°.- Les entreprises ayant bénéficié des avantages prévus par cret n° 156/PR/ du 26 Août 1963 et les textes subséquents demeurent s par ledit Décret jusqu'à ce que l'effet desdits avantages ait é.

Les entreprises qui exercent conformément aux dispositions cret n° 156/PR du 26 Août 1963 pourront, à la date de la publica- le la présente Ordonnance, demander pour le reste de la durée du , le bénéfice des avantages prévus, si elles remplissent les con- ns qui y sont prescrites.

LE 51°.- Sont abrogées, sous réserve des dispositions de l'article -dessus, toutes dispositions antérieures contraires à la présente nance.

LE 52°.- Les modalités d'application de la présente Ordonnance t définies par Décret.

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ICLE 53°.- La présente Ordonnance qui prend effet pour compter la date de sa signature sera enregistrée et publiée au Journal iciel de la République et exécutée comme Loi de l'Etat

Fait à N'DJAMENA, le 08 DECEMBRE 1987

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REPUBLIQUE DU TCHAD
PRESIDENCE DE LA REPUBLIQUE
MINISTERE DU COMMERCE ET DE L'INDUSTRIE

UNITE-TRAVAIL-PROGRES

DECRET N° 446 /PR/MCI/87

Fixant la procédure d'octroi des avantages du Code des Investissements.

(/ISA : S.G.G.

LE PRESIDENT DE LA REPUBLIQUE,
CHEF DE L'ETAT,
PRESIDENT DU CONSEIL DES MINISTRES

VU l'Acte Fondamental de la République ;
VU le Décret n° 025/P-CE/SGCE/82 du I8.IO.82 portant publication de l'Acte Fondamental de la République ;
VU le Décret n° I44/PR/CAB du IO.08.87 portant remaniement Ministériel ;
VU la Loi Organique n° II-62 du II Mai I962 relative aux Lois de Finances et instituant la nomenclature de Codification des ressources et charges du Budget de l'Etat, modifiée par Ordonnance n° 028/PR/85 du 30 Octobre I985 ;
VU la Loi n° 30 du 28.I2.68 relative aux prix, aux interventions économiques et à la repression des infractions économiques ;
VU l'Ordonnance n° 025 /PR/87 du 08/12/87 portant Code des Investissements dans la République du Tchad ;
VU le Code Général des Impôts ;
VU le Code des Douanes ;

Sur Proposition du Ministre du Commerce et de l'Industrie,
Le Conseil des Ministres entendu en sa séance du 21 Novembre 1987

D E C R E T E

CHAPITRE I : DE L'OBJET

Article 1 : Le présent Décret a pour objet :

1°- de fixer la procédure d'octroi et de retrait des avantages du Code des Investissements ;

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2°- de définir les conditions dans lesquelles les personnes physiques ou morales, dont les demandes d'agrément sont présentées suivant les formes prescrites à cet effet, peuvent bénéficier des divers régimes du Code des Investissements après avis de la Commission des Investissements ;

3°- de définir les conditions dans lesquelles les personnes physiques ou morales agréées à l'un des régimes peuvent bénéficier du taux global réduit à 5 % après avis du Comité Technique des Agréments.

CHAPITRE 2
DES DOSSIERS D'AGREMENT ET DU TAUX GLOBAL REDUIT

rticle 2 : La demande d'agrément est adressée au Ministre du Commerce et de l'Industrie en trente (30) exemplaires pour les régimes "A", "B" et "D" et en soixante dix (70) exemplaires en ce qui concerne le régime "C". Elle doit préciser celui des régimes privilegiés dont l'octroi est sollicité et être accompagnée des documents suivants :

- un dossier juridique ;
- une note technique ;
- un dossier sur les investissements projetés.

rticle 3 : Les dossiers de demande d'agrément aux régimes "A", "B" et "D" devront comprendre les renseignements suivants :

1 - Présentation de la Société

1.1- Dénomination sociale, forme juridique et siège social

1.2- Numéro d'immatriculation statistique, numéro d'enregistrement des statuts de la Société ;

1.3- Noms, nationalité et part de chaque associé dans le capital social ;

- Répartition du capital entre associés étrangers et associés nationaux ;

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1.4- Adresse précise de la société (boîte postale, téléphone et télex)

1.5- Le pouvoir du signataire de la demande d'agrément ;

1.6- un projet de contrat d'assistance technique dûment signé par les parties au cas où il en est prévu un.

