ETHIOPIA COMMERCIAL LAW & INSTITUTIONAL REFORM AND TRADE DIAGNOSTIC

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ETHIOPIA COMMERCIAL LAW & INSTITUTIONAL REFORM AND TRADE DIAGNOSTIC

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I. Introduction

A. Ethiopia: Cautious Reform, or Half-Measures?

In Ethiopia, the need for comprehensive and sustained economic reform, including significant loosening of restraints on commerce and vastly improved access to capital and to markets, is a matter of life and death. Within the country’s population of nearly 77 million people, about 85%—roughly 10 million households—live in rural areas and work in agriculture-related activities. About 14–17% of Ethiopia’s people are chronically or transitionally food-insecure, and half the population reportedly lives on less than US$1 per day. Ethiopia ranks low—170th out of 177 countries—on the United Nations’ Human Development Index for 2005.

Although the country has suffered greatly in recent years, most prominently through frequent droughts and the 1998–2000 war with Eritrea, Ethiopia has taken some important steps toward transforming its economy into one that is more competitive and dynamic. The Government of Prime Minister Meles Zenawi, in place since 1994, has fostered increased macroeconomic stability, privatized a significant number of companies, eased constraints on foreign investment, and enacted or reinforced a number of market-oriented laws. Moreover, as enunciated in 2005 in the draft Government’s Plan for Accelerated and Sustained Development to End Poverty (PASDEP), there is renewed resolve in Ethiopia to promote development through a mix of strategies, including a focus on basic human needs for health, sanitation, and education; an emphasis on capacity-building within various State sectors; and broad-based macroeconomic reform.1 The Government has identified among its primary economic objectives during the period of 2006–2011 “to accelerate the transformation from subsistence to a more business/market-oriented [system of] agriculture.”2

On the world stage, moreover, Ethiopia has much to offer. Its fundamental resources include agricultural products for which there is significant demand in wealthy countries (coffee and flowers, for example), the potential for developing far more “value-added” agricultural and industrial exports, underdeveloped tourism potential due to its rich history and environment, and, given significant long-term investment in infrastructure, a vast potential for regional trade.

1 Ethiopian Ministry of Finance and Economic Development (MoFED), Plan for Accelerated and Sustained Development to End Poverty (Draft-PASDEP) (October 2005).
2 Id. at Chapter IV, Section 4.1.
Notwithstanding this potential, Ethiopia’s reform efforts in recent years have unfolded with a cautiousness that belies the urgency of addressing the country’s poverty. The policy changes to date do not ultimately reflect confidence that, were individuals and firms are not overwhelmed by unnecessary bureaucratic constraints or unfair competition from State and political party actors, their collective dynamism could contribute to significant and sustainable “homegrown development.”

Equally important, the initial rounds of reform have not sufficiently addressed key constraints to economy-wide productivity, such as access to capital and access to markets. Enhancing the ability of Ethiopian firms to borrow capital represents a critical step in raising the status of the private sector in the global economy from a small, static player to a larger and more dynamic competitor. Similarly, the ability of Ethiopia’s farmers and other business concerns to transport their goods to market, and for those goods to flow smoothly across borders, is of critical concern.

This Report explores the state of economic opportunity in Ethiopia through the critical lenses of Commercial Legal and Institutional Reform (CLIR) and cross-border trade. Following an overview of the purpose and methodology of the inquiry, this Report identifies certain cross-cutting themes in the commercial, legal, institutional, and trade environments and then details 15 individual topics that comprise the infrastructure of a thriving economy. Through its findings and analysis, the Report aims to bring a concrete, substantive structure to a long-term agenda for legal, institutional, and trade-related reforms that set a welcoming stage for entrepreneurship, investment, trade, and development.

B. The E-CLIR Trade Diagnostic: A First in Africa

This inquiry—known as the Ethiopia CLIR and Trade Diagnostic (“E-CLIR Trade” or “Diagnostic”)—represents a first for Africa. Through the comprehensive methodology established by USAID’s Seldon Project for Global Trade Law Assessment and Assistance and tested in recent years in several different regions of the world, the Diagnostic examines the following topics:

**Commercial Law**
- Company Law
- Contracts Law and Enforcement
- Real Property Law
- Secured Transactions Law
- Bankruptcy
- Commercial Dispute Resolution
- Court Administration
- Competition Law
- Foreign Direct Investment
- International Trade Law
- Financial Crimes
- Intellectual Property

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4 Detailed information about the Seldon Project can be found at [www.bizlawreform.com](http://www.bizlawreform.com).
Trade
Flows of Goods and Services Across Borders
Trade-Related Flows of People
Trade-Related Financial Flows

The purpose of focusing on these topics is to identify in specific and substantive terms the various ways in which a developing country may be missing out on opportunities for economic growth because of its law, policies, institutional characteristics, or social dynamics, and how specifically it is advised to change. Sustained efforts to address these topics can increase a country’s prospects for economic growth and prosperity. Indeed, raising prosperity over time requires legal and institutional changes that allow economic actors to become established, grow, compete, resolve conflicts, access markets, and engage in trade with relative ease. Although every country has specific needs and priorities, research has brought to light a great number of best practices in the implementation of micro-economic reform.\(^5\)

Within each of the targeted areas, therefore, this Diagnostic has accessed data from a broad spectrum of stakeholders and endeavored to build a “360° picture” of the E-CLIR/Trade challenge. This picture derives from inquiries into the following:

**Legal Framework.** The Diagnostic first examines the laws and regulations that Ethiopia has in place that serve as the basis for its ability to achieve and sustain market-based development. The Diagnostic poses the following questions: How closely do existing laws reflect emerging global standards? How well do they respond to commercial realities that end-users face? What inconsistencies or gaps are present in the legal framework? Often discovered through this review are opportunities to make relatively small changes that may result in significant openings for business development and expansion.

**Implementing Institutions.** Next, the Diagnostic examines those institutions that hold primary responsibility for implementation and enforcement of Ethiopia’s laws, regulations, and policies governing one or more of the areas addressed in this Report. For example, courts are usually a crucial institution in the examination of commercial law. Problems uncovered often relate to bureaucratic inefficiency, lack of resources and training, and, of paramount concern, real or perceived corruption. With respect to the flow of goods, services, and people, Customs and Immigration authorities are the chief implementing institutions.

**Supporting Institutions.** The Diagnostic then considers the environment of organizations, individuals, or activities without which the legal framework or policy agenda cannot be fully developed, implemented, or enforced. Examples include notaries, lawyers, banks, business support organizations, professional associations, universities, and other similar ancillary service providers. Of particular interest with respect to supporting institutions is whether they have any meaningful involvement in what the law says. Where there has been “buy-in” from affected constituencies, a law and its commensurate system for implementation are more likely to be understood, to be used properly, and to achieve their overall purpose.

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**Social Dynamics.** Finally, studying social dynamics entails asking whether the affected constituencies of a law or policy perceive a need for change, and, if so, how they are demonstrating this need. Are they effectively lobbying those institutions that can make a change? Is the media seizing the issue as a topic of public concern? Are individuals speaking out? Or, have social dynamics taken a less positive approach—for example, is the “gray economy” growing as a response to overly burdensome conditions for market entry? Analysis of social dynamics may affect how an assistance project is ultimately designed. Where outside participation is strong and public understanding high, a reform program may simply involve a relatively small number of State officials who are capable of meeting the demands. In contrast, where mistrust and misunderstanding are abundant, an approach that involves significant engagement of “end-users” will likely be necessary.

The E-CLIR Trade Diagnostic took place on June 19–30, 2006, when a team of commercial law and trade professionals, including a representative from USAID/Washington, DC, traveled to Ethiopia to conduct a comprehensive inquiry pertaining to the country’s laws, public and private sector institutions, and social dynamics relating to commercial law and trade. The team consisted of the following individuals:

- Andrew Mayock (*Team Leader*) (Flows of People);
- Amy Allen (Administrative Support, Gender Issues);
- Peter J. Baish (Flows of Goods and Services);
- Wade Channell (*USAID*) (Bankruptcy, Secured Transactions);
- Joanne Cornelison (Flows of Goods and Services);
- Timothy Hughes (Competition Law);
- Thomas N. Jersild (Company Law, Real Property Law);
- Mark Walter (Contract Law, Financial Crimes, Legal Education);
- Irving Williamson (Foreign Direct Investment, International Trade Law, Flows of Money);
- Arthur Westneat (Agricultural Economy); and
- Scott Worden (Commercial Dispute Resolution, Court Administration).

**C. Summary of Subject-Specific Findings**

The findings of the 15 subject-matter areas examined in this Diagnostic are summarized as follows:

**Company Law and Corporate Governance.** Although Ethiopia’s company law—set forth primarily in its Commercial Code enacted in 1960 and in the 1997 Commercial Registration and Business Licensing Proclamation—has proven basically adequate for conditions to date, the Code needs to be updated to reflect current commercial realities and the demands of a global economy. The Government recognizes the need for a new law and has appointed a committee under the Department of Justice, which has been working on a replacement for more than 2 years. Unfortunately, the committee has yet to circulate a draft of the law for comment from interested constituencies, which may include trade associations, individual businesses, university representatives, foreign investors, and others. Nonetheless, completion of the effort is said to be planned for early 2007. Although the efficiency of company startup and registration in Ethiopia has been a problem in the past, those issues are no longer as pressing because of streamlined
company registration procedures and forms in the Ministry of Trade and Industry. Issues ripe for change within the legal framework include (a) the current law’s requirement that private limited companies must have at least two members and a shareholding company must have at least five shareholders, and (b) the lack of a requirement that larger companies have independently audited annual financial statements. There also is a general lack of quantitative and qualitative information on Ethiopian companies, an issue that discourages investment in them.

**Contracts Law and Enforcement.** Though Ethiopia’s written law on contracts—specifically, the Law of Obligations in the 1960 Civil Code—is comprehensive and reasonably well thought out, most of the other components critical to an efficient culture of commercial contracts are either nonexistent or seriously underdeveloped. A traditional, customary legal system in Ethiopia is sometimes used by individuals and small commercial enterprises and is reported to be reasonably efficient. Individuals with commercial disputes reportedly turn first to the customary system (usually the elders of a rural community or urban neighborhood), then to the courts if the dispute cannot be resolved. Judges have suggested that they will review the findings of the elders as if they had come from a lower court. This state of affairs is not necessarily a barrier to the development of a domestic market system. However, it is a system which will not be viable for business in the international market. The dependence upon customary dispute resolution will need to be reduced for Ethiopia to successfully compete in the global marketplace.

**Real Property Law.** Under Ethiopia’s Constitution all land is owned by the State, a circumstance that is hardly conducive to a free market in land transactions. Moreover, Ethiopia has never had a widespread system of land survey and titling. At the same time, however, the Constitution and other laws support extensive private use and quasi-ownership of land by Ethiopians and, in limited cases, by foreigners. This includes the right of private persons to own buildings and fixtures on the land, their right to lease land from the State on a long-term basis, farmers’ right to continue using rural land permanently for agriculture and, in limited cases, to lease it to investors or otherwise develop it commercially, and the State’s right—and frequent practice—to expropriate urban or rural private land use rights and sell those to private investors. Through these limited rights, there is an active market in land transactions. That market is politically controlled and highly opaque, however, and the rights are less secure and predictable than in market-economy countries or than should be the case for optimal economic development in Ethiopia.

**Secured Transactions Law.** Ethiopia’s collateral law system has significant gaps that limit its utility for supporting economic growth and development, with the absence of a national collateral registry among the most prominent gaps at this time. This absence of a national registry for collateral is of immediate concern. Moreover, the country’s basic legal and institutional structure is inadequate to move significantly beyond existing levels of credit. Supporting institutions—especially the banking system—create further limitations on the utility of movable property for expanded access to credit. Significant reforms are needed before the demand for secured credit can be met, including significant legal and regulatory reform and refinement, strengthening creditors’ awareness of opportunities and options in secured lending, increased public education about such new options as leasing and warehouse receipts, and public education about access to credit generally. These reforms are neither difficult nor radical, and they should be marked as one of Ethiopia’s highest priorities.
Bankruptcy. Ethiopia’s bankruptcy regime is relatively untested. Despite a reasonable framework law based on the Swiss bankruptcy code, other laws and practices have encouraged avoidance of the bankruptcy system. To the extent the bankruptcy law is being used, it is being used only for liquidation, not for reorganization. (Should the Government eventually increase privatization of State-owned enterprises, reorganization can be a very effective tool for making them functional and viable in a market economy.) The courts, understandably, are not well versed in bankruptcy practice or procedure, as bankruptcy filings are rare. Surprisingly, however, there seems to be a strong basis for building trustee and reorganization capacity based on existing “private receivership” practices. Current banking collateralization practices and limited commercial credit make it unlikely that much significant change will take place in the near future.

Competition Law. In recent years, Ethiopia has taken affirmative steps to open several sectors of the economy to competition and to encourage and facilitate new entrants into those sectors, including the enactment in April 2003 of a new Trade Practices Proclamation. This legislation states that the Government is committed to “establish a system that is conducive for the promotion of a competitive environment by regulating anti-competitive practices in order to maximize economic efficiency and social welfare.” It prohibits anticompetitive behavior and unfair or deceptive conduct by one competitor against another, authorizes regulation of prices for basic goods and services in times of shortage, and requires disclosure on labels of basic consumer information such as weights and measures. The law also provides for the creation of two implementing institutions, the Trade Practices Commission and the Trade Practices Secretariat. The process of introducing free competition into Ethiopia’s economy, however, is far from complete. Important sectors remain overwhelmingly dominated by State-owned enterprises, and the retail sector and financial services are, for the most part, closed to competition from foreign firms. Government monopolies also continue to exist in energy and other sectors. Even in those sectors where there have been reduced barriers to foreign competition and privatization of industry and services, expected economic benefits can be short-circuited by private cartels, barriers created by dominant firms, and public regulations. Concurrent with measures that focus on broadening access to capital for private enterprise in Ethiopia, concrete steps should be taken to reduce anti-competitive forces in the Ethiopian economy.

Commercial Dispute Resolution. Despite several decades of dormancy, the Ethiopian legal system that was created in the 1960s provides a solid foundation for the resolution of commercial disputes. The present challenge is to build the capacity of lawyers and judges—many of whom are relatively inexperienced—to better understand commercial transactions so that they may accurately apply that system to business disputes. In addition to the lack of commercial acumen in the legal community, two key issues are the excessive length of time it takes to achieve a final decision in the courts and the generally inexperienced pool of judges that decide the cases. Significantly, the most prevalent form of commercial dispute resolution in Ethiopia is informal mediation and arbitration. From merchants in the sprawling Mercato open-air market in Addis Ababa, to disputes among rural farmers and herders, parties often seek out a mutually trusted mediator or recognized village chief or council to resolve their commercial disputes. Two arbitration and mediation centers have recently been created in Addis Ababa to handle larger and more sophisticated transactions. Although together they have accepted fewer than 20 cases in their first 2 years of operation, the centers offer significant promise for providing businesses with a reliable dispute-resolution mechanism that is speedier and more private than the courts.
Court Administration. Ethiopia’s courts have limited reach and limited resources, but are generally well organized and effectively administered within those constraints. Businesses and lawyers praise the organization of pleadings and scheduling, as well as the ease with which they obtain basic information on ongoing cases. As noted, their greatest complaint is the excessive length of time it typically takes to achieve a final resolution. More efficient court administration could decrease case time considerably, including hiring additional judges and staff, segregating and fast-tracking basic commercial disputes from more complicated family matters on the civil docket, and improving information management within the courts and between them and other implementing agencies. Notably, the Supreme Court has initiated a national court reform project, which has offered training for judges and court support staff to implement administrative reforms and to better accomplish complaint resolution, record management, information technology, and customer support. It will take more than training to implement this initiative, however, and the main obstacle to implementation is the lack of resources devoted to the courts.

Foreign Direct Investment. Too many sectors of Ethiopia’s economy are closed to foreign investment. Although some of these sectors are not where international corporations normally operate, the restrictions tend to project a generally negative image to potential foreign investors in Ethiopia. In some of the reserved sectors, in particular air transport, travel operations, and financial services, the financial and trading skills of foreign investors would likely bring an important positive influence on domestic investors and stimulate domestic investment activity. In addition, the Government should review and likely reduce or eliminate its current minimum investment requirements. Moreover, although it has taken many positive steps toward encouraging private investment, the Ethiopia Investment Agency lacks resources in terms of the necessary scale and content of its investment promotion activities; its staffing, equipment, and information resources; and its access to and status with other relevant Government departments and agencies. To undertake effective promotional work, the agency should be strengthened.

International Trade Law. In its current form, Ethiopia’s trade regime contains the key provisions that support economic development. The structural adjust program of the 1990s resulted in a streamlined tariff structure with bands and a maximum tariff of 35% and a trade-weight average tariff level of 17%. Notwithstanding these reforms and others implemented in the early part of this decade, a number of additional reforms are needed before the regime satisfies WTO transparency and other trade-facilitation requirements. The Government of Ethiopia’s decision in January 2003 to apply for membership into the World Trade Organization presents an excellent opportunity to further modify the trade regime to ensure that Ethiopia’s trade policies make a maximum contribution to development and to promoting domestic and foreign investment. Until Ethiopia submits to the WTO its memorandum on its foreign trade regime, however, the accession process will not begin in earnest. In the meantime, a number of impact assessment studies have been completed and a number of training programs have been conducted. In addition, work has been started on revising legislation in the customs and intellectual property areas.

Flow of Goods and Services. Ethiopia suffers from a wide range of legal, institutional, and operational constraints that impede movement of goods and services beyond its borders and thus hinder trade expansion as a source of economic development. Ethiopia’s new draft Customs Law should be supported—it not only includes provisions that will facilitate the country’s bid for WTO accession, but also provides the foundation for modernization and reform. The country
must also continue its development and use of information technology relating to customs and other trade facilitation functions, including streamlining and reducing the paperwork requirement of all the border agencies. Certain border procedures should be consolidated and export assistance programs should be strengthened. Significantly, Ethiopia’s system of supporting institutions needs strengthening, especially through the development and capacity-building of trade associations and through initiatives that aim to diminish public-sector suspicion and interference with private sector activity. These and many other topics are detailed in the discussion of Flows of Goods and Services.

**Trade-Related Financial Flows (Flow of Money).** Ethiopia’s foreign exchange regulations represent a major impediment to trade. They clearly contribute to the country’s ranking as the lowest among all countries rated (149th) in the 2006 Doing Business category of “Trading across Borders.” Ethiopian authorities have expressed concern about the country’s balance of trade, which is lopsided in favor of imports, and pressures on foreign exchange reserves, which are dangerously low. The IMF has recently stated that, although imports are a concern, diminishing reserves are reflective of under-capitalized, over-extended public enterprises, as well as of rising oil prices. The IMF further raises “questions about the desirability of maintaining such tight exchange rate management.” On the other hand, Ethiopia has made significant improvements in the area of microfinance in recent years, thus improving access to capital, particularly for micro-enterprises and small businesses.

**Trade-Related Flows of People.** In recent years, the Government has eased travel restrictions, streamlined processes, and upgraded automation. Despite earning less than a quarter of the tourist receipts of Kenya and Tanzania, Ethiopia’s tourism sector has experienced robust growth and has significantly closed the gap between neighboring countries. Although tourism currently accounts for only 2% of GDP, the annual increase in the number of visitors from 184,077 in 2004 to 227,398 in 2005, a growth rate of nearly 24%, is encouraging as a future source of income for the country. Much of this increase can be attributed to an easing of rules that govern ownership of hotels and restaurants, which has dramatically improved (the often Spartan) offerings. “Flows of people”—that is, tourism and business travel—is an area where Ethiopia clearly has room to improve and will likely be a key driver of economic growth in the years to come. In addition, the safety of foreign travelers is not considered a real issue, as the crime rate is relatively low compared to other African countries. As with the flows of goods, services, and money, however, Ethiopian institutions need to modernize further.

**Financial Crimes.** Although Ethiopia is not currently a haven for financial crimes, conditions indicate that the country is highly vulnerable. Ethiopia’s borders are extremely porous; Customs officials are poorly trained and poorly paid; conflicts are common near each of the country’s border areas (Somalia has recently experienced a violent transition to an Islamist government); and, though the banking system is not particularly vulnerable, so much of the economy is cash-based that money flowing in and out illegally simply blends into the informal economy. Ethiopia has made headway in its cooperation with international efforts to bring the legal regime in line with international standards, and is party to 7 of the 12 international conventions and protocols relating to terrorism. The international community has been slow, however, to recognize Ethiopia’s vulnerability, citing its underdeveloped financial infrastructure and lack of economic development as obstacles to crime. In addition, Ethiopia’s Government has lagged recently in preparing its own infrastructure for compliance with international standards. Nonetheless, there
is evidence of drugs being routed through Ethiopia as far back as 1994. There is also recent evidence of significant domestic counterfeiting operations, both in foreign and domestic currency, as well as the smuggling into Ethiopia of large amounts of counterfeit foreign currency produced abroad.

**Intellectual Property.** Within the last two years, Ethiopia has enacted a series of new laws pertaining to major areas of intellectual property rights (IPR), namely, copyright and related rights, plant varieties, and trademarks. In addition, the country is in the process of developing new laws for the protection of geographical indications and for undisclosed information. These actions indicate that IPR is receiving government interest and attention, primarily through efforts of the Ethiopian Intellectual Property Office (EIPO). Until the formation of the EIPO in 2003, responsibility for and control over the various areas of intellectual property were handled by different, unrelated government agencies, none of them with authority concerning IPR. Despite government efforts in collaboration with private sector associations to reduce the sale of pirated music, counterfeit goods (e.g., CDs and DVDs) are available in Addis Ababa most visibly through street vendors. The extent of IPR enforcement at the border is unknown. It would not be unreasonable to expect that Ethiopia’s prospects for growth arising from substantial foreign investment may be affected if the Government fails or slows down its efforts to engage in meaningful implementation of its IPR regime.

**D. Cross-Cutting Themes in Legal and Institutional Reform**

Along with the findings summarized above, certain cross-cutting themes emerged in the CLIR and Trade Diagnostic in Ethiopia. These themes include the following and are discussed in turn:

- Notwithstanding certain efforts toward reform in recent years, the capabilities and potential of the private sector in the Ethiopian economy are undervalued by the Government, while the Government remains over-invested in participating in and regulating the economy;
- As competitive forces increase across many sectors in the economy, improving access to capital, to markets, and to other types of service providers is essential for private enterprises to flourish;
- Ethiopia has a great deal of promise to emerge from its status as a Least Developed Country, with a number of specific opportunities and advantages that should be seized and exploited in the near future;
- To achieve broad-based and sustainable improvements in the Ethiopian economy, legal constraints against the participation of women must be removed, while institutions that encourage the participation of women in the economy should be supported; and
- Ethiopia’s opportunities in legal education represent a powerful source of grass-roots support for commercial law reform in the near and mid-term.

**Industrial Policy and Low Competition.** Throughout this Diagnostic, a number of constraints to the private sector became evident, suggesting that the State remains reluctant to cede control as the primary economic engine in the Ethiopian economy because of a belief that the private sector will not be able to lead the way toward sustained economic development. The State continues to
reserve for a few powerful players—including State-owned companies and Party-owned entities—many of the most viable and economically important commercial opportunities, thereby turning its back on the growth potential presented by freer competition and improved access to productivity-enhancing services for private companies. The State also exhibits insufficient interest in dismantling its cumbersome bureaucracy, widely reputed to discourage domestic and foreign investment. Evidence of these issues includes the following:

- Strategic sectors of the economy that are dominated by the State (e.g., financial services, telecommunications) and strategic sectors dominated by party-owned enterprises or politically influential groups (e.g., cement production and distribution) severely limit the possibility for growth of private enterprises in these sectors. Interviewees complained that certain sectors, most notably construction, were severely constrained by the favoritism received by politically connected entities in the process of import licensing.

- State-owned companies are not organized under the Company Law and thus are not subject to its rules and protective provisions (although they are covered by—and occasionally reorganized under—the Bankruptcy Law).

- Although foreign investors may now undertake certain activities that were previously reserved for State bodies—including air freight, the import of propane and butane gas, and travel and tourism—certain critical areas remain off-limits to foreign investment, most notably financial services, telecommunications (joint ventures only), shipping, and retail distribution. Foreign exchange accounts, payments, and currency transfers are subject to significant controls and restrictions, as are capital transactions. As discussed in this Report’s section on Secured Transactions (social dynamics), the State’s policy interest in protecting banks seems to be an overriding concern that competition will lead to failure of the existing banks. The notion that competition will lead to greater market efficiency and improved access to capital for private business and consumers has not yet taken hold.

- Ethiopia’s Competition Law, enacted in April 2003, represents a promising step toward greater competitive freedom in the economy. Unfortunately, the law also contains certain provisions that will continue to protect the anti-competitive nature of various State-owned and even party-owned enterprises. The law in effect grants the State broad and flexible powers to exempt many consumer goods from competition. This power to regulate prices, when viewed in conjunction with the fact that the retail sector is largely closed to foreign companies, suggests a lack of confidence in and commitment to competition as an effective regulator of supply and demand for consumer goods and services. More ominously, it suggests undue political concerns with maintaining control over certain sectors, rather than a more broad-based interest in setting a level playing field as a foundation to a competitive economy.

- Moreover, Ethiopia’s Trade Practices Commission, established in 2003, has the authority to exempt from enforcement of the Competition Law any enterprises that have “significant impact on development and [were] designed by [the] Government to fasten growth and facilitate development” and “basic goods or services that are subject to price regulations.” This broad discretion of the Commission to exempt enterprises from the law, and to do so ex post facto, does not provide the assurances and predictability that would encourage innovation, expansion or entrance by entrepreneurs whose success
depends upon free competition. Rather, it suggests a gratuitous loop-hole for State or party-owned enterprises.

- In the area of real property, the laws and all persons interviewed made it clear that, even beyond remaining restrictions on the ownership of land by foreigners and nonresidents, State regulation is extensive, multi-layered, and heavy handed. A person’s acquisition and actual commercial use of the land that he or she holds can be subject to numerous approval processes at the federal, city, region, woreda, and kebele levels which are not always transparent, predictable, or consistent from area to area.

- State intervention in the flow of goods across borders similarly places enormous constraints on economic activity. For example, coffee exports must be inspected by the Coffee and Liquor Unit of the Ministry of Agriculture for quality control purposes after the shipment is loaded for export. This requires the transporter to make an additional stop on the way to the port and is an example of Government involvement in an area usually negotiated and resolved between the private parties to the transaction. Similarly, meat exporters face regulatory restraints with up to 10 institutions overseeing the export process. Most exported agro-products require a minimum of two inspections, which are performed sequentially rather than simultaneously. All these inspections add costs and delays to the shipment.

- The State controls most of Ethiopia’s radio and television stations, the primary source of information for a populace that is about two-thirds illiterate. There has been some loosening of control over the media—two private FM radio licenses have been awarded recently, for example, and the private press has felt able to express more criticism of the Government in recent years, although not without significant restraints. However, the Government continues to suffer from an absence of critical feedback and dialogue on its political and economic policies that could be fostered by more liberal media policies.

This Report details these and many more examples of a State apparatus that, although reform-minded in certain respects, remains unwilling at its core to release its extensive control over commerce and allow the emergence of an economy that is truly competitive and dynamic to a degree necessary for its citizenry to take advantage of all of the opportunities that may be available to them. At the same time, the State has not met the country’s substantial need for a strengthened national infrastructure that will bolster its ability to transport and export goods to regional and international markets. Unless the State pushes toward greater competition in the economy, which includes increased focus on its infrastructure and reduced concentration on unnecessary bureaucratic constraints, its efforts to date will become nothing more than “half-measures,” which could ultimately prove less helpful than no measures at all.

**Sharing Top Billing: Better Access to Credit, Markets, and Services.** Despite significant advances in economic freedom in Ethiopia and the rationalization of policies that followed, entrepreneurs in just about every economic sector must learn to succeed in a hostile business environment. Small and mid-sized farming concerns and other entrepreneurs who seek to raise their businesses from the ground up face a particularly difficult business environment that has

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6 Unit of government equivalent to a local district; made up of kebeles.
7 Smallest unit of government, often a neighborhood.
not yet adjusted to wholly meet their needs. This Report identifies and discusses the following constraints, both direct and indirect, on access to capital (that is, the ability to borrow money) and access to markets:

- Limited use and availability of funding and modern collateral devices (including leasing);
- Over-regulation of banks;
- Limited credit information;
- Limitation of borrowing power due to “over-collateralization”;
- Problems in identifying land use rights, which in turn undermines the use of land as collateral for lending;
- Insufficient recognition of useable collateral (chiefly, movable and intangible property);
- Minimal borrowing opportunities outside of cities;
- Absence of a national collateral registry of movable goods;
- An underdeveloped system of warehouse receipts;
- Lack of professional expertise among lawyers and judges in credit-related matters; and
- Inadequate physical infrastructure providing access to markets, including poor roads, expensive transport costs, and negligible rail service.

During Ethiopia’s most recent famine in 2003, observers noted that insufficient food resources in Ethiopia were not the culprit, but blamed rather an “incomplete” market system in which the private sector could not meet vital needs for warehouses, crop insurance, transport, and other factors that collectively would have prevented wide-spread hunger. To meet these needs in the future, individuals and firms would need access to capital, including access to bank loans and access to regional and international markets. The urgency of a broad-based program that would support greater access to capital, markets, and services in Ethiopia—through systems that offer sufficient confidence to lenders—cannot be overstated.

**What Works Now and What Could Work Better Soon: Seizing the Short and Mid-Term Opportunities.** Notwithstanding the many difficulties Ethiopia faces, the country in fact enjoys a relatively strong basis for commercial law and institutional reform, as well as continued development in trade. For example, this Diagnostic found Ethiopia’s commercial legal framework, though in need of significant updating for modern commerce, to be basically sound. Many other Least Developed Countries present far more formidable challenges in legal reform, which is often considered a prerequisite to meaningful institutional change. Although updating the legal framework should certainly continue to be a priority, it is one that can and should be achieved in relatively short order.

In addition, against an extremely challenging physical and socioeconomic environment, Ethiopia has pockets of real economic progress that show reform growing from within its network of implementing institutions. These include meaningful steps in recent years toward civil service

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9 Of course, a program of legal reform should necessarily be a dynamic activity that “includes research, debate, negotiation, public education, outreach, institutional capacity building in parliament, revisions of drafts based on local political compromises and a host of other steps.” Wade Channell, *Lessons Not Learned: Problems with Western Aid for Law Reform in Postcommunist Countries* (Carnegie Paper No. 57, March 2005), page 9.
reform, improvements in Customs procedures, and streamlined procedures in company registration. In light of this progress, the challenge now is to sustain and build upon existing institutional momentum. As detailed in this Report, particular opportunities for short and mid-term reforms—ones that need not be overly complex or expensive—include the establishment of a national collateral registry; bolstering the role of professional and trade associations in contributing to macroeconomic reform and educating their members and the public; empowering and providing technical support to certain critical State players, such as the Trade Practices Commission and the Foreign Investment Agency; and seeing through institutional improvements to the country’s system of land ownership.

Moreover, Ethiopia has made choices in recent years that will facilitate further legal and economic reforms. The decisions to join the World Trade Organization has set in motion a number of studies and technical assistance activities which should yield far-reaching benefits even if the process is not moving as quickly as expected. Again, Ethiopia’s challenge is to sustain the momentum of reform.

**Including Women in the Opportunities of CLIR and Trade Reform.** Women’s empowerment in the marketplace is still a problem. In recent years, Ethiopia has taken some steps toward integrating women into its commercial sector reforms. However, the status of women remains vastly under-valued in the Ethiopian economy.

Most of the efforts of the Women’s Affairs Office (WAO) in the Prime Minister’s Office in the Government of Ethiopia (GOE) have been directed at poverty eradication, education for girls, and violence against women and girls, a focus that has resulted in increased economic opportunities for women. Examples of these reforms include a National Policy on Ethiopian Women, which aims to facilitate the conditions necessary to bring equality between men and women in Ethiopia. In addition, in May 2006 Ethiopia implemented a five-year Plan for Accelerated and Sustained Development to End Poverty, which includes gender as a pillar. Ethiopia also has in place a gender-aware agricultural development pilot program, and a commitment to revising its Civil Code in such a way that allows for men and women to be given the same rights in succession of property.

Nearly three-quarters of the population of Ethiopia is dependent on agricultural livelihoods. As a result, both the Government and various nongovernmental organizations (NGO) have focused their capacity-building efforts for women in the agricultural arena. The “Improving Client-oriented Extension Training” program, funded by the Dutch and implemented by the Ministry of Agriculture, is one example of this focus. This program allows for agricultural extension agents to be trained with a gender-aware curriculum that recognizes women as vital co-participants in the traditionally male-dominated areas of field crop and large livestock care. The program also allows for the development of a gender-conscious structure for planning and implementing agricultural development programs based on the findings of the trained agents.

In addition, there is work in progress to revise the country’s Civil Code to accommodate equal property rights for both men and women. The revised Code specifically has the potential to assist women in Private Limited Companies (PLC) with their husbands to govern the family farm. Currently, if a woman is widowed, she is expected to sell the farm or take on another partner, usually a male relative, to continue business. The revised Civil Code would allow a widow to
continue her business without the additional male partner. Its complete revision to allow for
gender equality throughout the economy should be an immediate priority.

An African proverb says that “Habits are first cobwebs, then cables.” Though progress may seem
slow, current activities have the potential to provide a robust platform for removing barriers to
gender equality in Ethiopia. A small but determined contingent of grass-roots parties’ seeking
women’s equality could benefit from continued technical assistance and support.

The Foundation of Sustained Legal Reform: Opportunities in Legal Education. Legal
education is an oft-forgotten yet critical component of the four-cornered foundation for a solid,
energetic legal culture. Those four corners comprise legal education, civil society,
government/judiciary, and the practicing bar. Each component of this foundation must be strong
enough to provide support for, as well as a check against the power of, the others. Although legal
education in Ethiopia presents serious and obvious deficiencies, the core of a strong educational
ethic, and well-educated and enthusiastic faculty, provide an excellent starting point for
development.

Two surprises greet first-time visitors to the Addis Ababa Law Faculty. The first is that the
building is literally falling apart. The former residence of the Emperor’s children, and rather
eerily still presenting a touch of its faded grandeur, the school has apparently lost much of its
structural integrity. Window frames are skewed into decidedly non-rectangular shapes, and,
during the week of this Diagnostic, at least 30% of the library’s table space was covered with
plaster that had fallen from the ceiling.

The other surprise, consistent with the first only in its visual impact, is the stacks of hundreds of
student theses that nearly fill one room of the school. Each student graduating with an LLB must
complete one of these carefully supervised papers in English. Most papers were in excess of
eighty pages and immediately identifiable as works of very high quality, easily as well
researched and written as student papers in Europe and the United States.

These two surprises go a long way in illustrating the troubling irony of legal education in
Ethiopia. The students and faculty perform work that far outstrips the ability of the country’s
infrastructure—as well as the interest emanating from the other three corners of the foundation—
to put it to good use. Thus, the theses lie in haphazard stacks in a dark room within the crumbling
law faculty building.

Until 1995, the Addis Ababa University (AAU) Law Faculty was the only law school in
Ethiopia. (In the past 11 years, seven public law faculties, and at least three private faculties,
have been opened. A number of additional faculties, mostly public, are planned over the coming
years.) Founded in 1963 by Emperor Haile Selassie near the end of his huge efforts to modernize
the Ethiopian legal system, the AAU Law Faculty remains the most respected. The faculty
prospered, with the help of a group of foreign legal scholars, until the Derg regime took power in
1974. The school suffered through the regime, as did everyone and all infrastructure, until 1991.
In the years since, the school has risen and fallen periodically in Government favor. Recently, it
has undergone rather dramatic funding cuts and its authority over admissions and curriculum has
been taken away by the Ministry of Education.
A new effort has begun, however, by members of Ethiopia’s community of legal educators to make positive changes to the entire system by developing a lengthy draft document entitled Reform on Legal Education and Training. The suggestions made in the draft, if adopted by the Government, would allow the AAU Law Faculty to prosper once again, while also allowing for the expansion of opportunities in legal education in Ethiopia.

Though the rule of law is itself an ideal and never perfectly manifested in any society, it is generally assumed that the strength of legal capacities in any society depends upon how broadly and deeply the rule of law reaches into the public psyche. Legal education is a critical component in any program to establish the rule of law in the public psyche. Those who provide the legal service in a working democratic society have immense influence on attitudes toward the law. Those who train lawyers are key to the attitudes and approaches taken by those lawyers in their effect on society.

A focus on legal education has been used with varying degrees of effectiveness throughout the past 30 or more years in attempting to establish the rule of law in states in transition. Early in that period the Law and Development movement was the vehicle of choice for educators and donors, putting the emphasis on judicial reform and training. One assumption was that improvement in the structure of the Government would trickle down to the general public and would in turn lead to strengthened social development. Another was that courts played the same role in transition civil law democracies as in mature and mostly common-law developed nations.

A newer rationale supplanting this top-down approach focuses on legal culture immersion, on the influence of the legal profession on a culture of rule of law, and aims at impacting those who will train the next generation of members of that legal profession. This approach is based in part on the overwhelming role of lawyers in the establishment of successful democratic systems, including the Constitution and early Government of the United States of America, and the various successive treaties supporting the evolution of the European Community and European Union.

With respect to legal education, this Report’s recommendations reflect the belief that quality legal education can be a cause, rather than an effect, of the rule of law and effective commercial legal systems:

- **Make the student theses available online.** These works contain a wealth of knowledge directly relevant to many of the issues that our team was researching. Making them publicly available—preferably on a U.S. law school website—would be a nearly cost-free exercise that would have immediate and dramatic impact.

- **Establish faculty training programs.** Teaching the teachers is, of course, a fairly tried and true method for reaching exponentially larger groups of people, yet no training programs had been established at AAU. These can be as simple as inviting expatriate lawyers working in Addis Ababa to conduct short workshops with faculty in their specialized areas. **Engage in curriculum development.** Much work needs to be done with the existing curriculum. Though the standard courses are reasonably well

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established, no courses reflecting the special needs of Ethiopia—such as financial crimes law—have been developed. An even more ambitious goal is to put the authority for curriculum development back into the hands of the faculty.

- **Make law school admissions fair and transparent.** Since the authority over admissions has been taken from the administration of the law faculty, the quality of the student body has clearly declined.

- **Set up clinical legal education programs.** As American law schools have discovered, no programming provides more impact upon both students and the community than clinical legal education. Given the country’s special interest in agriculture as a source of economic development, clinical legal education may properly be directed, at least in part, to this arena.

- **Use the law faculty.** The faculty can provide a significant community service, and establish itself as a resource for information within the community of practicing lawyers, by developing continuing legal education programs. They cost little to establish, and can even become, in the longer term, profitable for the school.

E. **Acknowledgments**

Over nearly three weeks, the team received invaluable assistance in preparing for, facilitating, and executing its Diagnostic from Ethiopian Government officials, the U.S. Embassy in Ethiopia, the USAID mission, USAID-funded projects, the Ethiopian Chamber of Commerce and the Addis Ababa Chamber of Commerce and Sectorial Associations (AACC SA). The team particularly benefited from the magnitude and quality of the contribution by USAID’s Doha Project for WTO Accession and Participation-Ethiopia. Specifically, as well as its work in the broader context of institutional reform and trade policy making, the Doha Project’s previous cultivation of relationships, prior technical work, collaboration, and comments played an extremely important role in completing the Diagnostic. The efforts of the Doha Project’s Chief of Party, Irving Williamson, and his staff, Almaz Fiseha, Mamo Mihretu, Million Habte, and Russell Brott, were essential to the team’s work. In addition, the support of the USAID mission including John McMahon, Head of the Business, Environment, Agriculture, and Trade (BEAT) office, and Michael Klesh, Senior Agribusiness/Private Sector advisor, proved indispensable. Likewise, Elizabeth Jafee, Economic and Commercial Officer of the U.S. Embassy, played a key role in linking the team to key actors throughout the country. Scores of individuals from throughout the Government, including a wide array of public-sector institutions, as well as from the private sector, the donor community, the university community, and a large sample of supporting institutions proved enormously helpful in providing a candid and thorough view of the commercial law and trade sectors. Louise Williams and Russell Brott contributed to the drafting and editing of this Report, including the section on Cross-Cutting Themes. The team is very grateful for the assistance and contributions of all of these individuals and institutions.

Indeed, through the course of over 100 meetings with a far-reaching representation of public and private actors who participate in Ethiopia’s economic activity, in concert with a comprehensive review of a vast number of documents prepared to date that touch upon one or more aspects of the E-CLIR Trade initiative, the team developed broad findings with respect to Ethiopia’s strengths, weaknesses, and opportunities. On June 30, 2006, the team met with representatives of
the Government, private sector, and other stakeholder groups, which greatly helped to inform this exercise. This Report now summarizes the team’s findings in each of the four areas of review—legal framework, implementing institutions, supporting institutions, and social dynamics—and includes recommendations for specific areas of reform.

