

118. Since the 1996 Budget, profits on exports have been exempted from corporate income tax on the condition that such proceeds are repatriated to Nigeria, and used exclusively for the purchase of raw materials, equipment and spare parts.⁶⁹ The profits of companies exclusively producing inputs for manufactured exports are also tax-exempt.⁷⁰

119. In addition, under the Export (Incentives and Miscellaneous Provisions) Decree of 1986, an annual Capital Asset Depreciation Allowance of 5% on plant and machinery is granted to manufacturing exporters. In order to be eligible, exporters must export at least 50% of their annual turnover and the product must have at least 40% local raw material content or consist of at least 35% of local value added. The Tax Relief on Interest Income grants a tax reduction on interest accruing to banks for loans extended to export activities. Until 1996, the percentage of tax reduction was a decreasing function of the loan's duration. Since 1996, interest income on loans and advances granted by banks for manufacturing for exports is entirely tax free.⁷¹

(f) Export processing zones and factories

120. An enabling law for the operation of export processing zones (EPZs) was enacted in 1992 (Box III.2). Construction of Nigeria's first EPZ, the Calabar EPZ, began in the same year. The Calabar EPZ adjoins the Calabar Port in south-east Nigeria; the authorities have pointed out that the Zone has its own facilities, thus assuring uninterrupted supply of essential utilities like power and water.⁷² Two companies have reportedly completed their installations in the Calabar EPZ.

121. To further encourage manufacturing for export, the Government approved in 1996 the setting up of export processing factories in any part of the country (Box III.2). Such factories are entitled to all the incentives applicable in EPZs. Two such companies are apparently in operation (Aluminium Smelting Company of Nigeria and Union Forest Industries) (Chapter (IV)).

122. Nigeria has notified the income tax exemption under the EZP legislation as a subsidy programme to promote non-traditional exports with a view to diversifying production and generating employment and income.⁷³ The authorities indicated that there were no estimates of the value of the subsidy as it was not a transfer of funds but a tax exemption.

(ix) Export finance and insurance

123. The Nigerian Export Credit Guarantee and Insurance Corporation (NEXIM) was established in 1991 to provide a range of financial facilities, including short-term supplier credit, buyer credit

⁶⁹WTO document WT/BOP/6/Rev.1/Add.1, 2 September 1996.

⁷⁰Nigerian Export Promotion Council (undated). To benefit from this exemption, the seller must first acquire from the exporter a certificate of purchase of the input for exportable goods.

⁷¹Nigeria Export Promotion Council (undated).

⁷²Nigeria Export Processing Zones Authority (undated).

⁷³Non-traditional exports refer to semi-processed and manufactured products, which Nigeria has not been traditionally known to export.

and external trade facilities. The two currently functional schemes are the Refinancing and Re-Discounting Facility (RRF) and the Stocking Facility.⁷⁴

124. Under the RRF, NEXIM provides commercial and merchant banks credit to enable them to extend pre- and post-shipment finance to non-oil exporters established in Nigeria. In 1995, advances of N2.7 billion were made to commercial and merchant banks. Some 221 exporters benefited from RRF advances. Repayments stood at N2.6 billion. Exports were destined to the European Union, and to a lesser extent to North America.

125. The Stocking Facility is available in local currency to enable manufacturing exporters to procure stocks of raw materials. Stocking advances of N174 million were granted through banks in 1995 for the procurement of cocoa beans and butter, rubber and raw skins. In 1996, aggregate disbursement under RRF and the Stocking Facility stood at N1.5 billion, a considerable decline from the levels in 1995. The number of beneficiaries also declined to 87, and repayments in 1996 totalled N2.2 billion.

126. Currently, NEXIM does not provide any insurance against trade-related risks. The export credit guarantee and other risk-bearing facilities envisaged at the time of the 1991 Trade Policy Review appear to have remained at the planning stage.⁷⁵

127. In the context of the 1998 Budget Address, the Head of State announced in January 1998 that all loans acquired from NEXIM and under the National Economic Recovery Fund (NERFUND) by small-scale industrialists on or before 31 December 1994, would be repaid at the rate of N22 per dollar, in order to promote the development of small-scale enterprises. A reorganization of the two institutions was also announced.

(4) Other Measures Affecting Production and Trade

(i) State enterprises, commercialization and privatization

128. The Nigerian Government recognized as early as 1983 the need to restructure Nigeria's parastatal sector.⁷⁶ A government survey showed that in 1990 there were about 600 public enterprises at the federal level alone, and some 900 smaller entities at the state and local levels. These 1,500 companies accounted for 30-40% of both fixed capital investments and employment in Nigeria. A Presidential Commission established in 1983 concluded that such enterprises were affected by "defective capital structures resulting in heavy dependence on the Treasury for funding, bureaucratic bottlenecks in their relations with supervising ministries; mismanagement, corruption and nepotism".⁷⁷ Press reports suggest that certain problems persisted until recent years.⁷⁸

⁷⁴Nigerian Export-Import Bank (1993). In addition, the Foreign Input Facility was a foreign exchange loan provided by NEXIM to exporters through their commercial and merchant banks for imports of raw materials, capital equipment, packaging materials and spare parts to produce exportable products. In 1992, 13 banks and ten types of activities benefited from such disbursements, totalling US\$26.9 million. Disbursements under the Foreign Input Facility stopped completely in 1993 following the exhaustion of its funding.

⁷⁵GATT (1991).

⁷⁶The Presidency (1993). Most of the presentation that follows draws on this source.

⁷⁷The Presidency (1993), p. 8.

⁷⁸In 1995, the managing director of the Nigerian National Petroleum Company was removed from office, in order to restore general management and accountability (Africa Research Bulletin, 16 June - 15 July 1995).

(continued...)

Box III.2: Export Processing Zones

Under the Nigeria Export Processing Zones Decree of 1992, the Nigeria Export Processing Zones Authority (NEPZA) administers the Nigerian EPZ programme. NEPZA is empowered to approve new zones, modify existing ones, grants required permits and approvals for operators in the EPZs, and manage such zones.

The approved activities are specified in the Second Schedule of the Decree, and cover most manufacturing activities for export; warehousing, freight forwarding and customs clearance; handling of duty-free goods (transshipment, sorting, marketing, packaging, etc.); banking, stock exchange and other financial services; and insurance and re-insurance. Manufacturing activities include assembling or processing of goods for export provided exports total at least 75% of turn-over during the assessment year.

Under the 1992 decree, domestic laws on taxes, levies, duties and foreign exchange regulations do not apply within the zones, and approved enterprises operating within them are exempt from all government taxes and levies. Imports may include any capital goods, consumer goods, raw materials, components or articles intended to be used for the purposes of and in connection with an approved activity, including any article for the construction, alteration, reconstruction, extension or repair of premises in a zone or for equipping such premises.

New industrial undertakings, including foreign companies and operations inside or outside an EPZ in Nigeria, are allowed full income tax holidays for three consecutive assessment years provided the undertaking:

- is not formed by splitting up or re-constituting a business already in existence;
- derives at least 75% of its turnover from manufactured exports;
- is not formed by transfer of machinery or plant used by a former company or, where the transfer is effected, the written down tax value of the machinery so transferred does not exceed 25% of the total value of the machinery or plant in the new undertaking.
- repatriates at least 75% of export earnings to Nigeria and places this in the domiciliary account opened in any bank registered in Nigeria.

Up to 25% of production may be sold in the Nigerian territory against a valid permit, and on payment of the duties in force. Enterprises operating in a zone and supplying or purchasing goods and services to or from customers within the customs territory may pay in foreign currency under the rules and regulations applicable to external trade.

Foreign investment, including capital gains, in the zones may be repatriated at any time. Profits and dividends earned by foreign investors in the zones may also be remitted at any time. No import or export licences are required. Land is provided rent-free at the construction stage.

A licensed company operating within a zone and undertaking an approved activity must notify the Authority of any purchase, assignment or transfer of shares in the company, except where the company's shares are quoted and are freely transferable on any international stock exchange.

The decree prohibits strikes or lockouts for a period of ten years following the commencement of

⁷⁸(...continued)

More recently, the Minister of Petroleum Resources reportedly dissolved the board of directors of Nigeria's Liquefied Natural Gas Scheme, a joint venture between the Government and three multinational oil companies, and ordered that its management should report directly to his Ministry (Financial Times, 10 June 1997).