2 - Etude de Marché

2.1- Nombre d'établissements et lieux d'implantation ;

2.2- Evaluation de l'offre du produit, évaluation de la production des entreprises locales existantes, évaluation du niveau des importations;

2.3- Evaluation de la demande, consommation locale et exportation ;

2.4- Analyse de l'évolution du marché visé en dégageant les taux de croissance de l'offre et de la demande, évaluation de la part du marché potentiel et de la part du marché escompté ;

2.5- Analyse de l'évolution du marché des produits substituts ou similaires importés en faisant ressortir pour lesdits produits :

- les prix hors taxes ;
- les prix CAF (coûts, assurances, frêts)
- les prix de gros, les marques commerciales appliquées
- les prix de détail ;

2.6 - Description sommaire de l'organisation des circuits de distribution mis (ou à mettre) en place.

3 - Activités poursuivies

3.1- Préciser la liste des produits fabriqués en les désignant par leur dénomination tarifaire et commerciale ;

3.2- Préciser les matières premières, les produits semi finis utilisés et leurs pays d'origine ;

3.3- Décrire sommairement le processus de fabrication de tous les produits et donner éventuellement les références du partenaire technique ainsi que l'origine de la technologie utilisée ;

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3.4- Pour chaque type de produit, préciser la capacité de production des équipements installés (ou à installer)

3.5- Préciser pour les activités poursuivies, leur impact sur l'environnement et les mesures à mettre en oeuvre pour atténuer, supprimer ou empêcher les nuisances industrielles.

4 - Investissements et sources de financement

4.1- Pendant la durée du régime, préciser le montant des investissements cumulés et le calendrier de mise en oeuvre desdits investissements en distinguant d'une part, les dépenses locales et les dépenses extérieures d'autre part ;

4.2- Préciser les sources de financement des investissements programmés en distinguant les sources de financement propres et les concours financiers extérieurs : dans le cas des financements extérieurs à l'entreprise , préciser les modalités d'emprunts (taux d'intérêt, durée, tableau d'amortissement des emprunts, la monnaie de règlement de l'emprunt etc...)

5 - Les Comptes Provisionnels

Dégager sur une période couvrant les cinq (5) premiers exercices comptables de la durée de validité du régime sollicité.

5.1- Les principaux soldes caractéristiques de gestion (selon les principes et la nomenclature des comptes en vigueur dans la zone de l'UDEAC) en régime de droit commun et en régime privilegié sollicité ;

5.2- Les éléments de calcul des prix de revient sorti de l'usine en régime de droit commun et en régime privilegié sollicité et pour le régime de la taxe unique, les prix de vente à l'exportation dans les pays de l'UDEAC

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5.3- Un tableau de trésorerie en régime de droit commun et en régime privilegié sollicité.

6 - Personnel

6.1- Préciser sur les cinq premiers exercices de la période de validité du régime sollicité l'importance numérique du personnel à utiliser en distinguant :

- les salaires versés aux nationaux et aux expatriés ;
- la main d'oeuvre locale et expatriée ;
- le personnel cadre, de maîtrise et les ouvriers ;

6.2- Préciser les garanties offertes sur le programme de formation professionnelle continue et éventuellement sur celui de la Tchadinisation des postes techniques et administratifs ;

6.3- Préciser le profil des qualifications des cadres et agents de maîtrise.

7 - Liste des matériels

Donner une liste des materiels, machines, outillages, matières mières, produits semi-finis et emballages en prenant soin de distinger, dans la nomenclature du tarif douanier en vigueur dans la zone EAC, ceux qui sont d'origine importés et ceux achetes (ou à acheter) calement. Le pays d'origine des dits matériels devra également être écisé.

8 - Rapport d'Activité

Les societés exerçant sous le régime du droit commun et qui llicitent les avantages du Code des Investissements devront fournir rapport d'activité, des bilans et comptes certifies par un expert ptable agréé à l'UDEAC sur les trois (3) derniers exercices.