A Closer Look: FDI Brings Benefits to Ethiopian Families

In fewer than 5 years, Ethiopia has revamped its image in the floriculture world from one of relative obscurity to that of leadership in providing businesses and entrepreneurs the right mix of incentives and natural assets to sustain real opportunities for growth. Although Ethiopia earned just $20 million in the sale of cut flowers in 2005, the market’s projected expansion is enormously promising. At current trends, the country’s floriculture sector should grow by 250% in 2006 and, by 2007, amount to a $100 million market—not bad for a $10 billion economy that is growing at around 6% annually.

A look inside the plastic domes scattered across Ethiopia’s intensely traditional countryside surrounding Addis Ababa, where the majority of floriculture takes place, reveals a rather modern engine of rural growth. Electronics imported from Israel, plastics from Kenya, and proprietary cuttings from Holland each demonstrate a sophistication that is otherwise unseen in rural areas of this country. Here, Ethiopians may benefit like never before from what might be considered a titanic change to rural areas: the introduction of globally integrated, sophisticated, and highly profitable enterprises.

What is most interesting about this story, perhaps, is what happens beyond the farms and away from the flowers that are sold at auctions and supermarkets across Europe. Namely, in rural Ethiopia, where over three-quarters of the country’s population resides and works, women never quite thrive like the men. Their rate of malnutrition is significantly higher, their education is typically lower, and their role in society less privileged.

Yet a member of a household who works at a flower farm is likely to be generating the family’s primary income, while other family members remain tied up in on-farm activities that sustain the family but allow for little if any surplus to be sold for cash. Significantly, nearly 80% of the flower workers are women, many of whom are earning wages for the first time in their lives. The year-round nature of floriculture has a substantial and positive effect on family incomes that helps them to ride out the lows of commodity cycles—people hired by flower farms in Ethiopia tend to earn 42% more per hour than those who work in other types of locally available jobs. The flower industry thus implicates a profound effect on household dynamics: research shows that women tend to spend more on health and education than men, and therefore reap longer-term benefits for the families.

With increased incomes and less flexible schedules, pregnancies and marriage may also be delayed because of this new source of work. These delays, important in a country where the average woman has six children and may start having babies even before she reaches her teens, has health impacts that are anything but trivial. When childbirth is postponed, the likelihood of complications from childbirth is reduced and there are better chances of having more money for fewer children. More investment in education and health and fewer births with the increase in income may very well lead to beneficial cycles whereby a “mere” job can extricate families from poverty on a sustainable basis.
II. Company Law and Corporate Governance

A. Introduction

Company law is crucial in market economies; it sets the legal environment for the creation and continuing operation of privately owned businesses. Good company law is especially critical in transition-economy countries. It can encourage new investment—and provide investor protection—by setting forth clear and objective rules for a company’s ongoing internal governance; it can encourage entrepreneurship by making it easy to start up and register a company; and it can encourage businesses to come out of the underground economy into the publicly registered, taxpaying economy.

Ethiopia’s current company law is part of its Commercial Code, which has remained unchanged since its enactment in Imperial times (1960). It is patterned after the French Commercial Code as it was in effect in 1960. The company law was effectively suspended during the Communist Derg period (1975–1991), when formation of new limited liability companies was not permitted. The company law was restored to full effect under the present Government.

Although the current company law has been basically adequate for conditions to date, it needs to be updated. The present Government recognizes this and appointed a committee under the Department of Justice, which has been working on an updated version for more than 2 years with completion said to be hoped for by early 2007. The committee currently has a working draft but that draft is not publicly available.

One distinct issue involving company law is that of startup and registration of new companies. Although that has been a problem in the past, it is no longer so according to all persons who were interviewed, including practicing lawyers and accounting firm professionals, company officials, registry officials, and donors. That is due to implementation with donor help of revised and streamlined company registration procedures and forms in the Ministry of Trade and Industry.\textsuperscript{11}

B. Legal Framework

Types of Companies. The current company law provides for four forms of companies, as can also be expected in the forthcoming new company law:

- \textit{General partnership}, in which the partners are personally liable for the partnership’s obligations (Commercial Code Articles 280-95);
- \textit{Limited partnership}, in which one or more general partners are personally liable for the partnership’s obligations and one or more limited partners are liable only to the extent of their agreed contribution (Articles 296-303);
- \textit{Share company}, which may offer shares publicly and has no upper limit on the number of shareholders, which roughly corresponds to a French SA, a German AG or an English

\textsuperscript{11}It should be noted that although the company law covers registration generally (Commercial Code Articles 86–123), most provisions for company registration are contained in other, more recent laws, namely, Proclamation 67/1997, Regulation 13/1997, Proclamation 376/2003, and Regulation 95/2003.
PLC, and which is identified by the company’s name and the initials “SC” (Articles 302–509); and

- *Private limited company*, which has fewer formalities than a share company; which may not offer shares publicly and may not have more than 50 members; which roughly corresponds to a French SARL, a German GmbH, an English private limited company, or a U.S. limited liability company; and which is identified by the company’s name and the initials “PrPC” or “PLC” (Articles 510-543).

Both share companies and private limited companies provide limited liability for their shareholders/ members, meaning that those persons are not personally liable for the company’s debts and other obligations.

**Profile of Ethiopian Companies.** The overwhelming majority of Ethiopian companies are family or otherwise closely owned, and although some are relatively substantial businesses, most are small. Accordingly, the overwhelming majority of companies are PrLCs, which is the best form for a company with only a few owners. (Most of the smallest Ethiopian businesses are not organized as companies but as sole proprietorships, which are also required to register with the State. Those businesses have little or no reason to be companies; for example, limited liability has little meaning for small-scale business, especially when business is done on a personal basis and court lawsuits are virtually unknown or impracticable.)

There are very few widely held companies. From interviews it appears that the single company with the most shareholders is the Awash Bank, a share company of about 2400 shareholders. There is neither a stock exchange nor another mechanism for an open or liquid market in share trading, although there is a need for such an exchange, as many interviewees pointed out. Currently persons who wish to buy or sell shares do so privately, either contacting prospective sellers or buyers directly (if they know who they are) or contacting the company, which in some cases arranges informal markets in its shares.

The bulk of Ethiopia’s largest companies are owned or controlled by State bodies or political parties. Several interviewees pointed out that such companies account for a larger part of the economy than privately owned companies, which can add a political tone to doing business. State-owned companies are not organized under the company law and thus not subject to its rules and protective provisions.

The overall Ethiopian company-form profile is illustrated in the following chart, which lists new company and sole proprietorship registrations from 2000 through mid-2006.

<table>
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<td>5</td>
<td>4</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
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<td>7366</td>
<td>5109</td>
<td>4054</td>
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</tr>
</tbody>
</table>

**Corporate Governance.** The current company law contains important provisions for corporate governance, although many of these would require revision to comport with governance...
provisions of other countries and current international best practice. Among the significant
corporate governance provisions are a requirement in share companies that conflict-of-interest
dealings between a company and a director must receive prior approval of the board of directors
(Article 356); that a company may not make loans to a director (Article 357); that directors are
personally liable to the company for failure to carry out their duties that include a duty of due
care and diligence (Article 364); and that a company may sue a misbehaving director upon
approval of shareholders representing 20% of the capital (Article 365)—although currently the
law does not provide for shareholder-derivative litigation as is the case in other countries.

At the same time, the current law contains provisions that are contrary to international best
practices and facilitate insider minority control and hinder transparency in governance. Such
provisions can seriously discourage new investment. These include permitting a share company
to issue bearer shares (Article 325—this is inadvisable because anonymous bearer shares can
lead to hidden ownership and tax evasion); permitting a share company to impose restrictions on
free transfer of its shares (Article 333—this is not appropriate, at least in widely held companies,
because it prevents share liquidity), and permitting a share company to limit the number of votes
which shareholders may exercise at shareholder meetings (Article 408—this is counter to the
“one share one vote” principle which assures control in proportion to investment).

As detailed in the recommendations below, these and other governance provisions should be
tightened and, in many cases, extended to private limited companies as well as share companies.

**Particular Often-Cited Problems.** Multiple interviewees cited two major problems which could
be fixed without a full replacement law. The first is a requirement in the current law that a
private limited company must have at least two members and a shareholding company must have
at least five shareholders. Such a rule serves no evident purpose and other countries’ laws
generally do not have it. It can cause considerable inconvenience and unnecessary expense and
paperwork. As only one example, this rule prevents a company with several shareholders from
having wholly owned subsidiaries. Instead, the company must martial all of its shareholders
multiple times to act as identical separate owners of each of multiple, separate, commonly
controlled companies. This in turn causes difficulties in consolidating the accounts of such
companies—something that the law should make easy, not difficult, in commonly controlled
company groups.

Second, many persons have strongly urged that the Company Law should require all larger
companies, regardless of company form, to have independently audited annual financial
statements. Although in many countries this is not a subject for the company law, it appears to be
a definite need in Ethiopia because of laxity which prevails in connection with financial
statements. This point was made separately by bankers, accountants, lawyers, and company
officials.

**Information on Companies.** There is a general lack of quantitative and qualitative information
on Ethiopian companies. Efforts were made to obtain, for example, breakdowns of companies by
type of business (e.g., the industrial classifications used in the United States), size (by any rough
measure such as number of employees or capital), number of shareholders, number of companies
which are foreign-owned versus domestically owned versus State-owned, number and names of
companies which are linked in common ownership, etc.
Such information would be useful in assessing corporate governance needs for Ethiopian companies. It is recommended that a system be developed in Ethiopia for its collection and public availability.

**Company Startup and Registration.** In many transition economies company startup and registration is lengthy, costly, often unpredictable, and conducive to corrupt payments—which discourages both domestic and foreign investment. In such countries the most-needed company law reform is simply to prescribe and implement a quick, efficient, inexpensive company registration procedure.

As stated above, this appears to have been a problem in the past in Ethiopia but it no longer is. Much work has been done to facilitate and streamline the process with the help of SIDA (the Swedish International Development Agency) and USAID. With these improvements the registration of a standard company can now be done in a few days, according to Ministry officials, lawyers, and others who deal with the registry and keep checklists of the steps and required documents. (The longest example given was 10–15 days, including allowance for preparing the Memorandum and Articles of Association and other documents, completing the Ministry’s application form with the necessary client information, and obtaining notarization.) A mock company registration for purposes of this Report was done at the registry in the Ministry of Trade and Industry’s registry in Addis Ababa, whose personnel were courteous and user friendly.

It should be noted that these company registration procedures do not reduce the need or time required for other approvals that may be needed such as investment, labor or tax approval, and regulatory permits for specific activities such as banking, mining, health care, construction, tourism, or commercial agricultural activities. Such approvals were generally said not to be a major burden, but interviewees reported that they can be time-consuming, unpredictable, and sometimes costly. Such approvals were not separately investigated for this Report.

**C. Implementing Institutions**

The Ministry of Trade and Industry is the primary regulator under the Company Law, its most important duties (described above) being those relating to registration of companies, including initial registration and registration of other acts and documents (e.g., checking and approval of company names, amendments of articles of incorporation, mergers, and dissolutions). As stated above, the Ministry’s personnel were courteous and user friendly during the mock company registration.

There is no ongoing company regulation or monitoring such as is provided in other countries by bodies such as securities commissions, stock exchanges and similar agencies, or by investor groups. There is, however, regulation of private banks by the National Bank, which oversees their financial statements and conditions, among other things.

**D. Supporting Institutions**

The chambers of commerce, detailed later in this Report, are important factors in monitoring and advocacy activities relating to company law and registration. The Addis Ababa chamber in particular has been active in supporting and commenting on the forthcoming new company law and in advocating creation of a stock exchange or similar share-market body.
Donors, particularly SIDA and USAID, have been very active in supporting and contributing to company law and registration reform.

The Ministry of Justice Legal Drafting Committee is charged with drafting the new company law. It is chaired by a Ministry representative and its members include a broad representation of expert lawyers, accountants, bankers, chamber of commerce representatives, and others.

Private Lawyers, Accountants, and Other Professionals are necessary and helpful for advice with regard to company registration, corporate governance, and investor disputes. Their input has been valuable in drafting of laws such as the new company law and in improving registration procedures.

The courts are the ultimate recourse for the resolution of company disputes and the Company Law gives them jurisdiction to hear share company lawsuits against company directors and officers. In general, however, the courts are viewed as slow to decide and lacking in corporate expertise and independence and thus, as a practical matter, not very useful.

E. Social Dynamics

There is a demand (“market”) for a more modern company law, which has been recognized by the Ministry of Justice and assisted by donors and the legal community, whose comments on the forthcoming new company law were in some cases solicited and taken into account.

There continues to be a strong demand for efficiency and transparency in the granting of other approvals needed for a company’s full operation and for disclosure and information about Ethiopian companies, and there will be a continuing demand (now unmet) for advice, training, and education with regard to investor rights and corporate governance (recommended below).

F. Recommendations

The following recommendations are made:

1. To best serve the needs of closely held businesses, both large and small, and to conform to modern law in other countries, include the following in the forthcoming revision of the PrLC part of the new company law:
   - Allow single-member companies and make clear that a company may have any number of wholly-owned subsidiaries (thus revising Article 510).
   - Eliminate or reduce the requirement of minimum capital and, if it is retained, state it in U.S. dollar or Euro equivalents (thus revising Article 512). Many countries have eliminated such capital requirements as being unclear and confusing (and subject to manipulation) as an accounting matter, and as not serving to protect either creditors or shareholders (and not enforceable) as a practical matter.
   - Make clear that a PrLC may structure its governance as it wishes—e.g., it could give all members equal management authority, or it could name certain persons as managers, or it could create an elected management body similar to a board of directors.
• Allow the members—by agreement—to share votes and share profits as they wish—e.g.,
equally, or in proportion to their capital contributions, or on another basis. However, the
law should state how those are shared if the members do not agree otherwise (e.g., it
could state that they share equally in that case).

• Allow a company—by agreement of the members—to impose whatever restrictions on
sale of shares they wish—e.g., free transferability (no restrictions), transferability only to
family members or other company members, requirement of a first offer to the company
or to existing members, etc. However, the law should state how transfer is restricted if the
members do not agree otherwise (e.g., it would restrict transfer to inheritance or transfer
with 75% member approval, as is stated in the current law).

• Provide that decisions in a PrLC be made by majority voting power except for certain
very major decisions requiring unanimous consent—such as admitting a new member,
amending the charter, sale of the company’s assets, merger with another company, etc.
However, the law should also allow the members to vary even those requirements.

2. To prepare share companies for future public ownership and to conform to modern share
comp any law in other countries, include the following in the forthcoming revision of the
share company section of the new company law:

• As with PrLCs, allow one-member companies and make clear that a company may have
any number of wholly-owned subsidiaries (thus revising Article 307).

• Consider eliminating or reducing the requirement of minimum capital and, if it is
retained, stating it in U.S. dollar or Euro equivalents; also, consider eliminating the
requirement for outside valuation of in-kind capital contributions.

• State in more detail the rules for stock. For example, prohibit bearer stock (thus revising
Article 325), which can lead to hidden ownership and tax evasion. State that every
company must have common stock, and that all common stock has one vote per share,
which promotes transparency and investor control (thus revising Article 408). State that
any company may also have preferred stock with preference over common stock for
dividends and/or liquidation distributions, but that all of the specific rights of preferred
stock must be stated in the company’s publicly filed Memorandum of Association.

• Consider adding more detail to the rules for convening, conducting, and voting at
shareholder meetings. These include the rules for notice to shareholders, setting the
agenda, proxies, quorum requirements, and secret ballots in some cases (e.g., election of
directors, vote counting). International experience has shown that these seemingly minor
details can be essential to protect the integrity of shareholder control. Consider providing
that certain major items require a two-thirds vote, including amending the Memorandum
of Association, a merger with another company, a major asset sale, and a decision to
dissolve the company.

• Further clarify the role and responsibility of a company’s board of directors. Consider
changing the law (Article 350) to provide that directors are to be elected or reelected at
each annual shareholder meeting—which means that their terms are for 1 year at most,
although there is no limit on how many times a director can be reelected—that
shareholders may remove a director without having to prove cause or provide special compensation, and that directors’ remuneration must be approved by the shareholders (thus revising Article 354).

• Consider new rules to give a company more freedom and flexibility in declaring dividends and in buying back its own stock, while at the same time placing detailed restrictions on dividends and repurchases of stock to protect creditors. Add provisions that dividends and buybacks are strictly prohibited whenever they would render the company insolvent or unable to service debt (or whenever they invade capital if that concept is retained); that directors or managers who cause a company to pay prohibited dividends, and shareholders or members who accept them knowing they are prohibited, should be personally liable to return the amounts illegally received.

3. To improve corporate governance and investor protection, add the following in the forthcoming new company law:

• Clarify the duties of care and loyalty which directors—and other controlling persons—have to their company, including their duty when they have a personal conflict of interest (thus revising Articles 356 and 364 among others). Define the concept of “personal interest” (to cover family relationships for example) and add rules for authorization of any contracts or transactions between a company and a director by “disinterested” directors, shareholders, or members who themselves have no personal interest in the matter. These follow current international precedents and would expand the above-cited provisions in the current law on this point.

• Expand the current rules (in Article 365) for lawsuits against directors who breach their duties to shareholders. These can be extended to cover both types of limited companies and to include managers and other persons in control of a company of either form. Such suits are a weapon of last resort, but, as the current law recognizes, investors must be able to go to court if necessary.

• In other provisions the current law gives shareholders and members access to company financial records. These can also be expanded following international precedents.

• Add detailed procedures for mergers, conversions of a company from one form to another, and other major transactions, including disclosure and voting rules to protect shareholders/members and a procedure for dissenting shareholders to opt out of a merger and receive payment of the fair value of their shares, which in some cases can be determined in a court appraisal proceeding.

4. To improve financial reporting and transparency and facilitate companies’ obtaining of credit in general, require in the new company law that all companies over a certain size, regardless of form, must have independently audited financial statements prepared at least annually. (The size itself should be determined with local advice.)

5. Continue, and if practicable, expand the implementation of company registration reform being carried out by the Ministry of Trade and Industry with donor assistance, including:

• Further simplify the forms.
• Make full use of the proposed Ministry of Trade and Industry website to set forth the forms, procedures, and policies; set forth the text of the company law, all forms, and all Ministry announcements and regulations; and provide statistics on companies such as those referred to above in this Report.

6. Establish a program on corporate governance which would, among other things, provide training and education on corporate governance and protection of investors in Ethiopia. Knowledge of these can be used for investor protection and encouragement of investment in Ethiopia, including investment looking toward future widely held companies. In this connection there is much to be learned from knowledge of corporate governance guidelines and practices in other transition countries as well as countries with developed capital markets. Target groups would include:

• Judges, who have a strong need for knowledge in this area, including knowledge of their powers under the derivative litigation and other parts of the new law
• Company directors and officers
• Company investors/shareholders
• Potential investors, domestic and foreign
• Financial institutions
• Professionals, including lawyers and accountants.

7. Establish procedures for greater collection and dissemination of data on companies such as the data listed in “Information on Companies” above. Some of such data can be collected when a company registers (for example, identifying its business sector using a standard industrial code system). The information could then be posted on the Ministry of Trade and Industry website.

8. Consider establishing a “one-stop shop” system for regulatory approvals other than company registration, as many other countries have done. In this system a single institution coordinates (and may issue) all necessary approvals following a uniform and consistent policy.
III. Contract Law and Enforcement

A. Introduction

The law of contracts governs the commercial relationships between parties, typically buyers and sellers of goods, services, and rights. The development of an efficient market requires a clear and predictable law that adequately covers such basic issues as contract formation, obligations of the parties, and available remedies when one party is in breach, as well as more complex issues such as force majeure (natural disasters and other “Acts of God”) and assignment of rights to third parties. However, other components of the legal system are just as critical. Contract law is of little practical use if the general legal, business, and government environments act to suppress the formation of efficient commercial agreements.

Ultimately, the law and legal support systems must be sufficient to allow parties to assess and allocate risk. Components of this support system include the legal community’s ability to understand and apply legal principles in the contract drafting and dispute-resolution phases; sufficient information that allows for an informed assessment of risks and obligations; the judiciary’s ability to resolve disputes; the existence of alternative dispute-resolution systems; civil society and the State’s roles in supporting and regulating the commercial sector; and the commercial sector’s willingness to seek legal advice.

Against a backdrop of State support for the needs of commerce, three distinct sectors are needed: a strong, responsible practicing bar; a commercial sector that is at least minimally knowledgeable in legal principles; and civil society support systems.

Though the written law on contracts (the Law of Obligations in the 1960 Civil Code) in Ethiopia is comprehensive and reasonably well thought out, most of the other components critical to an efficient culture of commercial contracts are either nonexistent or seriously underdeveloped.

Ethiopia’s traditional customary legal system is widely used by individuals and small commercial enterprises and is reported to be reasonably efficient. Individuals with commercial disputes often turn first to the customary system (usually the elders of a community or urban neighborhood), then to the courts only if the dispute cannot be resolved. Judges indicate that they review the findings of the elders as if they had come from a lower court. This state of affairs is not necessarily a barrier to the development of a domestic market system. It is, however, a system which will not be viable for business in the international market, and the dependence upon customary dispute resolution will need to be reduced by individuals wishing to enter the global marketplace.

B. Legal Framework

The 1960 Civil Code was promulgated under Emperor Haile Selassie as a result of national recognition and adoption of a modern legal system. The law is loosely based upon the Code Civil of France (a document that has remained virtually unchanged since Napoleon’s time), but was obviously drafted to reflect some more contemporary notions of contract law.
The Civil Code is law in the civil tradition at its core, but with introduction of some common law principles. For example, there is heavy reliance on the requirement of good faith of the parties (a civil law concept) throughout the law on contracts—in the interpretation of contracts (Article 1732) and in a judge’s authority to make decisions that take good faith into account (Article 1785)—but there is also a seeming preference for the award of damages (Article 1776) over specific performance.

With its Book of Obligations (Book IV) covering general contracts, and Book V devoted to so-called Special Contracts, the law on contracts fills a daunting 275 pages. Most of the familiar concepts of formation, obligations of the parties, remedies, and exceptions to the general rules are found in Book IV. Five specific types of contracts that are afforded special treatment in Book V:

(a) Assignment of Rights; (b) Performance of Services; (c) Custody, Use, and Possession of Chattels; (d) Contracts for the Sale of Immovables; and (e) Administrative Contracts.

There is little interest demonstrated in Ethiopia in acceding to the United Nations Convention on Contracts for the International Sale of Goods\textsuperscript{12} or in revising the law to conform with, for example, the much simpler UNIDROIT Principles.\textsuperscript{13}

**Contract Formation.** As with other Civil Law systems, Ethiopia’s Civil Code explicitly requires only an “expressed agreement of the parties” (Article 1680 (1)) for a contract to be a priori valid. As a practical matter, however, the traditional elements of offer, acceptance, and defined subject are also required in order to make a determination that the parties have agreed. Book V has similar formation provisions for the Special Contracts.

No writing is required (Article 1681 (1)), with administrative and immovables contracts excepted. For those contracts that must be in writing, two witnesses are also required and the contract must be registered in a court or with a notary. The Civil Code spells out that unless otherwise agreed, the locus of the conclusion of the contract shall be the place where, and time when, the acceptance is sent (Article 1692).

Article 1695 provides for something like the American “mirror image rule,” requiring the acceptance to substantively echo the offer. Specifically, the Article states that “a contract shall not be deemed to be completed unless the parties have expressed their agreement to all the terms of the negotiation.” The nominal difference is that where, under the mirror image rule, agreement to the terms can be implied from a simple acceptance of the offer, Article 1695 seems to require that there be some expression of agreement after there has been a final manifestation of the terms.

The doctrine of Mistake is treated in the formation section of the Code, in a group of articles titled “Defects in Consent.” The Code requires the mistake to relate to a fundamental component


of the contract, and to be of a type that, had the mistake not been made, the mistaken party would not have entered into the contract (Article 1697). This right is, however, cut back by Article 1701, which disqualifies mistakes that relate only “to the motives which led to the making of the contract.” Nowhere in the Code, unfortunately, is there a definition of “motives.” The other defects in content are the typical faults which destroy a contract ab initio, such as fraud, deceit, incapacity, and unconscionability.

**Excuses for Non-Performance.** The Civil Code provides both of the common legal defenses for non-performance of obligations—Force Majeure and Suspension of Performance (due to the insecurity of the suspending party). The Force Majeure provisions (Articles 1792–94) require impossibility of performance as the standard, and expressly disqualify excuse where the occurrence was foreseeable or where performance would be possible but financially onerous. Anticipatory breach (Articles 1788–89) is only available where a party “informs [the other party] in an unequivocal manner that he will not carry out his obligations under the contract.”

**Remedies and Enforcement.** The closest the Code comes to making warranty provisions are the requirements that “the parties shall be bound by the terms of the contract and by such incidental effects as are attached to the obligations concerned by custom, equity and good faith, having regard to the nature of the contract” (Article 1713), and that “the creditor shall not be bound to accept a thing other than that due to him…” (Article 1745). If these principles are violated, the nonbreaching party is entitled to either cancel the contract or demand enforcement (Article 1771). It is unclear whether this provision means that the nonbreaching party may demand conforming performance or if it means that the party may simply keep the contract alive and seek damages. The latter interpretation is supported by the language of Article 1776, which allows the award of specific performance only where it is of “special interest to the party requiring it and the contract can be enforced without affecting the personal liberty of the debtor.” The Code provides for a rather generous 10-year period of limitations.

The Code’s damages provisions are, as is typical in Civil Law systems, shared by all the breaches of law and agreement that result in civil liability (e.g., torts and contracts). The basic rule for damages is that they should be “equal to the damage caused to the victim by the act giving rise to the liability” (Article 2090). The damages must be foreseeable (Article 2101) and are adjustable according to issues of good faith (Article 2097), which would presumably include unreasonable lack of mitigation of damages by the nonbreaching party. The law adheres to a “loser pays” system for court costs and attorneys’ fees.

Though the Civil Code provides much of what is necessary to determine the law on contracts, it presents a number of downsides. It is, of course, not a new law. The 45-year-old Civil Code was written with the help of distinguished legal scholars from both Ethiopia and abroad, but lacks features that would make it more efficient. There is very little dynamism to the Code. Moreover, as is pointed out elsewhere in this Report, the practical use of the Code was suspended during the Derg, from 1974 to 1991, so opportunities to explore the efficiency of the law experienced a large gap. And, in the post-Derg period, such tight controls on commercial activity have been in effect—especially on international commerce—that the law remains largely untested.

The Code itself contains flaws that would certainly have a chilling effect on its use without significant judicial and scholarly analysis made widely available to the practicing bar and the
business community. For example, important terms and phrases are left undefined. No legislative history is available to clear the confusion, and little scholarship is made available, almost none in English. An Ethiopian judge said that he often uses a commentary that was written on the Code of Civil Procedure. Research on the Internet indicates that the book was written in 1968 and is out of print.

Though court decisions and, in some cases, judicial opinions are supposed to be transcribed and made available, the number and thoroughness of the opinions to be released is left to the court. No efficient system is in place for the publication of opinions. Because of this lack of informational infrastructure, contradictions in the written law go unresolved and lead to potentially higher risk and uncertainty for parties to agreements. For example, though the Code expressly allows unwritten contracts, Article 1728 requires “any party bound by a contract [to] affix his handwritten signature thereto.” Though it can be reasonably assumed that this would apply only in cases where a written contract has been done, there is no disinterested authority that can provide such logic to a judge.

C. Implementing Institutions

As mentioned above, the Ethiopian courts are not the only available means for dispute resolution. There is also traditional alternative dispute resolution and modern commercial arbitration. Though there are problems associated with both of these non-judicial mechanisms, it is hoped that they will begin to act as complementary sources for resolution for commercial parties.

There seems to be a thriving customary dispute-resolution mechanism with its roots in the traditional community unit—villages in the countryside, and neighborhoods in the city. Among the rural population of Ethiopia, which amounts to more than 90% of the total population, commercial disputes are almost invariably resolved by family members or community elders. These methods are reasonably efficient because, for security purposes, most contracts are formed between people who are either related or who have known each other for a long time. The downside to this, of course, is that efficient, arm’s-length transactions—those that would necessarily occur between farmers or collectives and exporters in the city, or between rural firms and partners in other countries—are slow to develop.

Another problem is that some modern legal instruments have found their way to the countryside, and are too complex to be resolved by traditional means. A troubling example is that many farms are set up as Private Limited Companies (PLCs) and, because the law requires more than one shareholder, the shareholders are often husband and wife. Upon death of the husband, the widow is forced to liquidate the company or take on new shareholders. These issues are made even more difficult by the diminished role that women play in Ethiopian culture. These women are forced into courts that are thoroughly unfamiliar to the local culture and perhaps unsympathetic. Legal aid programs are making some difference in these cases, but even then, most of the volunteers providing legal advice at the community level are not lawyers at all.

Arbitration is a growing alternative. The Code of Civil Procedure expressly allows arbitration, and the judges we talked to all supported it as relief to their demanding dockets. The AACCSA is the first organization in Ethiopia to offer modern arbitration with internationally recognized
rules—the International Chamber of Commerce Model Rules. The Chamber’s Arbitration Institute has handled some cases to this point and is hoping to achieve significant growth. Two major hurdles to growth exist, however. First, the practicing bar is woefully deficient in its ability to represent clients, and, second, there has been little effort by the Government so far to become party to the New York Convention on Recognition of Arbitral Awards. Until the New York Convention is acceded to, there may be little substantial growth in the commercial arbitration industry.

The courts, at the moment, seem to be the only reasonable recourse for larger, complex firms and for foreign parties needing to litigate in Ethiopia. Though the courts are treated separately in this assessment, it is worth noting a few important features here. The Ethiopian Code of Civil Procedure (1965), based on the Indian Civil Procedure Code, is another example of law that is fairly comprehensive, even modern, but which has undergone the same 17-year interruption as the other codes in Ethiopia and which is far more ambitious than Ethiopia’s efforts to apply it efficiently, transparently, and fairly. Though there is a contracts division designed to be specialized, judges are rotated in and out of it often, thus reducing or even rendering moot its ability to handle special cases knowledgeably.

There are serious deficiencies in the skills of judges, who are often stymied in efforts at contract interpretation. The situation is not helped by the poor quality of lawyers for the litigants. The number of lawyers in Ethiopia who are considered “capable” ranges from between five and fifty depending on who is asked. Even allowing the more generous estimate indicates a serious dearth of qualified legal professionals. Part of the problem is legal education, but another part is that though a good Law on Advocacy was promulgated in 2001, no implementing directives have been issued and the law now lies wasted. That law, if implemented, would provide enforced rules of ethics, would require malpractice insurance and continuing education, and would allow the establishment of law firms, something that would undoubtedly increase both the quality of the practicing bar and the numbers of lawyers practicing.

Finally, until 2001, lawyers and judges needed no formal training in order to practice law, and those who were practicing for ten years before the institution of the new rule were grandfathered in. One anecdotal estimate suggests that only 25% of practicing lawyers possess a degree in law.

D. Supporting Institutions

The Ethiopian Bar Association is a voluntary association of lawyers that is working primarily on development of continuing legal education programs. Because the Ministry of Justice is responsible for licensing, examination, and discipline of lawyers, and the Department of Education is vested with exclusive responsibility for legal education, the bar association is left with little substantive authority over the legal profession. It is the firm belief of the administration of the association that membership should be mandatory and that the association should at least have the authority to administer a mandatory continuing legal education program. The association is collaborating with the Canadian Bar Association in the development of a continuing legal education program.
It may be noted that there is also an Ethiopian Women Lawyers Association, but it is a legal aid project rather than a traditional association of lawyers. That said, this association’s members/volunteers comprise a large proportion of the women practicing law in Addis Ababa.

No description of the institutions that support the legal profession can be complete without mentioning the role of the Addis Ababa University Law Faculty. The faculty should be used as a valuable resource for the legal and business community, and the judiciary. Among other things, the faculty can act as a clearing house for information about the law, conduct continuing legal education programs, and provide student interns in legal and business practices. But, sadly, almost no efforts have been made to reach out to the law faculty.

There are two main commercial associations in Ethiopia: the Ethiopian Chamber of Commerce, and the AACCSA, as well as a number of sectoral associations. By most accounts, there is little cooperation between the two chambers. The AACCSA employs a legal representative, but his role is as counsel for the Chamber itself rather than as a legal support representative for the chamber’s members. The major positive step taken by the Chamber has been the establishment of the Arbitration Institute referred to above.

E. Social Dynamics

There is an obvious chasm in Ethiopia between legal framework and reality. The legal framework for contracts, in the form of the Civil Code and the Civil Procedure Code, is reasonably sound and, if treated with the care that it deserves, could become an efficient tool for contract negotiation and dispute resolution. As an efficient tool, the law could be used with dramatic results in the development of both domestic and international commerce.

For a number of reasons, the sound foundations of the law that exist are not in any way reaching into the business community. Business people, especially those who are seeking partners abroad, should at the very least be able to rely on quality legal advice from well-trained and ethical lawyers. As it stands, after interviews with several farming collectives (the crops of which are destined for purchasers abroad), exporters associations, and business people involved in both export and import activities, it became painfully clear that those doing business abroad are virtually ignoring the legal ramifications of the contracts into which they are entering. The common response when asked why they are not reading the legal terms of their contracts is “we leave the legalities to our foreign trading partners.” This is unacceptable in international trade where contracts, especially those made with American parties, can be extraordinarily complex. And it is not just disadvantageous to the Ethiopian traders. Foreign traders strongly prefer sophisticated trading partners; traders who don’t know or read contracts tend to complain later.

The Ethiopian coffee industry provides a good example of the problems. According to the Ethiopian Coffee Exporters Association, coffee growers are receiving an average of only US$0.57 per pound of sorted, unroasted coffee, which translates into such low revenue that many growers are turning to growing Chat, a mild narcotic, to replace lost income. Yet the fine Arabica coffee of the type grown in Ethiopia sells for as much as US$15 to US$20 or even more per pound in the United States and Europe.
Representatives of the Exporters Association claim that the foreign importers, most of whom are themselves members of very large trade associations, apply sophisticated pressure to push down the prices paid to the growers and Ethiopian exporters. But they also admit that they pay little attention to the legal aspects of their contracts, simply relying blindly on the form contracts drafted by the trade associations and issued by the importers. The exporters also readily admit that there are few lawyers who are equipped to understand the law that is being proposed and able to negotiate terms that will better allocate risk for their clients. It is important to keep in mind that the strength of a business enterprise is directly proportional to its ability to negotiate both the financial and legal components of contracts.

There are, of course, other important chilling effects to commercial activity in Ethiopia. The Letter of Credit and Foreign Exchange rules are overly strict. This especially hurts importers involved in State procurement deals. The importer is required to issue letters of credit in which only 80% is payable upon presentation of documents, and the remaining 20% is payable upon inspection of the goods on delivery. These are terms that few foreign exporters can risk. If they are willing to enter into such a contract, they will demand a higher price in order to compensate for the additional risk. Also, because letters of credit must be issued in such cases through the National Bank of Ethiopia, the bank is able to charge an unusually high commission on issuance of letters of credit. Procurement importers are also required to get signed and sealed performance invoices from their trading partners, something that is inconvenient and impractical in today’s world of electronic commerce.

In addition to these legal barriers, substantial infrastructure barriers exist as well. For example, it is widely reported that wholesalers cannot get distribution agreements with foreign suppliers because the Customs authorities will not honor them and independent traders will continue to make trips abroad, buy gray or black market goods, and bring them in to sell in Ethiopia under the noses of Customs officials.

Some progress has been made in supporting commercial activity in Ethiopia. Examples include the establishment and support of the chambers of commerce, the establishment of a bar association, and the significant growth of farmers collectives and export associations. The group of returning nonresident Ethiopians, with its increased wealth and business savvy, has also made a significant impact in commercial activity. But the contracts law that does exist does not benefit the business community because of poor legal support and implementation infrastructure, and because of slow implementation of regulations that would enhance the legal community.

F. Recommendations

The following recommendations are made:

1. Provide Training to Legal Professionals and Judges. This is critical if the law is ever to be made accessible to the business community. Training can begin with the law faculties and the Ethiopian Bar Association. Both institutions need financial assistance and expertise in order to create continuing education programs that actually provide useful education to practicing lawyers and judges. Though the bar association should not be mandatory for lawyers, it should have some exclusive responsibility over the bar; possessing authority over mandatory continuing legal education and a mandate to share
responsibility for courses with the law faculties would be a perfect way to bring the bar association into the legal infrastructure as a stakeholder.

2. Implement the Law on Advocacy. Important parts of the Proclamation on Licensing and Registration for Advocates and of the Regulations on Advocates’ Code of Conduct require implementation regulations in order to be effective. One of these areas concerns the establishment of law firms. The licensing rules expressly allow the establishment of law firms, but the directives necessary to put the rule into effect have not been issued. Law firms are a necessary component in the support of the legal and business communities. They allow individual attorneys to specialize, they tend to establish their own resources (e.g., libraries and forms catalogues), they develop in-house training programs for their lawyers, and they create opportunities for talented young lawyers just out of school.

3. Simplify the Law by Encouraging the Writing of Restatements and Treatises. Legal research and internship programs should be fostered in the law faculties. Faculty members and students are an excellent resource for legal information. One need only recognize, for example, the somewhat difficult-to-swallow fact that the bulk of legal scholarship in the United States is reviewed, edited, and published by law students to realize the potential value of that group. Ethiopian law students are as bright and enthusiastic as any anywhere, and thoroughly capable of publishing the theses that they are required to write. Likewise, faculty members need to be motivated to write, publish, and speak in public.

4. Provide Technical Assistance in the Pursuit of Accession to International Legal Instruments. It is critical for Ethiopia to seek to accede to at least the United Nations Convention on Contracts for the International Sale of Goods and the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. The U.N. Commission on International Trade Law will provide technical assistance (within its rather tight financial constraints) if it is requested. Other projects should also be instituted that will provide training programs in international commercial law and practice.
IV. Real Property Law

A. Introduction

Real property law is crucial in a market economy; it provides the legal environment for a business to own, use, and sell land and buildings as well as to use them as collateral to obtain credit. Good property law is especially critical in transition-economy countries; a good law enables entrepreneurs to acquire land freely to produce goods and services in a secure ownership environment, which is a necessity in planning for the long term. A good property law must also be accompanied by an objective, standardized titling system.

Under Ethiopia’s Constitution all land is owned by the State, a circumstance which is hardly conducive to a free market in land transactions. Furthermore, Ethiopia has never had a widespread system of land survey and titling.

At the same time, however, the Constitution and other laws support extensive private use and quasi-ownership of land by Ethiopians and, in limited cases, by foreigners. This includes the right of private persons to own buildings and fixtures on the land, their right to lease land from the State on a long-term basis, farmers’ right to continue using rural land permanently for agriculture and in limited cases to lease it to investors or otherwise develop it commercially, and the State’s right—and frequent practice—to expropriate urban or rural private land use rights and sell those to private investors. Further, the city of Addis Ababa has a working cadastral titling system, and survey and titling projects have just begun with donor help that in several more years could cover much of the significant commercially desirable land in Ethiopia.

Through these limited rights, there is an active market in land transactions although that market is much more politically controlled and opaque, and the rights are less secure and predictable, than in market-economy countries or than should be the case for optimal economic development in Ethiopia.

B. Legal Framework

The main features of Ethiopian land law and the governing federal laws are described below. It is important to note that although overall land policy is set at the federal level (in the laws cited below), administration of the law has been delegated almost entirely to innumerable local authorities which include municipalities (in urban areas) and regions, woredas, and kebeles (in rural areas). A kebele is a group of villages forming an administrative unit, and a woreda is a group of kebeles forming a larger administrative unit within a region (for example, the Amhara, Tigray, or Oromiya Regions).

14 At the federal level the highest laws, called “Proclamations,” are adopted by the Parliament and designated by numbers beginning with No. 1 and the year of their adoption; thus, the Constitution, designated Proclamation 1/1995, was the first post-Derg Proclamation chronologically and was adopted in 1995. At a lower federal level are “Regulations,” which are adopted by the Council of Ministers, many of which interpret and flesh out specific proclamations.
State Ownership with Private Landholding Rights: the Federal Constitution (Proclamation 1/1995). These competing concepts are in the Constitution itself, which states that ownership of land “as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia…and shall not be subject to sale or other means of exchange” (Article 41/3), but also states that “Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labor or capital” (Article 40/7); that the “government shall ensure the right of private investors to the use of land [on] the basis of payment arrangements established by law” (Article 40/6); and that the “government may expropriate private property for public purposes subject to payment in advance of compensation . . .” (Article 40/8).

Private land ownership was recognized in Imperial times but was abolished during the Communist Derg period. The Constitution’s current prohibition of private ownership continues that latter state of affairs.  

Private Landholding Rights—Urban versus Rural. Ethiopian law treats urban and rural land separately. The underlying conditions are different; in urban areas, especially Addis Ababa, there is growing commercial development and a recognized need for an active market in commercial and residential real estate; in rural areas subsistence farming and continuous subdivision and fragmentation of plots are often the rule and there is a desire to encourage farmers to remain on—and invest in—their land rather than migrate to crowding cities. In practice (and oversimplifying somewhat), the urban land law results in a real estate market and substantial income for the State through leasing of land rights to private persons; the rural land law results in substantial control by the State in agricultural areas. (Ethiopia also has pastoral/communal lands not falling into either of these categories or covered by the laws below; this Report does not deal with those.)