129. The Privatization and Commercialization Decree of July 1988 established a framework for privatization or commercialization of 145 public enterprises, many in the manufacturing sector. One hundred and eleven enterprises were to be either wholly or partially privatized, and operated without any government subsidy. Another 34 were to be "commercialized". The Decree distinguished between, (i) fully commercialized enterprises that should be profit-making commercial ventures operating without subsidies from the Government and be independent in setting prices, capitalizing assets and borrowing money without government guarantee; and (ii) partially commercialized enterprises, defined as generating enough revenue to cover operating expenditures, but with the possibility of capital grants to finance capital intensive projects.

130. The Decree established a Technical Committee on Privatization and Commercialization, whose tasks were to advise the Government on the companies' capital restructuring needs, on all activities necessary for successful public issues of the companies' shares, on the determination of a fair price for each issue, and to oversee the actual sale of shares. In its four years of existence from 1988 to 1992, the Committee privatized 88 of the 111 enterprises listed in the Decree⁷⁹; and in the area of commercialization, prepared a comprehensive general framework and specific reform packages for 30 of the 34 affected enterprises. A number of enterprises were considered impossible to sell. Reasons included technical insolvency, and the perceived need for the Government to play a considerable development role in sectors considered as strategic.

131. According to a survey carried out by the Committee, at the end of 1993 there remained 429 public enterprises wholly or partly owned by the Federal Government in addition to the 145 enterprises covered by the exercise under the 1988 Decree. According to the Committee, 58 of these public enterprises could also be privatized or commercialized. In general, the Committee recommended that the commercialization programme should be extended to all economic public enterprises. Those with the largest exports are the Nigerian National Petroleum Company; the Oso Condensate Project, which exported products worth US\$318 million in 1996; and the Federal Super-Phosphate Fertilizer Company, which exported urea and ammonia worth approximately US\$20 million.

132. No privatization or commercialization took place during 1993-97, reflecting the need to consult fully on the desirability or otherwise of those actions.⁸⁰ Some commercialized companies have continued to depend on public assistance to cover their operating costs.

133. In the 1998 Budget Address, a "Guided Privatization and Commercialization Policy" was announced that included commitments to sell at least 20% of the shares in privatized companies to Nigerians, and make share ownership as widespread as possible by providing "financial assistance to acquire shares in privatized enterprises". The Government would retain at most 40% of the equity in the privatized enterprises. Government enterprises in telecommunications, electricity, petroleum refining, chemicals, coal and bitumen production and tourism development would be privatized in the first phase of the programme. Specifically, the Government announced the privatization in 1998

⁷⁹The Presidency (1993). This involved the marketing of some 1.5 billion shares to the Nigerian public resulting in the creation of over 800,000 new shareholders and realising privatization proceeds of over N3.7 billion. The original investment in these privatized enterprises was N652 million thus creating a capital gain of nearly 600%. In the process, the Federal Government relinquished a total of 280 directorship positions in the privatized enterprises, "thus reducing the scope of political patronage".

⁸⁰Press Release No. 01/98, Address on the 1998 Budget, 4 January 1998.

of the telecommunications operator NITEL and the reorganization of the electricity utility NEPA for privatization (Chapter IV(6)).

134. One of the obstacles to commercialization, and to competition between the commercialized companies and any new investment, is that only a few of the concerned companies are incorporated and therefore governed by the provisions of the Companies and Allied Matters Decree No.1 of 1990. Currently, several of Nigeria's main public enterprises remain statutory corporations created by enabling laws. The reduced corporate accountability of these commercialized companies may in turn discourage new investments, as these would not operate under the same commercial conditions.⁸¹

(ii) Industrial core projects

135. The Government has also continued to fund the development of industrial core projects (ICPs), such as oil refineries and petrochemicals plants, liquefied natural gas projects, fertilizers, steel, paper and sugar plants, an integrated aluminium smelter, machine tools, marble, and cement industries. These projects have been established by the Government because of their capital intensive nature and the potential to produce basic inputs for downstream industries.⁸²

136. The ICP status has generally involved the State as the sole provider of capital in the projects concerned. In recent years, reflecting the shortage of public capital, the Government has increasingly granted ICP status to joint ventures with private companies. In 1996, the Government approved the establishment of two entirely private oil refineries exclusively destined to serve the export market, described by the authorities as ICPs.⁸³ No legislation or regulations appear to specify the exact nature of public sector measures available for industrial core projects.

(iii) Tax incentives including regional promotion measures

137. Fiscal incentives have been introduced in successive budgets in support of manufacturing enterprises. These include corporate tax rebates for small manufacturing companies for the first five years of business. Dividends paid by small manufacturing enterprises were exempted from tax in the 1997 Budget.

138. One of the oldest incentives, pioneer status, is granted on application to certain companies or products under the provisions of the Income Tax Relief Act of 1958 as amended by Decree No. 22 of 1971. The objective of the Decree is to encourage the establishment of industries that the Government considers beneficial to the country. The Decree is applicable both to public and private limited liability companies. A company or product granted pioneer status is entitled to a corporate income tax holiday of five years; this period is extended to seven years for a company located in an economically disadvantaged area. In addition, a pioneer industry sited in an economically disadvantaged area enjoys a 5% capital depreciation allowance over and above the initial capital depreciation allowance.

⁸¹For example, statutory companies are not generally subject to the requirement to maintain a minimum share capital; to convene an extraordinary meeting of the company whenever net assets are less than half the called-up share capital; or to keep accounting records or appoint and remunerate qualified auditors.

⁸²Central Bank of Nigeria (1996).

⁸³Central Bank of Nigeria (1996).

139. Some tax incentives are sector specific. For example, since 1995, dividends paid by manufacturing companies in the petrochemical and liquefied natural gas sub-sectors have been exempt from tax. Other measures are targeted specifically towards small companies and companies manufacturing for export.

140. There are no particular regional promotion measures aside from those provided under the Pioneer Status Scheme.

(iv) Price regulation, monopolies and competition

141. In early 1998, administered prices on goods were applied only on petroleum products and pharmaceuticals, following the removal of administered prices on fertilizer in 1997. Price controls are applied equally to domestic and imported products. Tariffs for public services are set by public enterprises under agreement with the Federal Ministry of Finance, including for telephone services, electricity and water supply. The Government also the controls prices of certain privatized services, such as insurance and air transport.

142. Public monopolies have been the norm in such areas as mining and oil refining, electricity generation and distribution, telecommunications, air transport and railways. The Government reiterated in the 1998 Budget that private investments would be welcome in of telecommunications, crude petroleum, coal and bitumen exploration, refineries "particularly" for export, hotels and tourism. It was also announced that laws that inhibit competition in these sectors of the economy would be repealed or amended in 1998.

143. No information was available on competition policy in Nigeria.

(v) Production controls

144. Nigeria's oil production is restrained by OPEC production quotas, with exports depending on the amount required to meet local demand (at below world prices) and OPEC quotas (under international conditions) (Chapter IV(3)).

(vi) Protection of intellectual property rights

145. Nigeria is a signatory to the Universal Copyright Convention, the Berne Convention, and the Paris Convention (Lisbon text), and became a member of the World Intellectual Property Organization in 1995 (Table III.10).

Table III.10
Nigeria's membership of main IPR-related international agreements

Name of Agreement	Date of Entry
<u>Member</u>	
Berne Convention for the Protection of Literacy and Artistic Works	14.9.1993
Convention Establishing the World Intellectual Property Organization	9.4.1995
International Convention for the Protection of Performers, Producers of Photograms and Broadcasting Organizations (Rome Convention)	20.10.1993
Paris Convention for the Protection of Industrial Property	5.7.1964
Universal Copyright Convention	
WTO Agreement on Trade-Related Intellectual Property Rights	1.1.1995
<u>Non-member</u>	
Brussels Convention	
Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the Purpose of Patent Procedure	
Geneva Convention	
Hague Convention	
Lisbon Agreement	
Locarno Convention	
Madrid Agreement	
Nice Agreement	
Patent Cooperation Treaty	

Source: Government of Nigeria.