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rticle 4 : La demande d'agrément au régime "C" doit être présentée dans les formes prévues à l'article premier de l'Acte I2/65 UDEAC 34 règlementant le régime de la taxe unique en UDEAC et ses textes modificatifs.

rticle 5 : Le Ministre du Commerce et de l'Industrie transmet le dossier pour examen au Comité Technique des Agréments, lequel le transmet à la Commission des Investissements pour avis.

rticle 6 : La demande d'admission du taux global réduit à 5 % est adressée au Ministre du Commerce et de l'Industrie en trente(30) exemplaires. Elle comprend les pièces suivantes :

- un exemplaire de l'arrêté ou du décret d'agrément ;
- les factures proforma ;
- un quitus de la Direction des Impôts et Taxes.

rticle 7 : La liste des matériels d'équipement admis en taux global réduit à 5 % et celle des matières premières admises en franchise des droits et taxes en ce qui concerne les régimes A, B et D sont arrêtées par le Directeur des Douanes et Droits Indirects conformément à l'arrêté du Ministre du Commerce et de l'Industrie.

CHAPITRE 3

DU COMITE ET DE LA COMMISSION

SECTION I

COMITE TECHNIQUE DES AGREMENTS

rticle 8 : Le Comité Technique des Agréments est composé comme suit :

1 - Le Directeur de l'Industrie et des Coopératives, Président
2 - Le Directeur de la Planification, du Développement et de la Reconstruction ; , Membre
3 - Le Directeur des Douanes et des Droits Indirects, Membre
4 - Le Directeur de l'Office de Promotion Industrielle du Tchad , Membre
5 - Le Directeur des Impôts et Taxes , Membre

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6 Le Directeur de l'Enregistrement, des Domaines, du Timbre et de la Conservation Foncière ....., Membre
7 Le Directeur de la Législation au Secrétariat Général du Gouvernement....., Membre
8 Un Représentant de l'Inspection Générale et du Contrôle d'Etat ....., Membre
9 Un Réprésentant du Secrétariat Général de la Présidence de la Republique....., Membre
10 Le Secrétaire Général de la Chambre Consulaire....., Membre
11 Un Représentant de l'Association Professionnelles des Banques, Membre
12 Un Représentant de la Banque de Développement du Tchad....., Membre
13 Un Représentant des Services Techniques compétents....., Membre

Peut être convoqué à titre consultatif, toute personne qualifiée pour ses fonctions ou pour sa compétence professionnelle.

Article 9 : Le Comité Technqiue des agréments se réunit sur convocation de son Président chaque fois que les circonstances l'exigent et, au plus tard un (1) mois après le dépôt des dossiers qui lui sont transmis par le Ministre du Commerce et l'Industrie. Il délibère valablement si huit (8) au moins de ses membres sont présents. Son avis est consigné au procès-verbal de séance qui est transmis avec le dossier de l'affaire à la Commission des Investissements. Il est compétent pour émettre un avis sur toute demande d'agrément et convention d'établissement et délibère valablement sur toute demande au bénéfice du taux global réduit à 5%.

Article 10 : Le Secrétariat du Comité Technique des agréments est assuré par la Direction de l'industrie et des Coopératives. Il est chargé de préparer l'ordre du jour de cet organe.

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SECTION 2

COMMISSION DES INVESTISSEMENTS

rticle 11 : La Commission des Investissements est composée comme suit :

- Le Ministre du Commerce et de l'Industrie , Président
- Le Ministre des Finances et de l'Informatique , Vice Président
- Le Ministre spécialement intéressé par l'activité de l'entreprise considérée , Membre
- ~~Le Ministr~~e délégué à la Présidence de la République chargé de l'Inspection Générale et du Contrôle d'Etat , Membre
- Le Ministre du Plan et de la Coopération , Membre
- Le Secrétaire Général du Gouvernement , Membre
- Le Secrétaire Général de la Présidence de la République , Membre
- Un Représentant du Conseil National Consultatif (C.N.C) , Membre
- Le Directeur National de la Banque des Etats de l'Afrique Centrale , Membre
- Le Président de la chambre Consulaire , Membre
- Le Président de l'Association Professionnelle des Banques , Membre

La Commission peut appeler à titre consultatif, toute personne qualifiée pour ses compétences.

rticle 12 : La Commission des Investissements siège à N'Djaména.

Elle se réunit sur convocation de son Président chaque fois que les circonstances l'exigent et au moins une (1) fois par trimestre pour examiner les dossiers qui lui sont soumis par le Comité Technique des Agréments :

- La Commission siège valablement à condition qu'il y ait au moins six (6) membres présents, y compris le Président.

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En cas de partage de voix, la voix du Président est prépondérente. Les délibérations de la Commission font l'objet d'un procès-verbal.