- **Urban: the Urban Land Law (Proclamation 272/2002).** The main urban land law, Proclamation 272/2002, is mostly concerned with leasing from the State, and most privately held land in Addis Ababa and other cities is held by such leases. Leases of improved (built) land can be privately sold or mortgaged, and space within buildings can be privately leased to tenants on a negotiated basis. In Addis Ababa there is a fairly active market in leasing, sales of leases, and even bank mortgaging of buildings on leased land. The leases themselves tend to be short documents whose contents are determined by State agencies, and often require construction by the lessee as a condition of maintaining a lease (and all construction is subject to approval by the State). The method for determining rent for land leases is determined by the State—it can be through auction, by direct negotiation, or by other dealing with or without public notice. The leasing is done (and the land is owned) at the municipal or regional level, not at the federal level (in Addis Ababa the agency that leases the land is the Municipal Land Administration Department). Proclamation 272/2002 is overly detailed on matters that are determined by

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15 Actually there is a small but important exception to this which was described by several interviewees. This is that some Imperial-era freehold titles were allowed to survive so long as they remained in the same owner, and they continue to be recognized so long as they remain in that same owner or an heir of that owner. It was stated, however, that if they were sold to a third party the land reverted to the Government, which in some cases has then leased it to the buyer under the practices described later in this report. Land in this category represents a small part of the total privately held land in Addis Ababa and other areas.
the market in a market economy, and it provides for State control and discretion at every step. For example, leases are permitted “in conformity with the law which [the] Region or City government makes” and may be offered through auction, negotiation, or “according to the decision of [the] Region or City government” (Article 4); a leasehold title deed shall be conferred on a person to whom urban land “is permitted,” the details of the deed “to be specified by Region or City Government” (Article 5); there is a highly detailed schedule of maximum permissible lease terms for separate categories of use and location, examples being up to 50 years for commerce in Addis Ababa and up to 70 years for commerce in lesser towns (Article 6); there are formal requirements for lease renewal and renewal “as per the agreement to be reached, unless the urban land is wanted for public interest”—“public interest” being defined simply as “that which an appropriate body determines as a public interest” (Articles 2 and 7)—and rent amounts “shall be stipulated by Regulations to be issued by [the] Region or City Government (Article 8); the leased land must be used for the prescribed activity within a period of time to be specified by the authorities and any change in use must be approved by them (Article 12); and in any event the authorities “may clear and take over urban land [whether leased or otherwise held] which is necessary to commit for a public interest” (Article 16).

- **Rural: The Rural Land Administration and Use Law (Proclamation 456/2005).** This Proclamation provides for granting land “holding rights” free of charge to farmers already on the land, for issuance to them of a title certificate identifying the plot concerned, and for survey and cadastral registration of the title (a process now in its beginning stages). This is all done at the woreda and kebele levels. For a farmer who is farming “for a living,” this right has no time limit but is not entirely secure; it can be taken away if the farmer leaves the land for 2 years (perhaps to try city life) (see Article 9) or if the land gets damaged as determined “in the land administration law of the regions” (Article 10). A farmer’s holding should be of a minimum size which provides for his family’s “food security” (Article 2/10), and it may be transferred by inheritance to members of his family who are also engaged in farming, but may not be freely sold (Article 8/5). For non-farmers, including private investors, the duration of a rural landholding right is not perpetual but “shall be determined by the rural land administration laws of regions” (Article 7). Regarding commercial development, a farmer may lease to an investor land “of a size sufficient for the intended development…for a period of time to be determined by rural land administration laws of regions” (Article 8/1); and a holder “may undertake development activity jointly with an investor” under a contract “which shall be approved and registered with the competent authority” (Article 8/3). These provisions can be used to facilitate private investment, but their language makes clear that it will be subject to close State regulation and control.

- **Expropriation, Urban or Rural: the Expropriation and Compensation Law (Proclamation 455/2005).** This Proclamation grants governmental bodies at all levels sweeping powers to expropriate land for business purposes. Recent examples were cited involving floriculture and coffee farms, urban office building and hotel expansion, and planned commercial development in “para-urban” areas where cities are expanding and taking over formerly rural land. The broadness of the authorizing language speaks for itself: the State may “expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public
entities, private investors . . . or other organs, or where such expropriation has been
decided by the appropriate higher regional or federal government organ for the same
purpose” (Article 3). If a landholder refuses to hand over the land when required, the
“administration may use police force to take over the land” (Article 4/5).

The Proclamation also requires that displaced landholders be compensated and it has
much detail (again, in highly discretionary language) on valuation of their holdings and
resolution of disputes with them. Needless to say, disputes often arise. Cases were cited
in which they have gone on for years without court or other resolution; on the other
hand, cases were cited—especially in sparsely populated, forested, or grazing areas—in
which persons displaced were agreeable to the process and received employment from
the newly established business. The issues which have been raised by displaced holders
include lack of notice, inadequate or no compensation, delays, rough eviction
procedures, and no provision for resettlement. In general, this is considered a significant
problem and, in response, a new project has just been initiated by ARD, Inc. with
USAID funding to study expropriation valuations and policies with a view to possible
new legislation.

When land rights are expropriated, the Government may sell the rights to the new
investors for prices which are unrelated to—and may far exceed—the compensation paid
to displaced landholders. The theory behind this is that the land and its value belong to
the State whereas compensation is owed only for the value of the buildings considered
separately. The sale prices can also be set at a level which effectively subsidizes the new
investment if the investment produces jobs or other social benefits. In any event, the
sales represent a revenue source for the Government.

One of the most important features of the expropriation process from investors’
viewpoint is that it is managed entirely by the Government without need for direct
investor involvement.

Landholding by Foreigners: The Civil Code, the Investment Law (Proclamation 280/2002),
and Regulation 84/2003 Implementing the Investment Law. The Imperial-Era 1960 Civil
Code (which is still in effect) states that “no foreigner may own immovable property situated in
Ethiopia except in accordance with an Imperial Order” (Article 390). That is currently
interpreted to prohibit direct holding of land use or leasehold rights by foreign individuals and
foreign-registered companies. It is not, however, deemed to apply to diaspora Ethiopians who
have returned to invest in Ethiopia even though they retain foreign citizenship, including in many
cases U.S. citizenship. Further, it was stated in interviews that it does not apply to Ethiopian-
registered companies in which both foreigners and Ethiopians are investors and to which an
Ethiopian makes an investment in the form of a beneficial contribution of land rights to the
company. This may apply even in cases where the foreign investors own a controlling interest in
the company. For residential property the Investment Law has a specific exception from the
Civil Code, providing that a foreign investor may “own a dwelling house or other immovable
property requisite for his investment” (Article 38).

The Investment Law does not cover landholding as such but, in combination with its
implementing Regulation 84/2003, it importantly specifies business areas which are reserved
exclusively for “Ethiopian nationals,” including banking, insurance, and broadcasting; and areas exclusively reserved for “domestic investors,” which it defines to include foreign nationals permanently residing in Ethiopia and having made an investment there. (These include a long list of business areas including retail trade; most wholesale, export, and import trade; hotels; and construction.)

Although local legal advice should be sought in interpreting these laws, it is clear that they do not foreclose all landholding opportunities for foreign investors. Several persons interviewed pointed out that the Government is encouraging foreign investment. That purpose would be advanced by expanding and clarifying these laws.

Survey, Titling, and Registration of Title. A major factor inhibiting land markets in Ethiopia has been the absence of a reliable, standardized survey and titling system. Uncertainty and disputes over ownership and boundaries continue to be a serious problem and there has been no efficient way to resolve them in the absence of good title records.

As mentioned above, there is a working cadastral registration system in one place—Addis Ababa—but nowhere else in the country. The Addis Ababa records are stated to show both lease and mortgage records and were described by interviewees to be satisfactory for their purpose.

Outside Addis Ababa, the issue is now being addressed—and may be resolved to a significant degree—by land survey and titling projects supported by ARD, Inc. with USAID funding and SIDA. These initiatives have been undertaken in settled areas in four regions—Amhara, Tigre, Oroma and Southern Nation, and Nationalities and Peoples Region.

This is very much a long-term project which is difficult to hurry. Among other issues, boundary disputes sometimes require face-to-face contact such as neighbor meetings and mediation by woreda and kebele officials. When completed, however, the new system can add significantly to the security of landholding in Ethiopia.

In Summary: Lack of Objective Laws and of an Open Market. The laws and all persons interviewed made it clear that Governmental regulation is extensive, multi-layered, and heavy. A person’s acquisition and actual commercial use of the land that he or she holds can be subject to numerous approval processes at the federal, city, region, woreda, and kebele levels that are not always transparent, predictable, or consistent from area to area.

Some of this can be ascribed to the complex federal versus local structure. In the federal laws land policies are stated only generally, with sweeping delegation of administrative responsibility to local authorities, while at the local levels many of the rules and regulations are discretionary, sometimes not available, and sometimes not in existence.

A reflection of this situation in the market is that, although land developers (meaning persons who acquire, consolidate, and resell land as their business) are becoming active in urban areas, there is still not a profession of real estate agents or brokers, as is familiar in market-economy countries.
C. Implementing Institutions

Government Land Administration Bodies. As described above, a large number of different federal, city, regional, district, woreba, and kebele bodies have sweepingly described authorities over land holding and use, surveying and titling, and resolution of disputes, the limits and the division of which are not always clear.

D. Supporting Institutions

Private Lawyers, Accountants, and Other Professionals. Lawyers and other professionals are useful and important in structuring, documenting, and dealing with Government officials in facilitating land transactions.

Donors. Important projects are being undertaken by SIDA and by ARD, Inc. with USAID funding that include development and clarification of rural land policy and administration, survey and titling, and evaluation of expropriation and compensation/valuation processes. SIDA is also undertaking a study of urban land-leasing policies and practices. Interviews with both ARD and SIDA made it clear that all of these, and similar projects, would benefit by being expanded and accelerated.

Courts. The courts are the ultimate recourse for resolution of land disputes whether involving title, lease, or contract questions, or other matters. However, the courts are generally viewed as slow to decide, lacking in expertise and independence, and thus as a practical matter not very useful.

E. Social Dynamics

Privately owned businesses in Ethiopia are heavily dependent on land use and there is both a need and a strong desire (a “market”) for land use rules that are clearer, more objective, and less all-embracing. Steps listed in the recommendations below can help toward that end.

Given the complexity and the large number of governmental players in the present system, however, a major re-do of the laws and practices may be needed to accomplish this.

F. Recommendations

The following recommendations are made:

1. Clarify the division of powers and functions between the federal and the local bodies at each level. In doing this:
   - State the powers and functions precisely and without overlap;
   - Combine powers and functions into fewer levels to the extent that doing so is practicable and politically feasible;
   - Specify in one place all of the approvals that are needed for the acquisition, use, lease, and sale of, and construction on, land by an Ethiopian citizen or a foreigner, and state the
procedures for obtaining each approval and the time limit within which a proper application must be granted; and

• Simplify many of the rigid rules in the present Proclamations, such as the numerous separate limits on maximum lease terms for specific activities and specific geographic areas.

These changes could be done through several methods—law revision, website-posted rules, etc. The methods should be determined centrally at the federal level.

2. Because land leasing is so important, standardize and publish clear and objective rules for:

• Leasing land rights from the State,
• Selling, subleasing, and otherwise transferring those lease rights;
• Negotiating or otherwise setting rental amounts;
• Establishing or assuring renewal rights; and
• Assuring that ownership of buildings is not severed from underlying land lease rights.

3. Because land as a financing device is so key, standardize and publish rules for mortgaging land rights, including those in the preceding bullet point.

4. Encourage an open and transparent market by establishing or encouraging land marketing agencies and systems for listing available properties, prices, and other terms.

5. Encourage investment in Ethiopia by making the rules for land use by foreign persons clearer and more secure. Consider the following:

• Allow certain foreign persons (such as long-term residents and persons or companies making investments over a stated amount) to have land use rights the same as or similar to those of Ethiopian citizens, and

• Issue a formal regulation or law clarifying matters about which there may now be uncertainty, such as rules for foreign ownership of buildings and other attachments on land, companies or joint ventures which are partly foreign-owned, the holding of land by Ethiopian citizens for the benefit of foreign persons, and eliminating or reducing investment license requirements for foreign holding of residential property.

6. Continue and encourage expansion of the land policy, survey, titling, and expropriation/compensation and urban leasing policy projects described above.

7. Establish training programs for federal, municipal, region, woreda, and kebele officials on all of the above.
V. Secured Transactions Law

A. Introduction

Collateral law provides a system for increasing access to affordable credit in a competitive lending market by reducing the costs and risks of lending so that lenders can pass on savings to borrowers. The system is actually quite simple:

- The credit provider (whether a bank, supplier, or non-bank financial institution) determines whether the borrower will have sufficient income to repay the credit.
- The borrower gives the credit provider an interest in movable property, such as equipment, a vehicle, or inventory, which secures the obligation with the value of that property.
- The credit provider registers the interest in a registry in order to establish priority in case others obtain a right in the debtor’s property.
- If the borrower defaults on payment, the credit provider may take possession of the movable property, sell it, and use the proceeds to pay off the debt.

Collateral lending lowers the risk of non-payment because the borrower will normally pay off the loan instead of losing the property used as collateral. If the borrower does default, then the value of the collateral helps to pay off the debt, further reducing the overall risk of non-payment. Finally, enforcement provisions of a well-crafted collateral law allow secured lenders to seize and sell the movable property rapidly and more efficiently than would be possible through a longer law suit. This reduces the costs of collection.

As an added benefit, collateral lending reduces conflicts over rights in property by establishing priorities and eliminating unnecessary legal claims. It reduces attempted fraud by borrowers because the lender’s interest in the property follows the property—if the borrower fraudulently sells the collateral and hides the proceeds, the lender can still seize the property from the new buyer. Consequently, the system lowers the overall risk of loss through fraud for the banking community.

Well-structured collateral lending systems also expand the scope of property that can be used as collateral, and thus expand access to credit. Any property right that can be identified, used, defended, and transferred by the owner can be used as collateral. In modern systems, this ranges from tangible property like vehicles to intangible property such as accounts receivables or future crops. Livestock and inventory can also serve as collateral, even though the individual items may change over time.

Ethiopia’s collateral law system has significant gaps that limit its utility for supporting economic growth and development. The basic legal and institutional structure is inadequate to move significantly beyond existing levels of credit. Supporting institutions—especially the banking system—create further limitations on the utility of movable property for expanded access to credit. Reforms are needed before the demand for secured credit can be met. Fortunately, these
reforms are neither difficult nor radical, but represent an appropriate next step in the evolution of Ethiopia’s collateral laws.

B. Legal Framework

The Collateral Law in Ethiopia is comprised of a mixture of traditional European strengths and weaknesses. The primary legal provisions can be found in the Ethiopian Civil Code of 1960, articles 2825 through 2874, which represent French approaches to collateral lending and were considered adequate for maintaining the French economic conditions of that time. Unfortunately, these provisions do not support the kind of accelerated economic growth that Ethiopia needs to escape from poverty and achieve prosperity.

Secured Lending. The strengths of the law lie in recognition of the basic concepts of secured lending. The law permits borrowers (and third parties) to provide various forms of collateral as security for an obligation, including equipment, vehicles, inventory, and even the business as a going concern. Priorities are defined based on registration of the secured rights in a public registry, thus reducing the possibility for competing claims or the likelihood of “hidden” liens that compromise the lender’s rights. Moreover, the recently enacted Law on Foreclosure has provided for rapid enforcement procedures that generally bypass the inefficiencies and added expenses of the courts. For 1960, this was a good and generally sufficient law for collateral lending in a developed economy.

The law does not suffice to support economic growth in today’s world. Although the law has broader applicability in theory than in practice, the practice is curtailed by two significant weaknesses:

- **Registration.** The effectiveness of collateral lending is founded upon notice to third parties that the creditor has an interest in the pledged property. This eliminates conflicting claims to pledged properties and reduces the likelihood of both fraud and misunderstanding. Ethiopia’s registration system is both fractured and inadequate, with no central registration available. Pledges are registered in a variety of locations according to the type of property being registered in the locale where the debtor is located. A lender must therefore search a variety of registries to determine the credit position of a borrower before lending, rather than searching a single, national database of registration information.

The lack of a national registry system also limits the items that can be used as collateral. Although the law theoretically permits the use of a wide range of movable and intangible property, the only items being used are those which can be registered, with each registry established separately by law. As a result, almost all collateral lending (other than for real property interests) utilizes vehicles (registered with the Motor Vehicles office), equipment (registered with the Ministry of Trade and Industry), or the business as a going concern (registered with the Company Registry). It is possible to use inventory; liens, for example, are taken through a hybrid possessory system in which the lender manages the inventory with the borrower and actually participates on site with release of inventory from a co-managed warehouse. Other common forms of collateral, such as receivables
(amounts owed to the borrower, whether or not they are currently due), are inconceivable under the current legal framework.

- **Scope.** According to Civil Code article 2820, a “pledge may consist of a chattel, a totality of effects, a claim or another right relating to movable property.” Further, it must be “capable of being sold separately by public auction.” Creative reading of this provision might permit the use of such assets as accounts receivable, livestock, or future crops, but Ethiopia’s legal culture prefers greater certainty and is thus much less likely to accept or produce such broad readings. The provision needs to be rewritten to expressly permit the use of intangible and tangible movable property, including future interests in such property, and proceeds from such property. In addition, the law should specifically permit the use of purchase money security interests in order to create greater flexibility in secured lending and greater competition between lenders. Values expressed in foreign currency should also be expressly permitted to encourage cross-border and international secured lending.

In practice, there are a number of other problems that are hampering the development of collateral lending and limiting access to affordable capital. These include over-collateralization and inappropriate collateralization leading to non-competitive lending. These problems arise in part from inappropriate banking regulation.

- **Over-collateralization.** Banks and micro-finance institutions tend to require at least 200% collateral. That is, the value of collateral required is normally twice the value of the loan, meaning that an asset can only be used to obtain financing up to 50% of its value. Although 200% is not outrageous (125% is normal in mature economies), requirements can be higher. Moreover, the quality of evaluation is generally considered inadequate, with poor understanding of market and income production values by evaluators. Consequently, existing collateral of a borrower (as opposed to new collateral that the borrower wishes to purchase at market price) is likely to be undervalued, thus further reducing the amount available against the asset. The greater problem is that banks prefer to take pledges of the business as a going concern, effectively tying up all assets of a business for any significant loan. Although this is a useful option, in well-balanced financial systems it is not used so frequently.

Over-collateralization limits the ability of a borrower to obtain the full value of capital that should be available through the pledged assets. Over-use of a business as a going concern also ties the borrower to a single bank, making it difficult to obtain secondary financing on a competitive basis from other lenders, because the primary lender has such a powerful priority claim on the business itself, and thus its assets. Combined with the practice of placing a bank financial manager inside the business in the event of default to ensure payment, secondary lenders are highly reluctant to undertake the risk of default. In short, over-collateralization is limiting access to affordable credit.

- **Inappropriate Collateralization.** One of the reasons for over-collateralization is that too few banks are sufficiently analyzing repayment capacity of the borrower as the basis for lending. Responsible lending is based on realistic assessment of cash-flow and revenue projections. Once the borrower can prove its ability to repay the loan, the bank takes collateral as security against default or fraud to reduce risk and encourage the likelihood
of repayment. The primary purpose of the collateral is not to pay off the loan in case of default, but to prevent default. A significant number of loans in Ethiopia appear to be based on collateral as the basis for repayment, not on the ability of the lender to repay. As a result, banks are taking collateral they would not need and which could be available for secondary lending. Also, they may be making higher-risk, irresponsible loans that are less likely to be repaid, leading to misallocation of credit to non-creditworthy projects. This in turn reduces the funds available for creditworthy projects.

- **Banking Over-regulation.** According to several bankers, current regulations have criminalized management error or economic downturn, so that losses on loans can lead to a jail term for those responsible for giving the loan. Although inappropriate lending should be regulated, this particular approach does not adequately comport with commercial reality. In the healthiest economies, numerous companies fail on a constant basis for a variety of reasons. Many of these companies are unable to repay their loans, but such failure is not reasonably foreseeable at the time of the loans. By making it a criminal offense to lend money to a borrower who becomes unable to repay the loan, the law forces bankers to take excessive collateral in order to protect themselves from jail terms. The law needs to be amended.

The impact of these weaknesses is that collateral lending is unnecessarily constrained on two fronts. First, access to credit from existing banks is limited. Better legal regulation and practices would permit greater credit volume on existing collateral than is currently available. Second, the framework does not permit expansion of credit providers that is a natural outgrowth of modern collateral lending regimes. In mature economies, numerous non-bank institutions will offer credit to customers secured by pledges. Wholesalers, for example, can offer short-term or long-term credit to the retailers they supply while taking an interest in inventory or other assets. Retailers can offer credit to customers. Unfortunately, this cannot yet happen in Ethiopia.

**Leasing.** Leasing is a common form of secured financing that allows someone to use property that may not otherwise be affordable. Leasing takes two forms—financial and operational. In a financial lease, the purpose of the lease is for the borrower (lessee) to eventually take ownership of the leased item from the lender (lessor). In this instance, the borrower identifies property for lease—such as a tractor—which the lender then purchases and allows the borrower to use upon payment of deposits and monthly fees. At the end of the lease, the borrower has the option of buying the item for a nominal fee. A variation of this lease is the hire-for-purchase agreement, in which the borrower obtains an increasing percentage of ownership of the item with each payment under the agreement. On the final payment, the borrower becomes the 100% owner of the item. In an operational lease, the borrower simply rents the property from the lender for a set term. There is no intention to transfer ownership. In all of these arrangements, the lender retains ownership of the item throughout. (In the hire-for-purchase situation, that ownership diminishes over the course of the lease.)

Ethiopia adopted a leasing law in 1998, the Capital Goods Business Leasing Proclamation, No. 103/1998. The law recognizes and establishes all three forms of lease noted above: financial, operational, and hire-for-purchase. It provides for efficient repossession of the leased items in case of default, which lowers the lender’s risks of default and costs of repossession by avoiding the inefficiencies of the court. In general, the law should permit the growth of a leasing industry.
Unfortunately, no leasing industry has yet appeared. Although the reasons have not been definitively identified, several issues seem to be constraining the employment of this extremely useful financial tool. First, the objects of leasing are over-regulated. Instead of letting the market decide what can be leased, the law permits leasing only of those items expressly identified as “capital goods” by the Ministry of Trade and Industry. So far, the Ministry has permitted the leasing of equipment, machinery, and some vehicles. There are, however, few reports of any such items being leased. The country would be better served by removing all restrictions on what can be leased. In mature economies, virtually any useful item can be leased, not just “capital equipment.” In North America, even dairy cows are leased, but this is not possible in Ethiopia.

Another partial explanation of the lack of leasing is the over-regulation of financial services. In Ethiopia banks, which in other countries tend to take the lead in establishing leasing services, have not become involved in this enterprise. They have no experience with leasing and prefer to lend and take equipment or vehicles as collateral rather than lease them. Respondents indicated some discomfort with the idea of leasing. Foreign banks would likely offer leasing services, but foreign banks are not yet allowed in Ethiopia.

Finally, import restrictions are depressing the market for leasing. In most countries, automobile leasing is the initial foundation for the leasing industry. High demand for automobiles and low liquidity provide an ideal setting for automobile leases. In Ethiopia, where the average automobile is 20 years old, there is pent up demand for new (or newer) cars. However, high import duties (200–300% was reported) make cars unaffordable for most people, unless they are classified as capital goods subject to import duty exemptions. Only a small percentage of vehicles qualify as capital assets, so the potential market is highly constrained, especially since banks prefer collateral lending.

The leasing law needs to be amended as part of an overall legal reform related to secured lending. Lease interests should be registered in the national registry for movable property. Currently the law requires registration of the actual lease contract (not just a public claim on the leased assets) at the Ministry of Industry and Trade. Although this alone does not significantly hinder leasing, it adds unnecessary costs that could be better handled through a national pledge registry system.

Despite the constraints enumerated, leasing is a viable possibility in Ethiopia. Upon further analysis, it may be appropriate to introduce pilot leasing projects, especially for agro-industrial equipment and machinery. If taxes on imported automobiles were reduced, there could easily be a vibrant market in auto leasing.

**Warehouse Receipts.** Warehouse receipts enable farmers to delay sale of their produce during gluts (at harvest) by storing their grains, flour, or other produce until the price improves. They also allow the farmers to obtain financing because banks will grant loans to farmers while taking an interest in the stored grains.

Ethiopia adopted a law governing warehouse receipts through the Proclamation to Provide for a Warehouse Receipts System (No. 372/2003). The Proclamation effectively sets forth the necessary basic legal elements for creating a warehouse receipts system. In practice, however, the system has not yet developed.
The principal problems in establishing a warehouse receipts system are practical. Respondents report that warehouse quality is still substandard, thus increasing risk loss for all involved. Second, many warehouse workers do not understand the concept of fungibility, and attempt to store grains separately for each farmer rather than store all fungible grains together. Finally, certification skills and services are still weak. In addition, to the extent that the State may seek to "protect" the market from price fluctuations, this will undermine the utility of the system—warehouse receipts derive their primary value by enabling farmers to capture better prices in a fluctuating market. If the market does not fluctuate, then warehousing merely increases costs with no benefits.

C. Implementing Institutions

Registries. The primary Implementing Institution for collateral law is generally the collateral registry. Ethiopia has an unusual structure for this area of law: on the one hand, it has no collateral registry per se, on the other, it has numerous sub-registries.

For purposes of establishing a modern, pledge registry system that will support growth, it is necessary to have a national, central registry that allows stakeholders to register and search for pledges and liens against movables, preferably through electronic means (adjusted for poor IT infrastructure countries like Ethiopia). Ethiopia’s current system is fragmented by type of collateral and by geography, thus providing only limited utility for collateral lending and credit information.

Even so, the various registry services being offered received very positive reviews from stakeholders. There was strong concurrence that the registries were generally efficient and that services were reasonably priced. This suggests that the same quality of service can be expected from a national registry system, once established.

Courts. Ethiopia again breaks from the stereotypical analysis for Implementing Institutions with respect to courts. In most countries, courts play an important role in enforcing pledge agreements through validation and foreclosure. Frequently, they are fraught with delays and expenses that inhibit collateral lending. Ethiopia suffered similar problems until recently, when the Government took foreclosure out of the courts through Property Mortgaged or Pledged with Banks, Proclamation No. 97/1998. This proclamation established direct foreclosure procedures through self-help and private sale.

Under this foreclosure law, a lender may foreclose directly against pledged property in the event of default (if the loan agreement provides for such foreclosure) upon prior notice. The law permits the lender to obtain police assistance upon approval of the relevant Ministry in order to avoid breach of peace. As a practical matter, repossession agents are always accompanied by the police.

The lender is responsible for auction and sale of the property, thus avoiding the inefficiencies (and even incompetence) of court auction procedures used in many countries. In Dire Dawa, respondents noted that there is a vibrant market for foreclosure sales, at least for repossessed automobiles, so that auctions result in elevated sales prices through competitive bidding.
For wealthier debtors, it is possible to obstruct the foreclosure by filing a court injunction to stop the process. Once this happens, the resulting litigation and appeals can take 2–6 years to be resolved, during which the debtor remains in position (and in default). Various legal professionals noted that the delays could be based on spurious and unsupported claims, which were not likely to be examined by the court without a full trial. Other countries have attempted to deal with unmerited delays by requiring the debtor to post some form of performance bond or collateral, or by enforcing the agreement without delay, but subject to any claims for damages the debtor might win in the suit. Ethiopia would do well to limit the capacity for inappropriate delay through similar measures.

D. Supporting Institutions

**Banks** are the most significant supporting institution in the collateral law area. In Ethiopia, they regularly take collateral and enforce contracts through repossession and sale of collateral upon default. As noted, however, they both over-collateralize in value and over-use the pledge of a business as a going concern in order to protect themselves from potential liability. This overuse suppresses development of better banking practices that rely more heavily on proper credit analysis and not on the value of collateral as the basis of repayment.

The banking industry has also been described as lacking in evaluation skills. This applies to credit analysis, just mentioned, as well as to evaluation of the collateral value of various assets. For real estate (discussed more extensively elsewhere), this is in part due to the underdevelopment of a real property market. Additional training is needed, but training will not be useful until the incentive and regulatory structure is changed so that banks rely more on the borrower’s repayment capacity and not collateral value.

There is not yet an effective **bank association**. An association has been formed, but will need time and (perhaps) assistance to function effectively in advocating reforms in the banking and collateral lending sectors.

**Leasing companies.** As noted in the discussion of the framework law, leasing companies have not yet developed. This seems in part due to the over-regulation of banks and the lack of foreign competition. However, it may be appropriate upon further study to introduce pilot projects for leasing in the near future, especially in rural areas.

**Notaries.** Notarization is required for registration, but is provided at acceptable cost and efficiency by the registry. Fortunately, notaries do not generally intervene in the contracting process (unless hired for that task), but the law requires that they insure the document being notarized is not illegal or immoral (Authentication and Registration of Documents, Proclamation No. 334/2003.) In other countries, such requirements often result in significant abuse through rent-seeking and unnecessary interference in the contract. This does not appear to be the practice in Ethiopia, but should be monitored if the law is not liberalized.

**Warehouses for warehouse receipt security.** As noted previously, few warehouses yet exist that can provide adequate warehousing services. Development of this industry should be left to the private sector, but technical assistance may be needed to understand and implement the practices necessary for the warehouse receipt system to function effectively.
Insurance. Insurers provide an essential function in risk management by insuring risks so that banks and borrowers are not unnecessarily exposed to loss in connection with pledges. As a general rule, banks require borrowers to insure all assets being pledged. If the assets are uninsurable, they are generally unacceptable as pledges. Consequently, the insurance industry indirectly defines the parameters of pledgeable assets.

Insurance is generally inexpensive, according to those familiar with the rates, but not sufficiently comprehensive. It is possible to obtain transit insurance for imports and exports as well as insurance on production facilities and buildings (including theft, fire, and third-party liability). It is not possible, however, to insure against crop failure or other agricultural risks generally. This limits the use of such assets as collateral, and thus limits access to credit based on agricultural activity.

One area of particular note is that of car insurance, which has an indirect but not insignificant impact on the insurance industry generally. Competition in the industry has kept car insurance low, so it is considered quite affordable. The industry is not profitable, however, due to the high rate of motor vehicle accidents and damage in Ethiopia (among the worst in the world). There is no requirement for accident coverage, so only 50% of motorists are insured. Given the age and condition of cars (the average car is estimated to be 20 years old), insurers are incurring a very high rate of loss. To cover this, they must raise their rates on other areas (because competition in auto insurance is keeping the rates at or below cost). Mandatory insurance laws would increase revenues from premiums while providing a valuable public safety service. Reduced taxes on automobile imports would lower the costs of replacing cars, increase the purchase of new or newer cars, and improve road safety, further lowering losses to insurance companies. Although not the highest priority in terms of impact on collateral law, the combined benefits of mandatory insurance and lower import duties suggest that such reforms should be considered seriously.

Ethiopia’s insurance industry is also weakened by excessive Government involvement. State entities must satisfy all insurance needs only through State-owned insurance companies. These companies are not generally perceived to be market oriented yet have anti-competitive privileges through this mandatory tying provision for insurance of State-owned properties, equipment, and other insurance needs. Consequently, the two State-owned insurance companies control approximately 50% of the market, leaving the other half for competition between private sector companies.

Insurance is still not well understood in Ethiopia. Although there are a number of apparently inexpensive insurance policies available, many business people are unaware of them. The Insurance Association is seeking to increase public awareness.

Credit Information is an important element of risk management for lenders and of accountability for borrowers. It helps to apportion risks based on a borrower’s credit history rather than spread the risks across all loans without regard to individual payment behavior. Ethiopia has no formal credit information provider, public or private. Banks share lending information with each other, and the Central Bank publishes a monthly list of those who have defaulted on bank loans. Although these are useful, they are insufficient for development of a broad-based credit industry and do not enable non-bank financial institutions or other credit providers to manage risk efficiently, because they have no access to the banks’ information. The
fragmented collateral registry system also makes it relatively expensive for credit providers to acquire information on other pledge agreements their borrowers may be subject to. Development of the registry would serve as an interim step in providing credit information until credit information services can be developed.

E. Social Dynamics

There is very high demand for greater access to credit in Ethiopia. Business respondents unanimously noted the need for expanded access to affordable credit. In Dire Dawa, several micro-enterprises complained of their inability to expand operations because they could not obtain the relatively low-value loans needed to purchase productive assets. One respondent, an international investor considering Ethiopia, advised his consortium to eliminate Ethiopia because of the lack of local financing, among other reasons. Whether micro or corporate, lending is constrained and limited. A significant number of potential investors must therefore rely on self-financing or simply forego investing altogether.

With such high demand for credit (including collateral-based credit), it would seem that lending services would be vibrant. On the contrary, the financial markets are heavily constrained and performing well below potential. The primary reason for this—with various factors involved—is poorly conceived regulation and policy.

First, the finance sector is over-regulated, as already noted. All potential lenders are regulated as if they were banks, with non-depositary micro-financing institutions under restrictions that should apply only to savings institutions. In addition, the threat of criminal penalty for management error based on retrospective evaluation of loans that fail has resulted in hyper-conservative lending practices with the result that few potential borrowers can meet the requirements and those who can find themselves locked into very restrictive lending arrangements. Although it is important to regulate banking adequately, it is just as important not to over-regulate and starve the economy.

Second, State ownership of banks and restrictions against competition act as a set of strong brakes on the engine of lending. Some State-owned banks—such as the Commercial Bank of Ethiopia—are relatively active and apparently healthy. Others, such as the Development Bank of Ethiopia, have become mere imitations of a bank, with little meaningful activity. In various conversations regarding competition in the banking system, Government officials and others raised questions suggesting that there is an understandable fear that competition will lead to failure of the existing banks.

The fear of competition is common and understandable, but misplaced, for a variety of reasons:

- Opening competition can increase the number of banks. When Uganda permitted foreign (and domestic) competition in banking services several years ago, the opening of the regulatory environment led to a doubling of Ugandan banks, plus investments by competing international banks.

- Much international banking investment takes the form of investment in existing domestic banks; few foreign banks start with a full-scale operation in a new market. As a result,
opening the banking sector to foreign competition is likely to strengthen a number of local banks through investment by experienced foreign financial institutions.

- Competition damages only those who do not adjust to it. When new competitors or new competitive practices enter a market—whether in sports or in banking—existing competitors learn quickly to adopt the new techniques or lose market share.

- Mere appearance of a new bank will not necessarily lead to loss of clients by an existing bank, especially in a market like Ethiopia’s, where there is a much greater credit need than existing banks can meet. In general, long-term banking relationships continue to remain long-term, even when new banks enter a market, especially if existing banks adjust to the new competition. In Ethiopia, it would be possible to fully support a number of new banks just from potential borrowers who do not yet have banking relationships.

- The purpose of allowing competition is to ensure that the commercial lending needs of the country are being met effectively. In Ethiopia, those needs are not being met, and protection of existing banks is directly resulting in poor growth and economic performance.

Ethiopia would do well to open up the banking sector to greater competition, including foreign investment.

A third constraint on lending arises from the lack of bankable projects under existing conditions. Banks lend based on the ability of a borrower to repay the loan. Repayment capacity is based on the ability of the borrower to balance the costs and risks of doing business against revenue potentials. In other words, banks lend only to borrowers who are likely to be profitable. In Ethiopia, there are numerous constraints to profitability, and many of these arise from Government involvement in the economy. Excessive involvement in agriculture (through fertilizer monopolies, for example, or tariffs on equipment and inputs) limits the ability of farmers to obtain the inputs they need at reasonable costs and to respond to market demands. As a result, their profit margins are reduced, if not eliminated, so that they are not good prospects for lending. Although there are various lending systems that have been able to reduce lending risks in these circumstances (such as group guarantees), the more important strategic approach is to increase the ability of borrowers to succeed in business.

Fourth, capital markets are undeveloped. Various financial intermediation services for investment, collateralization, on-lending, and other mechanisms common in mature economies are either in their infancy or non-existent in Ethiopia. As a result, investment and lending opportunities—indeed, the overall health of the financial system—are depressed. The proposed commodities exchange will fill some of the gap—at least for commodities—especially as it drives underlying changes needed for a healthier financial infrastructure.

Capital market analysis is beyond the scope of this assessment. Development of capital markets requires specialized expertise and analysis. The recommendations here for improved collateral lending, however, along with many of the recommendations for an improved business environment generally, are part of the foundation needed for capital markets. Moreover, Ethiopia would do well to begin work on capital markets simultaneously, so that as the foundation is built, the rest of the structure can be designed and eventually implemented without unnecessary delays.
F. Recommendations

Based on the foregoing, the following recommendations are made:

1. Ethiopia’s pledge law should be rewritten to expressly permit the use of intangible and tangible movable property, including future interests in such property and proceeds from such property. In addition, the law should specifically permit the use of purchase money security interests in order to create greater flexibility in secured lending and greater competition between lenders. Values expressed in foreign currency should also be expressly permitted to encourage cross-border and international secured lending.

2. Ethiopia needs a national system of collateral registration. Best practices from other countries where a registry that allows for pledges of movable property, as well as both tangible and intangible property, should be considered and implemented in the formation of, implementation of, and public education about a national collateral registry.

3. The leasing law needs to be amended as part of an overall legal reform related to secured lending. Lease interests should be registered in the national registry for movable property. Currently the law requires registration of the actual lease contract (not just a public claim on the leased assets) at the Ministry of Industry and Trade. Although this alone does not significantly hinder leasing, it adds unnecessary costs that could be better handled through a national pledge registry system.

4. Significant outreach should be made to Ethiopia’s community of banks and other lenders for the purpose of educating about, and building confidence in, the idea of secured lending in movable and intangible property. Strategies should be devised to dismantle the norm of over-collateralization and inappropriate use of collateral. The banking association should be strengthened as an important means of increasing understanding and use of the many flexible options and opportunities in secured lending.

5. The goals behind Ethiopia’s enactment in 2003 of a Warehouse Receipts law should be reinforced through continued donor support and State initiative focused on public education about the purpose and functions of such a system.

6. The over-regulation of banks must be evaluated and altered as a means of releasing constraints on lending in Ethiopia.
VI. Bankruptcy Law

A. Introduction

Bankruptcy law and practice play an important role in limiting the risks of credit. In every loan, both borrower and lender face a risk that it cannot be repaid. Bankruptcy limits the risks for lenders by establishing the rights of each type of lender and the obligations of the debtor in the event of default. This permits lenders to calculate the risk and price their credit more accurately. It also sets methods for working with defaulting borrowers in order to better enable the borrower to better meet financial obligations. For the borrower, bankruptcy is an institutionalized form of forgiveness, providing borrowers with relief (whether in whole or in part) from their obligations if a business venture fails.

Bankruptcy consists of two related but distinct possibilities: reorganization and liquidation. In reorganization, creditors will work with a bankrupt debtor in order to make the business viable again, preserving jobs, investments, and repayment capacity. They may forgive some of the debt or simply reschedule it for future repayment in order to improve their chances of obtaining the rest of the debt. When it is clear that the debtor cannot repay the debt, even after reorganization, then liquidation is used. Under liquidation, the defaulting company is closed and its assets are distributed or sold.

The economic impact of bankruptcy law is significant. Proper laws and practice improve access to credit by encouraging lenders to lend with the confidence that they have a reasonable mechanism for dealing effectively with defaulting debtors. At the same time, they encourage entrepreneurs to take on the reasonable risks of investing in new areas or expanding existing investments with the knowledge that there are constructive ways to deal with failure in case their investment predictions do not work out. In healthy economies, bankruptcies are a normal part of the overall business climate.

Ethiopia’s bankruptcy regime is relatively untested. Despite a reasonable framework law based on the Swiss bankruptcy code, other laws and practices have encouraged avoidance of the bankruptcy system. To the extent the bankruptcy law is being used, however, it is being used only for liquidation, not for reorganization. (Should the Government eventually increase privatization of State-owned enterprises, reorganization can be a very effective tool for making them functional and viable in a market economy.) The courts, understandably, are not well versed in bankruptcy practice or procedure, as bankruptcy filings are rare. Surprisingly, however, there seems to be a strong basis for building trustee and reorganization capacity based on existing “private receivership” practices. Current banking collateralization practices and limited commercial credit make it unlikely that much significant change will take place in the near future.

B. Legal Framework

The Bankruptcy Law is found in the Ethiopian Commercial Code of 1960, Articles 968-1168. As with other legislation from 1960, the Bankruptcy Law presents a reasonably useful legal foundation from that era, but has not been properly updated to reflect improvements in
understanding and practice over the past half-century. The law has never been supplemented with development of needed regulations for bankruptcy trustees or other issues, and thus is not well defined in practice. According to various legal professionals, the law is currently being reviewed for the purpose of amendment and regulation. Work is needed.