146. Three institutions are involved in the protection and administration of IPRs and the technological information derived from them:

- The Trademarks, Patents and Designs Registry at the Federal Ministry of Commerce and Tourism is responsible for industrial property matters; this Registry is also responsible for receiving patent applications for inventions in the field of pharmaceutical and agricultural products.⁸⁴
- The Nigerian Copyright Commission at the Federal Ministry of Information is responsible for all matters affecting copyright and neighbouring rights in Nigeria. In February 1996, the National Copyright Institute was established between the Government of Nigeria and the WIPO.⁸⁵ The Federal High Court has jurisdiction in industrial property and copyright.
- The National Office for Technology Acquisition and Promotion (NOTAP) at the Ministry of Science and Technology is responsible for acquiring foreign technology considered crucial for industrial and economic development. NOTAP has the Patent Information and Documentation Centre where industrial and project profiles are stored for dissemination to public and private sector investors and entrepreneurs for utilization in the promotion of industrial activity and services.⁸⁶

⁸⁴WTO document IP/N/1/NGA/1, 17 September 1996, notification under Article 63.2.

⁸⁵Dun & Bradstreet.

⁸⁶NOTAP.

147. Under the Counterfeit and Fake Drugs Act of 1990, the import, manufacture, distribution or sale of counterfeit, adulterated or sub-standard drugs is subject to imprisonment and fines. In 1992, the Decree was amended to cover fake and expired drugs. Provisions of the Act are enforced by the Federal Task Force on Counterfeit and Fake Drugs, run by NAFDAC, and by similar task forces at state level.

148. Legislation covering intellectual property in Nigeria is summarized in Table III.11. The legislation does not include all the subject matter for which protection is required under the TRIPS Agreement, such as geographical indications, layout-designs of integrated circuits, undisclosed information, plant varieties and special requirements related to border measures. As a developing country, Nigeria should implement the TRIPS Agreement by 1 January 2000, except for product patent protection to areas of technology which were not protected on 1 January 1995; Nigeria should extend patent protection for those products by 1 January 2005.

(a) Patents

149. The Patent and Design Act of 1990, and the Patent Rules of 1971 govern patent protection for inventions that meet the requirements of novelty, inventive activity and industrial application for all areas of technology. Exceptions to this are: (i) plant or animal varieties, or essentially biological processes for the production of plants and animals (other than microbiological processes and their products); and (ii) inventions the publication or exploitation of which would be contrary to public order or morality. The authorities have indicated that Nigeria intends to accede to the Convention for the Protection of New Varieties and Plants.

Table III.11
Main IPR legislation in Nigeria

Types of IPR	Main Legislation	Duration of Protection	TRIPS minimum duration of protection
Patents	Patent and Design Decree of 1990	20 years	20 years
Industrial Designs	Patent and Design Decree of 1990	5 years; renewable for two consecutive 5-year terms	10 years
Trademarks	Trade Marks Act of 1990	7 years; renewable for further periods of 14 years	7 years; renewable indefinitely
Copyrights	Copyright Decree of 1988 Copyright (Amendment) Decree No.96 of 1992	Life of author plus 70 years; 50 years from year of performance, fixation and broadcast	Life of author plus 50 years; 50 years from of performance or fixation; 20 years from year of broadcast
Technology Transfer	National Office of Technology Acquisition and Promotion Act of 1992		
Geographical indications	Nil	...	Unlimited
Layout-designs of Integrated Circuits	Nil	...	10 years
Undisclosed Information	Nil	...	

... Not available.

Source: Government of Nigeria.

150. Any inventor, whether Nigerian or a foreign national, may file a patent application, although foreign applicants must file through a resident agent. If the required documents are complete and in order, the Registrar (at the Patents and Design Registry) issues a patent and is responsible for publication. The law does not require the Registrar to carry out a substantive examination of patent applications. Interested parties may, however, challenge the validity of a patent already granted by applying to the Federal High Court for its cancellation. Once conferred, a patent gives the patentee the exclusive right to make, import, sell, or use the patented products or apply the patented process. Patents are valid for a maximum of 20 years from the date of filing the relevant patent application, subject to the payment of an annual maintenance fee. A total of 276 patent certificates were issued in 1996.

151. An interested person or manufacturer may apply to the Federal High Court for a compulsory licence on one or more of the following grounds: that the patented invention, capable of being worked in Nigeria, has not been worked; that the existing degree of working of the patented invention does not meet the demand for the products on reasonable terms; that the local working of the patented invention in Nigeria is being hindered or prevented by the importation of the patented article⁸⁷; or that by reason of the refusal of the patentee to grant licences, on reasonable terms, the establishment or development of industrial or commercial activities in Nigeria is unfairly and substantially prejudiced.⁸⁸ No compulsory licences have been granted since 1990.

(b) Industrial designs

152. The Patent and Design Act of 1990 provides for protection of industrial designs that meet the requirements that a design is novel and is not contrary to public order or morality. When all the necessary formal conditions have been fulfilled, the industrial design is registered and a certificate of registration issued. The owner of a registered design has the exclusive right to prevent third parties from holding, reproducing, importing and selling the design or using it for commercial purpose. Protection is granted for a term of five years, renewable for two consecutive periods of five years each; 244 certificates were issued in 1996.

(c) Trade marks

153. The Trade Marks Act of 1990 provides for the registration and protection of trade marks with respect to a particular good or class of goods. In order to ensure conformity with the TRIPS Agreement (Part II Section 2), the coverage of the Act must be extended to include service marks.⁸⁹ The registration of collective marks and certification marks is possible. A registered trade mark is assignable and transferable in connection with the goodwill of a business. In 1996, 3,452 applications were made for trade marks, 1,097 certificates were issued, and 963 certificates were renewed.

⁸⁷Nigeria may have to re-examine this provision in the light of its obligations after January 2000 under Article 27.1 of the TRIPS Agreement.

⁸⁸In addition, if an invention protected by a patent in Nigeria cannot be worked without infringing rights derived from a patent granted on an earlier application or benefiting from an earlier foreign priority, a compulsory licence may be granted to the patentee of the later patent to the extent necessary for the working of his invention, if the invention serves industrial purposes different from those served by the invention which is the subject of the earlier patent, or if the invention constitutes substantial technical progress in relation to that invention.

⁸⁹According to the authorities, Nigeria does not presently issue trade marks for services.

154. The fundamental prerequisite for registration is the distinctiveness of the mark. The first applicant, as user or intended user, is entitled to registration. Once registered, the Act provides the holder of the trade mark the exclusive right to prevent any person from using a mark identical or so nearly resembling it as to be likely to deceive or cause confusion. The registration of a trade mark is for a term of five years, renewable perpetually for periods of 14 years. A registered trade mark may be removed from the register because of non-use during a continuous period of at least five years during which it was registered. The marks are published in the Nigerian Trade Marks Journal. The registration process is reportedly often delayed, and in some cases, it takes up to four years or longer.

(d) Copyrights

155. The Copyright Act of 1988, as amended by the Copyright (Amendment) Decree No. 96 of 1992, provides an improved copyright regime based on the WIPO standards.⁹⁰ As a signatory of the Universal Copyright Convention, Nigeria provides national treatment for the holders of copyrights of all other signatories of the Convention. The Government of Nigeria is also in the process of reviewing adhesion to the Bern Convention.⁹¹

156. Under this Act, works eligible for copyright include literary, musical and artistic works, cinematograph films, sound recordings and broadcasts. However, the Act does not specifically cover computer programmes and databases, which are to be protected as literary works under the TRIPS Agreement. Exclusive rights of reproduction, publication, performance, translation, distribution (including rental), broadcasting and adoption are granted to copyright owners. The Act, however, does not contain a provision on "moral rights".

157. Terms of copyright protection are the lifetime plus 70 years after the death of the author for literary, musical and artistic works; 50 years from the end of year in which the work was first published, performed or made for cinematographic works, photographs, sound recordings and broadcasts. The decree also provides performers exclusive control in relation to performances, for a term of 50 years from the end of the year in which the performance took place.