- Dans l'hypothèse où la Commission émet un avis défavorable, la notification en est faite dans un délai de 15 jours et, le demandeur peut solliciter d'être entendu pour apporter des explications complémentaires. La Commission statue définitivement sur cette demande.

icle 13 : La Commission des Investissements adresse tous les six (6) mois au Président de la République, un rapport d'évaluation sur ses activités propres et sur celles de ses organes techniques.

icle 14 : Le Secrétariat de la Commission des Investissements est assuré par le Directeur de l'Industrie et des Coopératives.

icle 15 : Après avis favorable de la Commission des Investissements l'agrément est accordé :

- Le régime "A" par Arrêté du Ministre du Commerce et de l'Industrie ;
- Les régimes "B" et "D" par Décret pris en Conseil des Ministres ;
- Le régime "C" par un acte du Comité de Direction de l'UDEAC sur proposition du Conseil des Ministres.

CHAPITRE 4

CONVENTION D'ETABLISSEMENT

icle 16 : L'avant-projet de Convention est préparé conjointement par Le Ministère du Commerce et de l'Industrie, Le Ministère de tutelle et l'entreprise concernée.
Il est soumis pour avis au Comité Technique des agréments et à la Commission des Investissements. Le projet de convention doit être approuvé par Décret pris en Conseil des Ministres. Il en est de même des avenants à ladite convention.

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CHAPITRE 5

PROCEDURE DE RETRAIT D'AGREMENT

cle 17 : En cas de manquement grave d'une entreprise aux dispositions résultant de l'Arrêté ou de Décret d'agrément, le bénéfice d'un des régimes prévus dans l'Ordonnance n° 025 /PR/87 du 08/12/87 peut être retiré dans les conditions suivantes :

1°) Sur rapport du Ministre du Commerce et de l'Industrie, l'entreprise est mise en demeure de prendre des mesures nécessaires pour mettre fin à la situation créée par ses défaillances. A défaut d'effet suffisant, dans un délai de soixante (60) jours à compter de la réception de la mise en demeure une enquête est réalisée sur le manquement constaté. Au cours de cette enquête, l'entreprise intéressée est invitée à présenter ses explications.

2°) Après avis motivé de la Commission des Investissements, un décret ou un arrêté de retrait d'agrement est, s'il y a lieu, pris en Conseil des Ministres ou par le Ministre du Commerce et de l'Industrie. L'entreprise pourra exercer son droit de recours devant une juridiction administrative dans un délai de soixante (60) jours à compter de la notification du décret ou de l'arrêté.

3°) Sur saisine du Gouvernement, le Comité de Direction de l'UDEAC procède au retrait d'agrément au régime "C".

4°) Toutefois, pour les entreprises dont le capital a été en majorité constitué par apport extérieur, tout différend relatif à l'application du présent décret est règlé conformément à une procédure d'arbitrage et de conciliation découlant :

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soit des accords et traités relatifs à la protection des investissements conclus entre la République du Tchad et l'Etat dont la personne physique ou morale étrangère concernée est ressortissant ;

soit d'une procédure de conciliation ou d'arbitrage dont les parties sont convenues ;

soit de la convention du 18 Mars 1965 pour le règlement des différends relatifs aux investissements entre Etats et ressortissants d'autres Etats, établie sous l'égide de la Banque Internationale pour la Reconstruction et le Développement (BIRD).

CHAPITRE 6
DISPOSITIONS FINALES

18 : Des Arrêtés du Ministre du Commerce et de l'Industrie détermineront les délais et les modalités d'application des dispositions présent décret.

19 : Le présent décret abroge toutes dispositions antérieures contraires.

20 : Le Ministre du Commerce et de l'Industrie, le Ministre des Finances et de l'Informatique et le Ministre de la Justice de des Sceaux sont chargés chacun en ce qui le concerne de l'application du présent décret qui sera enregistré et publié au Journal Officiel de la République du Tchad./-

Fait à N'Djaména, le 8/12/1987

LE PRESIDENT DE LA REPUBLIQUE,
CHEF DE L'ETAT,
PRESIDENT DU CONSEIL DES MINISTRES

AL-HADJ HISSEIN HABRE

RESIDENT DE LA REPUBLIQUE

TRE DES FINANCES L'INFORMATIQUE	LE MINISTRE DU COMMERCE ET DE L'INDUSTRIE	LE MINISTRE DE LA JUSTICE GARDE DE SCEAUX
DANA NGARNAYAL	BILAL SOUBIANE	DJIBRINE NEGUE DJOGO

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