**Liquidation Versus Reorganization.** The Bankruptcy Law provides for liquidation and reorganization, but in tone and practice clearly favors liquidation. Pursuant to Article 1119, a debtor who has not yet been declared bankrupt can seek to establish a “scheme of arrangement.” This scheme is not fully defined, but in essence is a proposal for delay in payments of outstanding debts over a period of 1 to 3 years. In addition, the bankrupt party may propose a “composition” with creditors (Article 1081 and following), by which debts are reduced and settled and the bankrupt party can presumably reorganize and recover. The law limits, however, the bankrupt party’s right to operate the business once bankruptcy is declared. Article 1023 expressly establishes that a “bankrupt shall not administer or dispose of his property . . . until he is discharged.” Article 1021 permits the trustee to hire the debtor to run the business during winding up in liquidation, but the law does not generally foresee debtor involvement in ongoing operations. Instead, creditors are given the right to run the business (Article 1039). Greater specificity is needed on reorganization generally, both in the framework law and through regulations.

Despite the apparent legal gap, there is some practice of reorganization taking place in the context of collateral lending. Many lenders take a pledge of the business as a going concern when lending large amounts to a commercial entity. Once the debtor has difficulty making payments, the lender (pursuant to the loan contract) will place its own employee or consultant inside the debtor’s business to manage the financial operations and attempt to restore the debtor to solvency. This “private receivership” allows the lender to protect against potential bankruptcy of the business by ensuring timely payments or negotiation. As a result, there are also a number of experienced financial managers who can provide services once there is greater application of the bankruptcy law.

There have been very few bankruptcies initiated at all in Ethiopia since 1991. No numbers were available, but several legal professionals suggested that there had been fewer than ten. One reason for this is that lenders are using foreclosure law and practice instead of bankruptcy. Secured lenders can institute accelerated proceedings to repossess and liquidate security and do not need to start a bankruptcy action. Frequently, borrowers are captive to a single lender, with few other commercial obligations than their bank loan, so that foreclosure effectively deals with most of the debtor’s liabilities, although it does not permit rehabilitation or reorganization and often results in liquidation.

**Priorities.** Although the law distinguishes effectively and appropriately between secured and unsecured creditors, it does not effectively define priorities. Instead, there is general mention of “special privileges” and priorities (e.g., Article 1025), but no concise list of the priority framework. It is thus unclear what “special privileges” are, and how they affect the claims of other secured and unsecured creditors. For example, the law does not address how employee salaries, pension contributions, consumer claims, or unsecured tax claims will be handled. Greater definition is needed in order for lenders to identify and calculate risks so that they can price credit appropriately.
**Claims.** The definition of claim is quite weak. According to Article 1046, “any creditor who appears on the [bankrupt party’s] balance sheet or has proved a right” may lodge a claim. This would appear to permit broad interpretation of “claim” that permits contingent claims and liability lawsuits, for example. Although such a broad reading is desirable to ensure that the largest numbers of claims possible are settled in bankruptcy, the failure of the law to specify creates uncertainty in application. Different trustees may define claim differently or, even worse, be tempted to engage in rent-seeking behavior because of the unnecessary discretion created from vague definitions.

**Trustees and Commission.** Ethiopia’s Bankruptcy Law has created an extra layer of administration that is not necessarily useful. Whereas most jurisdictions provide for the court to appoint and oversee bankruptcy trustees, the Bankruptcy Law inserts a Commission between the court and the trustee. The Commission has responsibility for oversight of the trustee, with an obligation to seek various approvals from the court and report regularly to the court. In effect, Ethiopia has split the trustee function in two. This is not necessarily negative, but the failure of the Government to create detailed regulations for the two roles has created confusion and a potential for duplicity. The current working group may decide to eliminate the Commission, but either way, regulations are needed. Macedonia discovered that the failure to regulate trustees at the outset led to serious breakdowns in trustee practice and competency. Such regulations will be needed before any serious attempts are made to train and prepare trustees for greater involvement.

**Privatization and Bankruptcy.** Many developing countries have found that the bankruptcy process can be very effective for reorganizing or liquidating State-owned enterprises during the privatization process. Experienced bankruptcy trustees tend to apply market-oriented standards and practical solutions to achieve the best value available for the State-owned enterprise itself or its assets. Ethiopia has taken a different route, however, with privatization handled by a Government board empowered to handle all issues related to privatization. Most respondents felt that the board had not been particularly effective. As bankruptcy law and practice develop, it may be worth rethinking the most effective means of increasing the value and impact of privatization.

**Personal Bankruptcy.** The law does not permit personal bankruptcy, per se. The law applies only to “traders” as defined by Article 5 of the Commercial Code. However, traders are “persons” who carry on commercial activity and are registered as such. As a consequence, individuals can declare bankruptcy for debts related to commercial activity if they qualify as traders. Whether Ethiopia wishes to extend such bankruptcy protection for consumer and other non-commercial debt in the future is a policy decision that should be examined. The fact that individuals enjoy protection as traders is an important risk management tool for entrepreneurs.

**Protection of the Bankruptcy Estate.** One of the most important functions of a trustee is protecting the bankrupt estate from inappropriate claims. The Ethiopian Bankruptcy Law does not adequately define or provide the powers needed to exercise that role. Although the trustee is charged with verifying claims, the provisions defining preferential payments, fraudulent claims or other abuses are insufficient.
In summary, the existing Bankruptcy Law needs to be updated, amplified, and then supported with appropriate implementing regulations.

C. Implementing Institutions

In the field of bankruptcy, the courts are the primary institution with responsibility for implementation of the laws. They oversee trustees and all others involved with bankruptcy claims, and thus are essential to the efficient and effective settlement of bankruptcy claims. In Ethiopia, this particular implementing institution is still rather weak.

The court system is covered in more detail this Report’s section on Commercial Dispute Resolution. In addition to that analysis, it should be noted that bankruptcy is handled by commercial divisions of the courts, theoretically with specialized bankruptcy judges. As a practical matter, this specialization has not yet developed, because there have been so few cases actually completed. All cases brought prior to 1974 were discontinued under the Derg, and less than a dozen have been brought since. In short, almost no creditors or debtors seek to use the bankruptcy system.

As a result, judges, commissioners, trustees, and lawyers have little experience with bankruptcy. It is effectively a new field. Training will eventually be needed to create or enhance specialization, but should be timed to accompany increased demand for bankruptcy services.

Bankruptcy trustees are more complicated. On the one hand, the formal profession of bankruptcy trustee is still underdeveloped, which is not surprising given the paucity of bankruptcy cases. On the other hand, banks have been installing financial managers in faltering companies to serve as quasi-trustees. This body of managers represents a pool of experienced individuals who, with additional training, could become trustees.

D. Supporting Institutions

Accounting Firms. Accounting is both a problem and solution in Ethiopian bankruptcy. As a general rule, accounting standards are poor, with multiple books kept by businesses in order to avoid taxes and other obligations, so that most companies do not have audit-worthy financial records. This creates a twofold problem. Poor records make it difficult for companies to get reasonably priced credit and then to manage their affairs effectively if they do get credit. Thus, poor accounting increases the likelihood of bankruptcy and makes bankruptcy administration more difficult as well.

Good accounting, however, has a price, and few companies feel the need to incur the cost unless they see countervailing benefits. Normally, this benefit takes the form of bank loans, sometimes at preferential rates, so that banks are the drivers of accounting reform in most countries. In Ethiopia, high collateral requirements take the place of good lending practices in many cases, so that many of the businesses that are able to get loans do so without first adopting better accounting standards.
On another issue, several respondents noted that accounting firms are able to supply trustees (or private financial managers) for troubled firms. They may, therefore, have a strong interest in bankruptcy reform and their own role in it.

**Evaluators.** Professional evaluators provide an important service in bankruptcy proceedings by determining the value of assets owned by the debtor. Unfortunately, Ethiopia has not yet developed this service effectively. For the most part, market-based evaluations are weak at best, in part because of the newness of the concept and in part because of the newness of the markets. (Real property markets are still nascent and uncertain.) On the other hand, others are providing private auction services and achieving reasonable returns, in many cases suggesting that there may be a good foundation for building evaluation services through the auctioneers.

**Auction Services.** Because of the private repossession and sale provisions of the Law on Foreclosure, Ethiopian lenders have developed substantial capacity for sale of seized property. In some cities, lenders have begun to supply a strong demand for used, repossessed vehicles, which attract highly competitive bidders and result in strong sales. This is a very positive development that could serve as a basis for bankruptcy auctions and sales in the future. To take advantage of these strengths, however, it will be necessary for the courts either to hire competent auctioneers or to delegate the services to those with experience. Many countries have had very poor results in trying to create a judicial auction service.

**E. Social Dynamics**

There is little demand for reform of the bankruptcy system at this time. Although a number of legal professionals see the weaknesses—especially the bias toward liquidation over reorganization—amendment is not one of the higher priorities locally. There are several good reasons for this.

First, as already noted, lenders are relying on foreclosure laws and mandatory financial managers to bypass bankruptcy. This is not surprising, and not necessarily negative. Most borrowers do not have sophisticated credit relationships with a variety of creditors, but instead often have a single significant debt to a single lender. That lender uses the safety provisions of a pledged business to put a financial manager into a troubled debtor in order to work out the problems, if possible, rather than foreclose. Consequently, the lenders do not see a great need for bankruptcy reform—they are doing it privately. When this solution doesn’t work out, they simply foreclose and take the pledged assets, which they would be able to do anyway in bankruptcy. Thus, lenders see themselves sufficiently protected for the moment and are not seeking significant reforms.

There is also little demand for change from the debtor side because so little is known about bankruptcy protection. The possibility of reorganization or protection arises not only from law, but from knowledge of the law, and that is quite limited. Until the credit community better understands the possibilities inherent in a modern bankruptcy code, it is unlikely that there will be significant popular demand for change.

Reform of bankruptcy laws and institutions is inextricably tied to reform of the banking and lending environment generally. The over-regulation of financial services has inhibited commercial lending, especially competitive commercial lending. Bankruptcy protections are
important to commercial credit and will become more important as the lending environment is liberalized. It is possible to pursue bankruptcy reforms currently while awaiting liberalization, but reform efforts should include input from international lenders and international experts to ensure that any amendments will meet appropriate international standards and, more importantly, provide protections needed to enable lenders to increase access to affordable credit.

F. Recommendations

Based on the foregoing discussion, the following recommendations are made:

1. Efforts should be undertaken by the community of implementing and supporting institutions—including creditors and accountants—to learn about and more frequently access the option of reorganization. As noted, the possibility of reorganization or protection arises not only from law, but from knowledge of the law, and that is quite limited at this time.

2. For more effective implementation of the law, bankruptcy regulations should significantly detail and clarify the role of the Commission and the Trustees.

3. For the purpose of fair and efficient auctioning services, courts should either hire competent auctioneers or delegate the services to those with experience. Auctioneers should also be regarded as a good source for competent valuation services.

4. Any bankruptcy reform efforts should include input from international lenders and international experts to ensure that amendments will meet appropriate international standards and, more importantly, provide the protections needed to enable lenders to increase access to affordable credit.
VII. Competition Law and Policy

A. Introduction

In recent years, Ethiopia has taken steps toward opening several sectors of the economy to competition and to encourage and facilitate new entrants into those sectors. The Ethiopian business community has responded very positively to these openings, as demonstrated by the number of new Ethiopian entrants into the banking, textiles and floriculture sectors, for example. The process of introducing free competition into the economy, however, is far from complete. Despite new entry, important sectors are still overwhelmingly dominated by State-owned enterprises, and the retail sector and financial services are, for the most part, closed to competition from foreign firms.\(^\text{16}\) Government monopolies also continue to exist in energy and other sectors.

Even in those sectors where economic liberalization has taken place through reducing barriers to foreign competition and privatization of industry and services, expected economic benefits can be short-circuited by private cartels, barriers created by dominant firms and by public regulations. On April 17, 2003, to safeguard against private and public impediments to free competition taking place, and as part of the move to introduce free market forces into the Ethiopian economy, the Ethiopian Parliament passed the Trade Practices Proclamation No. 329/2003 ("TPP"). This legislation states that the Government is committed to "[establishing] a system that is conducive for the promotion of a competitive environment, by regulating anticompetitive practices in order to maximize economic efficiency and social welfare." It prohibits anticompetitive behavior and unfair or deceptive conduct by one competitor against another; authorizes regulation of prices for basic goods and services in times of shortage; and requires disclosure on labels of basic consumer information such as weights and measures. The law also provides for the creation of two implementing institutions, the Trade Practices Commission and the Trade Practices Secretariat.

Aspects of the law and institutions, however, make it difficult to use them as effective tools for enhancing consumer welfare. First, the law has disparate goals—prohibiting anticompetitive conduct, regulating unfair and deceptive conduct between individual competitors, prohibiting importation of goods at prices that are below wholesale in the country of production, regulating prices for basic goods and services, and regulating product labeling—that divert enforcement from the most harmful anticompetitive conduct and dilute limited enforcement resources. Second, the Trade Practices Commission that has responsibility for addressing abusive conduct by dominant players, many of whom are Government-owned and controlled enterprises, is itself part of the Government’s Ministry of Industry and Trade. Its members are high-level officials of other Government agencies such as the National Bank. Third, the Commission has no staff of its own and virtually no budget. The Trade Practices Secretariat does have a small staff of approximately five, but it has a clerical, non-investigative, and non-prosecutorial function. Fourth, legal and economic training in competition policy and law enforcement at the university level does not exist.

\(^{16}\) In some industries, enterprises that are owned and/or controlled by political parties are very significant players.
B. Legal Framework

The TPP has five parts: (a) definitions, objectives, scope, and exceptions; (b) prohibited trade practices; (c) enforcement bodies and appellate rights; (d) labeling and pricing regulations; and (e) remedies for violation. Although the framework law contains the substantive prohibitions and remedies needed to preserve and enhance competition policy, it also gives a great deal of room for interpretation and leaves power to grant exemptions in the hands of a Commission composed of high government officials and the Minister of Trade and Industry. Therefore, to paraphrase what one prominent Ethiopian private businessman said, if the Government has no will or desire for competition to drive a sector of the economy, it will not happen, no matter what budgetary or human resources are given to the Commission.

Definitions, Objectives, Scope, and Exceptions. A noteworthy and important feature of the TPP is that State-owned enterprises are subject to the law. They are included in the definition of “persons” and “trader(s)”, and Article 5, which clearly exempts commercial activities exclusively reserved for the Government, does not list commercial activities in which the Government participates on a non-exclusive basis.

Three Articles in this section of the law are, however, problematic. First, “basic goods and services” are defined vaguely as “goods or services related to the daily material needs of [the] consumer.” Because later provisions of the TPP permit the Minister of Industry and Trade to make recommendations to the Council of Ministers for regulating the price of goods (Article 22) and exempt “basic goods and services” from the TPP (Article 5(3)), the vagueness of this definition may have significant ramifications. It likely grants the Minister, Council of Ministers, and Commission broad and flexible powers to exempt many consumer goods from competition. This power to regulate prices, when viewed in conjunction with the fact that the retail sector is largely closed to foreign companies, suggests a lack of confidence in and commitment to competition as an effective regulator of supply and demand for consumer goods and services.

Second, significantly missing from the list of definitions is a definition of “dominance.” In discussions with those who must enforce Article 11(2)’s prohibitions against abuses of dominance, it was acknowledged that this poses a difficulty. Since the law’s passage in 2003, the gap has not been filled by the application of Article 11 to factual circumstances in cases or by the issuance of regulations or guidelines. The Commission lacks the power to issue implementing regulations that may fill some of this gap, but the Council of Ministers or Regional Councils do have the power to do so (Article 29). In the only two actions that the Commission has brought that have involved, among other issues, alleged abuses of dominance, actions brought against Total and Mobile Oil, apparently no analysis was done to determine if the parties were dominant in their markets.

Third, the Commission has the authority to exempt (1) any enterprises that have “significant impact on development and [are] designed by Government to fasten growth and facilitate development;” and, (2) “basic [goods] or services that are subject to price regulations” (Article 5). It appears that an exemption on these grounds may be granted, after an alleged violation of the law has taken place. The broad discretion of the Commission to exempt enterprises from the law, and to do so ex post facto, does not provide the assurances and predictability that would
encourage innovation, expansion, or entrance by entrepreneurs whose success depends upon free competition.

**Prohibited Trade Practices.** The substantive provisions of the law prohibit anticompetitive agreements (Article 6) and abuses of dominance (Article 11) and “unfair competition” (Article 10). It should be noted that the TPP does not have a specific provision addressing mergers or advocacy responsibilities. Presumably, some mergers could be addressed under Article 11’s abuse of dominance provisions, as it is done in some countries. It would be helpful if some provision were made to make clear that the Commission has an official role to play as advocate on behalf of competition.

The prohibited practices are fairly typical of those found in antitrust laws around the world and follow the EC-Treaty Article 81 and 82 models. Specifically, Article 6 prohibits price fixing, bid rigging (“collusive tendering”), market and customer allocations, and refusals to deal. The Ministry may authorize exceptions to these prohibitions when “the advantages to the Nation are greater than the disadvantages” (Article 7). This exception seems to authorize exceptions for national champions and may be used to discriminate against foreign companies, even in those sectors in which foreign firms may participate fully.

Article 11(2) prohibits, for the most part, the same kind of monopolistic conduct listed as prohibited in many jurisdictions. It prohibits, for example, price discrimination, tying arrangements, refusals to deal, excessive prices, and predatory pricing. Some of this conduct is not considered illegal in the United States, but is illegal in other developed countries. Prohibiting excessive pricing puts the Commission in the position of being a price regulator of a sort, a position that is antithetical to the notion that the market sets prices and output. Most unusual about Article 11(1), however, is the class of persons to whom the prohibition applies. The language of this Article is not clearly directed at those firms that are likely to achieve dominance. It says that “no person may carry on trade . . . having or being likely to have adverse effects on market development.” This is unusually broad in that it is not limited to persons who are dominant or likely to achieve dominance, and the effect is that it focuses instead on “market development.” Prohibiting single-firm conduct without regard to the firm’s dominance opens wide the possibility that either competitively neutral or, even, pro-competitive conduct will be prohibited. It would be reasonable to interpret Article 11 as applying only to those who have dominance because the Article falls under the general heading of “Abuse of Dominance.” But, as indicated above, in the two cases in which this Article was invoked, no analysis of market power or dominance appears to have been conducted.

Article 10 of the Act prohibits what are generically called “acts of unfair competition.” It is unusual in that it addresses two different categories of conduct. Articles 10(1) and (2)(a)-(g) address what in the United States are referred to as tortious interference with business, disparagement, misuse of trade names and trade secrets, deceptive comparisons of product performance, and other Lanham Act violations. It is not uncommon to find these provisions in competition laws in Europe, but the provisions should not be confused with the “unfair methods of competition” that are prohibited by Section 5 of the U.S. Federal Trade Commission (FTC) Act. As used in the FTC Act, unfair methods of competition are generally limited to anticompetitive agreements and some of the abuses of dominance that are listed in Ethiopia’s TPP. The FTC would usually become involved in such matters only if there is harm to
consumers, and in such cases the focus would be on protecting consumers rather than on protecting one competitor from another. As a general rule, the types of conduct addressed by Article 10 of Ethiopia’s law are handled in the United States as private disputes that competitors resolve in private law suits or alternate dispute-resolution mechanisms such as those provided by the Better Business Bureaus. In fact, until the passage of the TPP, such disputes were also handled as private matters in Ethiopia. Articles 130-141 of Ethiopia’s Commercial Code of 1960 contain almost all of the same prohibitions contained in Article 10 of the TPP. Now, it appears that the courts have taken the position that the trial of such practices must take place at the Commission level, and the judiciary is involved only for appellate review.

Two drawbacks exist when a competition law gives a competition commission jurisdiction over these kinds of disputes between competitors. First, these disputes often siphon a very large percentage of resources away from enforcement against cartel and abusive behavior that harms consumer welfare as a whole. After handling these individual disputes, competition commissions have little time and resources to investigate and proactively uncover cartel conspiracies and other anti-competitive conduct. A competition commission can easily become bogged down in handling individual disputes which aggressive businessmen keep bringing to the commission’s attention. The volume of these kinds of complaints is high because competitors like using competition commissions to resolve these disputes because of the commission’s speed and low cost compared to the ordinary judicial system. U.S. advisors doing technical assistance work in the late 1990s in some of the new Eastern European competition authorities observed this phenomenon. It appears that Ethiopia has likewise already experienced a skewing of enforcement resources toward resolving these disputes between competitors, rather than disputes that have a broader effect on the level of competition as a whole in markets for goods or services. In fact, of the 23 complaints that the Commission received as of February, at least 14 were cases alleging violations of Article 10. Second, Commissioners and enforcement staff who spend the majority of their time protecting businesses from their competitors in these “unfair competition” disputes lose sight of the different goals of Article 10 on the one hand and Articles 6 and 11 on the other. Protecting competitors from harming other competitors is in itself a proper goal of Article 10 enforcement. Protecting competitors from harming other competitors may be a secondary effect of Articles 6 and 11 enforcement, but the proper goal is to protect the competitive process as a whole. Proof that one competitor has harmed another is not proof of a violation of Articles 6 or 11.

Article 10(h) and (i) address conduct related to imported goods. Article 10(i) prohibits importing goods for humanitarian purposes without authorization from the Ministry. Article 10(h) is a type of antidumping provision. It deems the following an act of unfair competition:

(h) The importation of any goods from any foreign country into Ethiopia at a price less than the actual market price or wholesale price of such goods in the principal markets of the country of their production with the intent to destroy or injure the production of such goods in Ethiopia or to restrict or monopolize any part of trade in such goods.

(i) Trading in any manner in goods imported into Ethiopia for humanitarian purposes, without authorization by the Ministry.
Adding responsibility for handling these matters relating to imports on top of the many other disparate responsibilities of enforcement authorities will further distract from dealing with cartels and other conduct harmful to consumer welfare. Moreover, having the same enforcement authority responsible for both promoting competition and enforcing antidumping laws puts the authority in charge of laws with very different philosophies. Only a very few countries in the world do so. The concern is that these two bodies of law have very different bases and objectives. Although preventing below-cost pricing is a classic and mainstream objective of competition law, preventing the sale of imported goods at a price below the wholesale price in the producing country is not. Competition law is intended to promote vigorous rivalry, ultimately for the benefit of consumers; Article 10 (h) appears to limit certain types of foreign competition in order to prevent injurious effects on domestic producers.

**Trade Practices Commission and Judiciary.** The TPP creates a Trade Practices Commission within the Ministry of Trade and Industry that is accountable to the Minister. It also creates a Trade Practices Secretariat. The legal framework for these implementing institutions, along with that of the judiciary, is discussed in the next section, along with an analysis of the functions of these bodies.

**Labeling and Pricing Regulations.** Articles 20 and 21 of the TPP require prices to be posted and goods to be labeled with country of origin, weight, material content, warranties, and similar matters of interest to the consuming public. Disclosure of such basic information is useful so that consumers can shop and compare goods. The ready availability of accurate information helps competition to thrive. If given the resources to enforce such disclosure requirements, it is appropriate for the Commission to have authority over them.

Article 22 gives the Minister and the Council of Ministers authority to regulate the prices of basic goods and services. In a great understatement, one professional who has studied the TPP called it “paradoxical” to have the Minister of Industry and Trade be responsible both for preventing price fixing agreements and for setting prices. With “basic goods” undefined, investors in many different sectors are assuming a risk that the calculations that they made when deciding to invest may suddenly be mooted out by price controls.

**Remedies.** The Commission has rather substantial tools to prevent conduct that is harmful to competition and to deter future conduct. In addition to being able to order the offending party to cease and desist from the harmful conduct, it may order the offending party to take affirmative action to restore the injured party’s competitive position or completely cancel the offending party’s license to do business. In addition, it may assess substantial fines up to 10% of the value of total assets or 15% of gross total sales. It may also fine individuals who cooperated in the harmful conduct.

**C. Implementing Institutions**

The TPP creates a **Trade Practices Commission** within the Ministry of Trade and Industry that is accountable to the Minister. The number and term of Commissioners is not specified by law. Commissioners are recommended by the Minister of Trade and Industry and appointed by the Prime Minister. Currently, there are five members of the Commission: the Chair, who is a member of Parliament; the Chief Economic Advisor to the Prime Minister; the Commissioner of
Co-operatives; the Director of the Department of Standards; and the Governor of the National Bank. The law requires that the Commission also have on it representatives from a consumer association and from the private sector (Article 13(1). As pointed out above, having such a heavy representation of Government officials on a Commission that may be called upon to examine alleged violations of the TPP by State-owned enterprises raises questions about its ability to be impartial. In addition, these Government officials are reportedly so busy in their primary jobs that they have little time to devote to their responsibilities as Commissioners. As of June 2006, the two representatives from outside the Government have not been appointed.

The Commission is responsible for investigating complaints of violations of the law and ordering remedial action that may include cease-and-desist orders, suspension or cancellation of business licenses, and measures that would restore the victim’s competitive position (Articles 15 and 25). The Minister may approve, amend, or remand any remedy or penalty ordered by the Commission. The Commission lacks the authority to initiate investigations. The complaining party that is alleging injury carries the case forward. The Commission also lacks the authority to accept consent decrees or settlements. Each complaint must be carried forward to a decision.

The Commission lacks the budget and manpower to do the investigatory work necessary to gather evidence to determine if a provision of the law has been violated. As a result, the task of conducting the investigatory part of matters brought before the Commission is handled by the parties themselves. The Commission acts in much the same way as a court, issuing subpoenas as requested by the parties. The parties act in much the same way as private parties in any private lawsuit. The Commission’s only staff is one attorney who works for the Commission on a part-time basis and is an employee of the Ministry of Justice with other responsibilities. He performs the function of an attorney advisor to the Commission. He pulls together the evidence and law that the parties present, and helps in formulating a recommendation to the Commission. The Commission does have a Trade Practices Secretariat with approximately five employees. This office functions in a way similar to the office of a clerk of court in the United States. The Secretariat handles and keeps track of the filings, the subpoenas, and the evidence that is submitted. It is, however, not accountable to the Commission. It answers directly to the Ministry.

Despite all of these limitations, the Commission has been very active in hearing cases and issuing decisions since its establishment in 2003. As of June 2006, it has issued over 12 decisions. This has been possible only because the Commission has acted purely as an administrative adjudicative body. It has not actively conducted any investigations. It relies entirely on the parties to gather the evidence and present their cases before the Commission.

Parties may appeal the decisions of the Commission that have been approved by the Minister to the Federal High Court (Article 17). A particular court room in the Federal High Court has been designated to hear all matters arising out of the Commercial Code and TPP. In matters where the Commercial Code of 1960 and the TPP overlap, as in the case of unfair competition, the Ethiopian Supreme Court has determined that the matter must first be brought before the Trade Practices Commission. Focusing appeals of Commission decisions on one court avoids complex competition cases being heard by courts with no background or experience in hearing such cases. However, judges are regularly and routinely transferred from one court room to another after spending only a few years hearing a particular type of case. Thus, a judge who currently hears only Commercial Code and TPP matters may is just reaching a comfortable level
on the learning curve may be transferred to another court and never again hear a competition case. One can see the merit in bringing in new judges to hear commercial matters so that one single judge does not control all commercial law at the appeals level for an extended period of time. However, it is an inefficient use of resources to lose the experience and expertise of judges who have already learned something about competition law and economics. It also complicates the task of allocating limited training resources.

A fundamental weakness in both the Commission’s and the Federal High Court’s decisionmaking processes is their failure to publish these decisions. As reported elsewhere in this Report, the failure to publish decisions is not unique to the Commission. No decisions other than those of the Supreme Court, Cassation Division, are published. Interested members of the public may request to see decisions and the case files, but have no guarantee that such requests will be granted. This is hardly the type of transparency that will inform and educate the consumer, business, and legal communities.

D. Supporting Institutions

The law faculties and economic faculties that exist at many universities are fertile territory for producing a body of well-informed professionals who can support the implementation of competition law and policy in Ethiopia. At the law faculties in Addis Ababa several young professors trained in Europe have begun to explore the possibility of introducing courses in competition law. These efforts are still in a nascent stage, but could be launched quickly with some international support. Likewise, although there is a great deal of interest in industrial economics in the economics faculties, specialization in industrial organization is only at a nascent stage.

Because English is the language of instruction in all law faculties and is common in economics faculties, Ethiopia has an advantage that many other developing countries do not have. It can make use of the vast amount of information on competition law and policy that exists in English, and participate easily in the many international training programs conducted in English.

The judiciary has a special institute that trains judges. Although competition law is not currently in the curriculum, those who control the curriculum are open to and would welcome any training that could be provided in competition law and policy.

The private legal bar and Chambers of Commerce are organized and seek support for raising both the level of understanding of competition policy and for motivating government officials and the public to open markets to competition.

E. Social Dynamics

Some in Ethiopia appear to have mixed feelings about the value of competition as an engine of economic development and an arbiter of supply and demand. On the one hand, it appears that there is a growing recognition that competition is an important value. Indeed, the Chamber of Commerce of Addis Ababa provided, in part, the impetus for law reforms that promote competition. On the other hand, however, there is still an expectation that business colleagues
and acquaintances will cooperate with one another and that government will regulate prices. The TPP reflects these mixed sentiments of society.

Socialization of the law—that is, educating the public, businesses, government, political leaders, and other stakeholders about the law—is of utmost importance. It is the responsibility of the Secretariat to “prepare forums and disseminate information to enhance public awareness regarding the implementation” of the TPP (Article 18(1)(d)). Two workshops attended by 120 individuals have taken place with some support from outside donors. Conversations with many professionals and well-informed businessmen make it clear that they still expect government to intervene when competition becomes very aggressive and to protect inefficient incumbents.

F. Recommendations

In light of the above, this Report makes the following recommendations:

1. Engage in a broad and concerted effort to form and educate a body of academics, lawyers, judges, and consumer NGOs. Specifically, (a) courses in competition law and policy should be introduced to the law faculties, (b) courses in industrial organization should be introduced to the economics faculties, (c) judges should be given the opportunity to participate in judge-training offered internationally.

2. Empower the Trade Practices Commission to (a) focus on law enforcement that has the greatest benefit to consumer welfare, (b) create literature and conferences to educate the business and legal community regarding matters of competition policy and law enforcement, and (c) advocate on behalf of competition within the Government.

3. Give the Commission budget for a staff of lawyers and economists (comparable brand-new agencies in Vietnam have over 20 economists and lawyers) sufficient to conduct its own decisions and to publish and publicize them.

4. Plan for removing the Secretariat and Commission from under the authority of the Ministry of Trade and Industry.

5. Give to either the Trade Practices Commission or some prosecutorial body the authority and resources to initiate investigations and prosecute cartels and abuses of dominance in the name of and on behalf of the consuming public.

6. The foreign donor community should provide technical assistance to the Trade Practices Commission and the judicial training center in understanding and applying concepts of consumer welfare and market power. Some of this training could benefit from the involvement of other African countries so that a common regional understanding can emerge. South Africa’s competition law enforcement bodies have already benefited from substantial assistance, and are now at a more developed level and could assist as a mentor.
VIII. Commercial Dispute Resolution

A. Introduction

Despite several decades of dormancy, the Ethiopian legal system that was created in the 1960s provides a solid foundation for the resolution of commercial disputes. The present challenge is to build the capacity of lawyers and judges—many of whom are relatively inexperienced—to better understand commercial transactions to accurately apply that system to business disputes. In addition to lack of commercial acumen, a range of stakeholders interviewed on the topic of courts’ handling of commercial matters consistently complained about the length of time it took to achieve a final decision in the courts, and of the generally inexperienced pool of judges that decided the cases.

It is not surprising, therefore, that the most prevalent form of commercial dispute resolution in Ethiopia is informal mediation or arbitration. From merchants in the sprawling Mercato open-air market in Addis Ababa to rural farmers and herders, parties will often seek out a mutually trusted mediator, or recognized village chief or council, to resolve their commercial disputes. These methods are well accepted by Ethiopians but generally apply best to basic commercial matters. Two arbitration and mediation centers have recently been created in Addis Ababa to handle larger and more sophisticated transactions. Although together they have accepted fewer than 20 cases in their first 2 years of operation, the centers offer great promise for providing businesses with a reliable dispute-resolution mechanism that is speedier and more private than the courts. These arbitration mechanisms appear universally accepted by the judicial and business communities, but awareness levels are currently low.

Looking forward, one can expect that cases heard by formal arbitration mechanisms will proliferate and court systems will improve. Ethiopia’s business sector is still relatively immature, and trade levels are low. As this condition changes, the commercial disputes to be resolved will become more numerous and complex, and the system must adapt to deal with them. The challenge will therefore be to match their pace of reform and their capacity to a high growth rate of new businesses and transactions. Efforts are underway to increase training of judges at the university level, in the newly established judicial training center, and while on the bench.

B. Legal Framework

Court Structure. The Ethiopian legal framework for handling commercial disputes is generally clear and well established. The Constitution recognizes the separation of powers and mandates an independent judiciary. Three tiers of courts—First Instance, High, and Supreme—are established at the state and federal levels. The state and federal courts have concurrent jurisdiction over commercial disputes, provided that the amount in controversy meets thresholds prescribed by law. The Federal Supreme Court has the ultimate power of cassation over cases alleging a fundamental error of law, and a 2005 law establishes that decisions of law made by the Federal Supreme Court create binding precedent on the lower courts at the federal and state level. The Constitution gives the upper house of parliament exclusive authority to decide constitutional disputes.
There is no specialized commercial court in Ethiopia, nor do many courts have an established commercial division, despite the fact that Ethiopian law provides that courts may establish separate divisions “as required by their functions.” In practice most civil cases are given to the same bench, including family, property, and commercial disputes. Also, although commercial specialization may exist on paper in larger jurisdictions, the practical effect of the divisions is undermined by frequent rotation of judges between criminal, labor, and civil benches. This has the effect of diluting an already thin pool of expertise within the courts, and prevents judges from gaining specific expertise by practicing within one specific issue area.

**Commercial Cases.** The federal courts have jurisdiction over a wide range of civil cases involving commercial disputes, with exclusive jurisdiction in the Federal High Courts for suits involving the following parties or types of cases:

- The Federal Government or its officials,
- Individuals from different regions,
- Foreign parties,
- Business organizations registered with the Federal Government,
- Negotiable instruments,
- Patent, literary, and artistic ownership rights,
- Insurance policies, and
- The dissolution of corporate bodies.

In addition, cases involving amounts in excess of 500,000 Birr will be heard in the Federal High Courts rather than the First Instance Courts. The Federal High Court will also hear cases involving recognition of foreign judgments. Thus the majority of significant commercial disputes may be heard in federal rather than state courts.

The conduct of commercial cases in the Ethiopian courts is governed by the Civil Procedure Code of 1965, which roughly follows a civil law model. The 483 Article code adequately addresses all aspects of a civil suit that apply in commercial matters, including clear statements of how to initiate a suit, state a claim, serve process, and conduct proceedings. Moreover, the code provides clear guidelines regarding forum and jurisdiction, as well as the scope and effect of judgments. Commercial cases can generally be appealed to the next highest court, up to the Supreme Court. Judgments themselves must be written and reasoned (although several interviewees complained about the extreme brevity of many lower court decisions).

In sum, all of the procedural provisions governing commercial cases meet minimally acceptable international standards. The main difficulty with processing of commercial cases in the Ethiopian court therefore has more to do with implementation—including lack of training, resources, and understanding of the facts of a commercial case—than it does with any deficiencies in the legal framework governing the court’s procedures.

**Judgment Execution and Enforcement.** Stakeholders the assessment team spoke with had generally good things to say about the effectiveness of Ethiopia’s judgment enforcement regime. The procedures for execution of judgments are clearly stated in the Civil Procedure Code and appear to be generally well enforced. Final judgments are self-executing, but respondents may stay execution of the judgment pending appeal by posting a bond or other surety. To enforce
execution of a final judgment, a plaintiff may present a final judgment to the court and obtain additional relief, including an order of seizure of property or attachment and sale of assets, which the police are entitled to enforce. The Civil Procedure Code also sets forth specific procedures for conducting a valuation and sale of property—although in practice valuation is difficult because of limited markets in immovable property and some reluctance on the part of courts to order seizure of a family’s only assets.

**Arbitration and Mediation.** Ethiopia has no specific law on arbitration, but arbitration is recognized in the Civil Procedure Code and the courts are authorized to enforce valid arbitral awards. According to the code, parties may enter into a legally binding agreement for arbitration, and implicitly may freely choose the terms of the arbitration. Absent a specific agreement, the law states that the arbitration procedures should approximate those of the Civil Procedure Code. The tribunal should hear both parties and their evidence, may summon witnesses, issue a written award, and may issue a default award in the event a party fails to appear. Decisions can then be appealed and enforced according to the court procedures in the Civil Procedure Code. There is no formal mediation mechanism attached to the courts, but reportedly courts will encourage parties to mediate their disputes before proceeding with a formal case.

One exception that has caused confusion about arbitration is the provision in Article 316(2) of the Civil Procedure Code that states “No arbitration may take place in relation to administrative contracts,” which are opaquely defined in Article 3132 of the Civil Code as, inter alia, those which are stated as such by law or the parties, or are “connected with an activity of the public service and implies a permanent participation of the party contracting with the administrative authorities in the execution of such service . . . .” In practice, contracts between Government agencies and foreign private entities are frequently arbitrated abroad, and have been in Ethiopia as well. But there is concern that, without better clarification, arbitration awards may be disputed by Government-owned entities or agencies, which form a substantial part of the Ethiopian economy.

The Ethiopian Government is considering drafting a Law on Arbitration, and a draft has been circulating among experts and interest groups in Addis Ababa that many hope will form the basis of an exclusive arbitration law. The present civil society draft draws heavily from the UNCITRAL model and follows international standards. Any arbitration law passed to meet international standards would help to systematize the emerging arbitration practices, including setting minimum qualifications for arbitrators and resolving any ambiguity over the availability and legitimacy of arbitrations involving government entities.

Ethiopia has not ratified the 1958 New York Convention on the Recognition of Arbitral Awards, but nevertheless will recognize foreign arbitral awards. Reportedly there have been several cases in which Ethiopia or its owned entities appeared in private arbitrations in foreign forums and have a record of honoring adverse awards. Recognition and enforcement of foreign judgments is possible if mutual recognition is granted by the issuing state.

**C. Implementing Institutions**

The primary formal institution for resolving commercial disputes is the courts. Although generally well organized, the courts are significantly under-resourced and have limited reach
beyond a few major cities. There are federal courts in each of the nine Regions of Ethiopia, plus the special municipalities of Harar, Dire Dawa, and Addis Ababa. State courts operate at the local level in each Region. The current case load in the courts is heavy but manageable, although one must keep in mind that the majority of Ethiopia’s 70 million citizens live in rural areas and have very limited access to any court.

Businesses complain, however, of long delays in achieving final judgments after appeals, which may also discourage the filing of commercial suits. The average reported time to decide a case at first instance is around 6 months, with appeals taking an additional 1–2 years. This time can expand significantly, however, for more complicated cases. Statistics from 2006 indicate that around half of the cases in the First Instance and the appellate level of the Federal High Court have been pending for more than 1 year. Supreme Court cases are generally decided within a year. These numbers are said to be improving, however, for more recently filed cases.

Besides time delays, businesses and lawyers complained about judicial inexperience, in particular with regard to commercial cases. As discussed in more detail in the Court Administration section, the minimum legal criteria for becoming a judge are being 25 years of age and having a law degree. Many judges, therefore, are recent law school graduates who have served less than a year as judicial trainees before deciding cases on their own. According to 2006 statistics, there were around 110 judges on the federal bench. Almost all judges have an LLB, but only seven were reported as having an LLM degree. Statistics were not available regarding age or years of experience; but anecdotally the average age of judges below the Supreme Court level is low compared to international standards.

Not only do many judges lack practical experience, but young judges tend to rotate frequently between the criminal and civil benches, and to hear a wide range of cases while on each bench, which together prevent the buildup of any specific commercial (or other) expertise. Finally, due to low pay and other professional disincentives, judges tend to leave the bench in favor of more rewarding private sector employment once they have built up a few years of experience. Thus, the judiciary serves more as a training ground for lawyers and businessmen than a forum for resolving lawyers’ and businessmen’s complicated disputes.

There are reform measures underway to help reverse these trends. A recently created judicial training center was designed to provide practical training and increase professionalism for judges, prosecutors, and registrars. Also, one must consider that for many years until after the 1995 Constitution was adopted, judicial careers were discouraged and the bench purged. The judiciary is therefore still in the process of building up talent. It should also be noted that few lawyers or businessmen interviewed cited corruption as a principal concern with the courts. This may be due in part to an active anti-corruption commission that has pursued several high-profile cases against government officials.

Ethiopia has a long and strong tradition of alternative dispute resolution (ADR), anchored at the village level, where a village leader or council of elders often mediate disputes ranging from serious crimes to simple contract disputes. In urban settings, commercial disputes are also frequently resolved through informal mediation mechanisms. For example, in the Mercato (one of the largest open air markets in Africa), vendors rely on mutually recognized arbitrators to settle disputes. More formal—and larger scale—ADR mechanisms are, however, just beginning.
Currently there are two formal ADR institutions operating in Ethiopia—both in Addis Ababa, and both less than 2 years old. The Arbitration Institute is run by the AACCSA, which counts many of the country’s most prominent businesses among its members. This Institute has been hearing cases for a year, and has logged six matters; two rendering decisions; two settled; and two ongoing at the time of this Diagnostic. The Institute also offers mediation facilities. For both arbitration and mediation, the Institute draws from a roster of 80 arbitrators/mediators with diverse commercial expertise categorized by special skills such as construction, investment, and law.