(e) Transfer of technology

158. The National Office for Technology Acquisition and Promotion Act requires that all existing and new technology agreements or contracts be registered. Its purpose is wholly or partly related to: (1) the use of trademarks; (2) the right to use patented inventions; (3) the supply of technical expertise in the form of the preparation of plans, diagrams, operating manuals or any other form of technical assistance of any description; (4) the supply of basic or detailed engineering; and (5) the supply of machinery and plant. The provision of technology transfer agreements should be made within six months of the signing of the agreement.⁹²

⁹⁰Dun & Bradstreet.

⁹¹Dun & Brandstreet.

⁹²Katzarov (1997).

(f) Enforcement

159. Nigeria has a common law legal system. Thus, matters relating to evidence, injunctions, damages and other remedies, including provisional measures, are dealt with under the general law of civil procedure for all civil wrongs. Action for infringement is also available to the owner of a patent, design or copyright, as in respect of other proprietary rights under both the copyright and patent legislation.

160. TRIPS Article 61 requires countries to provide for criminal procedures and penalties in cases of wilful trade mark counterfeiting or copyright piracy. The Trade Marks Act of 1990 does not provide for such procedures and remedies. The Copyright Act of 1988, as amended, provides for criminal procedures and penalties for counterfeiting, exporting, importing, reproducing, exhibiting, performing, or selling any work without the permission of the copyright owner. The Nigerian Copyright Commission has been engaged in anti-piracy activities including raids. Provisions also exist for pre-emptive actions, such as searches and seizures at borders, including the destruction of infringing goods.

161. It has nevertheless been reported that enforcement of existing laws remains weak, particularly in the patent and trade mark areas. Few companies have secured trade mark or patent protection in Nigeria because it is generally considered ineffective. Production and sales of pirated tapes, videos, computer software, and books remains widespread in Nigeria, which has been described as Africa's largest market for pirated products from third countries. Satellite signal piracy is also common. Violation of patents on pharmaceuticals is apparently also a problem.⁹³

⁹³USTR (1997).

IV. SECTORAL TRADE AND INVESTMENT POLICIES AND PRACTICES

(1) Overview

1. Major objectives of Nigerian sectoral policies include self-sufficiency in agriculture and the development of industry, promoted by a wide range of import substitution measures. Although the use of some of the most distorting trade and investment measures has declined, serious structural imbalances have dissipated much of Nigeria's petroleum wealth in ambitious but ill-conceived and poorly managed projects whose survival has depended on continuous government assistance. Since 1997, the Government has advocated a stronger role for the private sector; this will require taking decisive steps to reduce the activities under state control and to strengthen the country's legal and judicial framework.

2. Agriculture continues to play a central role in the economy. Growth in production of staple foods has exceeded population growth, a considerable achievement in view of the country's large and growing population and the relatively minor official support for such production. Less than 3% of the value of food consumed is imported. Although tariffs have generally been reduced on both raw and manufactured agricultural products, import prohibitions on several agricultural products have been replaced by high tariffs, and prohibitions still apply to maize, sorghum, millet, wheat flour and vegetable oils. Local food processors have benefited from extra protection through increases in tariff escalation, and the removal of excise duties on domestic products.

3. Dependence on crude petroleum remains high, with oil income reaching well over 90% of total exports and over three quarters of public revenue in 1996. Oil production is subject to quotas in the context of Nigeria's membership in OPEC. The domestic market for petroleum products has been severely distorted by widespread government intervention, including foreign investment restrictions, public monopolies and state trading. Domestic prices are maintained well below world levels. Refinery maintenance has been neglected and fuel shortages have resulted in substantial imports of petroleum products. Similar problems afflict the electricity industry, with regular power failures seriously disrupting economic activity; the industry is being prepared for privatization.

4. The performance of the manufacturing sector has been disappointing, especially in view of heavy public investment and the potential offered by Nigeria's large domestic market. The production of basic consumer goods requiring relatively simple technology and low investment appears to be mostly the domain of private firms, many assisted through trade and industrial policy instruments. Capital-intensive manufacturing activities in aluminium, cement, motor vehicles, paper, and steel are dominated by partially or wholly state-owned firms. Common problems in these firms include construction delays, budget overruns, plant closures, low capacity utilization, high unit costs, and a persistent lack of working capital and maintenance. The authorities are apparently considering the sale of several such projects.

5. Services activities have stagnated or declined in recent years. Problems in the ports system have resulted in major bottlenecks, and unnecessary costs, while railways and the banking sector are emerging from near total collapse. Many services activities are dominated by inefficient public enterprises, which, over time, have seriously handicapped other sectors. Private participation has often been discouraged by non-existent or outmoded legislation. However, many services activities are currently being restructured and modernized to improve their efficiency and business orientation; Nigeria has made several ambitious sector-specific commitments under the GATS, particularly on financial services. A further strengthening of competition and prudential regulations may be necessary to ensure that the current liberalization does not merely replace public with private monopolies to the benefit of narrow interest groups.

(2) Agriculture, fisheries, forestry and related industries

(i) Main features

6. Since the last Trade Policy Review of Nigeria, the main change in its agricultural trade policy consisted in a significant reduction in the number of products subject to import prohibition, and a slight lowering of the average tariffs (Table AIV.1). The latter have all been bound under Nigeria's Uruguay Round commitments, although at significantly higher ceiling levels than the import duties actually applied (Chapter III(2)(ii)). The stated objective of the country's overall trade policy is to support agricultural policy, in particular the achievement of food security for the population (Chapter II(3)(ii)). The Government aims to achieve by 2010 an average level of daily energy supply of 2,900 Kcal per person per day, compared with the current level of 2,590 Kcal.¹

7. Over 70% of employment is in agriculture; with a production value of N827 billion in 1996 the sector represents 40% of GDP at constant prices.² Climatic and soil conditions allow Nigeria to produce a wide variety of agricultural products, including many food and cash crops. Major products include cassava (manioc), of which Nigeria is the largest world producer, yam, sorghum, millet and maize, as well as horticulture and nuts, fisheries and forestry (Table IV.1). Major agricultural exports consist of cocoa, rubber, and palm kernels. Main imported food products are rice, sugar, beef and milk powder. Food and other agricultural imports represented 14% of total imports in 1996 up from 11% in 1991. Less than 3% of Nigeria's food expenditure was imported in 1996, down from 3.7% in 1992.

8. The area currently under cultivation (an estimated 34 million hectares) constitutes less than half of the potential agricultural land, suggesting that the sector has a strong growth potential, and that past economic conditions have not favoured the agricultural sector. Production of staples reportedly expanded on average by nearly 8% annually over the 1990-96 period (Table IV.1), with the largest increases in production of cassava and yam. Nevertheless, 70% of the nation's poor and 95% of the extremely poor live in rural areas.³

(ii) Measures affecting production

9. Nigerian agriculture should have benefited from the exchange rate developments in 1995 more than other sectors that were less exposed to international trade. Exporters have been able to retain their export proceeds in foreign currency, which, *inter alia*, facilitated imports of inputs, and have been able to convert these proceeds at the market rate, which is approximately four times the official rate. Similarly, the use of a market determined exchange rate for food imports should have increased their returns, thus encouraging local production.⁴ The removal of the import prohibition on rice has

¹Food and Agriculture Organization of the United Nations (1996).

²Central Bank of Nigeria (1997), p.87. The share of agriculture in GDP would be lower if the oil sector's contribution was valued at market, rather than official exchange rates.

³Vision 2010, Economic Direction.

⁴Nyatepe-Coo (1994), pp327-336 found that exchange rate overvaluation over the 1960-90 period had resulted in significant increases in imports of agricultural and food products. He also found that agricultural production had suffered from the Dutch Disease phenomenon that has affected many oil-producing countries following the
(continued...)

also helped to bring this trade back into formal channels, to increased transparency, and reduced distortions in Nigeria's agricultural and food markets.

Table IV.1

Estimated output of major agricultural, fishery and forestry commodities, 1990 and 1996
(⁰000 tonnes, except otherwise stated)

	1990	1996	Average annual growth rate 1990-1996
Staples	55,964	88,080	7.9
Maize	5,768	6,217	1.3
Millet	5,136	5,803	2.1
Sorghum	4,185	7,514	10.2
Rice	2,500	3,122	3.8
Wheat	554	47	-33.7
Acha	39	64	8.6
Beans	1,354	1,847	5.3
Cassava	19,043	32,950	9.6
Potatoes	54	99	10.6
Yam	13,624	23,928	9.8
Cocoyam	731	1,295	10.0
Plantain	1,215	1,688	5.6
Vegetables	1,761	3,506	12.2
Other crops	11,362	12,891	2.1
Melon	208	317	7.3
Groundnut	1,116	2,078	10.9
Benniseed	44	64	6.4
Coconuts	118	151	4.2
Sheanuts	289	367	4.1
Soya beans	216	322	6.9
Cottonseed	276	301	1.5
Palm Kernel	1,190	548	-12.1
Palm oil	730	776	1.0
Groundnut oil	359	461	4.3
Cocoa	244	323	4.8
Coffee	303	178	-8.5
Rubber	147	245	8.9
Sugarcane	920	615	-6.5
Palm wine	5,121	6,122	3.0
Tobacco	31	23	-4.9
Livestock products	1,304	1,892	6.4
Poultry meat	57	74	4.4
Goat meat	179	92	-10.5
Lamb/mutton	84	96	2.3
Beef	279	197	-5.6
Pork	125	39	-17.6
Milk	243	972	26.0
Eggs	337	422	3.8

Table IV.1 (cont'd)

⁴(...continued)

1973 and 1980 oil shocks: the higher incomes and expenditure in the oil sector caused domestic prices of non-tradeable goods and services to increase dramatically, particularly vis-à-vis farm-gate prices, thus reducing real incomes in the agricultural sector. In addition, the growth of the oil industry attracted labour and other factors of production away from traditional activities, particularly agriculture, towards activities whose remuneration had increased relatively. Nigeria's agriculture in particular suffered from low productivity and migration of workers to the urban centres.

	1990	1996	Average annual growth rate 1990-1996
Fishery	315	364	2.4
Artisanal coastal and Brackish Water Catches	170	157	- 1.3
Artisanal Inland Rivers and Lakes Catches	113	157	5.6
Fish farming	7	33	29.5
Industrial (Trawling) coastal fish and shrimps	25	17	- 6.2
Forestry ('000 m³)	105,237	18,120	-25.4
Roundwood	103,964	16,653	-26.3
Sawn wood	1,121	1,339	3.0
Wood based panels	102	114	1.9
Paper and paper boards ('000 MT)	50	14	-19.1

Source: Central Bank of Nigeria (1997), Table 5.5.

10. Despite the statement in the 1998 Budget that "Government policies in the agricultural sector have not generated the expected results of increased agricultural and food production", Nigeria's reported growth in agricultural output since 1990 has been satisfactory, with output growth of most staples exceeding population growth over the period 1990-96 (Table IV.1). These results have been obtained without significant government intervention; current levels of funding, according to the Federal Ministry of Agriculture, do not allow for effective intervention in the sector (total budgetary allocation to agriculture, water resources and rural development were 6.2 % of the Budget in 1998). Problems include poor extension services, poor delivery systems, inadequate credit facilities, and poor funding of agro-based research activities.

11. The Nigerian authorities have notified the WTO that agriculture is not being subsidized, and that Nigeria does not grant any export subsidies on agriculture.⁵

12. In order to favour the expansion of agricultural production, the Government established the National Fertilizer Corporation of Nigeria in 1987, and the Federal Superphosphate Fertilizer Company, both in the form of industrial core projects (Chapter III(4)(ii)). Production of fertilizers has plummeted in recent years because of inadequate funding for imports of spare parts and shortage of raw materials. In 1997, the Government announced a review of the fertilizer programme, whose annual cost was reported to be as high as the country's entire agricultural value added.⁶ No decision has been taken by the Government regarding the privatization of the fertilizer companies.

13. The Government maintained a monopoly on importation, transportation and distribution of fertilizers until 1997, designed to facilitate their procurement by farmers. Fertilizers were distributed to farmers at subsidized prices which, together with quantitative restrictions on imports, resulted in shortages. The average use of fertilizers decreased considerably, from 13.5 kg. per hectare of arable land in 1990/91 to 6.6 kg. in 1995/96 (Table IV.2). The authorities have indicated that fertilizer imports and distribution were handed over to the private sector in 1997. According to NAFDAC, import certificates are required for each type and brand of fertilizer and for each private importer, which must be registered with NAFDAC (Chapter II(2)(vii)).

⁵WTO documents G/AG/N/NGA/1, 2 and 3, 2 March 1998.

⁶Point de vue (1997).

Table IV.2
Production, consumption, import, and export of fertilizers, 1990-96
('000 tonnes unless otherwise specified)

	1990/91	1995/96
Production	334	162
Consumption	400	200
Imports	197	52
Exports	122	44
Consumption per hectare of arable land (kg)		
Nigeria	13.5	6.6
Benin	7.8	14.7
Côte d'Ivoire	14.8	22.4
Ghana	4.8	4.3

Source: FAO Yearbook - Fertilizers, Vol. 46; and FAO Yearbook - Production, Vol. 50.

14. Prices of agricultural commodities are generally not subject to price controls. Considerable seasonal price fluctuations are frequent, reflecting the problems of inadequate storage, processing, marketing, and distribution facilities. Post-harvest losses reach 25% in cereal production, and up to 50% in horticultural production. This encourages speculators to buy at low farm-gate prices during the harvest season, and resell at considerably higher prices during the off-season. The authorities in 1995 were envisaging the establishment of a commodity exchange market (NICOMEX) to reduce these variations.

15. Currently, the National Agricultural and Co-operative Bank (NACB) is the main institution providing financial support for the production, processing, and marketing of agricultural produce. NACB may invest in major agricultural and agro-allied industries and provide guarantees for agro-based ventures in order to facilitate the raising of funds from domestic and external sources. The agricultural credit facilities of NACB are extended to individual farmers (including small, medium-, and large-scale operators), cooperative organizations, limited liability companies, government parastatals, as well as state and local governments. The Bank finances all aspects of agricultural and agro-based ventures including arable and tree crops, horticulture, poultry, pigs, cattle, rabbits, fishery, and forestry. In addition, NACB finances agricultural processing and marketing as well as such services as tractor-hire, production, and marketing of improved farm inputs.

16. NACB is experiencing "immense difficulties" in sourcing funds.⁷ Most of the Bank's funds are obtained from international sources since soft loans from the Federal Government have dwindled sharply over the years. NACB has noted that the burden of servicing foreign loans, compounded by exchange rate depreciation, has not only made external borrowing very unattractive, but also an unacceptable option for financing agricultural development in Nigeria.

⁷Tahir (1995). The author was at the time managing director Chief Executive of NACB Ltd.

17. Only 10% of agricultural production is further processed industrially in Nigeria. Infrastructural factors, including energy and water shortages, credit constraints, poor knowledge of potential markets, transport and telecommunications problems are important impediments to increasing this share. These problems affect most sectors in Nigeria.

(iii) Trade and investment measures

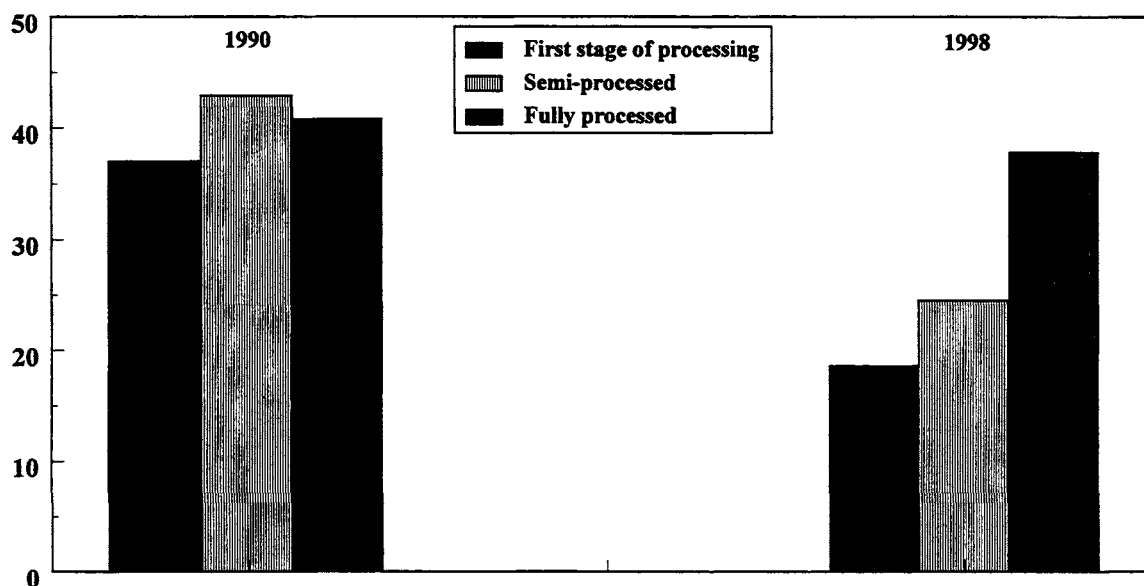
(a) Tariffs

18. Recognizing that agricultural production and processing has the largest export potential in non-oil activities, in the 1995 tariff reform the authorities reinforced the tariff escalation afforded to processing activities in the sector (Chart IV.1). Moreover, the removal of excise duties in 1998 provided significant extra protection to the food, beverage and tobacco industries.