The Ethiopian Arbitration and Conciliation Center (EACC) is an NGO that also provides mediation and arbitration facilities. In its first 18 months of operation it has accepted 10 cases, all of which were commercial disputes. Like the Institute, the EACC is dedicated to increasing training in and awareness of commercial ADR by hosting workshops for stakeholders in government and the private sector as well as specific training for mediators and arbitrators. The EACC boasts a roster of 180 legal and commercial experts, including engineers for construction-related disputes.

The rules of both arbitration bodies are similar, provide the parties wide latitude for choosing their arbitrators and setting the scope of the arbitration, and adhere to rules of procedure that follow international standards. Pursuant to the Civil Procedure Code, parties must agree to arbitration in writing, either as a provision of an existing contract or a special consent to arbitration entered before the beginning of a proceeding. Both institutions accept cases between foreign, domestic, and government entities. Decisions of each body are binding on the parties and are enforceable by the courts—although this has not yet been fully tested by litigation. A record is kept of the proceedings, but decisions are confidential unless the parties mutually agree otherwise. Parties must pay arbitrators’ fees and administrative costs; but neither is seen as prohibitively expensive, particularly in light of the costs of conducting multi-year litigation in the courts.

Despite the initial success of these arbitration bodies, both face obstacles in terms of resources and recognition by parties and by the law. Both organizations stressed the need for more training of arbitrators to further develop their expertise in arbitration/mediation. In addition, a law should be passed formalizing the authority and jurisdiction of private mediation/arbitration mechanisms, including whether administrative contracts may be arbitrated (an issue that is ambiguous in the current Civil Procedure Code) and the appealability/enforceability of arbitral awards. Other challenges for the arbitration institutions are to improve training for their arbitrators, including tapping expertise from foreign experience, and to increase awareness and understanding within the business community of the value and operation of the arbitration commissions.

D. Supporting Institutions

Lawyers/Bar Association. Ethiopia has a severe shortage of lawyers, who are concentrated in the few major cities. Overall, there are estimated to be less than 1,000 lawyers serving a population of over 70 million. Among those 1,000, only a handful has significant experience with international business transactions. There are no formal law firms, which further dilutes commercial expertise.
Lawyers must be licensed to practice in the federal courts. To receive a license, a person must be Ethiopian, have a degree from a recognized legal institution and at least 5 years’ legal experience, and must pass a licensing examination. Conduct of the legal profession is overseen by the **Minister of Justice**, which includes **Disciplinary Council** with representatives of the Ministry of Justice, Advocates Association, and the Courts.

The **Ethiopian Advocacy Association** is a voluntary bar association of private lawyers headquartered in Addis Ababa. The Advocacy Association has 480 members, most of whom are general practitioners. There is no formal division of commercial law specialists. The Association conducts periodic training for members, but it has not had a particular focus on commercial law.

In 2003 the Ethiopian government created the **Justice Sector Personnel Training Center** to increase the capacity and professionalism of judges, prosecutors, and court registrars. It has only recently entered into full operation. The training center provides initial training for professionals entering jobs in the court system, and gathers information from practitioners to design better training programs. There are currently no specific trainings, however, on any commercial law areas.

Ethiopia currently has one **law school**, located in Addis Ababa, but there are plans to expand legal higher education and offer law degrees at universities in each of the regions. The quality of general legal education at AAU is relatively high. Most faculty have LLM degrees from abroad, and many have significant international legal experience as well. The commercial law curriculum is currently at a basic level, however, and the law faculty is seeking to expand the depth and breadth of courses to prepare graduates from practice in international commercial arbitration forums. In particular, an LLM degree focusing on Alternative Dispute Resolution, including international commercial arbitration, will now be offered. Despite these ambitions, however, the current pool of lawyers trained at AAU (which includes most practicing lawyers in the country) will not have had advanced training in commercial matters unless they have gained additional experience abroad.

Ethiopia has a limited but dedicated network of **business associations** with missions that include education of members about commercial law and advocacy of legal reforms with the Government. In particular, the **AACCSA** and the **Ethiopian Chamber of Commerce** seek to keep members apprised of commercial law developments and actively participate in efforts to revise the commercial codes. The government appears receptive to their collective advice, and select members of the business community and legal experts are invited to participate in legal drafting committees. Specialized trade associations as well advise members about appropriate contractual provisions that will protect their rights and available legal remedies when deals fall apart. Overall, however, legal sophistication is low among business operators, and industry associations face a difficult challenge to significantly raise members’ overall legal awareness level.

Ethiopia has a **limited domestic NGO sector**, but there are a few organizations that provide legal aid and arbitration/mediation services that support commercial dispute resolution. International NGOs, along with bilateral **donor organizations**, likely play a more significant role in reforming the court system. USAID, SIDA, and the Canadian International Development Agency (CIDA) in particular have dedicated legal reform projects already underway, and the
German Society for Technical Cooperation is planning programs to support enhanced legal education. The Netherlands Embassy has supported arbitration and mediation centers.

E. **Social Dynamics**

Both the commercial and legal environments in Ethiopia are in a state of awakening following a period of dormancy during the Derg Regime and beyond that lasted more than 20 years. In the legal arena, the courts have the benefit of a solid foundation in the form of strong constitutional and procedural laws that generally meet international standards. The system is still learning, however, how to effectively implement those laws. Experience is limited with respect to complex commercial matters, and one gets the sense that, in a socialist system that has been dominated by State-owned enterprises, there is still a significant lack of understanding or appreciation of the free market business principles enshrined in the pre-socialist commercial and procedural codes.

That said, there are many positive signs of change, including public efforts to fight corruption through the Anti-Corruption Commission, efforts to provide additional training through the Judicial Training Center, and efforts to publish precedential decisions made by the Supreme Court of Cassation.

More attention must be paid, however, to teaching judges and lawyers the elements of more sophisticated transactions. Still, no amount of training will be effective as long as the judicial bench maintains its exceptionally high turnover rate, as young judges use the courts as a legal training ground after graduating law school, only to move on to more lucrative private sector positions once they have gained initial experience. Many more qualified commercial lawyers will be needed to support increased business activity, as will judges with specialized commercial skills.

F. **Recommendations**

Based on the foregoing, this Report recommends that the following be done:

1. Foster commercial expertise within courts by creating separate commercial and family divisions and otherwise endeavor to assign similar cases to the same judges.

2. Include commercial law courses in the Judicial Training Center curriculum.

3. Adopt a Law on Arbitration that clarifies arbitration’s authority and jurisdiction. Preparing for the new law should include a process of research, debate, negotiation, public education, outreach, institutional capacity building, and revisions of drafts based on local political compromises and a host of other steps.

4. Initiate a formal program by which the courts require parties to pursue mediation/arbitration as a first-instance approach.

5. Increase judicial compensation to encourage retention.
6. Increase funding and capacity of the private arbitration centers and expand their facilities beyond Addis Ababa.
IX. Court Administration

A. Introduction

Ethiopia’s courts have limited reach and limited resources, but are generally well organized and administered within those constraints. Businesses and lawyers praise the organization of pleadings and scheduling, as well as the ease with which they obtain basic information on ongoing cases. Their greatest complaint, however, is the amount of time it takes to achieve a final resolution. More efficient court administration could decrease case time considerably by hiring additional judges and staff, segregating and fast-tracking basic commercial disputes from more complicated family matters on the civil docket, and improving information management within the courts and between them and other implementing agencies.

The responsibility for court administration rests with the Federal Supreme Court and its administrative divisions. Active efforts are underway to achieve better performance and efficiency of court administration. Notably, the Federal Supreme Court has initiated a national court reform project, which has offered trainings for judges and court support staff to implement administrative reforms and to better accomplish complaint resolution, record management, information technology, and customer support. It will take more than training to implement this initiative, however, and the main obstacle to implementation is lack of resources devoted to the courts. Nonetheless, the fact that such public efforts are being made is a testament to the political will available for court administration reform.

B. Legal Framework

Ethiopia’s court system underwent major structural reform with the ratification of the 1995 Constitution, which reestablished an independent judiciary and created a three-tiered system of courts at the federal and state levels. The House of People’s Representatives may by a two-thirds majority establish additional courts, as it deems necessary. In areas where there is no federal court, the State High Court may serve as the Federal Court of First Instance. Appeals are available up the tiers of each court system, and ultimately to the Federal Supreme Court in all matters credibly alleging a serious error of law. Decisions of cassation made by the Federal Supreme Court when sitting with five judges are now published and constitute binding precedent on the lower courts.

Each federal court has separate criminal, labor, and civil divisions. Some courts have a separate commercial division, but there are no special commercial courts. Nor are there any administrative courts. Rather, disputes with government agencies are either handled through internal administration mechanisms or through suits in the regular courts.

The Constitution charges the Federal Supreme Court with responsibility for administration and oversight of the court system. The Federal Courts Proclamation designates the President of the Supreme Court as the head of the courts’ administration, and grants the Federal Supreme Court the power to issue procedural directives binding on all courts. Within each court, the President and Vice President of the court are responsible for administration and for reporting up to the
Supreme Court about operational matters. Each court also has a Registrar responsible for handling all court records and docketing.

The Federal Supreme Court is also constitutionally responsible for proposing a budget for the federal courts, which it administers, once the budget has been approved by the House of People’s Representatives. State court budgets are determined by the respective state council. Overall, limited resources are devoted to the courts. Pay levels for judges and staff are low enough to encourage high attrition, and there is a strong need for additional court personnel. Court facilities are often run down and have poor technological infrastructure. Also, the number of courts is small compared to the population, and access to the courts by the overwhelmingly rural population of Ethiopia is low.

Judicial Selection and Oversight. Federal judges are appointed by House of People’s Representatives upon submission by the Prime Minister. For all federal judges except the President and Vice President of the Federal Supreme Court, the Prime Minister submits names nominated by the Federal Judicial Administration Council. State judges are in turn appointed by state councils upon recommendation by the State Judicial Administration Councils.

The Federal Judicial Administration Commission is responsible for selecting judges who qualify for membership. The requirements for being a judge are rather broad: a person must be between the ages of 25 and 60, have attained “legal training or acquired adequate legal skill through experience,” and generally be of high moral character and without criminal convictions. Within this scope the Federal Judicial Administration Commission has wide discretion to decide on judicial appointments.

The Federal Judicial Administration Commission is also responsible for issuing and enforcing the judicial Disciplinary Code of Conduct Rules which, among other things, proscribes corrupt influence by bribes, favoritism, undue influence, intentional frustration of process, and “manifest incompetence and inefficiency.” The nine-member Commission is composed of the heads of the three levels of federal courts plus three members of the House of People’s Representatives. Judges of permissible age may only be removed by resignation or a finding of incompetence, incapacity, or breach of disciplinary rules as determined by the Judicial Administration Commission.

Law on Civil Procedure. Administrative provisions relating to the processing of a civil/commercial case are detailed in the Civil Procedure Code. Plaintiffs initiate a suit by filing a complaint with the court Registrar. Once it is registered, service of process is effected by the court or its agent, which generally delivers it in person to the respondent before witnesses. The Civil Procedure Code provides for alternatives including posting at the respondent’s residence or business. Mail service is also possible but in practice is rarely necessary or used. The Civil Procedure Code also sets forth detailed provisions on the submission, authentication inventory, and retention of evidence, including affixing seals on property pending the resolution of the dispute. The Civil Procedure Code also sets the parameters for court fees, which are further elaborated in the courts’ respective rules of procedure. Rules of procedure issued by the Supreme Court identify the requirements for cataloguing and organizing case files.
C. Implementing Institutions

Each of the federal courts has a criminal, civil, and labor division, and the courts may establish additional divisions (such as commercial or family divisions) as necessary. There are a total of 13 civil benches of the federal courts existing in each of the regions and recognized municipalities. Court proceedings are conducted in Amharic, and all submissions must be translated into Amharic. The court will provide a translator for those who do not speak Amharic. State courts may also hear testimony in the native language of their region.

The volume of cases in the courts is high but manageable, according to select judges and registrars the assessment team spoke with. According to interviews, the average judge may handle up to 800 cases per year. Statistics indicate that the courts are still working through a significant backlog, but that the overall time to reach a decision is dropping as older cases are cleared from the docket.

Judicial Administration Commission. The Judicial Administration Commission, in addition to regulating judicial conduct, provides oversight for the administration of the federal court system. The President and Vice President of the courts, who are responsible for overseeing their own court’s administration, implement the directives of the Commission. The President and Vice President of each court are also responsible for preparing statistics and reports regarding the activities of their court and to submit them to the Judicial Administration Commission. The President and Vice President of the courts also prepare budgets and work plans for their individual courts to aid overall planning and allocations by the Federal Supreme Court. According to the Supreme Court administration director, a new system of court administration will soon be implemented that gives operational administrative authority to two court managers, who will relieve some of the administrative burden from the Presidents and Vice Presidents of the courts.

Court Reporting. Court reporters were seldom used in the courts until recently, with the Judge or an assistant taking their own notes as a summary record of the proceedings. This is now changing. Witness statements are increasingly recorded and transcribed. Judges report that this additional clarity helps to reduce the decision time. Judges also tend to maintain their own schedule and docket, which avoids scheduling conflicts, but potentially takes away from time to hear and deliberate on cases.

Registration. Court administration is controlled by the President, but is run by the Registrar. The Registrar is responsible for receiving all documents and filings, distributing pleadings to the appropriate parties, and organizing the docketing and scheduling in conjunction with the judges of the individual benches. The Registrar is also responsible for recording retaining and safeguarding submissions of evidence. Upon the issuance of a decision, the Registrar is responsible for filing and distributing decrees. The Registrar also provides execution orders to the relevant enforcement agencies.

Records Management. Case files are maintained containing all pleadings, submissions, and records of the proceedings. The Registrar keeps a paper file of all documents and scheduling, and maintains a simple computerized database containing basic information about the case, such as the case number, parties, amount in controversy, the judge, and relevant deadlines. These
records, along with docketing and scheduling information, are available to the parties with relative ease. No documents are scanned, however, and to obtain detailed information one must access the file. (One exception is a pilot project funded by CIDA, in which all case records relating to negotiable instruments are scanned and all case information is maintained electronically. This approach was reported to be successful, but expensive to maintain country-wide.) General case statistics are kept by the Registrar, and are reported to the central court administration on a quarterly and yearly basis.

Files are stored centrally in each court, and are retained for a number of years after the conclusion of a case. But court decisions are not considered public information, and access to those files and decisions is generally limited, at the discretion of the Registrar or Judge, to interested parties to the case. Most federal court decisions are never published. (The one exception is that decisions of cassation made by the Federal Supreme Court are now published and by law serve as binding precedent on all courts.) Lack of access to decisions by practitioners contributes to inconsistency in judicial rulings. Not only can parties not gauge by past performance how their issue may be decided, but judges themselves have little access to related bodies of law. On the other hand, it is reported that the content of many decisions themselves is so thin that they offer little reasoning useful to deciding future cases if the decisions were available.

D. Supporting Institutions

The Justice Professionals Training Center was created in 2003 to provide initial and ongoing practical training for the judiciary, specifically judges, prosecutors, registrars, and other judicial staff. The Training Center is accountable to the Federal Supreme Court. In addition to training, the Center is tasked with providing “research on ways and means of correcting existing defects in the system with a view to developing uniform and reliable systems and procedures [throughout] the justice system” and then recommending reforms. The Training Center also provides an introductory course for judges before they assume the bench.

Although certainly a step in the right direction, stakeholders the assessment team spoke to indicated that the trainings offered tend to be superficial. No courses focusing on commercial law are currently offered. More funding is also needed for the Training Center to deliver more comprehensive, higher quality training. In sum, although a start in the right direction, the Judicial Training Center cannot substitute for a solid legal education at the university and graduate levels.

There are very few national NGOs working in the legal sector, with only one providing dedicated legal aid. The Bar Association is a voluntary organization of lawyers and frequently provides feedback to the courts on administrative issues, reportedly with mixed success. The greatest benefits provided by NGOs to court administration are in fact the arbitration and mediation services that help to reduce the case load in the courts. As discussed in this Report’s section on Commercial Dispute Resolution, there are two formal arbitration institutes operating in Addis Ababa, with plans to extend services to the regions. Many court personnel told the assessment team that they were enthusiastic about expanding court arbitration and mediation as a means to reduce the overall case-load and thereby improve the quality of court operations.
Several donors have focused their attention on improving the court system, both by providing judicial training and by supporting court administration reform. The most far reaching project in that area is supported by the Canadian International Development Institute, which has undertaken a pilot project to computerize the case management process for cases involving negotiable instruments. CIDA is also funding a court reporter program to expand transcription of witness testimony.

**E. Social Dynamics**

Problems with court administration were rarely mentioned among the complaints stakeholders expressed about the court system. On the demand side, lawyers were generally satisfied with their access to court documents for ongoing cases, and did not report incidents of lost files or untimely notice of court proceedings. Judges too appeared generally satisfied with the organization of registrars. Statistical reporting also appeared reasonably regular and reliable. In other words, the existing administrative structure appears to function adequately for the level of the court system’s development, and the demand for operational reforms is low.

Areas that did appear in need of reform were more structural and fundamental, such as the need for better education and training of court staff in general, as well as the need to establish divisions within courts to enable better build-up of practical expertise. The co-mingling of family and commercial disputes within the general civil bench seemed to be a particular area of concern, with complicated family cases taking up much of the court’s time and preventing more efficient resolution of basic commercial cases. Establishing a separate division for one or both areas could help to streamline case processing. The system would also benefit greatly from additional judges and better physical infrastructure, including courthouses and computers.

On the supply side, there have been visible efforts to improve court administration by addressing these problems, although the amount of resources available and dedicated to administrative reform is relatively low. One positive sign was that, in addition to technical administrative skills, Registrars are also trained in methods of improving customer service, a concept seldom incorporated into many court systems. The Justice Professionals Training Center is an important initiative that could provide valuable additional training to administrative staff, particularly as court automation is introduced.

The focus on training and administration will be a wasted effort, however, unless more is done to improve retention of judges. A high attrition rate—even among newly hired judges—is attributed to low pay and lack of supplemental benefits. Unless more is done to keep judges in their posts long enough to learn on the job and then apply their experience, the fundamental quality of court decisions will not improve.

**F. Recommendations**

Based on the foregoing, this Report recommends the following actions:

1. Create a separate commercial division in each Federal Court, and endeavor to retain the same judge in that division for a sustained period of time.
2. Create a separate family law division of the courts to segregate more basic civil/commercial disputes from the more complicated family docket.

3. Conduct a feasibility study to introduce a formal mediation requirement as a first step for commercial disputes, with possible implementation through the Law on Arbitration currently being considered.

4. Provide additional resources to refurbish courthouses and provide better communications infrastructure.

5. Provide resources to gradually introduce a more comprehensive uniform case management system.

6. Provide resources to enhance the capacity of the Justice Sector Personnel Training Center to train Registrars in advanced court management techniques.
X. Foreign Direct Investment

A. Introduction

Too many sectors of Ethiopia’s economy are closed to foreign investment. Although international corporations do not normally operate in some of these sectors, the restrictions project a generally negative image to potential foreign investors in Ethiopia. In some of the closed sectors, in particular air transport, travel operations, and financial services, the financial and trading skills of foreign investors would likely be a positive influence on domestic investors and stimulate domestic investment activity. In addition, the Government should review and reduce or eliminate its current minimum investment requirements. Moreover, although the Ethiopia Investment Agency (EIA) has taken many positive steps toward encouraging private investment, it lacks resources in terms of the necessary scale and content of its investment promotion activities; its staffing, equipment, and information resources; and its access to and status with other Government departments and agencies. To undertake effective promotional work, the EIA should be strengthened.

B. Legal Framework

National policies on investment are critical for encouraging and facilitating foreign investment and maximizing the benefits from it. Ethiopia’s current regulatory regime, governing both foreign and domestic investment, has undergone significant changes as part of the reform process started in 1992–1993. The investment regime in Ethiopia is based on a series of investment proclamations issued between 1996 and 2003. In combination, these laws specify the economic sectors that are open both to domestic and foreign direct investment (FDI); the financial limits and requirements for FDI; the monitoring and reporting requirements; and the financial incentives that are available.

FDI Admission under Ethiopian Investment Law. Unlike many other transition countries, Ethiopia does not have a separate law for FDI. Rather, its various investment proclamations govern both domestic investment and FDI. There are significant distinctions, however, among the type of investments foreigners and domestic investors may make.

Sectors open to FDI. Foreign investors are permitted to invest in all economic sectors except those reserved for domestic private sector or State investment. The domestic private investor category includes foreign nationals who are permanent residents in Ethiopia and who have requested domestic investor status. Moreover, foreign nationals of Ethiopian origin will

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18 Proclamation 280/2002, article 2 paragraph 6 defines a foreign investor as “a foreign or enterprise owned by foreign national, having invested foreign capital in Ethiopia, and includes an Ethiopian permanently residing abroad and preferring treatment as a foreign investor.”
19 Immigration Proclamation 354/2005 and Immigration Regulation 114/2004(Article28) govern the issuance of permanent residence permits.
20 This does not apply to individuals who forfeited Ethiopian nationality and acquired Eritrean nationality.
be considered as domestic investors pursuant to Proclamation 270/2002, even when they are not permanent residents of Ethiopia, so long as they have an Ethiopian identification card attesting to their Ethiopian origin.

Sectors open only to the State. Sectors exclusively reserved for investment by the State currently include: transmission and supply of electrical energy through the Integrated National Grid System and postal services, with the exception of courier services and air transport services using aircraft with a seating capacity of more than 20 passengers. Manufacturing of weapons and ammunition as well as the provision of telecommunication services are open to foreign and domestic investors only when they invest in a joint venture with the State. Investment in generation of electricity (though not its transmission) from hydropower is allowed for both foreign and domestic investors, without any limitation on generation capacity.

Sectors open to domestic investors. A number of sectors are currently reserved for domestic investors, including wholesale trade and distribution (excluding fuel and the domestic sale of locally produced goods from FDI plants); importing (except material inputs for export production); exports of raw coffee, oil seeds, pulses, hides and skins (if bought from the market), and live sheep, goats, and cattle (if not fattened by the investor). Foreign investors are also excluded from the following services and manufacturing activities: construction companies (excluding grade-one contractors) and building maintenance; tanning hides and skins up to crust level; hotels other than those “star-designated”; motels, tearooms, coffee shops, bars, nightclubs, and restaurants, excluding international and specialized restaurants; tour and travel operators; car-hire, taxis, and commercial road and water transport; grain mills; barber and beauty shops; goldsmiths; non-export tailoring; saw milling and non-export forest products; customs clearance services, museums, and theaters operation; and the printing sector.

Sectors open to Ethiopian nationals. Investment in sectors that the Ethiopian Government considers strategic is reserved to Ethiopian nationals; that is, foreign nationals permanently residing in Ethiopia and foreign nationals of Ethiopian origin, even if they are considered domestic investors, cannot invest in these sectors. The sectors, which are open only to Ethiopian nationals, include banking, insurance, broadcasting, air transport with seating capacity of up to 20 passengers, and forwarding and shipping agency services.

Ownership Limitations and Requirements. Under Article 11 of Proclamation 280/2002, any foreign investor who is allowed to invest pursuant to the proclamation must allocate a minimum amount of investment capital. The proclamation defines “capital” broadly to cover local or foreign currency, negotiable instruments, machinery or equipment, buildings, initial working capital, property rights, patent rights, or other business assets. The Ethiopian Government has

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22 See Article 5 of Proclamation 280/2002.
23 It is not clear from the investment proclamation if a company that is registered in Ethiopia but partly owned by foreigners will be considered a domestic investor. The investment proclamation simply defines domestic investors as “Ethiopian or a foreign national permanently residing in Ethiopia…the government, public enterprises as well as foreigners of Ethiopian origin.” However, a company that is registered in Ethiopia will most likely be considered a domestic investor if the foreigners who own it are permanent residents in Ethiopia.
24 See Council of Ministers Regulations on Investment incentives and Investment Areas Reserved for Domestic Investors No. 84/2003.
relaxed the minimum capital required for foreign investors in its series of Investment Amendments. Pursuant to Proclamation 280/2002, a minimum investment capital is required for wholly-owned operations and joint ventures. For wholly-owned FDI in the open sectors, an initial investment of US$100,000 is required. For joint ventures with Ethiopian investors, the foreign investor is expected to contribute a minimum equity of US$60,000, either in cash or capital equipment. In the areas of engineering, architectural, accounting and audit services, project studies, and management consultancy services, US$50,000 is required if the investment is wholly owned by the foreign investor, and US$25,000 if it is made jointly with a domestic investor. This minimum capital requirement is not applicable for a project that reinvests its profits or dividends or exports 75% of its production. The potential investor who intends to export 75% of his or her production should specify the same in the articles of association when the company is registered to benefit from the waiver of the minimum capitalization requirement.

Other than the minimum capitalization requirement, there is no requirement for a minimum level of domestic equity participation under Ethiopian investment law. Once an investment project is established and operational, it is clearly left to a company’s managers to make all key decisions without Government authorization or interference.

**Investment Incentives.** Ethiopia offers a number of incentives to investors. First, they are fully exempted from customs duties and import tariffs on all capital equipment and up to 15% on spare parts and from export taxes. Income tax holidays are given, varying from 1 to 5 years (depending on the sector and region within Ethiopia). In addition, investors can carry forward initial operating losses and are free to use any depreciation method in their financial statement. Investment guarantees for FDI include full repatriation of capital and profits. The term “capital and profits” encompasses profits, dividends, interest payments on foreign loans, asset sale proceeds, and technology transfer payments.

With regard to investment protection, Investment Proclamation 280/2002 provides protection against expropriation or nationalization. It states that no private investment may be nationalized or expropriated except when dictated by public need, and then only in accordance with the law. In the event of nationalization or expropriation, the constitution guarantees advance payment of adequate compensation corresponding to the prevailing market value of the investment. There has been no instance of expropriation since the assumption of power by the current Government in 1991.

Because Ethiopia does not distinguish domestic investment from FDI, the country’s incentives system is the same for both. This is a sound, nondiscriminatory policy, and it is also the direction pursued by some countries that started with the two-policy strategy. The only possible “discrimination” occurs in the pre-admission subsector restrictions discussed earlier in this section.

**Post-Admission Restrictions: Performance Requirements.** Ethiopian FDI policy does not explicitly require foreign firms to meet specific performance goals or guidelines, such as export limitations, foreign exchange restrictions for imports, minimum local content levels in manufactured goods, or employment limits on expatriate staff. In some countries, once a foreign investor is permitted to enter the host state, restrictions can still be imposed on the ownership or operation of the foreign investment. The most common forms of post-admission restrictions are
performance requirements, which are used to optimize the impact of FDI. Performance requirements are stipulations, imposed on investors, requiring investors to meet certain specified goals with respect to their operations in the host country. Broadly speaking, Ethiopian investment laws do not have any significant post-admission restrictions.

**Screening and Registration.** Together with the application for an investment permit, a potential investor must submit supporting documents. The EIA will, upon receipt of the documents, issue a certificate of registration evidencing the formation of a branch of an overseas company.

The operation of any business organization in Ethiopia will be governed by the 1960 Commercial Code of Ethiopia, which recognizes the following forms of business organizations: (a) general partnership, (b) limited partnership, (c) share company, and (d) private limited company. The most common of these are private limited and share companies. Any two individuals may set up a private limited company, but a minimum of five founders is required to establish a share company, which is a public company. An individual investor may also invest as a sole proprietor, with full equity ownership in most areas.

Areas open for joint-venture investment with the Government are the manufacture of weapons and ammunition and telecommunication services. By reducing the minimum capital requirement, the investment proclamation encourages joint ventures with Ethiopian individuals and companies. Partially or fully foreign-owned companies may sell their shares in accordance with the law. However, there are no stock markets to facilitate the quick disposal of shares.

**Acquisition of Immovable Property and Access to Capital.** Articles 390–393 of the Ethiopian Civil Code prohibit foreign ownership of immovable property except by “imperial order.” However, Article 38 of Investment Proclamation 280/2002 gives a foreign investor the right to own a dwelling house and other immovable property necessary for his investment. Article 38 of Proclamation 280/2002 can, therefore, be considered an exception to the Civil Code.

Legally established foreign companies in Ethiopia have access to domestic bank loans on the same terms as domestic investors. Exporters also have access to external loans and suppliers’ or foreign partners’ credit in keeping with the directives of the National Bank of Ethiopia (NBE). However, foreign investors must have their investment capital, external loans, and suppliers’ or foreign partners’ credits registered with the NBE.

**Access to Land.** The 1993 Urban Land Proclamation gives investors the use right of land on leasehold for periods of up to 99 years. The land cannot be mortgaged or sold, but the lease value of the land and the fixed assets thereon may be mortgaged or transferred to a third party. State governments and municipal administrations are authorized to allocate rural and urban land free of charge or on lease, in accordance with the provisions of their laws. Investment projects in social services, such as hospitals and educational institutions, may acquire land free of charge, while export-oriented investment schemes may obtain land at reduced lease prices. All other projects may rent land through public auction or through negotiation with the relevant authorities.

Regional governments are expected to allocate land to investors within 60 days of receiving their applications. Article 35 of Investment Proclamation 280/2002 provides that “[when] a regional
government receives an application for the allocation of land for an approved investment, it shall deliver within 60 days, the required land to the investor.” However, this does not always occur in practice because there is no sanction if a regional or local government does not meet the 60-day requirement. The lease price of urban and rural land varies according to location, type of investment, and class of land. The high cost of land lease and the lengthy bureaucratic process are considered impediments to investment inflows. This Report’s section on Real Property discusses the adverse effects on foreign and domestic investment of the current land laws and procedures and makes a number of recommendations on how they can be addressed.

**Exchanging and Remitting Funds.** A foreign investor has the right to take the following remittances out of Ethiopia in convertible foreign currency:

- Profits and dividends;
- Principals and interest payments on external loans;
- Payments related to technology agreements;
- Proceeds from the sale or liquidation of an enterprise; and
- Proceeds from the sale or transfer of shares or partial ownership of an enterprise to a domestic investor.

Although Article 20 of Proclamation 280/2002 guarantees to foreign investors the right to make remittances, domestic investors who do not have the same assurance and remittances are subject to NBE approval. Also the trading rights of foreign investors are limited because import and export trade, except material inputs for export products, is reserved for domestic investors.

Ethiopia has signed the World Bank’s convention on the settlement of Investment Disputes and Nationals of Other States. A Multilateral Investment Guarantee Agency (MIGA) guarantee program is also operational.

**Exit from FDI.** The Commercial Code of Ethiopia (1960) provides for the dissolution and winding up of legally established business organizations. The possible reasons for dissolution of the different types of business organization recognized by the Commercial Code are also provided.

One legitimate reason for the dissolution of a share company, for example, may be the resolution of an extraordinary general assembly of shareholders. Having resolved to liquidate, the general meeting must appoint liquidators, if provisions are not made for such appointment in the memorandum or articles of association. The liquidators must follow the rules and procedures of the Commercial Code in liquidating the share company.
Private limited companies and joint ventures may be voluntarily liquidated according to the provisions of their memorandum or articles of association and according to the Commercial Code. The liquidation processes of joint ventures must also consider joint-venture agreements. Article 218 of the Commercial Code provides for the dissolution of a business organization “for good cause” by court order at the request of a partner. Foreign investors may also exit by selling or transferring their assets, shares, or enterprises. Foreign investors have the right to remit proceeds from the sale or liquidation of an enterprise and from the transfer of shares or partial ownership of an enterprise to a domestic investor. Article 1155 of the Commercial Code also provides that commercial business organizations may be adjudged bankrupt.

Dispute resolution. The legal system in Ethiopia follows the Continental legal tradition, and most disputes—investment and others—are resolved through litigation in court, although arbitration and alternative dispute resolution are becoming increasingly popular. Some legislation, such as the employment law, expressly encourages the mechanisms of mediation and negotiation.

C. Implementing Institutions

The Ethiopian Investment Agency is the principal government organ responsible for promoting, coordinating, and facilitating foreign investment in Ethiopia. It is accountable to the Board of Investment chaired by the Minister of Trade and Industry.

The EIA has been restructured recently with a view to promoting more FDI and to improving the services provided to investors. It is now organized into four functional departments:

- Investment Promotion and Public Relations;
- Investment Facilitation and Aftercare;
- Planning and Research; and
- Licensing and Registration.

With respect to foreign and domestic investment, the EIA is responsible for the following tasks:

- Issuing investment permits, work permits, trade registration certificates, and business licenses as part of its one-stop-shop service;
• Promoting and facilitating FDI, including the registration of technology transfer agreements and export-oriented non-equity-based collaborations with foreign enterprises;
• Monitoring the implementation progress of licensed investment projects;
• Negotiating and, upon Government approval, signing bilateral investment promotion and protection treaties with other countries; and
• Advising the Government on policy measures needed to create an attractive investment climate for investors.

The EIA is always trying to improve its service delivery. However, some of the people interviewed said that the EIA has limited capacity to promote and facilitate investment. In particular, there are constraints in terms of providing adequate information on investment opportunities and sources of capital, and in advising the Government in how to improve the internal policy environment.

D. Supporting Institutions

Ethiopia has a number of private sector institutions involved with trade and investment. These include the Ethiopian Chamber of Commerce and Sectorial Association; the AACCSCA; and the Ethiopian Coffee Exporters Association.

**Ethiopian Chamber of Commerce and Sectorial Association.** Established in 1947, the Ethiopian Chamber of Commerce is an umbrella organization consisting of 12 city chambers, including the AACCSCA. Its main activities include coordinating the activities of the 12 city chambers; finding foreign markets for exportable commodities; organizing exhibitions, seminars, and trade fairs; and preparing commercial journals and conducting studies.

The services of the Ethiopian Chamber of Commerce and Sectoral Association, as well as those of all the other city chambers, are limited as a result of financial constraints, lack of sufficient office space, and, especially, the absence of a coherent policy framework. In general, the chambers lack competent staff as well as modern communication facilities such as fax, telephones, and computers. To improve the service of the chambers, staff must be trained in a number of areas, including assessment of markets and research.

**Addis Ababa Chamber of Commerce and Sectorial Association.** The AACCSCA is by far the largest, oldest, and most influential organization of its kind in the country. Its functions include providing technical and advocacy services to the business community; organizing trade fairs and overseas trade missions; providing business skills training; publishing business directories and advisory leaflets; and conducting specific studies. Most important, it serves as a bridge between the Government and the business community in Addis Ababa. It is the only representative body that speaks with authority on behalf of the business community. The AACCSCA advocates for and represents the business community through reports and regular meetings with Government officials as well as through the press and media.

The AACCSCA disseminates information not only on business developments in Addis Ababa, but also on the economy as a whole. Such information includes information on national economic
and social indicators, trade regulations and procedures, country profiles, business opportunities in other countries, technology information, and a list of international conferences, seminars, and exhibitions. Additional information is disseminated through its two bimonthly newspapers, *Trade and Development* (in Amharic) and *Addis Business* (in English). In addition, the AACCSA publishes the *Addis Ababa Business Directory* every 2 years.

**Ethiopian Coffee Exporters Association.** The main objectives of the Ethiopian Coffee Exporters Association (ECEA) include improving the quantity and quality of coffee production and export; standardizing and streamlining coffee trading among and between members and coffee traders; establishing and ensuring a just, fair, and honest commercial code of conduct; and advocating the views and opinions of the ECEA to the Government and other concerned agencies on measures regarding the production, quality, and trading of coffee. ECEA provides market information and training to its members. It also participates in trade fairs and trade missions. The effective delivery of its services is limited, however, due to financial constraints, including lack of sufficient staff members.

**E. Social Dynamics**

Ethiopia has great potential to be regarded as a promising country in which to invest. The potential size of the domestic market is one of its attractions. Because most of the private sector views the economy as moving in the right direction, even if it is doing so at a pace much slower than it would prefer, the market potential is regarded as a strong plus, although the population of 77 million is poor even by African standards.

Ethiopia’s long history is another unusual feature, which contributes to its stability as a state and gives it an asset with commercial value, if it can be properly exploited, to attract tourism. Although the country is marked by a great variety of regions, languages, and ethnic groups, it is free of tensions between its two major religions, Christianity and Islam, and notably free of crime and corruption.

The absence of what might be called routine grand corruption is perhaps the most notable feature of the Ethiopian business environment. This is unusual not only compared to other African countries, but also compared to the developing world as a whole. As elsewhere in developing countries, investors complain in Ethiopia about bureaucratic hassles and delays, but unlike in most other developing countries, in Ethiopia being asked to make “unofficial” payments is rare. Although routine bureaucratic corruption is largely absent in Ethiopia, the Government has reacted to some actual or suspected cases of corruption with strong anti-corruption measures, which some investors view as an overreaction that has unhappy and unintended consequences.

**F. Recommendations**

Based on the foregoing, the following recommendations are made:

1. Although some of the sectors currently closed to FDI are not those where international corporations normally operate, the restrictions may not give a positive welcoming image to potential foreign investors. Moreover, in some of the reserved (closed) sectors, in particular air transport, travel operations, and financial services, the financial and trading
skills of foreign investors may have an important positive influence on domestic investors and may stimulate domestic investment activity. Therefore, the Government should review these exclusions with the intention of reducing the sectors that are currently closed to FDI to a minimum level.

2. Ethiopia should revisit and reduce its minimum capital requirement for investments.

3. The EIA is seriously under-resourced in terms of the necessary scale and content of its investment promotion activities; its staffing, equipment, and information resources; and its access to and status with other relevant Government departments and agencies. To undertake effective promotional work, the EIA should be strengthened.

4. WTO accession will stimulate FDI by signaling to potential investors that Ethiopia has bound itself to rules that are investor friendly. Therefore, the Government should speed up the accession process.
XI. International Trade Law

A. Introduction

Ethiopia’s trade regime contains the key provisions that support economic development, although much of the supporting legal and institutional architecture to promote trade remains underdeveloped. The structural adjustment program of the 1990s resulted in a streamlined tariff structure with six bands, a maximum tariff of 35%, and a trade-weight average tariff level of 17.5%. Despite the reforms to the trade regime in the 1990s and early 2000s, however, additional reforms are needed before the regime is up to international standards of “good governance”; additional reforms are needed particularly in the areas of transparency, due process, trade facilitation, and pro-poor strategy. Moreover, interviewees noted that trade-supporting institutions, such as Chambers of Commerce, the courts, and trade-related Government bodies, remain hampered by a lack of political latitude to reform their own institutions and their inability to retain quality personnel.

The Government of Ethiopia’s decisions to apply for membership in the WTO and to sign a bilateral partnership agreement with the EU both present excellent opportunities to further modify the trade regime to ensure that Ethiopia’s trade policies make a maximum contribution to the country’s development and to promote domestic and foreign investment. Until Ethiopia submits to the WTO its memorandum on its foreign trade regime, however, the WTO accession process will not begin in earnest, to the detriment of the economy as a whole. Substantial work to revise legislation in the customs, intellectual property, and investment laws will mark significant improvements to the trade regime and be supportive of increased international trade.

B. Legal Framework

Overall Legal Framework. Ethiopia’s basic laws governing international trade are generally sound. Regarding international trade, there are a number of legal, regulatory, and procedural hurdles that, on one hand, have the potential to stymie growth, but on the other hand, can be fixed with relative ease. According to private sector actors who engage in trade, the laws and regulations that currently have the most restrictive impact on international trade transactions include the foreign exchange regulations administered by the NBE, the monopoly power of the State in service areas (including shipping, financial services, and telecommunications), and the lack of formal trade facilitative legal infrastructure such as transparency and due process provisions.

The basic trade regime with regard to goods is, in general, non-discriminatory. Imported goods appear to be treated no less favorably than domestic goods with respect to internal taxes and regulations. Except for the preferences noted in this section’s discussion of bilateral regional trade agreements and duty exemptions provided in the investment regime, there is no discrimination on the basis of origin of imports. As noted earlier, trade in services is restricted in certain areas. Interviewees, especially those from Government offices, expressed serious concern over the potential loss of domestic service providers if the country proceeded with full-scale liberalization in this area. With the upcoming accession process to the WTO, the trade regime
will be subject to rigorous examination, with this area being of particular interest to the country’s trading partners.

**Customs and Tariff Regime.** Since 1993, the Ethiopian Government has implemented a series of customs tariff measures that, by 2003, had resulted in Ethiopia having a six-band tariff structure, with a maximum tariff of 35% and minimum of 0%. The 2002 version of the harmonized system has been in place since January 1, 2003. Import tariffs are ad valorem (i.e., proportional to the value of the product) and all export taxes have been abolished except the export tax on coffee, which has been suspended since 2003. Quantitative import restrictions in the form of import bans are applied only to five categories of imports: used clothing, certain drugs, seeds with terminator gene technology, organic fertilizer, and soil and ethyl and denatured alcohols. In addition, preferences are provided for in the Common Market for Eastern and Southern Africa (COMESA) agreement and in Ethiopia’s bilateral trade agreement with Sudan, and the second schedule of the tariff book contains a Schedule A, which addresses conditional exemptions at reduced or zero rates, and a Schedule B, which covers general exemptions for importation by or on behalf of privileged organizations, privileged persons, public bodies, and institutions.

The laws governing customs and the customs clearance process are scattered through several proclamations. At the request of ECuA, however, a Customs expert working with the USAID Doha Project for WTO Accession and Participation–Ethiopia prepared a comprehensive draft customs law that is fully consistent with WTO and World Customs Organization requirements. A Customs Authority team has revised this draft and has circulated it to stakeholders for comment. Although international experts who have reviewed the draft have suggested changes to the Customs Authority’s draft to make it fully compatible with WTO rules, the important point is that the ECuA is seeking to have in the near future a revised Customs Law that will allow Ethiopia to have, by the time it joins the WTO, a law that is fully consistent with WTO rules, with requirements of the World Customs Organization, and with the draft COMESA Customs Management Act. This new law will address gaps in the areas of customs valuation, rules of origin, and Customs’ authority to administer modern inspection techniques, such as post-release audits. In light of the advanced state of this legislation, this Report does not address existing Customs legislation.

**WTO Accession.** Ethiopia’s decision in January 2003 to start the WTO accession process came after the country had held observer status for about 6 years. The Government established a steering committee to oversee the process and a technical committee to undertake the technical work. The technical committee, with representatives drawn from the relevant Government institutions that regulate aspects of international trade, prepared the draft Memorandum on the Foreign Trade Regime, which is awaiting approval by the Council of Ministers. More than one interviewee noted that this body still lacks substantial and necessary oversight capacity given its important role in joining the WTO and in harmonizing Ethiopia’s trade regime. To address the concerns of the private sector and other stakeholders, the Government needs to establish a mechanism for meaningful and timely consultations with these groups during the WTO accession process and for the negotiation of other trade agreements. This is an area of particular concern to traders who view (rightly or wrongly) Government officials as relatively less informed of the implications of the policies that they set.
Before the decision to join the WTO was made, the Government conducted an impact assessment study during the country’s observer status period to assess the implications of accession on national economic policies and strategies. The study found that most of Ethiopia’s trade-related laws, rules, and regulations were consistent with the WTO agreements. Since applying, Ethiopia has also undertaken, with donor assistance, impact assessment studies on: (a) agriculture, non-agricultural products, and a few services sectors with funding from the EU and (b) with UNDP funding, the agreements on (i) Sanitary and Phyto-sanitary Measures, (ii) Technical Barriers to Trade, (iii) Trade Related Investment Measures, and (iv) Customs Valuation. The World Bank is funding ongoing impact assessment studies on the telecommunication and financial services. Ethiopian leaders have been particularly eager to learn from the experiences of other countries that have acceded to the WTO.

Given that Ethiopia is still early in the WTO accession process, the extent to which the process will result in changes to Ethiopian laws and regulations is difficult to predict. However, one can expect that the trade regime will have to become much more transparent. Although proclamations and Council of Ministers–issued regulations must be published in the Ethiopian Federal Negari Gazatat, the official gazettes, directives issued by ministries and agencies do not have to be published, and many are not. Further, some ministries and agencies do not have websites, and even those that do have websites do not always include on them the consolidated updated versions of their laws, regulations, and directives. Two agencies whose regulations have a direct impact on international trade, the ECuA and the NBE, do have websites that post a number of their regulations; these websites, however, could be made more user-friendly.

The impact assessment studies and interviews with key stakeholders suggest that, in addition to the need for a more transparent trade regime with more complete advance publication of laws, regulations, and directives affecting trade, Ethiopia must strengthen its standards-setting regime. This regulatory reform is necessary to ensure effective oversight of the way agencies impose new mandatory standards; to strengthen the ability of agencies to help exporters satisfy both mandatory and voluntary foreign health, safety, and quality standards; and to ensure the most efficient use of Government resources.

**Bilateral Trade Agreements.** Ethiopia has signed nearly 100 bilateral trade and trade-related agreements. Many of these agreements provide for most favored nation (MFN) tariff treatment with countries that are already WTO members or are acceding countries. A number of agreements with neighboring countries deal with transportation-related matters, such as road transport. The 2002 preferential trade agreement between Sudan and Ethiopia provides for duty-free trade between the two countries. Imports from Djibouti of salt, fish and fish products, and bottled or canned water are also exempt from duty.

Developed countries are Ethiopia’s most important trading partners. For this reason, the preferential access that Ethiopia enjoys in developed country markets under programs such as the EU Everything But Arms and the U.S. African Growth and Opportunity Act is important to Ethiopia. About 28% of Ethiopia’s exports go to the EU, 7% to Japan, and 4% to the United States. These flows are often volatile, however, reflecting in large part the degree to which Ethiopia’s economy is tied to rain-fed agriculture.
Regional Trade. Ethiopia is a founding member of COMESA and as part of its commitment to regional integration applies tariffs on imports from COMESA countries that are 10% below the MFN tariff. Ethiopia has not, however, joined the COMESA Free Trade Area, which provides for elimination of duties on trade between COMESA members. Ethiopia has signed a regional agreement on economic integration with the Inter-Government Authority on Development (IGAD), which is composed of Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, and Uganda. Ethiopia is also a member of the African Caribbean and Pacific European Union (ACP–EU) Economic Partnership Agreement and participates in negotiations to establish an Economic Partnership Agreement with the EU.

However, regional trade does not account for a large percentage of Ethiopia’s total trade. Because of chat exports, Djibouti accounts for 22% of Ethiopia’s exports, but aside from chat, Ethiopia’s recorded trade with its neighbors is relatively insignificant.

State Trading. Ethiopia still has a number of State enterprises engaged in the production and commercialization activities of goods and services. Ethiopian law provides that certain State enterprises or agencies have the exclusive right to import specified products. For example, the Petroleum Enterprise has the monopoly to import and distribute petroleum products; the Ethiopian Telecommunication Corporation has the exclusive right to import communications apparatus; the National Lottery Administration has the exclusive right to import gaming machines, lottery tickets, and games; the Ministry of Defense alone may import armaments, dynamite, and fire guns; and only the Ethiopian Tobacco and Cigarette Enterprise may import cigarettes.

Competition Policy and Trade Remedies Legislation. The Trade Practice Proclamation (Proclamation No. 329/2003) lists anti-competitive practices as “price fixing, collusive tendering, consumer segmentation, allocation of quotas of production and sales, and refusal to deal or sell.” Although the Commercial Code of Ethiopia contains articles on competition issues, such as Articles 130–134; the Commercial Code focuses more on preservation of the good will of a competitor. The new proclamation is relatively comprehensive and seeks to address competition problems arising between business competitors and between businesses and consumers. Competition policy issues are fully discussed in the section on Competition Law and Policy.

The Trade Practices Proclamation identifies dumping as an anti-competitive practice, but the proclamation does not require investigations to follow the procedures established by WTO rules. Ethiopia currently has no other trade remedies legislation.

C. Implementing Institutions

Under the Ethiopian Constitution, the House of People’s Representatives is the highest authority of the Federal Democratic Republic of Ethiopia (FDRE) and its authority includes the power to enact specific laws on inter-state commerce and foreign trade. The highest executive power is vested in the Prime Minister and the Council of Ministers. The Council ensures the implementation of laws and decisions adopted by the House of People’s Representatives, and is also responsible for formulating and implementing economic and foreign policies.
The Ministry of Trade and Industry (MoTI) has lead authority for implementing trade policies. Article 35 of the Commercial Registration and Business Licensing Proclamation No. 67/1997 provides that State institutions are to consult with MoTI before making policy decisions that may affect commercial activities, and MoTI may propose policies to promote trade and to coordinate trade policy. In addition to MoTI, the Ministry of Agriculture and Rural Development, the Ministry of Revenues, and the Ministry of Foreign Affairs are also responsible for implementing laws related to foreign trade. The Investment Authority, Quality and Standards Authority, and Export Promotion Agency also have roles in international trade, and are accountable to MoTI. Monetary policy, including policies on the availability of foreign exchange for international trade activities, are initiated by the Ministry of Finance and Economic Development, in cooperation with the NBE and related organizations. The Ministry of Revenues is the principal entity for initiating and implementing policies with respect to customs and duties, and the ECuA is accountable to the Ministry of Revenues.

D. Supporting Institutions

This Report’s section on Trade in Goods and Services details the institutions that support the implementation of trade policies in Ethiopia. Of particular note is the role of donors in supporting Ethiopia WTO accession. Donors, in consultation with the WTO Affairs Department of MoTI, have developed a WTO Accession Roadmap that identifies the activities that donors are planning to support WTO accession.

The formulation of effective trade policies requires meaningful consultations with the private sector and other stakeholders. Although there are some public/private sector consultation mechanisms in place, a more comprehensive and more elaborate system is probably needed to ensure effective and meaningful consultations. Fortunately, donors are supporting the strengthening of private sector institutions, such as the national and city Chambers of Commerce and other associations (e.g., Ethiopian Women Exporters Association), and this support should enable private sector associations to provide more meaningful contributions to the policy formulation process.

E. Social Dynamics

The Government of Ethiopia places a high priority on the promotion of Ethiopian exports. Although supply-side constraints such as the transportation infrastructure and competitiveness of producers pose the biggest challenges to achieving the Government’s export promotion goals, improving the policy environment for trade can make a positive contribution. WTO accession and the Economic Partnership Agreement (EPA) negotiations with the EU both offer the Government major opportunities for obtaining and focusing donor support on efforts to improve the trade policy environment. Both the private sector and the Government are becoming increasingly aware of the importance of these two negotiations. Fortunately for Ethiopia, the reforms and policy changes that Ethiopia needs to undertake to join the WTO are the same reforms it needs to undertake to succeed in, and benefit from, the EPA negotiations.

F. Recommendations

Based on the foregoing, the following is recommended:
1. Move forward with the WTO accession process as quickly as possible.

2. Strengthen the mechanism for stakeholder consultations on trade policy matters. A formal consultation mechanism with the private sector and civil society needs to be established.

3. The Ministry of Trade and Industry needs to employ staff with adequate management as well as technical expertise to cover the WTO, African Growth and Opportunity Act (AGOA), COMESA, ACP-EU negotiations, and other bilateral agreements. Staff must have skills in trade policy analysis, formulation, and negotiation.

4. The Ministry of Foreign Affairs, in consultation with MoTI, should ensure that officials representing Ethiopia abroad are well equipped to deal with trade negotiations.

5. MoTI should play an active role in the promotion of Ethiopian exports through initiatives such as the EU Everything But Arms Initiative and AGOA. The services of the Ethiopian Quality and Standards Authority need to be improved to help Ethiopian products compete in the international market.

6. Efforts to strengthen trade institutions should not be carried out in isolation, but should take into account the overall development objectives of Ethiopia.
XII. Flow of Goods and Services

A. Introduction

This section analyzes the legal, institutional, and operational constraints that impede trade expansion and recommends practical steps to minimize those constraints. First, the analysis focuses on Ethiopia’s legal framework for the ECuA. Second, this section considers the institutional issues regarding ECuA management, organizational capacity, and operations. Third, this section reviews other key public institutions involved in trade facilitation, including the Ministry of Finance and Economic Development, the MoTI, the Ministry of Health, Quality and Standards Authority of Ethiopia, the Ethiopian Intellectual Property Office, and the Ministry of Agriculture, along with their respective roles in trade facilitation. Fourth, key supply-chain partnership groups (i.e., private–sector–based system of supporting institutions) are reviewed, including such groups as importers, exporters, customs brokers, trade associations, and others. Finally, this section sets forth recommendations to improve the state of trade facilitation in Ethiopia.

B. Legal Framework

For a truly facilitative environment, it is critical that laws and regulations pertaining to trade facilitation provide the following: (1) adequate and coherent authority structure for the essential trade-related institutions; (2) clearly stated regulations and procedures, and that these authorities strike an adequate balance between facilitation and necessary control; and (3) the means to legally employ modern risk management techniques using selective inspections and post-release audits to accomplish their respective missions.

Ethiopia applied for admission to the WTO on January 13, 2003. In February 2003, a working party was established to assist Ethiopia in taking the necessary steps forward toward accession, but no meetings have taken place to date. The precursor to negotiations is the Memorandum on the Foreign Trade Regime, which has not yet been completed by Ethiopia. This is a complex task and often is considered the sole responsibility of the applicant.

Joining the WTO binds member countries to commitments and rules that include transparency of trade laws and regulations and progressive liberalization and modernization of international trade procedures. In addition, joining the WTO inspires confidence in the stability, predictability, and fairness of the country’s treatment of trading and investment partners. Implementing the new laws and regulations required for WTO membership will necessitate major changes in Ethiopian Customs and other control authority border procedures. Finally, joining the WTO allows developing countries to avoid marginalization in the international trade arena.

As noted above, the ECuA, with assistance from the donor community, has drafted a WTO-compliant Customs Law. Enactment of this new law and the issuance of implementing regulations are important steps that remain to be accomplished. Changing processes, enforcing the new rules, and educating Customs staff and the Ethiopian trade community are challenges that ECuA will face as implementation phases are undertaken and completed. Because of modernization efforts already completed or in process, Ethiopia has begun to take steps that will ease the accession burden. However, without enactment of the new Customs Law and accompanying careful monitoring,
evaluation, and planning, there is a high risk of continued noncompliance with international standards.

In addition to providing WTO compliance, the draft Customs Law also provides for essential functions for ECuA’s reform and modernization: licensing and regulation of Customs Clearing Agents, automation of essential functions, officer and trade anti-corruption measures, fiduciary compliance through post-release audits, and sound enforcement provisions consistent with international customs standards.

C. Implementing Institutions

The ECuA is the principal Government agency for border control and is part of the Ministry of Revenue (MOR). ECuA is the lead border agency, and provides 57% of Ethiopia’s revenue.

As stated in official publications, the major functions of ECuA are:

To assess values, collect duties and taxes, and collect license and service charges/fees;

- To examine documents of importers or exporters to enforce customs law;
- To establish customs stations in any Customs port, frontier, and post and transit routes;
- To approve the place and procedure for the deposit of import and export goods, establish warehouses, issue licenses to those who establish Customs warehouses, supervise the proper handling of deposited goods, and suspend or revoke warehouse licenses;
- To prevent and control the importation or exportation of contraband;
- To search any goods and means of transport entered into or departing from Ethiopia through customs ports, frontier posts, and other customs stations;
- To detain prohibited, restricted, or unregistered goods, and take the necessary measures for their disposal;
- To investigate customs offences, institute criminal proceedings, and pursue cases in court;
- To collect, organize, and disseminate import and export data for trade statistics;
- To carry out studies as to the levying, assessment, and collection of customs duties, devise ways to combat and repress contraband activity, and implement changes;
- To sell or dispose otherwise of abandoned and forfeited goods;
- To issue or revoke customs clearing licenses;
- To prepare and implement automated systems for the assessment and collection of duties, financial accounting, and related activities;
- To arrange for training and workshops to upgrade the efficiency of Customs officers; and
- To assist other Government control authorities with their import and export responsibilities.
ECuA has a complement of approximately 2,800 staff, made up of 1,800 civilian Customs officers (responsible for policy executive management and revenue collection) and 1,000 armed Customs police (responsible for control and security). The ECuA is organized as a headquarters in Addis Ababa, with 11 ports/Customs offices and nine stations for the Customs police. In addition, there is an advance information office external to Ethiopia in the Djibouti port that deals with the release of goods to allow transit to Ethiopia. Headquarters functions are represented in the regions. A reorganization that focuses on Customs reform measures is now being planned.

ECuA is beginning a program of modernization. In February 2006, ECuA issued the Integrated Reform Plan (Phase 1). The plan is comprehensive and outlines broad goals for the ECuA. A Customs Reform Unit is in the planning stages.

A 5-year plan (2005/2006 through 2009/2010) has also been issued. This plan focuses on the following:

- Capacity-building;
- Modernization, simplification, and development of new cargo processing and control procedures;
- Smuggling reduction;
- Automation improvement;
- Self-assessment of duty by importers;
- Improved transit procedures;
- Professionalism of the private sector; and
- Increased use of risk management and selectivity.

These plans are highly ambitious and involve major changes in current processes. They require resolve, monitoring and evaluation, and strong leadership.

The Ethiopian Government has set a vision of characterizing its services by modernity, effectiveness, efficiency, legitimacy, and honesty, and being able to render high-quality services at the level of other successful countries that are known for their implementation of internationally agreed customs practices and are respected for their integrity. ECuA has embarked on a path to reforming its activities and revisiting its philosophy of operation. The reform effort undertaken at Customs is part of the overall Civil Service Reform Program, which embraces the entire Civil Service System of Ethiopia. The plan focuses on addressing the following major problem areas:

- Corrupt practices by ECuA officials who provide unscrupulous importers with a competitive advantage over honest traders, through evasion of payment of the correct import duties and taxes.
- Despite dramatic improvements, it takes an excessively long time to clear goods and cumbersome manual procedures remain in effect, which add to the costs of the importer and create operational inefficiencies.
- The proliferation of contraband goods in the marketplace hampers industrial development, discourages business investment, and places the honest importer/trader at a disadvantage.
• The slow and antiquated process used to obtain rulings on the classification of goods leads to disputes between importers and the ECuA, which delay import processing and increase costs to the importer.

• The lack of qualified personnel and modern computerized systems in the ECuA impedes its capacity to rectify problems related to poor service to the business community and to the smuggling of contraband goods.

To achieve the overall objectives of the reform, the plan states that the ECuA will focus on the following:

• Simplification of procedures;
• Enhancement of the post-release verification and audit system;
• Strengthening the enforcement capacity;
• Revision of Customs Law;
• Organizational restructuring; and
• Human resource and information technology development.

The methodology used to facilitate trade and the standards by which to measure trade progress are well defined and accepted internationally, which makes the task of undertaking such reform less dependent on local conditions and culture. There is no debate about the desired end result and the techniques and tools that must be used to obtain it. In interviews with public and private officials, the ECuA was given much credit for the reforms already undertaken and the achievements to date. However, much remains to be done to fulfill their vision. Specific implementing institution issues to address include Customs procedures, automation, corruption, staffing, training, intellectual property rights, and risk management.

**Customs Procedures.** The ECuA has taken steps to simplify its procedures, but further streamlining, as recognized in ECuA internal plans, is needed. There are three major areas of duplication and complication:

• The NBE requires forms that duplicate the Customs declaration and require clearance of the letter of credit that is required for Customs release. In addition, banks can place holds on cargo shipments until their requirements are met. The involvement of banks in the Customs release clearance process adds a level of complexity that increases the expense and the time taken to complete international trade transactions.

• The other control authority functions (such as Agriculture and Health) have not been integrated into the Customs process. Cargo is subject to multiple uncoordinated examinations and separate forms that require much the same information. This lack of integration adds to delays and increases costs.

• Customs clearance procedures and the related Customs automated system should ideally be coordinated, with the automated system replacing and enhancing most manual processes. This has not occurred yet in Ethiopia. The ECuA has overlaid the manual process with the automated system, but it does not use the automated system’s functionality; all manual processes remain (e.g., logbooks are still compiled by hand, documents are stamped, and all paper is routed step-by-step). To illustrate this point, the ECuA is akin to a person who
enters their data into an MS Excel spreadsheet, but then uses a calculator to figure the sums. Thus, ASYCUDA++ has become a burden rather than a tool.

**Automation.** The ECuA has implemented and deployed ASYCUDA++, which is a great accomplishment and an advantageous means to achieve its ambitious goals of modernization and reform. ASYCUDA++ was activated in August 2004 and handles approximately 100,000 import and export transactions per year. A staff of 15 IT specialists maintains the system; unfortunately, these staff members are almost all recent hires because there is high turnover caused by low salaries and high private sector demand for IT professionals.

As noted, the full potential of the automated system has not been realized because the modules have not been activated or integrated with the manual clearance process, for the following reasons:

- The risk-management module, which would allow for selective examination of high-risk cargo shipments and immediate release without examination of low-risk shipments, has not been deployed.
- The transit module, which would allow a simpler and less paper-intensive procedure, has not been implemented. With the reliance on Djibouti as its main outlet to the sea, a secure and facilitative process using automation would be a major step forward for a land-locked country such as Ethiopia.
- Direct trader input (DTI) has not been fully implemented in Ethiopia. A variant of DTI has been implemented, but Customs officer input is required, rather than the system’s electronic validation and reception of declaration data. Most Customs systems, including ASYCUDA++, allow for the Customs declaration and other information to be electronically accepted and validated by the system after input to the clearance agents and importers/exporters. The current process is error-prone because many documents are handwritten, prevents possible selectivity options from being realized, and also causes extra work for the Customs port office.

**Corruption.** Salaries for public servants are very low and are not competitive with private sector salaries. In addition, harsh climates, poor schools, and inadequate healthcare options often contribute to the high turnover in Customs stations outside of Addis Ababa. Despite these challenges, Government officials and trade community members agree that corruption in Customs, although it exists, is at a relatively low level. However, many interviewees worry that as trade increases and as Ethiopia becomes more prosperous, corruption will increase. Currently, Ethiopia successfully combats corruption through a combination of social pressure, cultural norms, and legal restrictions. In addition, Customs procedures are designed for inherent transparency.

Customs does not have its own code of conduct, but relies on a code developed by the Ministry of Revenue. Customs does not have a table of discipline that specifies administrative punishment for different infractions. Infractions and allegations are investigated by the Federal Ethics and Anti-Corruption Commission (FEACC), which has primary anti-corruption responsibility for Ethiopia. FEACC in October 2006 established a telephone hotline for reporting corrupt activities.

**Staffing.** A stable, well-trained cadre of Customs officers is necessary for reform, modernization, and the maintenance of an effective and efficient Customs service. Salaries in the ECuA are not
commensurate with workload or with the complexity of Customs operations. For example, in 2005, more than 500 recent college graduates were hired to upgrade Customs frontline personnel. Today, 90% of those hires have migrated to better paying positions in telecommunications, banking, and nongovernmental organizations. In addition, political and party appointees, rather than professional career Customs officers, hold many professional positions within ECuA.

Training. Most training for ECuA’s employees is informal, on-the-job training. However, two classrooms are part of ECuA’s facilities and are used periodically for special sessions or updates. A lack of formal Customs training, basic and advanced, represents a lost opportunity to enhance professionalism and to correct individual bad practices, weed out incompetent hires, and provide standardized curriculums in Customs law, procedures, and ethics. Formal training for new hires has not been conducted for 2 years. A training plan is being developed in conjunction with the Ethiopian Civil Service College’s Institute of Tax and Customs Administration. This recently established institute will offer a joint curriculum for public financial management for Customs and the tax authorities. This institute will also provide training for Customs Clearance Agents.

Intellectual Property Rights. Training in how to identify counterfeit goods does not occur, and border officials are unfamiliar with procedures to be followed if counterfeit goods are encountered. This issue must also be addressed as part of the WTO accession process.

Risk Management. Risk management is a systematic approach to making decisions under uncertain conditions by identifying, assessing, understanding, planning, and communicating risk issues. For Customs and other border agencies, risk management provides a way for Customs to move from attempting to achieve total control of documents and goods for every shipment to a rational, data-driven process for selecting cargo for intensive examination. Most countries have adopted the risk management approach to facilitate the international movement of goods from compliant importers while devoting their Customs and other control agency resources to goods that have the highest potential impact on revenue, the economy, and the health and welfare of its citizens. Risk management deployment simply means that a large proportion of international shipments can cross the border quickly with no inspection and minimal formal requirements. In addition, the increased transparency reduces the opportunities for bribe solicitation and payment.

The move to capture transaction data in a modern automated system such as ASYCUDA++ provides the essentials for a risk management regime. However, the current risk management regime in ECuA is not an efficient Customs risk management regime. Rather, the ECuA regime is driven by the faxing of document copies to Customs Headquarters, where a decision is made on the enforcement level and on the level of Customs police involvement in the inspection. All shipments except diplomatic shipments are inspected. Selectivity is not practiced.

In addition, a post-release audit, an excellent means for verifying compliance and refining risk management techniques, is in the early stages of use by the ECuA.

D. Supporting Institutions

Although the ECuA is the main implementing institution for the movement of goods, an efficient trading system relies on an interdependent process that includes other trade-related public sector institutions, trade service providers, and the traders themselves—importers and exporters. Their capacities, honesty, and performance can result in significant costs (or savings) within the trading
system, and optimized trade facilitation depends on their active involvement. Like the ECuA, trade-related public agencies also need sound management, well-trained staff, modern equipment, modern facilitative procedures, and active dialog with the trade to respond in a timely manner and predictably to issues while guarding the public safety and the security of the country. In addition, the private sector trade community adds its expertise and familiarity with expert legal and logistical knowledge to the import/export process, which is crucial to the efficiency and overall compliance of international trade movements.

Public Institutions. The following traditional border agencies are present at ports and border checkpoints in Ethiopia: the Ministry of Finance and Economic Development, the Ministry of Trade and Industry, the Ministry of Health, Quality and Standards Authority of Ethiopia, the Ethiopian Intellectual Property Office, and the Ministry of Agriculture. Currently, the facilities of the Ethiopian border agencies (or other control authorities) and the number of officers are adequate for Ethiopia’s trade volume. In addition, many interviewees stated that positive and concrete steps have been made to increase facilitation and they are optimistic about the Government’s ability to achieve reform. Another factor that is important to reform is the support given to Ethiopia by the donor community and the coordination of donors’ activities, which are also important factors favoring reform.

Considering the potential for economic growth and the demonstrable increases in foreign trade, achieving a predictable, reliable, smooth, and efficient trade flow is necessary for a modern economy and for compliance with WTO principles.

Currently, there is little coordination between ECuA and the other control authorities. Each trader or Customs clearance agency must arrange their individual clearance, and forms containing duplicative information on the same shipments abound.

Although none of the agencies were considered serious impediments to trade, they suffer from the same issues as EcUA—poor staff retention and antiquated processes. Each agency has a limited presence at the border and often requires transportation to its offsite offices for examination or to perform clearances on an appointment basis. Limited training has been provided to Customs officials in how to detect or identify other control agency shipment problems and issues, particularly in the area of animal and plant diseases and infringing IPR goods. In addition, because responsibility for hazardous material shipments is not clear, there is lax or no enforcement. Complicating this issue, the automated system AYSCUDA ++ does not designate commodities that require other control authorities hold or procedures.

Private-Sector Institutions. The various categories of private-sector institutions that facilitate the movement of goods and services include the following: importers; exporters; transporters, including land, marine, air, and rail transporters; Customs brokers and freight forwarders; air transport delivery services; and trade associations.

Importers. Although imports are twice the volume of exports, and have increased 25% over the last 5 years, most of the import volume is attributable to humanitarian aid and products imported under Government contract, such as fertilizer. The other imports are attributable to a small private sector, mostly small shopowners, who personally purchase finished products from such countries as China and Dubai. The vast majority of importers (85%) are located in or near Addis Ababa. No major companies currently act as wholesalers or major retail outlets. Although there are no
restrictions for development of such enterprises, the private initiative and the capital necessary to undertake such projects is lacking at this time.

Although significant strides have been made toward simplification of import processing, reforms are needed to elevate Ethiopia to acceptable international trade facilitation standards. Minimum required import documents include original bills of lading, multiple copies of invoices and packing lists, and a certificate of origin.

State officials do not set out to cause problems for the importer or to collect illegal payments; however, they are intent on following the letter of the law, and often do not know the rationale behind a requirement. Progress on simplification of the process is slow because there is a fear that the change will have a negative impact on revenue collection, which is viewed as the primary function of Customs. Lower-level employees are hesitant to make decisions, usually referring matters to higher-level management. The higher within a ministry a problem is referred for resolution (and the sequence of steps is strictly adhered to), the greater the likelihood that an importer will obtain an informed decision that facilitates genuine resolution of the problem. To significantly reduce the time imported goods spend at the border, ministries should empower and train lower-level employees to make decisions and solve problems.

Importers often import a needed raw material, rather than sourcing it locally, to guarantee a consistent quantity and quality of production. Generally, State-owned companies, which are often the sole producers of a product nationally, are incapable of producing a high-quality product on a consistent production schedule at a reasonable price. Even with the high applicable duties and excise taxes, an equivalent import has a lower price.

Export incentive programs are not offered to parties other than the actual exporter, which discourages the purchase of products from local sources. Thus, importers who sell their products, such as packaging material, to an exporter cannot claim a refund of the import duties and taxes even though this would lower the cost of the exporter’s inputs. As a result, an exporter might often find that the cost of an imported product from a local supplier is higher than the cost if the exporter sources the product abroad directly and claims a duty exemption.

The import process remains heavily bureaucratic, document-intensive, and time-consuming, and traders view Customs as a major bottleneck in the import process. The general rigidity of Customs and the burdensome and time-consuming process at times results in imported cargo incurring storage charges at the port and in some cases, abandonment of the goods. An impaired competitive environment attributable to both the high volume of contraband and presence in the marketplace of party and public institutions, particularly in the cement and sugar industries, impedes the growth of private enterprise.

Moreover, use of the standard prices maintained and published by Customs for import valuation in lieu of invoice values lengthens the time and cost of preparation of Customs documentation. Such use is also in contravention of General Agreement on Tariffs and Trade Article VII that offers model statutes (beginning with transaction value) for Customs valuation, which must be followed upon Ethiopia’s accession to the WTO.

Exporters. The Ethiopian Government recognizes that growth of exports is an important engine of poverty reduction and economic development. The Government’s firm and continuing
commitment to expanding exports has resulted in improved facilitation of the export process. Because more than 50% of Ethiopia’s gross domestic product (GDP) results from agriculture-based production, the Government’s commitment to expansion of export markets is concentrated in these areas; exports of manufactured goods account for only 7% of GDP. Although the Government is currently using the floriculture industry, which is in its infancy, as its model for expansion, and has allowed FDI as the growth engine, exports continue to be dominated by oil seeds, coffee, meat, and leather.

**Export incentives.** Three export incentive programs, administered by the Export Incentive and Facilitation Department of the Export Promotion Agency under the MoTI, allow duty-free and tax-free importation on inputs. Two companies currently use the traditional manufacturing duty-drawback program, whereby taxes are paid on importation of inputs and then refunded after export. This process has been streamlined by Customs, and refunds, which used to take years to receive, now are processed in 2–3 months.

The most popular export incentive program is the voucher program, with 62 beneficiaries. Under this program, the exporter files with the Facilitation Department a yearly plan of intended imported inputs, with calculated duty and tax liability. A numbered voucher is then issued, usually within 2 to 3 days, that allows the trader to import listed products free of duty for a 1-year period, so long as the voucher amount is not exceeded. Customs reconciles the imports and exports annually. Although this widely used voucher program facilitates import of inputs through a procedure that does not require upfront payment and subsequent refunds, yearly estimates and reconciliations are time-consuming and should be streamlined.

The third incentive program, which is used by only one exporter at this time, requires the importer to establish a bonded warehouse where the trader can store imported inputs without duty payment, and then withdraw for production under Customs supervision. The reimbursable cost of having the Customs person on site prohibits this program from being used extensively.

Notwithstanding these incentive programs, State intervention in the flow of goods across borders is intensive and needs to be decreased significantly. For example, coffee exports must be inspected by the Coffee and Liquor Unit of the Ministry of Agriculture for quality control purposes after the shipment is loaded for export. This requires the transporter to make an additional stop on the way to the port and is an example of Government involvement in an area usually negotiated and resolved between the private parties to the transaction. Similarly, meat exporters face regulatory restraints, with as many as 10 institutions overseeing the export process. Most exported agro-products require a minimum of two governmental inspections, which are performed sequentially rather than simultaneously. These processes add costs and delays to the shipment.

**Significant export sectors.** Exports of a limited number of fruit and vegetable products are dominated by State and party-owned enterprises. The international fruit and vegetable markets are complex and dynamic, and the Government lags in compliance with international standards such as the Good Agricultural Practice of the European Union, which regulates multiple aspects throughout the supply chain. Such problems inhibit export growth in these sectors.

The coffee industry is of primary importance to Ethiopia, accounting for about 60% of its foreign exchange. The sector operates in a high-risk environment. There is daily volatility of prices dictated by the multiple markets on which coffee is traded, including both spot and future commodity
markets. Turnover within the sector is high and changes in the patterns of moving the product from grower to buyer are changing.

Until recently, coffee generally passed through a minimum of two middlemen before export. The first, called collectors, add value by collecting, washing, sorting, and bagging the product for the required sale at the public auction, operated by the Coffee and Tea Authority. Then licensed coffee exporters (about 100 registered with 20 actively engaged) purchase coffee from the auction, wash and re-bag the product for export, negotiate the export sale, and arrange for clearance and transport of the goods to the port.

A move to have farmers receive more for their products by organizing them into cooperatives that can sell directly for export is changing this traditional pattern. Ten percent of coffee for export is now purchased directly from the farm cooperatives/unions, and it is anticipated that this pattern of export will continue to expand. In effect, farmers are now exporters, and exporters are becoming farmers. Organizations such as the Coffee Exporters Association must be reinvented to represent this new reality.

Hides, skins, and leather (HSL) is another significant export group, with tanners representing the largest subgroup within the sector. Twenty-one private commercial tanning operators dominate the market, although there are still two State-owned tanneries in operation. Current export volume is US$67 million. Ninety percent of the hides are exported, principally to the EU (60%) and Asia (30%). The major problem confronting the industry relates to the quality of the raw hide, which the Ministry of Agriculture is working to improve.

There are about 50 textile and garment producers, 11 of which are State-owned. Only 15, all private, are currently engaged in exporting. Most of the State-owned companies are inefficient due to a lack of investment over long periods of time, and produce fabric rather than garments. The private firms currently exporting garments are supported by foreign investment, principally from the United States. Raw materials for garment production are both imported and purchased domestically. The Ethiopian Textile and Garment Manufacturing Association, formed in 2004, represents almost the entire sector, including the State-owned enterprises.

The floriculture industry is the export sector currently targeted for significant growth and is being used by both Government and industry as the model to develop other export sectors. In addition to incentives offered by the Government, the good climate, abundance of land and cheap labor, and competitive air freight rates to the EU make it a viable industry. Projections are that the industry, currently at US$20 million, will reach US$100 million by 2007, and become the principal Ethiopian export commodity.

Currently about 50 to 60 private companies manage flower farms, with almost all exports destined for the EU. The majority are local investors, although foreign investors, principally Dutch, German, and Israeli, are major growers that bring extensive experience to the trade. The industry has a limited number of large operations (350 hectares or more under cultivation), some medium-sized operations (20 to 50 hectares under cultivation), and a majority of small producers (about 5 to 20 hectares under cultivation). Most operations are located within 150 miles of the capital.
Flower exporters have full-time Customs Inspectors on site at the farms, on a reimbursable basis, to inspect the shipment when loading, and to accompany the product to the airport facility to eliminate any problems or delays in delivery.

Lack of high-quality, cool-chain management negatively affects flower export production, prohibits Ethiopian flowers from being recognized as consistently high quality, and prevents operators from receiving the maximum prices. Ethiopian roses are generally considered to be of low or variable standards. Although present cool-chain facilities are acceptable, improvements must be made to ensure the consistency and quality of the flowers. Prices decrease a minimum of 10% when temperature at arrival exceeds 10–15ºC. Flowers then often have bent stems, are open, and must be examined for the presence of fungus. Lack of IPR protection for new plant varieties also impedes the introduction of innovative products for production.

Exports: Additional areas of concern. One issue that significantly affects exporters is the lack of availability of containers, particularly in the garment industry; where this shortage impedes maintenance of delivery schedules, which are critical for the current just-in-time inventory approach of international buyers. Coffee exporters are also affected by higher-than-normal pilferage rates because they must transport their cargo to the port in bags.

Transporters. Ethiopia is landlocked and has no commercially navigable rivers; thus, it lacks the transport option that generally offers the lowest costs for moving break-bulk (non-containerized) cargo. Moreover, Ethiopia’s rail system is antiquated and is used only minimally for trade; 80% to 90% of imports and exports move via truck along the Addis Ababa–Djibouti corridor through the Port of Djibouti, a trip of 925 kilometers. Transit time is 3–4 days and most truckers average only three round trips per month. The current highway is not adequate to handle fast, unobstructed movement of commercial traffic. Privately owned and operated toll roads that could be used in parallel with the existing highway system to accommodate commercial traffic are not under consideration, even though such roads are in use elsewhere in Africa. Likewise, donor funding for inter-modal projects such as the linking of rail and road transport from Ethiopia to the port of Mombasa, Kenya, is currently not available.

Road transport. The trucking sector is dominated by about 55 private companies that own more than 30 trucks each. Small private operators that group together into loose associations (about 45) to pool their resources and a few public firms whose market share is minimal complete the industry. Foreign investment in the sector is not permitted.

The Transport Authority, which as a result of a 2005 proclamation replaced the Road Transport Authority (RTA), regulates the sector; it issues drivers licenses, registers trucks, and distributes permits that eliminate the need for visas at the borders with both Djibouti and Sudan. This bilateral facilitation arrangement is not in place with Kenya. This arrangement enables properly registered Ethiopian trucks to transport merchandise into neighboring countries, rather than transfer their load to foreign trucks at the border.

Approximately 4,500 trucks are registered for international movements with the RTA. About 1,000 of these trucks are fairly new, European 40-ton-capacity rigs purchased by the larger private companies. The remainder of the fleet consists primarily of old 30-ton-capacity vehicles, which are inadequate to handle current traffic.
Transport prices are generally high, and fluctuate significantly with the high- and low-volume periods, which last about 6 months each and are driven by two import commodities: food aid and fertilizers. During the high-volume period, prices reach US$0.053 per ton per kilometer; during the low-volume period, prices drop to lows of around US$0.03 per ton per kilometer. The high cost of road transport can be attributed to many sources, including the following:

- 50% load capacity because many trucks haul import cargo without a return export load, a result of the significantly higher volume of imports;
- High tariffs on imported trucks and spare parts; costs of new rigs, including import duties and excise taxes (25% to 40%), range from US$150,000 to US$170,000; and
- Poor infrastructure and an old fleet, resulting in high maintenance and tire replacement costs.

Most general export cargo moves as break-bulk to Djibouti, with stuffing down carried out by agents of the exporter at the ports. Exporters complain of shortages noted at the destination due to losses at the port. Shortages are not a major problem en route because drivers are charged for losses when deemed responsible. Trucking companies do perform limited screening of their drivers, such as checking with previous employers and validating licenses.

The RTA has recently completed construction of a trucking terminal outside the Djibouti port, for which it has a 25-year concession. Truckers park at the terminal while awaiting authorization to enter the port for pick up or delivery of cargo to eliminate congestion at the port. In an effort to include the trade in its operation, a Transporters Board, composed of both the RTA and private stakeholders, was organized to oversee the facility. This is an example of effective public-private partnership.

At this time, there is no national association that represents road transporters. Procedures to establish such a body take years to conclude, as illustrated by the recent 5-year experience of the freight forwarders and shipping agents. Although the RTA has tried to resolve this through such measures as the ad hoc use of the Transporters Board, those efforts have fallen short. Lack of a national body limits the ability of road transporters to influence policy and procedural development as well as to participate in the problem identification and resolution process. In addition, there is neither an organization to develop transport-related training programs to upgrade current business practices nor any ability to reach out to international transport organizations for assistance.

A recent study by the affected ministries detailed the problems that cause delays and add costs on the Djibouti route and recommended establishment of dry ports in Ethiopia to address these issues. Issues identified include complexity and multiplicity of required documentation, lack of harmonization of procedures among the involved public agencies, frequent required stopovers due to use of only one driver on the run, and multiple stops by enforcement officials. Although the required bilateral agreement to institute dry port procedures has been completed between Djibouti and Ethiopia, the modalities of the operation have yet to be finalized.

Establishment of dry ports is supported by the Government and should result in the opening of such facilities on the corridor between Addis Ababa and Djibouti and on other trade routes. Significant
reduction in delays and costs at Djibouti and along the trade corridors should result from the following dry port benefits:

- Import duty and tax payments and clearance will be deferred until goods reach the dry port. Products can be offloaded at Djibouti and transferred to the dry port on a transit document, where Customs formalities can then be completed.
- Most import and export functions by the trade and public officials will occur at the dry port, saving the Government the costs associated with stationing officers in other countries and avoiding storage charges incurred when Customs release is delayed at the port.
- Problem resolution will be expedited because key decisionmaking officials will be on site.
- All public agencies regulating trade, not only Customs, will be stationed at the dry ports. This will facilitate implementation of a one-stop process for traders.

The dry port facility will function as the centralized container location, which will facilitate stuffing and de-stuffing of full-load import or export cargo as well as consolidation of other cargo. This minimizes turnaround time on the actual container and permits the small-quantity shipper or buyer to take advantage of full container load transport rates.

General export cargo, which currently travels primarily to Djibouti as break-bulk, will be loaded into containers at the dry port, thus protecting the cargo from damage and pilferage. The exporter can also supervise the loading and sealing to ensure the shipment’s quantity. This is particularly beneficial to the textile trade, which always has a shortage of container availability, causing delays in shipment.

Ethiopia conducts little cross-border trade with its neighbors. Such factors as closure of roads in Sudan during the rainy season, poor road conditions, particularly in Kenya, and higher fuel prices in Sudan and Kenya make such trips costly, unpredictable, and time-consuming. Efforts by COMESA toward adoption of a regional transport insurance card that covers the transporter and his vehicle anywhere within the region have facilitated cross-border trade overland. Nonetheless, road transport regionally remains extremely difficult.