Chart IV.1

Tariff escalation in the food, beverages and tobacco industry (ISIC 31), 1990 and 1998

(Per cent)



Source: WTO Secretariat based on data provided by the Nigerian Government.

19. Tariffs have been reduced on raw agricultural products, except those that compete with domestic production, such as millet, sorghum, maize and live poultry (Table AIV.1). Also, tariffs on most agricultural equipment and chemicals have become duty free. At over 20% (Chart IV.1), average tariffs on products used in agro-processing nevertheless remain high and substantially increase the cost of production.

20. The average tariff on processed food, beverage and tobacco products fell between 1990 and 1998 (Table AIV.1). However, high tariffs have been maintained (or even increased) on products where domestic production exists, including poultry, cereals, confectionery, grain mill products, animal

feeds, and mineral waters; high duties on tobacco and beer are maintained for health policy purposes. In some cases, large tariff increases reflected the switch from import prohibitions to tariffs (see below).

(b) Import prohibitions

21. Since the Trade Policy Review of Nigeria in 1991, several agricultural products have been removed from the Import Prohibition List, including rice, meat and poultry, fish, vegetables, fruit and fruit juice, mineral waters and soft drinks. It is unlikely that this liberalization has negatively affected domestic producers of products competing with previously prohibited imports, as the latter were entering the country informally. For example, the lifting of the import ban on rice in 1995 has considerably reduced the volume of unrecorded imports into Nigeria.⁸

22. Currently, imports of the following agricultural and food products remain prohibited: maize, sorghum, millet, wheat flour and vegetable oils (Chapter III(2)). Informal imports may also be significant for these products. Nigeria has undertaken to phase out import prohibitions on vegetable oils and maize by 2000 and 2002 respectively.

(c) Export prohibitions

23. Exports of key agricultural products such as maize and rice remain prohibited (Chapter III(2)(vi)). A lifting of the ban on exports of cassava products in 1996 led to an above average expansion in production, which has made Nigeria the world's largest cassava exporter.

(d) Inspection and certification requirements

24. In order to stem imports of counterfeit goods, expired or otherwise illegal or dangerous food products found in Nigerian markets, the authorities have put in place a comprehensive system of sanitary and phytosanitary inspection and certification requirements on imports managed by the NAFDAC (Chapter III(2)(vii) and (3)(ii)). Accordingly, foreign exporters wishing to sell products such as food and bottled water in Nigeria must obtain certificates of free sale from their home country, which must be authenticated by the Nigerian Consulate in the country of origin, and subsequently register both the importing company and the product for each product type and brand with NAFDAC prior to importation. Following the reform of Nigerian port and customs procedures, it is not clear whether NAFDAC officials are allowed access to Nigerian borders, and consequently whether they are in a position to effectively enforce these requirements.

25. Traders of agricultural commodities have complained about Nigeria's preshipment inspection systems introduced in 1996 both on imports and exports, which appear to have caused delays particularly detrimental to agricultural products.

(e) Investment measures

26. The authorities are aware that private investment constitutes the best prospect for increased financial flows to Nigeria's agriculture and agro-based industries. To encourage this investment, the Enterprises Promotion Decree of 1989, which restricted foreign investment including in agriculture, was abrogated in 1995.

⁸The volume of rice imports into Benin for re-export to Nigeria is reported to have decreased from 164,000 tonnes in 1993 to 100,000 tonnes in 1995.

27. The Land Use Act of 1978 vests the ownership of land in state governments. The Chief Executive of a State is the trustee of all land in the State, which every Nigerian or bona fide investor is entitled to work. Under the decree, an investor may be granted access to up to 500 hectares of land for agricultural purposes and 5,000 hectares of land for grazing, under a customary right of occupancy. Although land is in principle available for agricultural purposes under the statutory right of occupancy, unclear land and acquisition policy may constitute a disincentive to private-sector participation in the promotion of large-scale, commercialized agriculture. Land acquisition procedures vary from place to place.

(f) Other measures affecting agricultural trade

28. A study was commissioned by the Federal Government of Nigeria in 1995 to identify agricultural and food products with export potential, and small and medium-size enterprises likely to produce them. In this context, recommendations were made by the WTO/UNCTAD International Trade Centre in 1996-97 to the Federal Ministry of Agriculture on ways to promote exports through improved supply and import management techniques.⁹ The report found that the main obstacles encountered by agro-processing companies in importing materials, equipment and critical spare parts related to the operations of government agencies involved in the supply/import process, namely the Nigerian Customs Service and the Nigerian Port Authority, as well as preshipment inspection companies, clearing agents and forwarding agents. These problems were not specific to the agricultural and food sectors, but affected them more because companies in the sector tend to be small and less organized into private sector associations such as the Organized Private Sector (Chapter II(2)). Import delays, high import prices and the disruption of export flows ultimately priced exporters out of highly competitive world markets for agricultural and food products.

(iv) Developments in selected agricultural sectors

(a) Cocoa and products

29. Nigeria was the world's fifth largest exporter of cocoa beans in 1997 (after Côte d'Ivoire, Brazil, Ghana and Malaysia), and cocoa beans are Nigeria's single most important agricultural export item. According to data from the Central Bank of Nigeria, the production of cocoa beans rose from 292,000 tonnes in 1992 to 323,000 tonnes in 1996. According to the Federal Produce Inspection Agency, total exports for the 1995/96 (October-September) reached 140,000 tonnes, the remainder being locally processed.¹⁰ (Estimates for 1997 indicate exports of nearly 142,000 tonnes). However, the Central Bank reports exports of 73,000 tonnes, and has attributed this sizeable discrepancy to activities of smugglers, unrecorded trade, under-invoicing of exports, and downgrading of export quality. Similarly, exports of US\$165 million for all cocoa products reported by the Central Bank in 1996, compare with imports of US\$254 million recorded by Nigeria's trading partners (Chart III.3).

30. In 1987, price controls were removed and the commodity marketing boards abolished. This may have encouraged domestic production and exports, as farmers received a higher price for their exports. The current marketing system relies on private traders for internal and external marketing, and on federal and state quality inspection services. However, persistent quality problems have been reported for Nigerian cocoa marketed abroad, suggesting the need for reinforced quality control and better quality at the production stage.

⁹ITC document ITC/DTCC/97/2341, 21 November 1997.

¹⁰Reuters, 14 August 1997.

31. Tariffs are relatively high on cocoa products, which protects a domestic industry producing cocoa butter, liquor, cake and powder both for domestic consumption and exports; the industry competes with the export sector for supplies of cocoa beans. Some of these companies are partly foreign-owned.

32. An export tax of US\$5 per tonne of cocoa beans exported is currently suspended. In early 1998, the domestic cocoa processing industry was asking for the reintroduction of the export tax to alleviate shortages of bean for processing, and was apparently considering importing beans from Ghana or Côte d'Ivoire to maintain production levels.¹¹

(b) Sugar

33. Sugar is one of Nigeria's main food imports, estimated at US\$200 million in 1996. In addition to customs duties of 10%, a levy has been applied to imports of sugar since 1978 to fund the development of the domestic sugar industry. In 1995, the levy was reduced from 10% to its present level of 5%. The policy of developing a domestic sugar industry has not yielded the expected results, and the volume of refined sugar produced in Nigeria in 1996 stood at less than one third of the 1992 level.¹² According to the authorities, the poor performance of the sugar subsector resulted largely from input constraints, especially the short supply of fertilizers. There are three publicly owned sugar plants with a combined capacity of 25,000 tonnes in 1996 and a capacity utilization rate not exceeding 20%.

(c) Other products

34. Exports of unprocessed rubber remain prohibited. Nigerian statistics report exports of less than US\$37 million in 1996, whereas partner country data value them at nearly US\$200 million, suggesting that some exports may be unrecorded.¹³

35. Nigeria exports palm kernels, with an export revenue of US\$1.6 million in 1996; trading partner data report exports of US\$18.2 million. The Federal Government attempts to sell two palm oil companies (Ore Irele Oil Palm Company Limited and Ihechiowa Oil Palm Company Limited) since the early 1990s have failed so far due to problems of land compensation.

(v) Developments in fisheries

36. Fish output has risen steadily since 1993, progressively recovering to levels achieved in the 1980s before the rising cost of imported inputs (nets, outboard engines, spare parts) priced most fishermen out of the sector. The increase in production partly reflects the various assistance schemes of the Federal and State Governments, in conjunction with the World Bank Assisted Integrated Rural Fisheries Programme.

¹¹Marchés Tropicaux, 16 January 1998.

¹²Central Bank of Nigeria (1997), Table 5.15.

¹³Central Bank of Nigeria (1997), Table 6.6.

37. Nigerian fisheries export shrimps, crabs, oysters, periwinkles and shark fins. There has been a considerable increase in exports of fish and shrimps, from 5,6000 tonnes in 1991 to 36,8000 tonnes in 1995, decreasing to 16,8000 tonnes in 1996. The authorities have complained that Nigerian plants processing shrimp for export to the EU have been denied certification by the Union, thereby preventing such exports.

38. There has been a considerable tariff reduction on raw fish and seafood, while high tariffs continue to be applied on processed products (Table AIV.1). Landings of fish are banned unless the vessels are licensed in Nigeria.

(vi) Developments in forestry and wood production

39. The forestry sector mostly produces roundwood, both for exports (118,000 tonnes in 1996) and for downstream industries. Wood-based industries produce mainly sawn wood, wood-based panels and furniture, as well as paper and paper boards (section (5)(i)). The degree of local sourcing in the wood and wood products sector is one of the highest in the Nigerian economy (82% in 1989).

40. Tariffs are designed to promote processing in the country. Import prohibitions on wood products were maintained for balance-of-payments reasons until 1996; these applied to processed wood and particle board, furniture and furniture products, and wooden cabinets for radio and television sets. There is an export ban on raw timber.

41. Forestry resources are exploited intensively, with major environmental consequences. Deforestation was estimated in 1995 and 1996 at 400,000 hectares annually; re-afforestation declined during those two years from 13,358 to 1,043 hectares.¹⁴ The Federal Environmental Protection Agency (FEPA) is mandated to review and approve Environmental Impact Assessments of all forestry projects at the planning stage.

42. Unrecorded exports of wood products are reported to be of the order of US\$30 million (Chart III.3).

(3) Mining and Electricity

(i) Petroleum and natural gas

43. Trade and investment measures affecting the petroleum and natural gas sector include membership in OPEC and related production quotas, restrictions on foreign direct investment, and the use of countertrade. Measures affecting the downstream sector include state trading, import licensing, exclusive import rights and administered pricing, as well as restrictions on foreign commercial presence, and sizeable producer and consumer subsidies. Major policy developments in the sector since the last Trade Policy Review in 1991 include a partial relaxation of restrictions on foreign direct investment in 1995 and the announcement in 1998 of the refineries' privatization.

¹⁴Central Bank of Nigeria (1997).

(a) Petroleum production and exports

44. Nigeria's crude oil reserves were estimated at nearly 21 billion barrels in 1996 (Table IV.3), equivalent to about 25 years of production at current levels. In 1996, the country was the world's 11th largest oil producer with 3.3% of world oil output. Crude oil production in 1996 reached 2.1 million barrels a day (b/d), with some 365,000 b/d retained for domestic consumption, and the rest exported as crude oil (Chart IV.2).¹⁵ Production is mostly carried out under joint-venture arrangements with multinational companies (Box IV.1). These had on several occasions in 1997 invoked force majeure, as violence halted production from several installations.¹⁶

Table IV.3
Oil and gas statistics, 1996

	1996
Proven reserves	
Crude petroleum (billion barrels)	20.8
Natural Gas (trillion cubic metres)	3,476
Production	
Crude oil ('000 barrels/day)	2,064
Natural Gas (million cubic metres/year):	
Gross Production	35,450
Marketed production	5,260
Flared	26,590
Re-injected	3,600
Exports	
Total exports of crude oil ('000 barrels/day), destinations:	1,699
United States	769
Other America	95
France	169
Other Europe	528
Asia and Far East	91
Africa	40
Exports of natural gas (million cubic metres)	..

Note: Data reported by OPEC based on secondary sources.

Source: OPEC Annual Statistical Bulletin 1996.

45. According to the authorities, oil export revenues in 1996 totalled over US\$15 billion, representing 96% of total exports and over three quarters of public revenue. Nigeria is well located to supply oil markets in North America and Western Europe, with the United States accounting for nearly half of Nigerian crude exports in 1995 (Table IV.3). The Nigerian National Petroleum Company (NNPC) has indicated the existence of significant exports on a countertrade basis, notably with Venezuela and Brazil, where Nigeria ships light crudes in exchange for heavy products.

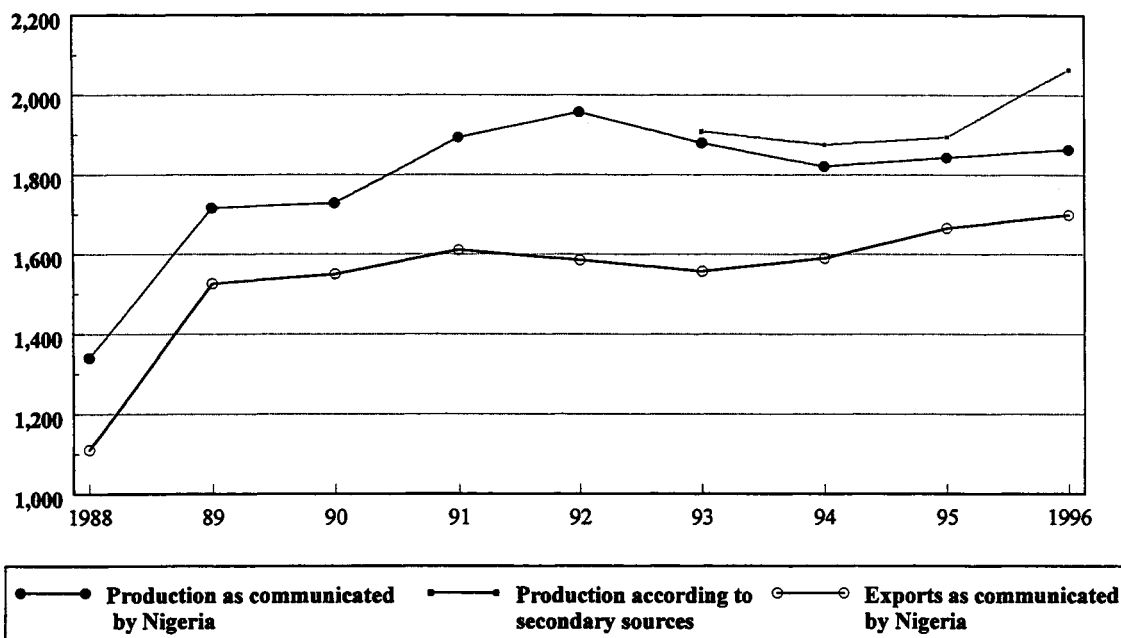
¹⁵However, according to the Nigerian National Petroleum Company, production of crude oil and condensate was considerably higher in 1997, reaching an average of 2.4 million barrels per day, with only 300,000 barrels retained for domestic refining.