**Marine transport.** The Port of Djibouti is, and will remain for the foreseeable future, the principal import and export point for Ethiopian goods because of the lack of good infrastructure and services on alternative routes and the current political climate. Although discussions are ongoing to use Port Sudan for goods from the northeast sector of Ethiopia and the port of Berbera in Somaliland, these options are not currently economically viable. This might change at some point because the container handling rates at Sudan Port are half those at Djibouti, and Berbera is the same distance from Addis Ababa as Djibouti. On the other hand, the road infrastructure to both of these alternatives is poor.

Djibouti port is managed by Dubai Port World under a 35-year concession agreement. The trade has noted improvement in the professionalism of the port management and its quality of services. Tariffs have been simplified, the port presently operates 24 hours per day 7 days per week, and labor charges are based on tonnage rather than on hours worked. The system for tracking and handling of containerized cargo is automated and efficient.
However, operations are still not up to modern standards. Port handling costs are high. There are no weigh scales that can accommodate a long-bed truck and trailer, so the transporter must unhook the rig so each unit can be weighed separately, which delays loading. Ship cranes are the only available stevedoring equipment, and when they are not working, all loading and unloading operations come to a halt.

Ethiopia Shipping Lines (ESL), the State-owned shipping company, has a monopoly on the cartage of imports. All general imported cargo (not dry bulk or liquids) must be carried on ESL vessels or booked by them on other carriers if the ports of lading are not among those ports called on by ESL vessels, unless a waiver is granted.

Eight ESL vessels service ports in the Far East, Southeast Asia, Europe, and the Arabian Gulf, and carry about 40% of all imports. Booking through and on ESL accounts for 80% of all general imported cargo, but only for 43% of the total because dry and liquid bulk commodities are excluded. The export side is the reverse, with 90% of all export trade carried by foreign carriers due to the limited capacity of ESL and lower shipping rates. ESL’s ability to invest in additional vessels is limited (only two vessels are under construction) due to lack of resources.

ESL has reduced costs periodically and has held costs steady in this era of rising fuel costs. As a result, its freight charges are now more competitive with those of major private marine carriers on the same routes, although ESL’s freight charges are still somewhat higher. Government sources indicate that the intent is to open the import market to competition within the next few years.

**Air transport.** Efficient and cost-effective air transport is vital to the growing flower trade, as air transport accounts for about one-third of the total cost of the flower trade. State-owned Ethiopian Airlines (EA) has completed construction of a 14,000-square-meter cargo terminal that can handle more than 100,000 tons of freight per year. This modern facility includes compartmentalized storage (capable of storing flowers and other perishables at different temperatures), transfer vehicles, and a multi-level storage racking system to expedite loading. EA has also added cargo freighters to its fleet and has on order several Boeing 787s, which are scheduled for delivery in 2008. These efforts are directed at making Addis Ababa a dominant cargo hub in East Africa.

Current prices on EA are approximately US$1.20 to US$1.40 per kilogram, versus US$1.58 to US$2.05 for other carriers, which transport cargo only on passenger flights. Ethiopian flower growers have joined together to purchase air transport collectively through EA to lower their costs and to have more influence over pricing.

Air transport costs for the flower sector are somewhat cheaper in Ethiopia than in neighboring Kenya, which is a well-established, major player in the flower market. This can be attributed to a shorter flying distance to Europe (about 1,000 kilometers), the prevalence of illegal payments in Kenya, and Government subsidies paid to EA.

In general, EA is viewed by the flower trade as responsive and price sensitive. Ethiopian cut flower exporters anticipate great benefits from the increased supply of freighter services and new cargo facilities undertaken by the EA.
Rail transport. Rail transport is not a major factor in the current environment, a result of the poor condition of both the tracks and the equipment on the line between Djibouti and Addis Ababa, but plans underway to triple current rail capacity are encouraging. A South African firm, Comozar (PTY) Ltd., was recently awarded a 25-year concession to operate the Ethio-Djibouti Railway Enterprise. Plans include increasing capacity to 1.5 million tons in 5 years, three times the current capacity. The next 2 years will be used to acquire additional locomotives and to make rail modifications in areas of extreme curves, which require the trains to slow. There is doubt, however, whether these projections will be met. One problem is that the rail end in Djibouti is not within the port, which means that the cargo must be offloaded and drayed to the port, a situation that demands double handling. On the other hand, if improvements to the rail transport system are achieved, transport costs would be lowered significantly on such products as coffee moving to Djibouti.

Customs Brokers and Freight Forwarders. There is a lack of clarity among both the trade and the public concerning the distinction in roles performed by Customs Clearance Agents (Customs brokers) and freight forwarders. This is evident in the Government proclamation regulating the freight forwarders, which incorrectly includes Customs clearance within their functions. In fact, each service sector is regulated by a different agency and must be registered separately. This lack of clarity in distinguishing freight forwarder functions from Customs broker functions on the part of border officials permits individuals to perform tasks outside their level of competency. This results in high error rates and creates a competitive disadvantage to the legitimate freight forwarder.

ECuA must certify the competency of a Customs broker before he or she can file an official registration to conduct business. The applicant must have minimum assets of US$1,200. All candidates must have completed a 12-grade education. About 5 years ago, Customs conducted a 1-month, full-time training course for prospective Customs brokers. Those that passed received a competency certificate.

Currently about 600 individuals are certified as Customs brokers, some of whom are employees of the approximately 45 companies that perform both Customs broker work and freight-forwarder work. To register with the MoTI to do business as a Customs broker, a company must show a competency certification for all employees who are engaged in preparation of Customs documents. The other employees operate as individuals, at times performing freight-forwarder functions illegally. Although some are competent within the sector, most lack training in current Customs procedures and rely on personal connections with officials to secure clearance.

Freight forwarders are regulated by the Ministry of Transport and Communication (MTC). Regulation No. 37/1998 details the requirements to enter this business, which include training in the marine industry, as well as capital in the amount of US$175,000. Documentation that demonstrates that these requirements are met must be submitted to the MTC to secure a Certificate of Competency, which is required to officially register a freight-forwarding company with MoTI. All but one of the 45 licensed freight-forwarding companies are private enterprises. The State-owned entity is a major player, handling about 20% of all international transactions.

Costs for Customs clearance and freight forwarding on a typical export shipment is about US$65.00, which is about US$25 more than what exporters pay if they conclude the arrangements in-house. These costs are reasonable and are in line with those of neighboring countries.
The Ethiopian Freight Forwarders and Shipping Agents Association (EFFSAA) was formed in 2004 and includes 25 of the 45 companies as members. The association is unable to provide a significant amount of training to increase and improve capacity within the sector, however, due mainly to a lack of funds and limited knowledge of modern international transport, especially maritime management. EFFSAA will become a member of FIATA, the International Federation of Freight Forwarders, in fall 2006, which will open to the association the full programs and training resources of that organization to upgrade their members’ current capacity in the concepts and complexities of modern, logistical services and supply-chain management. Donor support has also been pledged in this area.

The one State-owned freight forwarder and Customs clearance company has successfully incorporated modern business techniques to improve its efficiency. A business process reengineering review has reduced its actions and handling time per shipment by 50%. Time from receipt of import documents to arrival of cargo at Customs clearance stations has been reduced from 10–14 days to 5–7 days. Because the company has a large market share, improvements to the trader are evident. The entity takes seriously its role of educating private sector participants.

Efforts to transfer modern practices and expertise have had limited results to date, mainly due to lack of interest from other parties. However, as the pressure to compete increases, with proper coordination and persistence, this information can filter through to the weaker members. That said, a lack of knowledge about modern transport practices, including supply-chain management and inter-modal transport requirements, which are necessary not only to compete, but also to participate in the global trade marketplace, are generally lacking in the freight-forwarding sector.

Moreover, the relationship between Customs and the Customs broker is one of mutual distrust and suspicion. This makes it difficult to establish the dialog needed for effective trade facilitation reform and to identify and resolve mutual problems. There is currently no partnership or organization where the parties view each other as serious and important contributors to trade reform.

Customs brokers lack professional training, particularly on commodity classification in accordance with the HTS classification system. Generally, Customs views initial competency certification as its only function in regulating the industry. No oversight is given to performance to weed out those who are incompetent, and there is no engagement with the sector in assessing and meeting updated training needs.

Brokers generally do not rate the professionalism of Customs as high because there is a lack of training of officers and because recruitment and advancement are based on party affiliation rather than on merit. Recent improvements in processing are noted, although revenue collection ranks as a higher priority than trade facilitation. Many officers view facilitation efforts as an impediment to increased Customs receipts, although in practice they have the opposite effect. Therefore, there is no real push for such facilitative measures as selectivity in examinations or a post-audit approach to regulating trade.

Air Express Service Carriers. Ethiopia’s air express industry is becoming an important player in helping the import and export traders conduct their business in a timely manner. The focus of the sector is currently being redirected from express delivery of essential documents to delivery of high-value and time-sensitive goods, samples, and spare parts.
Five international air express service companies operate in Ethiopia, all through use of agents, with the exception of DHL, which operates as a direct investor. Traditional air carriers rather than dedicated fleets carry documents and small cargo packages. All items are cleared through the airport passenger baggage terminal except for those of DHL, which rents a warehouse at the airport and pays for the reimbursement of Customs officials to handle its cargo. No special Customs regulations are in place for the industry.

A draft Government proclamation regulating the postal and telecommunications sector recently proposed to create an exclusive monopoly for the Ethiopian postal service to circulate envelopes weighing less than 2 kilograms. In addition, packages weighing more than 20 kilograms could not be transported by air express services. It is believed that that proposal was drafted to help offset the losses of revenue the postal service will incur as it expands its infrastructure and service into rural areas.

The draft postal regulation, if passed, would eliminate about 80% of the air express business and most likely make it unprofitable for the carriers to continue to operate in Ethiopia. This would eliminate the expedited sending of samples for approval, often used by such industries as the coffee exporters, and expedited receipt of spare parts by businesses that currently depend on the service.

Discussions are ongoing between industry and the Government to resolve this issue equitably, and based on the previous successes the industry has had in resolving issues, there is optimism as to the outcome. Generally, when problems are addressed at the higher ministry levels, the officials at these levels are more knowledgeable of the negative impact that proposed actions may have on the international trade environment and are more willing to change policies accordingly.

Generally there is little Government interference in daily operations of the air express carriers. Previously, issues such as assessment of value added taxes on their operations have been resolved fairly.

Low-value shipments (less than US$200) are cleared quickly, even without special regulations, although such shipments are still subject to applicable duties. These represent the bulk of current cargo.

Although there is no official sector association, the players mobilize collectively to address issues.

*Trade Associations.* With the exception of the Chambers of Commerce and the Ethiopian Manufacturing Industry Association, trade associations are organized not only around a particular type of production but also in some cases around a specific activity related to the product, such as the coffee exporters. Most of these 50 groups are weak institutions, reflecting the small and immature private business sector it represents. For example, the Hides, Skins and Leather Products Manufacturing Association, which has within it three subsectors, has a total of 36 members, even though it represents 100% of all private tanneries.

The current Ethiopian Chamber of Commerce is represented by 15 regional Chambers of Commerce, the oldest and largest being the one in Addis Ababa. All are private organizations under the umbrella of the national Chamber, and with one exception assess flat fees for membership, which are generally low. The current Chamber structure is being reorganized under Law 341/2003. The resulting structure will include 1 national Chamber of Commerce, with 9 regional Chambers, 2 city Chambers, and 23 sector associations reporting to it.
Currently, the Addis Ababa association is the strongest of the Chambers, even stronger than the national Chamber. It has about 10,000 members, representing 50% to 60% of the total business community, and a staff of 75 to provide services. Membership fees are based on the business capital of a company. At least 24 training sessions based on a training needs assessment of its members are hosted yearly, and the training sessions are well attended. Instructors for the training are brought in from outside the Chamber (including from public agencies, such as Customs), are paid for their services, and develop the curriculum for the training. Draft legislation that has a potential impact on the business community is sent to the Chamber for comment.

One of the strongest sector groups is the Ethiopian Horticulture Producers and Exporters Association (EHPEA), formed in 2003. About 70% of the sector firms are members and the association has been a solid advocate and a channel for dialog with public institutions, a situation that has been facilitated by the designation of the cut flower trade as a model for all export development.

The Chambers of Commerce also receive some support from the donor community. Funding is underway for creation of an Institute of Leadership and a National Resource Center at the national Chamber level, for hiring of professional staff, and for creation of a business development plan for four principal regions in the country. Recent donor training on business association and advocacy skills was provided to all Chamber staff members. Donors have also provided broadband Internet service to all the Chambers to enhance communication and information exchange. These efforts should improve the quality of service provided to the membership, including training in sound business practices and linking of suppliers with buyers.

Reorganizing the weak sector associations into the Chamber structure should strengthen both parties and allow the donor initiatives aimed at strengthening the national and regional Chambers to affect all members of the business community. Small sector organizations currently have neither the funds nor the human capacity to offer quality business support services such as market research, trade data, or training to their members.

UNDP and the World Bank are coordinating initiatives to revitalize the Public Private Partnership Forum (PPPF) and generally improve communication between the business and public sectors. When the PPPF, co-chaired by the MoTI and the head of the national Chamber, was established in 2002, it was somewhat effective in fostering results-oriented dialogs, but it has since become inactive. If and when it is reinstituted, the PPPF needs to strengthen its practices regarding agenda setting, participation, and follow-up and extend its concept to the regions. Currently, when ad hoc public-private meetings do take place with Chamber members and officials, there is no follow-up mechanism, which means that issues are often left unresolved.

There is a lack of true partnership between the business and public sectors, caused primarily by suspicion of the private sector on the part of many Government officials. Generally, the private sector, with the possible exception of the coffee exporters, does not participate in developing policy or procedures. The private sector’s role is generally limited to commenting on draft laws and regulations, which are often circulated without sufficient time for review. This situation may be gradually changing, however, with increasing interest on the part of some groups (e.g., floriculture exports) to contribute to the evolution of trade policy at earlier stages of its development.
Associations like the Chamber do not actively partner with international entities or with other national Chambers in the region for assistance in curriculum development or for ideas for improving business services. This isolation denies them opportunities for information exchange with regional counterparts that could result in increased trading opportunities.

The Ethiopian Manufacturing Industry Association is the one cross-sectional organization that exists in addition to the Chambers. However, the recent decision of the Government to restructure the Chambers and sectoral associations means that the association no longer plays the role it once did, and as a result its membership has declined significantly from its high of 940. This is unfortunate because it was one of the few groups that had sufficient membership to provide a good level of service and was able to identify general issues related to production of exported products and imported inputs across all sectors.

EHPEA is not linked to the international organizations that regulate their trade. As a result, the group is not urging the Government to legislate into the current IPR laws the requirement of Plant Breeders Rights to protect their variety of seeds within Ethiopia. This is a detriment to flower trade production for some varieties of flowers. EHPEA must continue to represent the collective interest of the entire membership and not be overtaken by a few dominant members as the trade rapidly expands.

E. Social Dynamics

The climate for improved trade facilitation, growth of the private sector, and improved quality of service sector groups to assist international traders is positive, although major obstacles still exist. The highest levels of Government are more open to exploring the principles of a free-market economy, promoting increased foreign investment to achieve export expansion, and eliminating roadblocks to trade. As difficulties are encountered, the Prime Minister and the Minister of Trade and Industry often are the champions of business reform and trade facilitation to enterprises entering the market.

The willingness to make the changes necessary for Ethiopia to become a viable player in the global market is illustrated by the model program involving the cut flower industry. The Government secured small plots of land, with compensation to the owners, so it could lease sustainable plots to flower producers. The sector was opened to foreign investment, procedures were streamlined, and the required infrastructure to support the trade was put in place. Perhaps most important, leadership from the highest levels has been demonstrated over the last few years.

Despite the success of this project to date, suspicions still run deep in the attitude of the Government toward the private sector. Many of the required service sectors that support international trade remain closed to competition, including telecommunications, energy, shipping, and banking, among others. The pace of change is slow and is measured with cautious steps forward, usually accompanied by excessive regulation and control.

The members of Parliament must be educated on international trading practices and the needs of the trading community if that body is to play a supportive role in passing legislation required for WTO accession and to address the trade facilitation and infrastructure problems identified in this Report. With donor support, the Trade and Industry Committee of Parliament has already organized one 3-day seminar on WTO accession and is planning an additional seminar in early 2007. As the WTO
accession proceeds, members of Parliament would benefit from learning from parliamentarians in other developing countries how they handled the WTO accession process.

There is one national, State-controlled television station. There are private newspapers, but otherwise, all information with the independent media is generally paralyzed. There does not seem to be a strong tradition of independent media investigations or inquiries into suspected wrongdoing. This absence of independent media contributes to the appearance of a general lack of transparency involving Government actions and decisions.

Corruption is not a significant issue in Ethiopia. Small informal payments reportedly occur at times, but not to the extent that it disrupts trade or increases costs significantly. Ethiopian society generally maintains a high sense of values, despite its overwhelming problems. The Principles of Ethical Public Service are displayed prominently in all public agencies and in most cases are followed appropriately.

There is good cooperation and coordination within the donor community, which has some influence over policy. It maintains an active interchange with the Government to promote trade facilitation and international business growth, often linking continued funding to progress in these areas.

The private sector’s participation in international trade is impeded by limited knowledge of global opportunities and of how to enter and succeed in the global marketplace. As a result, those who do enter the global marketplace tend to copy models of existing enterprises rather than be innovative, which limits their opportunities. Shortages of skilled personnel to improve low productivity rates and the lack of knowledge of how to enter the international marketplace, how to identify buyers and investors, and how to build a business plan could well impede future growth of the textile sector.

The trade and public sector need training in how to establish, manage, and operate dry port facilities to maximize cost and time reduction projections. Initial start-ups at current Customs clearance facilities, which are crowded and in disrepair, will hinder effective implementation. A plan must be developed on the placement and operational requirements of these facilities. Other issues such as inefficient and redundant processing must also be resolved within this framework.

Private stakeholders are not fully engaged in dialog with the responsible public ministries in the selection and implementation of the dry port concept. The trade’s knowledge of trade patterns, practices, and problems in the private sector can be used to minimize mistakes and provide a smooth implementation. Private sector involvement in the operation would ensure competitive pricing for services as well.

F. Recommendations

Based on the foregoing discussion, the following is recommended:

1. Support and enact the new Customs Law. The draft Customs Law includes provisions that not only will facilitate WTO accession, but also provide the foundation for modernization and reform of Customs procedures. Every country, especially emerging countries such as Ethiopia, needs a Customs and Other Control Authorities process that is characterized by integrity, competence, and conformance with international services standards. The negative effects of border operations that are corrupt, inept, non-standard, and slow are severe.
Corrupt border organizations not only drive away legitimate trade and industries, which will not pay bribes, but also drive away the investment required for economic growth. International supply-chain and just-in-time delivery systems coupled with strong company ethics policies will not tolerate unreliable or unpredictable service because it disrupts their global operations. Global enterprises will simply move on and pass by countries with poor government border controls.

2. Continue to develop information technology (e.g., ASYCUDA++ Ethiopian Customs Automated System), including single-administrative-document and single-window concepts. In addition, continue the streamlining and paperwork reduction activities already in progress. The entire import process remains heavily bureaucratic, document-intensive, and time-consuming. Reforms should be carried out in full partnership with the trade community and left to a small innovative working group that could visit other developing landlocked nations that have made significant strides in trade facilitation. Also, competitive salaries should be set for Customs IT staff to ensure continuity and retention of talented employees.

3. Ethiopia currently does not have a major problem with corruption, but with increased prosperity and greater trade volumes it will encounter increasing negative pressure on its Customs personnel to participate in corrupt practices. The following actions are recommended to forestall such an event:

- Pay a salary that is commensurate with a professional position of honor and trust, that will attract high-quality personnel, and that will support a reasonable standard of living without the need for supplementary income.
- Establish high standards for recruits, and check backgrounds, finances, and references prior to employment.
- Periodically reinvestigate all personnel for the reasonability of financial worth and check for law enforcement violations or criminal associations.
- Continue to simplify the tariff and Customs procedures and ensure transparency in all Customs matters.
- Establish internal controls and audit processes/systems to prevent breaches of integrity, and establish audit trails to identify and uncover violations.
- Publish standards for cargo clearance and all Customs services and provide appeals for Customs decisions.
- Automate Customs processes, building in internal audits and controls, and use and expand systems for direct deposit of Customs duties and fees to financial institutions.
- Develop a Customs code of conduct based on the Minister of Revenue’s code that lists core values and includes a table of discipline that addresses integrity at all levels of the organization. This code of conduct should establish a “bright line” for integrity violations so that employees can clearly delineate violations and wrongful acts.
- Establish an internal organization within ECuA to oversee and protect the integrity of the organization, its systems, and its employees. The border agencies should be the first
agencies in the Ethiopian Government to have the services of their own internal affairs units of investigators.

- Create an environment in which importers and carriers feel safe in bringing integrity issues to the attention of management.

- Make it clear to the trade community that corruption on the part of Customs or the trade will not be tolerated. Ensure that appropriate sanctions are in place for both Customs and business violators.

Instituting practices such as those outlined above will enhance the environment and reputation for integrity and pay dividends in economic terms. Multinational businesses and investors will identify such countries as desirable locations for trade and investment. Failure to institute such behavior will have the opposite effect.

4. Importers who display excellence, and are competent and compliant pose little risk to Customs. ECuA should consider establishing a special program for compliant large importers to speed their goods through Customs formalities. This approach could be implemented immediately while the major reforms and programs proceed. Numerous countries have adopted this Account Management approach to allow their limited resources to focus on high-risk shipments while providing tangible benefits to legitimate businesses. Treating these companies as accounts, appointing Customs-employed account managers, and instituting a special set of compliance, risk criteria, and post-release audits for select companies could allow many legitimate companies “green-light” or expedited service and separate their shipments from the flow of riskier imports.

5. Consolidate other border agency functions (such as Health and Agriculture) at Customs clearance stations by ensuring adequate staffing; train Customs officers in other control authorities’ commodity jurisdiction and problem identification; and integrate forms, manual processes, and automation.

6. Establish alternate currency controls and limit Customs transactions to traditional Customs matters for letter of credit and other banking concerns.

7. Improve the export incentive program through the following initiatives:

- Replace the required time-consuming submission of yearly estimates and their approval with the institution of spot checks and periodic review of the exporter’s files.

- Expand export incentives to parties other than the actual exporter. Incorporate the ability for a domestic supplier to claim a refund of imported duties on taxes on goods sold to a final exporter.

8. Revise the export process by streamlining procedures and using the principles of selectivity. One-stop processing centers for exports should be implemented at the major trading centers so that the exporter can conclude all the required authorizations. A plan should be developed for the use of selective Customs and other agency inspections on routine exports. This could be started in the cut flower trade and would eliminate the need for reimbursable inspectors to be stationed at each farm, a significant cost factor for the grower. Most nations, even those
in a development stage, have eliminated or dramatically reduced export inspections, leaving this responsibility primarily with the importing country.

9. An audit of the cool-chain process should be carried out to determine the adequacy of the cold stores at the farms, cooled local transport, airport facilities, and handling, and a plan for improvement implemented. Lack of high-quality cool-chain management negatively affects flower export production because it prohibits Ethiopian flowers from being recognized as consistently high quality, and prevents operators from receiving maximum prices.

10. Establish a national transport association to address the significant lack of human capacity in modern business transport practices and technology within the transport sector and provide a focal point for identification and resolution of industry issues. The RTA could spearhead this effort and the RTA or the Chamber could be funded to provide training that would significantly increase fleet efficiency and lower costs.

11. Develop a plan to establish, manage, and operate a fully functional dry port system to maximize cost and time reduction. This would include outside experts and training on procedures and operational requirements. Private stakeholders should become full partners in the ongoing dialog. The trade’s knowledge of trade patterns, practices, and problems in the private sector can be used to minimize mistakes in implementation and ensure competitive pricing for services. Issues such as inefficient and redundant processing must also be resolved within this framework.

12. Improve the quality of the Customs Clearance Agent sector and create a partnership between it and Customs service. Establish a working group of Customs Clearance Agents and Customs officials to promote a better working relationship. This could start by identifying training needs and scheduling short seminars for the trade. As this relationship progresses, plans could be developed for effective shared oversight of the industry and voluntary reporting of suspected activity. Without acknowledgement of the valuable contribution a reliable and professional Customs Clearance Agent community can make to facilitation of the Customs process, reform will remain a slow and difficult process.

13. Train all border officials on the distinction between the roles of the freight forwarder and the Customs Clearance Agent and on the requirements that each firm or individual performing these tasks must possess a specific license to do so. Subsequently, perform spot checks to ensure compliance.

14. Support the efforts of the donor community by reestablishing the formal PPPF mechanism. When reinstituted, strengthen its practices regarding agenda-setting, participation, and follow-up and extend the concept to the regions. There will still be a need for more industry or sector-specific consultative mechanisms.

15. Redesign the Coffee Exporters Association to align with the current reality of the industry. Traditional roles within the sector are changing so that one party often plays multiple roles, such as producer and exporter.
XIII. Flow of Money

A. Introduction

In its report Doing Business in 2006, the World Bank notes that Africa’s share of global trade is lower today than it was 25 years ago. According to the report, “The reason is simple: Many entrepreneurs face numerous hurdles to exporting or importing goods.” Access to, and the sufficiency of, money flows are critical to the well-being of any economy. In today’s global economy, adequate flows of money at the national level are essential for a country’s prosperity. Impediments common to Ethiopia, such as burdensome foreign exchange requirements, drive up the costs of doing business. In this light, Ethiopia’s foreign exchange regulations represent a major impediment to trade, clearly contributing to the country’s ranking as the lowest among all countries rated (149th) in the Doing Business in 2006 category of “Trading across Borders.”

Ethiopian authorities have expressed concern about the country’s balance of trade, which is lopsided in favor of imports, and pressures on foreign exchange reserves. The latest IMF report on Ethiopia notes that, although imports are a concern, diminishing reserves are reflective of undercapitalized, overextended public enterprises, as well as of rising oil prices. The IMF further raises “questions about the desirability of maintaining such tight exchange rate management.” Although Ethiopian foreign exchange controls are in no way as restrictive as in times past, the necessity for the current foreign exchange regulations must be balanced against the foreign observations.

B. Legal Framework

Ethiopian Foreign Exchange Regime. The National Bank of Ethiopia exercises the functions of a central bank. The Monetary and Banking Proclamation authorizes the NBE to formulate and implement monetary policy and to supervise and regulate the financial system as a whole.

In 1998 the NBE transferred its foreign exchange function to the commercial banks (Directive No. FXD/07/98). This directive authorizes the commercial banks that are licensed to operate in Ethiopia to allow imports and exports, excluding coffee, and to provide other trade-related services against submission of the required documents by the importer and exporter.

Foreign Exchange Issues that Support Trade Facilitation. Ethiopia’s exchange regime currently holds a number of positive attributes. First, the legal structure for trade-related finance allows for payment through letter of credit, cash against documents, advance payment, suppliers credit (under certain conditions), and so-called Franco Valuta imports. Second, there are no restrictions on repatriation of profits by foreign business people. Third, Ethiopian banks, appointed agencies, foreign exchange bureaus, and others who are in the service-catering business can accept

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payments in foreign exchange and related instruments such as travelers checks, drafts and so on. Fourth, commercial banks provide a variety of foreign exchange services using conventional instruments. On the basis of licenses issued by the NBE, private banks are free to hold a wide range of currencies in their accounts, in correspondent banks, and in cash notes and other convertible instruments. The maximum foreign currency exposure that a bank can hold is 15% of its paid-up capital. Fifth, banks are generally required to regularly report their holdings and commitments to the NBE. Finally, commercial banks may open foreign exchange retention accounts for eligible exporters of goods and recipients of inward remittances without prior approval from the NBE.

**Foreign Exchange Issues to Address.** In the area of foreign exchange, numerous deficiencies remain, including the following:

- Foreign banks are not allowed to operate in the country.
- Importers and exporters find the legal framework for foreign exchange payments cumbersome and complicated. Foreign exchange restrictions not only pose a problem for importers and exporters, but also raise questions regarding Ethiopia’s compliance with some of its international obligations. The recent IMF Country Report, entitled *Staff Report for the 2005 Article IV Consultation*, states that, among Ethiopia’s foreign exchange measures, four are trade-restrictive and inconsistent with Article VIII of the IMF’s Articles of Agreement. Ethiopia is a member of the IMF, but it is deemed not to have accepted the obligations of Article VIII.
- Importers find that the requirements to use letters of credit and the paperwork requirement by NBE regulations make a letter of credit much more expensive than it is in other countries.
- Commercial banks are not restricted with respect to the value of imports they can approve. An importer who wants to import goods valued in excess of US$1 million, however, must show that he or she has gone through an open and competitive international bidding process to select the goods. Central Bank officials claim that this procedure is necessary to curb corruption. Banks only review the procedures and fairness of the auction process; the importer must implement it.
- Foreign exchange regulations require banks, prior to issuing import permits, to compel compliance with requirements that are found in the laws and regulations of a number of other Ethiopian agencies. For example, an importer must obtain from the Ministry of Trade and Industry a specific import license to import certain goods.

**Microfinance.** One of the most important improvements in Ethiopia’s enabling environment for poverty reduction and business growth over the last decade is that microfinance institutions (MFIs), previously allowed to charge no more than 2 percentage points above commercial rates, are now free to charge rates that more accurately reflect the cost of doing business, without the economies of scale available to large banks. This change has led to a large increase in the availability of funds for

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29 FXD/21/2003.
32 Article 4, Directive No. FXD/07/98.
33 Article 5.3 of the Directive.
the rural poor by spawning MFIs. Specifically, 26 MFIs have opened in Ethiopia since liberalization of banking regulations, although none existed prior to this liberalization. Although the legacy of easy credit distributed by political rather than market mechanisms of the past is still a challenge to the banking sector in Ethiopia, and microfinance is said to be no different, the rapid growth of the sector in just a few years demonstrates the demand for financial products suitable for even the poorest borrowers.

Despite improvements in the policy environment, however, the treatment of the microfinance sector in the same light as other banking institutions ignores the fact that the needs of micro and small enterprise owners are different from those of larger “more bankable” entities. Interviewees noted that MFIs are severely constrained by (the conservative) prudential regulations aimed at larger entities and this has hampered their growth and ability to serve the poor of Ethiopia.

C. Implementing Institutions

**Banks and Other Lending Institutions.** Currently, there are 10 commercial banks under the supervision of the NBE: 3 State-owned banks and 6 private banks. The Construction and Business Bank, Commercial Bank of Ethiopia, and Development Bank of Ethiopia are Government-owned with management autonomy. Abyssinia, Awash International, Dashen, NIB International, United, and Wagagen and Cooperative Bank of Oromia banks are the private commercial banks. There are 26 MFIs under the supervision of the NBE.

**Financial Crimes Unit.** The NBE is the body that deals with issues of money laundering. The Head of the Legal Advisor for the NBE is the focal point in this regard. The Ministry of Justice and its prosecutors are also involved in controlling and resolving issues of money laundering.

D. Supporting Institutions

The supporting institutions that facilitate trade-related finance are weak. There is a Banker’s Association, but it does not have any visible activities to date. Additional supporting institutions are discussed in this Report’s section on Secured Transactions.

E. Social Dynamics

Traders interviewed indicated that the foreign exchange regulations pose a problem for importers and exporters. Importers find that the requirements to use letters of credit and the paperwork requirement by NBE regulations make a letter of credit much more expensive than in other countries. Further, the limitations on accepting supplier credits increases the cost to the importer, who because of his or her well-established position, might be able to take advantage of more favorable credit terms and lower transaction costs associated with a supplier credit. Some importers find that foreign firms are reluctant to deal with Ethiopian importers because of the inconveniences associated with using the required letter of credit.

Studies have recommended that Ethiopian trade regulations would be more trade facilitative if Ethiopian Customs was not required to enforce the regulations of other agencies. The same can be said of the foreign exchange regulations.
F. Recommendations

Based on the foregoing, the following recommendations are made:

1. As detailed in this Report’s section on Secured Transactions, Ethiopia should open up the banking sector to greater competition, including foreign investment.

2. Those currency requirements that are trade-restrictive and inconsistent with IMF Article VIII should be identified and eliminated. The overwhelming documentary requirements to obtain foreign currency, especially when it comes to the private sector, should be significantly reduced.

3. Access to credit, which under current circumstances represents a serious and specific impediment to income growth, should be tackled in a broad-based manner, involving changes at both the policy level and the grass roots initiatives level for individuals and small borrowers. In particular, access to financial services for the poor should be a priority, with emphasis on rural areas.

4. Treating MFIs under the same regulatory framework as commercial banks ignores the lessons learned in other African countries, and should be modified.

5. Ethiopia should review its exchange regulations to ensure that unnecessary requirements that are trade restrictive in many aspects are eliminated.
XIV. Flow of People

A. Introduction

Overall, significant improvements have been made in Ethiopian laws and institutions, both public and private, that affect the facilitation of trade-related flows of people. The Ethiopian Government has lessened legal travel restrictions, streamlined processes, and upgraded its automation. In addition, the safety of foreign travelers is not considered a real issue because the crime rate is very low when compared with that in some other African countries. As with the flows of goods, services, and money, however, Ethiopian institutions need to modernize further.

Although small when compared with its neighbors’ flow of people, Ethiopia’s flow of people, mainly tourists, has grown markedly over the last decade (see Table 1). Despite earning less than one-fourth of the tourist receipts of Kenya and Tanzania, Ethiopia’s tourism sector experienced robust growth in recent years and has significantly closed the gap between it and its neighboring countries. Although tourism accounts for only 2% of GDP at present, the increase in the number of visitors from 184,077 to 227,398 between 2004 and 2005, a growth rate of nearly 24%, it is encouraging as a future source of income for the country. Much of this increase can be attributed to an easing of rules that govern ownership of hotels and restaurants, which has dramatically improved the often Spartan offerings. This is an area where Ethiopia clearly has room to improve and will likely be a key driver of economic growth in years to come.

B. Legal Framework

The legal framework supports the most basic trade facilitation principles. Relatively relaxed policies and procedures are in place for visitors from most countries, although Ethiopia’s legal regime could better accommodate these travelers for the sake of the country’s own economic development. Moreover, the legal framework surrounding the operation of infrastructure to support trade-related people flows is relatively restrictive in that car rental companies, Customs clearance services, and restaurants and hotels (excluding three-star and above) are all limited to investment by domestic investors only. The quality and cost of these items clearly reflect the lack of competition in these sectors, and was mentioned numerous times in interviews with business travelers as well as with tourists.

Table 1: Ethiopian Tourism receipts

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<td>Millions of USD</td>
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34 Balleh, Aregu, ”Exemplary move to encourage exporters,” Addis Zemen, November 29, 2006.
Laws and Regulations That Support Trade Facilitation. Ethiopia has a few key programs that facilitate tourism and business travel. For example, as an incentive for companies to export, companies can hire foreigners who are then exempt from personal income tax for 2 years if they engage in export-related activities. The paperwork is completed by the company and the investment agency is then responsible for issuing the permit. Regarding business travel, Ethiopian authorities have set few if any obstacles in the way of trade-related flows of people. Moreover, interviewees noted that the Ethiopian Investment Commission actively assisted them in securing visas and preparing for entry into the country.

Legal and Regulatory Issues to Address. Current law requires a visa for all travelers, on matters related to business or tourism, except for nationals of Djibouti and Kenya. However, neither tourist visas nor business visas can be considered obstacles to trade facilitation or commerce in general. Visas are acquired at Ethiopian missions/consulates or, in cases where this is not possible and the person is from a country without representation, at Bole International Airport upon arriving in Ethiopia.

C. Implementing Institution

Overall, the major implementing institution, the Ethiopian Immigration Authority, has a clear mission, along with active leadership that has made numerous changes in the past decade. A lack of professionalism, however, common to many public agencies, creates difficulties in administration.

Immigration Operations That Support Trade Facilitation. Ethiopia’s system for those seeking short-term and long-term trade-related stays has improved, but is still cumbersome. As noted in the Legal section, regulations are cumbersome, but not entirely prohibitive. Consular services execute visas with little delay, although some business travelers interviewed did complain of poorly functioning consular services in their home countries. International visitors who seek an extended stay and work permit benefit from a more facilitative process that can be a bit cumbersome, but is not too restrictive. The Immigration Authority’s fees are reasonable, but the agency has a mixed record when it comes to responding to inquiries. Ethiopian immigration officials use watch lists from INTERPOL, the United Nations, the United States, and other sources to monitor entry and exit of dangerous persons. This procedure is executed electronically at some sites. Ethiopia’s airport tax is nominal and transparently administered.

Immigration Issues to Address. There are a number of issues that the Ethiopian Immigration Authority should address. For example, some interviewees expressed concern over proposed legislation currently being debated in Parliament that would make it necessary for all foreigners who remain in the country for more than 30 days to register with the local authorities. In addition, the trafficking of people is increasingly a concern to authorities.

D. Supporting Institutions

The Immigration Authority administers the laws, while the police, under the Ministry of Public Security, provide the law enforcement function, such as detentions and arrests. The police force is considered by some to be a constructive partner. Others consider immigration, police, and Customs as part of a politically motivated and inefficient system. The Ethiopian Tourism Commission is increasingly a strong partner in trade-related people flows as the Government is beginning to dedicate resources and attention to tourism as a tool for development. It has a focused mission,
well-organized, and has a strong, competent leader. The legal profession provides a supporting function to the trade community by intermediating transactions between trade-related people seeking longer stays in Ethiopia, although as in other areas detailed in this Report, the weak status of general legal knowledge in the business community and the slow growth of legal associations are issues that will hamper the development of supporting institution for years to come.

Basic infrastructure and services regarding people flows are considered inadequate, but improving. Ethiopia has one major international airport, located in Addis Ababa, where there are daily direct flights from many cities in the region, in Europe, and in the Middle East, particularly with key hubs in Kenya, Italy (Rome), and Dubai. Ethiopia is served by many airlines, including British Airways, Egypt Air, Emirates Air, Ethiopian Airlines, Kenyan Airlines, KLM, Lufthansa, and Turkish Air. Intracountry airline service accommodates travelers with frequent flights between Addis Ababa and almost all parts of the country, especially the northern historic circuit and the trade hubs such as Dire Dawa. Intracountry road travel is adequate where tourism or commerce are most highly concentrated, but highly deficient, especially during the rainy season, in areas where there is little tourism or major commerce. The country has made significant progress in terms of infrastructure improvements in recent years, but improvements remain unfinished because repair work is not given the same high priority as construction of new infrastructure. Passenger rail service is almost nonexistent, with the country’s own train line from Addis Ababa to Djibouti in disrepair.

E. Social Dynamics

Improving trade-related people flows receives support in Ethiopia. The Government has made significant changes from the relatively insular regime it administered only a few years ago. People flows in the form of tourism are widely supported and encouraged at all levels: executive branch, legislature, private institutions, and the general public. People flows through business travel have received support for incremental improvements. There is some support in the business community for a more efficient immigration processing system to further facilitate business travelers who seek longer stays. There appears to be a degree of complacency, however, with current Ethiopian institutions and practices.

F. Recommendations

In light of the above, this Report recommends the following:

1. **Continue to upgrade and modernize the Investment Commission.** The Government should assist the Investment Commission in attracting more foreign investors to Ethiopia and assisting them in their trade and investment activities across the country. The Government should also develop a comprehensive personnel system for the Investment Commission that would upgrade candidate qualifications, improve recruitment procedures, and establish job-specific performance and evaluation standards.

2. **Modernize and upgrade automation for people-processing at the border.** Development of a stronger information technology system should be pursued. This upgrade should include an enhanced risk-analysis system.
3. **Promote Ethiopia’s brand.** Ethiopia’s brand as a place to do business is currently very weak. A promotion campaign that includes further streamlining of entry of people should be carried out.
XV. Financial Crimes

A. Introduction

For the purposes of this assessment, the two principal components of the law concerning financial crimes are money laundering and terrorism financing. Both are critical issues in development of transitioning economies, especially since the United Nations Security Council has made them priorities.35

Ethiopia was aptly described as not necessarily a haven for financial crimes at the moment, but highly vulnerable. The motivation for such criminal activity exists even now; Ethiopia’s borders are highly porous, Customs officials are poorly trained and poorly paid, at least two of the countries bordering Ethiopia are at risk of becoming terrorist hotbeds, much of one of them (Somalia) recently encountered a violent transition to an Islamist government; parts of Ethiopia itself are at risk for groups sympathetic to Somalia’s Islamist revolution; and, although the banking system is not particularly vulnerable, so much of the economy is cash based that money flowing in and out illegally simply blends into the informal economy.

Ethiopia has made headway in its cooperation with international efforts to bring the legal regime in line with international standards, and is party to 7 of the 12 international conventions and protocols relating to terrorism. Two factors, however, have slowed the progress made toward meaningful law and the implementation of law concerning financial crimes: (1) the international community has been slow to recognize Ethiopia’s vulnerability, citing its “underdeveloped financial infrastructure and lack of economic development” as obstacles to crime36 and (2) the Ethiopian Government has lagged recently in preparing its own infrastructure for compliance with international standards. Nonetheless, there is evidence of drugs being routed through Ethiopia as far back as 1994.37 There is also evidence of recent significant domestic counterfeiting operations, in both foreign and Ethiopian currencies, as well as the smuggling into Ethiopia of large amounts of counterfeit foreign currency produced abroad.