¹⁶Force majeure implies defaulting on delivery contracts by as much as five days due to circumstances beyond the company's control. Activists were campaigning for a larger share of oil revenues being redistributed to the communities where production takes place (*Financial Times*, 1 May 1997).

Chart IV.2

Nigeria's production and export of crude petroleum, 1988-96

(Thousand barrels per day)



Source: OPEC Annual Report, 1996.

46. Nigeria's oil is of high quality, with low sulphur content and light gravity (37° API in the case of Bonny Light), selling at about US\$1 per barrel above the average OPEC reference basket price.¹⁷ According to the authorities, the industry's average extraction cost is US\$3.5, although some companies produce at below US\$2 per barrel. Prices since 1991 have ranged from US\$13 to US\$21 per barrel, a considerable stabilization from the variations of the 1980s (Chart IV.3). Nevertheless, prices in the first quarter of 1998 were over a quarter lower than the average price of US\$19 obtained for Nigeria's crude in 1997, potentially jeopardizing the country's macroeconomic balance, given its dependence on oil export revenues (Chapter I).

47. Nigeria has been a member of the OPEC since 1971 (Box IV.2). The production quota is distributed by the Inspectorate Division of the Ministry of Petroleum Resources to the Nigerian National Petroleum Corporation and other petroleum producers in Nigeria. The private companies export their entire production quota, whereas NNPC retains part of its production quota for downstream activities.

¹⁷OPEC (1997).

Box IV.1: Foreign participation in the Nigerian oil industry

In 1971 the Government established the Nigerian National Oil Corporation, which became the Nigerian National Petroleum Corporation (NNPC) and acquired majority equity shares in all major oil companies in Nigeria in 1977. NNPC is a public company involved in production, distribution, exports and imports of crude and refined petroleum products. It operates under the responsibility of the Federal Ministry of Petroleum Resources for technical aspects, and under the Federal Ministry of Finance and the Head of State for financial matters, including new investment approval, taxation, pricing and international trade.

Legal provisions affecting foreign participation in the Nigerian oil industry are found in several legal texts. The Petroleum Act of 1969 provides that production licences may be granted only to Nigerian citizens. Under Nigeria's Constitution, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly. The Nigerian Investment Promotion Commission Decree of 1995 guarantees access to investment in any sector except "petroleum enterprises", unless these take the form of joint ventures (Chapter II).

Most production takes place under joint-venture agreements (JVAs) between NNPC and multinational companies in the form of a memorandum of understanding. The main such companies by order of output are Royal Dutch/Shell, Chevron, Mobil, AGIP, Elf, Texaco and Pan Ocean. Certain companies (e.g. Ashland Oil Nigeria) operate under production-sharing contracts with NNPC in which the companies pay all up-front costs and recover them from oil sales. A subsidiary of NNPC, the National Petroleum Development Company, produces some 12,000 barrels per day independently.

JVAs are based on a system of guaranteed margins, which to a certain extent protects oil producing companies from world price fluctuations. Exports are marketed by the oil producing companies. The Government retains the entire proceeds of its crude sales, as determined by NNPC's share of equity (43% in 1996). The foreign partner's guaranteed remuneration consists of an amount expressed in dollars per barrel (currently US\$2.3), multiplied by the remaining share of total sales. The foreign partners pay royalties to the Federal Government (19.6% of their share of the volume of production, multiplied by the actual dollar price obtained); and the net profits of the foreign partners are taxed at 85% under the Petroleum Profit Tax.

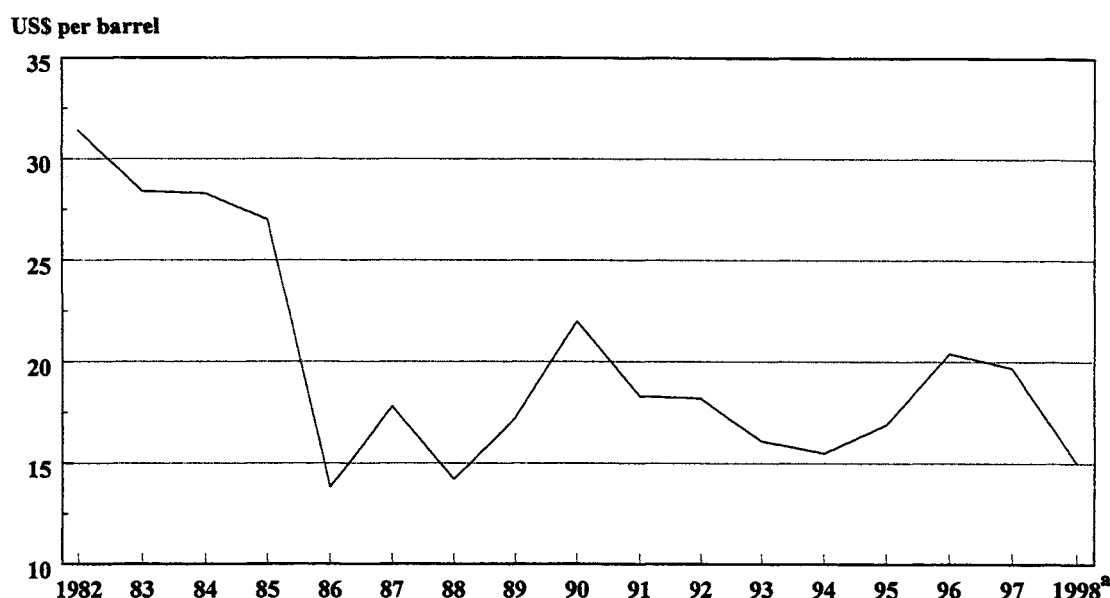
In the past, NNPC's has experienced difficulties in meeting on schedule its share of maintenance and running costs under JVAs. In 1994, Royal Dutch/Shell declared the NNPC in default, and the other foreign oil companies warned that unless the Nigerian Government improved its funding or reduced its equity, more default notices would follow. Arrears owed by NNPC to partners in the joint ventures amounted to US\$450 million in June 1996. In early 1998, Royal Dutch/Shell partly attributed a sharp fall in 1997 output to spending constraints imposed by the "lower-than-hoped-for operating budget".

In an attempt to solve funding problems, the Government has entered into production-sharing contracts for new offshore exploration agreements since 1991. Tax incentives include decreasing royalties with the depth of water; and a Petroleum Profit Tax rate of 50% rather than 85%. However, conversion of the existing JVAs is not currently under consideration.

Under new guidelines for the development of marginal fields announced in 1997, abandoned or under-utilized fields (currently numbering 183) will be recovered from joint venture companies and production rights reallocated to Nigerian citizens whose companies are incorporated in Nigeria. Foreign participation in these companies is limited to a maximum 40% equity.

Source: Government of Nigeria.

Chart IV.3
Average prices for crude petroleum, 1982-98



^a Estimates for the first quarter of 1998.

Source: UNCTAD Commodity Yearbook, 1984 and Monthly Commodity Price Bulletin, various issues.

(b) Natural gas

48. Nigeria has proven natural gas reserves of over 3 trillion standard cubic metres (m³), the world's eighth largest with 2.3% of all proven reserves. In addition, another trillion m³ is estimated to exist. Gas reserves correspond, on an energy-equivalent basis, to over 20 billion barrels of oil

49. Gross production of natural gas reached over 35 billion m³, three quarters of which was flared (Table IV.3). Nigeria is the highest gas-flaring nation, accounting for about a quarter of the gas flared and vented worldwide.¹⁸ Reasons for flaring include production and transportation difficulties, insufficient infrastructure and limited industrial demand. Nigeria's gas policy offers incentives to eliminate associated gas flaring, as well as encourage utilization of, and investment in, natural gas. The current policy states that gas flaring must stop in the year 2005.¹⁹ Since the 1998 Budget, a fee of N10 is levied per 1,000 standard cubic feet of flared gas, up from N0.5 previously.²⁰ The Government has introduced associated gas utilization clauses in recent production sharing contracts with oil producing companies.

¹⁸Shell Nigeria, URL <http://www.shellnigeria.com>.

¹⁹MBendi Information for Africa, URL <http://mbendi.co.za>.

²⁰1,000 cubic feet are equivalent to 28.32 cubic metres.