B. Legal Framework

Ethiopia has made progress in its efforts to cooperate with international organizations fighting financial crimes, but in the past few years that effort has slowed. Although Ethiopia is party to 7 of 12 international conventions and protocols relating to terrorism, it has yet to ratify the 2000 U.N. Convention Against Transnational Organized Crime or the 1999 U.N. Convention for the Suppression of the Financing of Terrorism. This is principally because of Ethiopia’s grindingly slow progress toward compliance with international standards. Ethiopia is not a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and is not, therefore, a

member of the global body of the Financial Action Task Force (FATF). However, Ethiopia is not on the FATF’s list of non-cooperating countries.

The new Penal Code makes money laundering a crime for the first time in Ethiopia, but without defining the crime and the elements, and thus will require implementing legislation if it is to be meaningful.

With that in mind, Ethiopia has had a draft Proclamation on Prevention and Suppression of Money-Laundering and the Financing of Terrorism in the parliamentary review process for more than 3 years. Although it is expected to be passed in the near future, implementation and enforcement will be the next major problem. The real key to combating financial crimes will be establishment of a Financial Investigations Unit (FIU). Plans for an FIU are in the works, but financial and authority issues are hampering these efforts.

A counterterrorism law has been languishing in Parliament for years without hope of passage in the near future. This law has suffered not only from the naturally slow processes of Ethiopian lawmaking, but also from criticism from international groups of alleged curtailments of freedom of speech presented by the draft law.

The draft Proclamation on Prevention and Suppression of Money-Laundering and the Financing of Terrorism [draft Money-Laundering Law] is a reasonably comprehensive attempt to come into full compliance with international standards set out by the FATF.

The draft Money-Laundering Law is clearly written, and expresses well-defined provisions for ensuring proper protections. It clearly defines the list of people and organizations that are considered “accountable” for disclosure in upholding and enforcing the law, and includes lawyers, accountants, dealers in precious metals and gems, real estate agents, corporate boards of directors, and any providers of trust services that might not be enumerated in the list. It also attaches responsibility to financial institutions and licensing authorities. The crime of money laundering and financing terrorism is clearly defined. The draft requires the strict maintenance of records by all accountable persons and organizations. It gives broad and clear authority to the courts to order the seizure, freezing, and/or forfeiture of assets, and authorizes the lifting of the corporate veil in order to reach assets that are being protected. Finally, although the amounts of fines have not been agreed upon at this time, a prison sentence of not more than 5 years has been recommended in the draft for a natural person.

39 See http://www.fatf-gafi.org/document/28/0,2340,en_32250379_32236930_33658140_1_1_1_1,00.html#r1.
40 Article 2.1.
41 Article 4.
42 Article 7.
43 Article 19.
44 Article 62.
45 Article 71.
C. Implementing Institutions

A Financial Investigations Unit must be established before any law that is passed can be effective. Without investigations, there can be no enforcement. This is where Ethiopia’s problems in implementation begin. No one is quite sure which Government agency or agencies will have authority over the FIU. The ECuA wants to play a responsible role, but currently it is clearly incapable of meeting the requirements. Corruption, high turnover of employees, and the paucity of effective Customs training programs make this agency an unlikely candidate for participation in investigating and enforcing financial crimes law, at least at the present time.

The NBE likewise wants to have control over the FIU, but its close connections to the political branches of the Government are troubling. In any case, given the budgetary crises that most agencies are experiencing, the risk that funding meant for the creation of an FIU will be used for other, more pressing needs, is significant and must be addressed carefully.

Finally, the courts will be responsible for adjudicating cases; but, as with other areas of the law, they are poorly equipped to handle complex legal issues. Ideally, a separate bench dedicated to financial crimes would be established, but the existing special sections are rendered moot by the practice of rotating judges. Many judges have no formal legal training, and almost no judges receive comprehensive training in complex areas of the law.

D. Supporting Institutions

The Ethiopian Bar Association is a voluntary association of lawyers that is working, primarily, on development of continuing legal education programs. A course on financial crimes would be a useful addition to the curriculum.

The Addis Ababa University law faculty should be used as a valuable resource for the legal and business communities and the judiciary. Among other things, the faculty can act as a clearinghouse for information about the law, conduct continuing legal education programs, and provide student interns for legal and business practices. However, almost no efforts have been made to reach out to the law faculty.

There are two main commercial associations in Ethiopia: the Ethiopian Chamber of Commerce and the AACCSA, as well as a number of sectoral associations. Targeted outreach on financial crimes could appropriately flow through these institutions.

The media, currently limited in its constructive influence in Ethiopia, should be considered a resource for public education on issues of financial crimes.

E. Social Dynamics

People speak anecdotally and ominously about Ethiopia’s risk of becoming a haven for financial crimes, but no one can point to real evidence of its occurrence. Some claim that Ethiopia is vulnerable, that the border with Sudan is a de facto “free zone,” and that known terrorist states and organizations are feeding money to Islamist groups in the Somalian region of Ethiopia; but there are no available statistics. The risk, it is feared, is that parts of Ethiopia, because of already poor governmental infrastructure outside of the cities, will become lawless territory controlled by
criminals and terrorists. This fear is a good thing. In a remarkably culturally, ethnically, and religiously diverse country, the Government of Ethiopia has no interest in losing segments of its territory to the kinds of criminal activity that can ultimately also have a catastrophic political effect. The Government has every reason to cooperate with the United Nations Office on Drugs and Crime (UNODC) and other international efforts to curb financial crimes.

F. Recommendations

Aside from a 2005 Workshop on Terrorism, Organized Crime, and Money-Laundering in Addis Ababa sponsored by UNODC, little technical support has been provided to Ethiopia. None of the present donor projects with the NBE are focused on the issue. Therefore, our recommendations begin with technical assistance:

1. **Technical assistance projects are badly needed.** Financial crimes law, investigation, and enforcement are complex. For Ethiopia to comply with international standards and become party to the latest money laundering and anti-terrorism conventions, Customs, the police, and the NBE need help developing implementation skills.

2. **Pass the draft proclamation into law.** Already, too much time has passed since the law was drafted. Virtually nothing can be done in the way of investigation or enforcement until there is a law in place.

3. **Train lawyers.** The legal profession will gradually become the watchdog component of a financial crimes framework. The lawyers will work with the FIU in investigations, prosecute the crimes, become the judges that adjudicate the cases, and be the principal organs for defending liberties that may be at risk under the law itself or as a result of poor/political application of the law.

4. **Introduce programs in the law faculty.** New financial crimes faculty, curricula, and possibly a clinical program to defend civil liberties threatened in prosecutions are effective ways to use law faculty resources, train the next generation of judges and lawyers, train law faculty members, and benefit the public.

5. **Establish the Financial Investigations Unit.** The FIU should be established under joint authority of the NBE and the police. No single institution should have exclusive authority. But, critical to the fair and transparent development of the FIU, civil society watchdog organizations should be granted access to administration of the FIU.
XVI. Intellectual Property Rights

A. Introduction

Over the past 2 years, Ethiopia has enacted a series of new laws pertaining to major areas of intellectual property rights (IPR), namely, copyright and related rights, plant varieties, and trademarks. In addition, the country is in the process of developing new laws for the protection of geographical indications and for undisclosed information. These actions indicate that IPR is receiving Government interest and attention, primarily through efforts of the Ethiopian Intellectual Property Office (EIPO). Until the formation of the EIPO in 2003, responsibility for and control over the various areas of intellectual property were handled by different, unrelated Government agencies with no single institution having authority over them. The Ethiopian Science and Technology Commission managed the protection of inventions and industrial designs, the Ministry of Culture and Information dealt with functions related to the administration of literary and artistic works, and the Ministry of Trade and Industry had responsibility for trademarks.

Relative to some other developing countries, Ethiopia does not exhibit a great and problematic tendency to abuse IPR. For example, Ethiopia is not among the countries the Office of the U.S. Trade Representative (USTR) has targeted in its annual “Section 301” report. Nevertheless, counterfeit goods (e.g., CDs and DVDs) are available in Addis Ababa, most visibly through street vendors, despite Government efforts in the past to address this problem. At this time, a series of measures are being taken to address the problem of counterfeit goods, especially songs. The extent of IPR enforcement at the border is unknown. It would not be unreasonable to expect that Ethiopia’s prospects for growth arising from substantial foreign investment may be negatively affected if the Government fails or slows its efforts to engage in meaningful implementation of its IPR regime.

B. Legal Framework

Ethiopia’s current principal IPR framework consists of a collection of laws that are consistent with international norms. The first and current Patent Law was enacted in 1995, namely, the Proclamation on Inventions, Minor Inventions and Industrial Designs (Proclamation No. 123), and implementing regulations were issued in 1997.

The Protection of Trademarks and Service Marks is currently under a directive issued in 1986, which involves the receipt and processing of trademark applications as well as the issuance of trademark deposit certificates by the EIPO in accordance with the directive’s requirements. A new law was enacted in 2006, which will bring Ethiopia’s trademark law into line with the law of other jurisdictions worldwide. Donors and some local institutions are pushing for implementing regulations to be issued in 2007.

A comprehensive Copyright Law was enacted in 2004 to replace previous legal protection that was based on the 1960 Civil Code of Ethiopia, which did not extend protection for the rights of performers, producers of phonograms, or broadcasting organizations.

The EIPO has ongoing efforts, with assistance from the USAID Doha Project for WTO Accession and Participation – Ethiopia (USAID WTO Accession Project), to prepare new laws concerned with IPR. In this regard, background papers and draft legislation have been created for the protection of geographical indications and for undisclosed information.

Insofar as international IPR treaties are concerned, Ethiopia is a contracting party to the 1981 Nairobi Treaty to Protect Olympic Symbols and to the 1967 Convention Establishing the World Intellectual Property Organization.

Ethiopia is not a party to any major international IPR treaty or agreement. Joining such treaties or agreements would signal furtherance of Ethiopia’s efforts to join the WTO and would support the goal of having the intellectual property of Ethiopian nationals protected in other countries. Ethiopia should endeavor to sign the following agreements:

- Paris Convention for the Protection of Industrial Property;
- Patent Cooperation Treaty;
- Berne Convention for the Protection for Literary and Artistic Works;
- Trademark Law Treaty;
- Convention for Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- WIPO Copyright Treaty;
- International Union for the Protection of New Varieties of Plants;
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks; and

IPR enforcement mechanisms in Ethiopia are too dispersed and lack coordination. Investigation and enforcement currently are in the hands of the police, Customs authorities under the Ministry of Finance, the Ministry of Culture & Youth, the Ministry of Information, the Ministry of Trade and Industry, and the Ethiopian Intellectual Property Office. Lack of coordination among these agencies, coupled with the low administrative fines imposed, contributes to the overall inadequacy of IPR enforcement within the country.

Few criminal prosecutions for IPR violations are brought, and civil litigation for IPR violations, though becoming more popular, is still relatively rare when compared with other types of civil cases.
C. Implementing Institutions

The EIPO is the primary Government body responsible for administration of the country’s IPR regime. The Director General of EIPO is directly accountable to the Prime Minister.

The major implementing institutions with respect to IPR in Ethiopia are the courts. At this time, Ethiopia does not have separate economic or commercial courts that deal with IPR matters. It is unclear whether judges are knowledgeable about IPR issues or have access to IPR training other than through coursework at Addis Ababa University. Existing arbitration institutions do not resolve IPR disputes, due primarily to the relative newness of the institutions and the disputing parties’ preferences to go to ordinary courts. Therefore, judges who work within the civil bench of the courts will require significant and ongoing training in the understanding and enforcement of the laws on intellectual property. Arbitration institutes also need assistance and awareness-building activities regarding their role in IPR disputes.

The extent of IPR enforcement by police at the border is unknown, as is the amount of training police and Customs officials have with respect to identifying counterfeit and/or infringing goods, or procedures to follow when they encounter them.

In 2004, the Government established the Trade Practices Investigation Commission led by Hareka Harouye, a former Minister of Justice. The objective was to transfer legal action involving infringement, among other issues, from the courts to this new commission. For example, there was a recent transfer of litigation to the commission by a Dubai-based tissue paper manufacturer regarding claims against importers of tissue paper from China because this paper bore the Dubai manufacturer’s Ethiopian-registered brand name FINE.

With regard to plant varieties, the Ministry of Agriculture and Rural Development and the Ethiopian Environmental Protection Authority have the power to draft legislation and follow-up implementation. With regard to copyrights and trademarks, EIPO works closely with the Ministry of Trade and Industry.

D. Supporting Institutions

The Addis Ababa University curriculum includes IPR courses and appears to have the capacity to train new lawyers about IPR matters. More than four of the faculty members have studied IPR abroad. Although currently meaningful scholarship and teaching in this arena is extremely limited, the faculty is currently planning to launch a Journal on Intellectual Property.

There are a few private Ethiopian law firms that deal with IPR. At this time, it is unknown whether their major source of work is local or foreign individuals and business enterprises.

Based on and perhaps arising from interest generated at a recent conference in Addis Ababa, a group of Ethiopian authors, composers, performers, and others engaged in the creation and/or production of copyrightable works have formed a collective management organization that will deal with the use of their intellectual property by third parties.

At present, it has been reported that the following groups exist in Ethiopia with an interest in enforcing IPRs:
Ethiopian Inventors Association;
Ethiopian Musicians Association;
Audio-Visual Producers Association;
Film Producers Society; and
Authors Society.

Although IPR in Ethiopia receive some coverage by the media, there remains a fundamental lack of broad-based public information generated by the media that explains to the public why IPR is important and why, from an economic growth standpoint, adherence to the new IPR regime throughout society is desirable. There is an effort, however, by the Ethiopian audiovisual and musicians associations to increase public awareness in the areas of IPR.

The AACCSA have cooperated with EIPO in organizing IPR workshops and creating awareness. AACCSA also houses the first Arbitration Institute in the country.

E. Social Dynamics

IPR Conferences/Workshops/Miscellaneous/Strategic Plan. A well-attended, 2-day WTO National Workshop on Intellectual Property was held in Addis Ababa on July 27–28, 2006, with active audience participation during question-and-answer sessions after each topic presentation. The workshop covered all areas of IPR and was presented by a representative of the Intellectual Property Division of the WTO and a representative of the World Intellectual Property Organization.

Another 2-day conference, held on August 1–2, 2006, was sponsored jointly by the EIPO and the USAID Accession Project on the topic of geographical indications protection. The conference, led by a consultant provided by the USAID Accession Project, was part of an EIPO effort to obtain input on the draft for a new geographical indications law for Ethiopia. Opening remarks were made by Glenn Anders, USAID Mission Director, and by State Minister of Agriculture and Rural Development Ato Yakob Yala, who stated that the enforcement of intellectual property laws contributes to ongoing development as FDI flows into the country and that strengthening intellectual property laws will enable Ethiopian products to win acceptance in the international market and speed investment inflow. Participants included Government officials, private sector attorneys, and representatives of trade associations.

The USAID Accession Project consultant also conducted training sessions for EIPO trademark examiners that covered trademark searching and examination as well as using information resources suitable for evaluating applied-for trademarks.

In addition to the workshop and conference mentioned above, EIPO held a workshop to educate the media about IPR. Also, EIPO participated in a 2-day conference on July 20–21 dealing with the copyright topic of author reproduction rights. It was attended by authors, composers, and others interested in protecting their rights in copyrighted material, with a presentation by a representative of the Reproduction Rights Organization of Norway.

The Ethiopian Government is currently engaged in a project to register the names of coffee-growing areas of Ethiopia, as geographical indications or marks, in 30 countries throughout the world.
F. Recommendations

The following recommendations are drawn from a Five Year Strategic Plan (2006/2007–2009/10) on IPR drafted by the EIPO. It sets forth a number of goals and objectives, including the following:

1. Develop a national IPR policy that will be integrated into the national development policy to be submitted to the Government by the end of 2006. The national IPR policy will include development of model institutional IPR policies for R&D organizations based on the national IPR policy, to be submitted to institutions by the end of the second quarter of 2007.

2. Develop legislation to make the national IPR legal framework comprehensive and integrate it with the international IPR system, which will include:

   - Preparing draft laws on geographical indications and trade secrets for submission to the Council of Ministers by March 2007;
   - Preparing draft trademark and copyright regulations for submission to the Government by December 2006;
   - Amending the Proclamation Concerning Inventions, Minor Inventions and Industrial Designs by the end of 2008 for purposes of making it TRIPS-compliant;
   - Studying three WIPO-administered IPR treaties and submitting accession proposals to the Government by June 2007;
   - Increasing the number of users of the IPR system by 15% each year during the plan period, which will include:
     - Initiating and strengthening IPR awareness programs in universities, R&D organizations, and business establishments during the plan period;
     - Undertaking at least three IPR awareness programs for the general public every year during the plan period;
     - Initiating incorporation of IPR courses to the curriculum of primary and secondary schools by the end of 2006;
     - Strengthening the offering of IPR law courses in eight HLRIs during the plan period;
   - Improving the quality of service delivered to EIPO customers in the protection of IPR and the provision of technological information contained in patent documents;
   - Initiating protection and exploitation of intangible assets related to export products;
   - Promoting commercialization of IPR assets;
   - Strengthening enforcement of IPR;
   - Enhancing cooperation with local and foreign organization on IPR matters; and
   - Using IPR to enhance export revenue.
## ATTACHMENT 1: COMPILATION OF RECOMMENDATIONS

### Company Law and Corporate Governance

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<tbody>
<tr>
<td>1.</td>
<td>Legal reform</td>
<td>Allow single-member companies and make clear that a company may have any number of wholly-owned subsidiaries (thus revising Article 510).</td>
<td>High</td>
<td>Short</td>
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<td>2.</td>
<td>Legal reform</td>
<td>Eliminate or reduce the requirement of minimum capital and, if it is retained, state it in US$ or Euro equivalents (thus revising Article 512). Many countries have eliminated such capital requirements as being unclear and confusing (and subject to manipulation) as an accounting matter, and as not serving to protect either creditors or shareholders (and not enforceable) as a practical matter.</td>
<td>High</td>
<td>Short</td>
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<td>3.</td>
<td>Outreach</td>
<td>Make clear that a PrLC may structure its governance as it wishes. For example, it could give all members equal management authority, or it could name certain persons as managers, or it could create an elected management body similar to a board of directors.</td>
<td>Medium</td>
<td>Long</td>
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<tr>
<td>4.</td>
<td>Institutional/Legal reform</td>
<td>Allow the members—by agreement—to share votes and share profits as they wish. For example, equally, or in proportion to their capital contributions, or on another basis. However, the law should state how those are shared if the members do not agree otherwise. For example, it could state that they share equally in that case.</td>
<td>Medium</td>
<td>Medium</td>
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<tr>
<td>5.</td>
<td>Institutional/Legal reform</td>
<td>Allow a company—by agreement of the members—to impose whatever restrictions on sale of shares they wish. For example, free transferability (no restrictions), transferability only to family members or other company members, requirement of a first offer to the company or to existing members, and so on. However, the law should state how transfer is restricted if the members do not agree otherwise. For example, it would restrict transfer to inheritance or transfer with 75% member approval as is stated in the current law.</td>
<td>Medium</td>
<td>Short</td>
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<tr>
<td>6.</td>
<td>Legal reform</td>
<td>Provide that decisions in a PrLC are made by majority voting power except that certain very major decisions require unanimous consent, such as admitting a new member, amending the charter, sale of the company’s assets, merger with another company, and so on. However, the law should also allow the members to vary even those requirements.</td>
<td>Low</td>
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### Contract Law and Enforcement

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<tbody>
<tr>
<td>1.</td>
<td>Education/Legal reform</td>
<td>Provide training to legal professionals and judges. This is critical if the law is ever to be made accessible to the business community. Training can begin with the law faculties and the Ethiopian Bar Association. Both institutions need financial assistance and expertise to create continuing education programs that provide useful education to practicing lawyers and judges. Although the bar association should not be mandatory for lawyers, it should have some exclusive responsibility over the bar, authority over mandatory continuing legal education, and a mandate to share responsibility over courses with the law faculties, which would be a good way to bring the bar association into the legal infrastructure as a stakeholder.</td>
<td>High</td>
<td>Medium</td>
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<tr>
<td>2.</td>
<td>Legal/Institutional reform</td>
<td>Simplify the law by encouraging the writing of restatements and treatises. Legal research and internship programs should be fostered in the law faculties. Faculty members and students are an excellent resource for legal information. One need only recognize, for example, the somewhat difficult-to-swallow fact that the bulk of legal scholarship in the United States is reviewed, edited, and published by law students to realize the potential value of that group. Ethiopian law students are as bright and enthusiastic as law students anywhere, and are thoroughly capable of publishing the theses that they are required to write. Likewise, faculty members need to be motivated to write, publish, and speak in public.</td>
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### Real Property Law

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<tbody>
<tr>
<td>1.</td>
<td>Legal/Institutional reform</td>
<td>Clarify the division of powers and functions between the federal and the local bodies at each level.</td>
<td>High</td>
<td>Long</td>
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<td>2.</td>
<td>Legal/Institutional reform</td>
<td>State the powers and functions precisely and without overlap, and combine them into fewer levels to the extent that doing so is practicable and politically feasible.</td>
<td>High</td>
<td>Long</td>
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<td>3.</td>
<td>Legal reform/Outreach</td>
<td>Specify in one place all of the approvals that are needed for the acquisition, use, lease, sale of, and construction on land by an Ethiopian citizen or a foreigner, and state the procedures for obtaining each approval and the time limit within which a proper application must be granted.</td>
<td>High</td>
<td>Medium</td>
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<td>4.</td>
<td>Legal reform</td>
<td>Simplify many of the rigid rules in the present proclamations, such as the numerous separate limits on maximum lease terms for specific activities and specific</td>
<td>High</td>
<td>Medium</td>
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<td>No.</td>
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<td>5.</td>
<td>Legal reform/Outreach</td>
<td>Because land leasing is so important, standardize and publish clear and objective rules for: • Leasing land rights from the State, • Selling, subleasing, and otherwise transferring those lease rights, • Negotiating or otherwise setting rental amounts, • Establishing or assuring renewal rights, and • Ensuring that ownership of buildings is not severed from underlying land lease rights.</td>
<td>High</td>
<td>Long</td>
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<tr>
<td>6.</td>
<td>Legal/Institutional reform</td>
<td>Because land as a financing device is so important, standardize and publish rules for mortgaging land rights, including those presented in the preceding bullet point.</td>
<td>High</td>
<td>Short</td>
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<tr>
<td>7.</td>
<td>Institutional reform</td>
<td>Encourage an open and transparent market by establishing or encouraging land marketing agencies and systems for listing available properties, prices, and other terms.</td>
<td>High</td>
<td>Long</td>
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<td>8.</td>
<td>Legal/Institutional reform</td>
<td>Encourage investment in Ethiopia by making the rules for land use by foreign persons clearer and more secure. Consider the following: • Allow certain foreign persons (such as long-term residents and persons or companies making investments of more than a specified amount) to have land use rights the same as or similar to those of Ethiopian citizens, and • Issue a formal regulation or law clarifying matters about which there may now be uncertainty, such as rules for: foreign ownership of buildings and other attachments on land; companies or joint ventures that are partly foreign-owned; the holding of land by Ethiopian citizens for the benefit of foreign persons; and eliminating or reducing investment license requirements for foreign holding of residential property.</td>
<td>High</td>
<td>Long</td>
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<td>9.</td>
<td>Legal/Institutional reform</td>
<td>Continue and encourage expansion of the land policy, survey, titling, and expropriation/compensation and urban leasing policy projects described above.</td>
<td>High</td>
<td>Long</td>
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<td>10.</td>
<td>Legal education/Outreach</td>
<td>Establish training programs for federal, municipal, regional, woreda, and kebele officials on all of the above.</td>
<td>High</td>
<td>Medium</td>
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### Secured Transactions Law

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<tbody>
<tr>
<td>1</td>
<td>Legal reform</td>
<td>Ethiopia’s pledge law should be rewritten to expressly permit the use of intangible and tangible movable property, including future interests in such property and proceeds from such property. In addition, the law should specifically permit the use of purchase money security interests in order to create greater flexibility in secured lending and greater competition between lenders. Values expressed in foreign currency should also be expressly permitted to encourage cross-border and international secured lending.</td>
<td>High</td>
<td>Medium</td>
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<tr>
<td>2</td>
<td>Legal/Institutional reform</td>
<td>Ethiopia needs a national system of collateral registration. Best practices from other countries where a registry that allows for pledges of movable property, as well as both tangible and intangible property, should be considered and implemented in the formation, implementation, and public education about a national collateral registry.</td>
<td>High</td>
<td>Long</td>
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<td>3</td>
<td>Legal reform</td>
<td>The leasing law should be amended as part of an overall legal reform related to secured lending. Lease interests should be registered in the national registry for movable property. Currently the law requires registration of the actual lease contract (not just a public claim on the leased assets) at the Ministry of Industry and Trade. Although this alone does not significantly hinder leasing, it adds unnecessary costs that could be better handled through a national pledge registry system.</td>
<td>High</td>
<td>Short</td>
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<tr>
<td>4</td>
<td>Legal education/Outreach</td>
<td>Significant outreach should be made to Ethiopia’s community of banks and other lenders, for the purpose of educating them about and building confidence in the idea of secured lending in movable and intangible property. Strategies should be devised to dismantle the norm of over-collateralization and inappropriate use of collateral. The banking association should be strengthened as an important means of increasing understanding and use of the many flexible options and opportunities in secured lending.</td>
<td>High</td>
<td>Short</td>
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<tr>
<td>5</td>
<td>Legal education/Outreach</td>
<td>The goals behind Ethiopia’s enactment in 2003 of a Warehouse Receipts Law should be reinforced through continued donor support and State initiative focused on public education about the purpose and functions of such a system.</td>
<td>Medium</td>
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<td>6</td>
<td>Legal reform</td>
<td>The over-regulation of banks must be evaluated and altered as a means for releasing constraints on lending in Ethiopia.</td>
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## Bankruptcy Law

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<tbody>
<tr>
<td>1.</td>
<td>Legal education</td>
<td>Efforts should be undertaken by the community of implementing and supporting institutions—including creditors and accountants—to learn about and more frequently access the option of reorganization. As noted, the possibility of reorganization or protection arises not only from law, but also from knowledge of the law, and such knowledge is quite limited at this time.</td>
<td>High</td>
<td>Long</td>
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<tr>
<td>2.</td>
<td>Legal/Institutional reform</td>
<td>For more effective implementation of the law, bankruptcy regulations should significantly detail and clarify the role of the commission and the trustees.</td>
<td>High</td>
<td>Long</td>
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<tr>
<td>3.</td>
<td>Education/Outreach</td>
<td>For the purpose of fair and efficient auctioning services, courts should either hire competent auctioneers or delegate the services to those with experience. Auctioneers should also be regarded as a good source of competent valuation services.</td>
<td>Low</td>
<td>Medium</td>
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<tr>
<td>4.</td>
<td>Institutional reform</td>
<td>Any bankruptcy reform efforts should include input from international lenders and international experts to ensure that amendments will meet appropriate international standards and, more important, provide protections needed to enable lenders to increase access to affordable credit.</td>
<td>High</td>
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## Competition Law and Policy

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<tbody>
<tr>
<td>1.</td>
<td>Legal education/Outreach</td>
<td>Engage in a broad and concerted effort to form and educate a body of academics, lawyers, judges, and consumer NGOs. Specifically: • Courses in competition law and policy should be introduced to the law faculties; • Courses in industrial organization should be introduced to the economics faculties; and • Judges should be given the opportunity to participate in judge training offered internationally.</td>
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<td>Long</td>
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<tr>
<td>2.</td>
<td>Institutional reform</td>
<td>Empower the Trade Practices Commission to: • Focus on law enforcement that has the greatest benefit to consumer welfare; • Create literature and hold conferences to educate the business and legal</td>
<td>High</td>
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### Institutional reform

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<tr>
<td>3.</td>
<td>Institutional reform</td>
<td>Give the commission a budget for a staff of lawyers and economists (comparable to new agencies in Vietnam, have more than 20 economists and lawyers) sufficient to conduct its own decisions and to publish and publicize them.</td>
<td>High</td>
<td>Long</td>
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<tr>
<td>4.</td>
<td>Institutional reform</td>
<td>Plan for removing the secretariat and commission from under the authority of the Ministry of Trade and Industry.</td>
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<tr>
<td>5.</td>
<td>Institutional reform</td>
<td>Give to either the Trade Practices Commission or some prosecutorial body the authority and resources to initiate investigations and to prosecute cartels and abuses of dominance in the name of and on behalf of the consuming public.</td>
<td>High</td>
<td>Long</td>
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<tr>
<td>6.</td>
<td>Strategy/Education</td>
<td>The foreign donor community should provide technical assistance to the Trade Practices Commission and the judicial training center in understanding and applying concepts of consumer welfare and market power. Some of this training could benefit from involvement of other African countries so that a common regional understanding can emerge. South Africa’s competition law enforcement bodies have already benefited from substantial assistance and are now at a more developed level and could assist as a mentor.</td>
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### Commercial Dispute Resolution

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<tbody>
<tr>
<td>1.</td>
<td>Legal/Institutional reform</td>
<td>Foster commercial expertise within the courts by creating separate commercial and family divisions, and otherwise endeavor to assign similar cases to the same judges.</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>2.</td>
<td>Legal education</td>
<td>Include commercial law courses in the judicial training center curriculum.</td>
<td>High</td>
<td>Short</td>
</tr>
<tr>
<td>3.</td>
<td>Legal reform</td>
<td>Adopt a law on arbitration that clarifies arbitration’s authority and jurisdiction. Preparing for the new law should include a process of research, debate, negotiation, public education, outreach, institutional capacity-building, and revisions of drafts based on local political compromises and many other steps.</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>4.</td>
<td>Legal/Institutional reform</td>
<td>Initiate a formal program by which the courts require parties to pursue mediation/arbitration as a first-instance approach.</td>
<td>High</td>
<td>Long</td>
</tr>
</tbody>
</table>
### Court Administration

<table>
<thead>
<tr>
<th>No.</th>
<th>Type</th>
<th>Recommendation</th>
<th>Priority</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Institutional reform</td>
<td>Create a separate commercial division in each federal court, and endeavor to retain the same judge in that division for a sustained period of time.</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>2.</td>
<td>Institutional reform</td>
<td>Create a separate family law division of the courts to segregate more basic civil/commercial disputes from the more complicated family docket.</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>3.</td>
<td>Analysis</td>
<td>Conduct a feasibility study to introduce a formal mediation requirement as a first step for commercial disputes, with possible implementation through the law on arbitration currently being considered.</td>
<td>High</td>
<td>Short</td>
</tr>
<tr>
<td>4.</td>
<td>Institutional strengthening</td>
<td>Provide additional resources to refurbish courthouses and provide better communications infrastructure.</td>
<td>Low</td>
<td>Long</td>
</tr>
<tr>
<td>5.</td>
<td>Institutional strengthening</td>
<td>Provide resources to gradually introduce a more comprehensive uniform case management system.</td>
<td>Medium</td>
<td>Medium</td>
</tr>
</tbody>
</table>

### Foreign Direct Investment

<table>
<thead>
<tr>
<th>No.</th>
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<th>Priority</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Legal reform</td>
<td>The Government should review FDI exclusions with the intention of reducing the number of sectors closed to FDI to a minimum level.</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>2.</td>
<td>Legal reform</td>
<td>Ethiopia should revisit and reduce its minimum capital requirement for investments.</td>
<td>High</td>
<td>Short</td>
</tr>
<tr>
<td>3.</td>
<td>Institutional strengthening</td>
<td>To undertake effective promotional work, the Ethiopian Investment Agency should be strengthened.</td>
<td>Medium</td>
<td>Long</td>
</tr>
<tr>
<td>4.</td>
<td>International agreements</td>
<td>WTO accession will stimulate FDI by signaling to potential investors that Ethiopia has bound itself to rules that are investor friendly. Therefore, the Government should speed up the accession process.</td>
<td>High</td>
<td>Short</td>
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</tbody>
</table>

### International Trade

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<tr>
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<th>Priority</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>International agreements</td>
<td>Move forward with the WTO accession process as quickly as possible.</td>
<td>High</td>
<td>Short</td>
</tr>
</tbody>
</table>
### ETHIOPIA COMMERCIAL LAW & INSTITUTIONAL REFORM AND TRADE DIAGNOSTIC—JANUARY 2007

<table>
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<tr>
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</thead>
<tbody>
<tr>
<td>2.</td>
<td>Institutional reform</td>
<td>Strengthen the mechanism for stakeholder consultations on trade policy matters. A formal consultation mechanism with the private sector and civil society needs to be established.</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>3.</td>
<td>Capacity-building</td>
<td>The Ministry of Trade and Industry needs to employ staff with adequate management as well as technical expertise to cover the WTO, AGOA, COMESA, ACP-EU negotiations, and other bilateral agreements. Staff members need skills in trade policy analysis, formulation, and negotiation.</td>
<td>Medium</td>
<td>Long</td>
</tr>
<tr>
<td>4.</td>
<td>Strategy development</td>
<td>The Ministry of Foreign Affairs, in consultation with MoTI, should ensure that officials representing Ethiopia abroad are well equipped to deal with trade negotiations.</td>
<td>High</td>
<td>Short</td>
</tr>
<tr>
<td>5.</td>
<td>Institutional strengthening</td>
<td>MoTI should play an active role in the promotion of Ethiopian exports through initiatives such as the EU Everything But Arms Initiative and AGOA. The services of the Ethiopian Quality and Standards Authority need to be improved to enable Ethiopian products to compete in the international market.</td>
<td>Low</td>
<td>Long</td>
</tr>
</tbody>
</table>

### Flow of Goods and Services

<table>
<thead>
<tr>
<th>No.</th>
<th>Type</th>
<th>Recommendation</th>
<th>Priority</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Legal reform/ Education</td>
<td>Support and enact the new Customs Law reform.</td>
<td>High</td>
<td>Short</td>
</tr>
<tr>
<td>2.</td>
<td>Institutional strengthening</td>
<td>Continue development of information technology (ASYCUDA++ Ethiopian Customs Automated System), including single-administrative-document and single-window concepts. In addition, continue streamlining and paperwork reductions already begun.</td>
<td>Medium</td>
<td>Long</td>
</tr>
<tr>
<td>3.</td>
<td>Institutional strengthening</td>
<td>Competitive salaries should be paid to Customs IT staff to ensure continuity and retention of talented employees.</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>4.</td>
<td>Legal reform</td>
<td>The penalties for border operations that are corrupt, inept, non-standard, and slow are severe. These policies should be rationalized.</td>
<td>Medium</td>
<td>Short</td>
</tr>
<tr>
<td>5.</td>
<td>Institutional strengthening/Capacity-building</td>
<td>Pay a salary that is commensurate with a professional position of honor and trust that will attract high-quality personnel, and that will support a reasonable standard of living without the need for supplementary income. Establish high standards for recruits and check backgrounds, finances, and references prior to employment. Periodically reinvestigate all personnel for the reasonability of financial worth and</td>
<td>High</td>
<td>Long</td>
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<tr>
<td>No.</td>
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<td>Recommendation</td>
<td>Priority</td>
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<tr>
<td>6.</td>
<td>Legal/Institutional reform</td>
<td>Check for law enforcement violations or criminal associations. Continue to simplify the tariff and customs procedures and ensure transparency in all customs matters. Establish internal controls and audit processes/systems to prevent breaches of integrity, and establish audit trails to identify and uncover violations.</td>
<td>High</td>
<td>Short</td>
</tr>
<tr>
<td>7.</td>
<td>Institutional reform</td>
<td>Publish standards for cargo clearance and all Customs services and provide appeals for Customs decisions.</td>
<td>High</td>
<td>Medium</td>
</tr>
<tr>
<td>8.</td>
<td>Institutional strengthening</td>
<td>Automate Customs processes, building in internal audits and controls, and use and expand systems for direct deposit of customs duties and fees to financial institutions.</td>
<td>Medium</td>
<td>Short</td>
</tr>
<tr>
<td>9.</td>
<td>Institutional strengthening</td>
<td>Develop a Customs code of conduct based on the Minister of Revenue’s code, which is a list of core values and includes a table of discipline that addresses integrity at all levels of the organization. This code of conduct should establish a “bright line” for integrity violations so that employees are able to clearly delineate violations and wrongful acts.</td>
<td>Medium</td>
<td>Short</td>
</tr>
<tr>
<td>10.</td>
<td>Institutional/Legal reform</td>
<td>Establish an internal organization within ECuA to oversee and protect the integrity of the organization, its systems, and its employees. The border agencies should be the first agencies in the Ethiopian Government to have the services of their own internal affairs unit of investigators.</td>
<td>Low</td>
<td>Long</td>
</tr>
<tr>
<td>11.</td>
<td>Institutional strengthening</td>
<td>Create an environment in which importers and carriers feel safe bringing integrity issues to the attention of management.</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>12.</td>
<td>Institutional transformation</td>
<td>Make it clear to the trade community that corruption on the part of Customs or the trade will not be tolerated. Ensure that appropriate sanctions are in place for both Customs and business violators.</td>
<td>Medium</td>
<td>Long</td>
</tr>
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<td></td>
<td></td>
<td>Importers who display excellence, and are competent and compliant, pose little risk to Customs. ECuA should consider establishing a special program for compliant large importers to speed their goods through Customs formalities. This approach could be implemented immediately while the major reforms and programs proceed. Numerous countries have adopted this “Account Management” approach to allow their limited resources to focus on high-risk shipments while providing tangible benefits to legitimate businesses. Treating these companies as accounts, appointing Customs-employed account managers, and instituting a special set of compliance, risk criteria, and post-release audits for select companies could allow many legitimate companies “green line” or expedited service and separate their shipments from the flow of riskier imports.</td>
<td>High</td>
<td>Medium</td>
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<td>No.</td>
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<tr>
<td>13.</td>
<td>Institutional transformation</td>
<td>Consolidate other border agency functions (such as Health and Agriculture) at Customs clearance stations by ensuring adequate staffing, training of Customs Officers in other control authorities' commodity jurisdiction and problem identification, and integrate forms, manual processes, and automation.</td>
<td>High</td>
<td>Medium</td>
</tr>
<tr>
<td>14.</td>
<td>Legal reform</td>
<td>Establish alternate currency controls and limit Customs transactions to traditional Customs matters for letter of credit and other banking concerns.</td>
<td>High</td>
<td>Short</td>
</tr>
</tbody>
</table>
| 15. | Institutional transformation/Legal reform | Improve the export incentive program through the following initiatives:  
  • Replace the required time-consuming submission of yearly estimates and their approval by instituting a system of spot checks and periodic review of exporter files.  
  • Expand export incentives to parties other than the actual exporter. Incorporate the ability for a domestic supplier to claim a refund of imported duties on taxes on goods sold to a final exporter.  
  • Revise the export process by streamlining procedures and using the principles of selectivity. One-stop processing centers for exports should be implemented at the major trading centers where the exporter can conclude all required authorizations. A plan should be developed for the use of selective Customs and other agency inspections on routine exports. This could be started in the cut flower trade and would eliminate the need for reimbursable inspectors stationed at each farm, a significant cost factor for the grower. Most nations, even those in a development stage, have eliminated or dramatically reduced export inspections, leaving this responsibility primarily with the importing country. | High     | Short    |
<p>| 16. | Analysis                      | An audit of the cool-chain process from the cold stores at the farms, cooled local transport, adequate airport facilities, and handling should be studied and a plan for improvement implemented. Lack of high-quality cool-chain management negatively affects flower export production and Ethiopian flowers from being recognized as consistently high quality, and prevents operators from receiving the maximum prices. | Medium   | Short    |
| 17. | Institutional development     | Establish a national transport association to address the significant lack of human capacity in modern business transport practices and technology within the transport sector and provide a focal point for identification and resolution of industry issues. The RTA could spearhead this effort and it or the Chamber could be funded to provide training that would significantly increase fleet efficiency and | Low      | Short    |</p>
<table>
<thead>
<tr>
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<th>Duration</th>
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</thead>
<tbody>
<tr>
<td>18</td>
<td>Institutional strengthening</td>
<td>Improve the quality of the Customs Clearance Agent sector and create a partnership between it and the Customs Service. Establish a working group of Customs Clearance Agents and Customs officials to promote a better working relationship. This could start by identifying training needs and scheduling short seminars for the trade. As this relationship progresses, plans could be developed for effective shared oversight of the industry and voluntary reporting of suspected activity. Without acknowledgement of the valuable contribution a reliable and professional Customs Clearance Agent community can make to facilitation of the Customs process, reform will remain a slow and difficult process.</td>
<td>High</td>
<td>Medium</td>
</tr>
<tr>
<td>19</td>
<td>Institutional strengthening</td>
<td>Train all border officials on the distinction between the roles of the freight forwarder and the Customs Clearance Agent and on the requirements that each firm or individual performing these tasks must possess a specific license to do so. Then perform spot checks to ensure compliance.</td>
<td>High</td>
<td>Short</td>
</tr>
<tr>
<td>20</td>
<td>Institutional strengthening</td>
<td>Support the efforts of the donor community in reestablishment of the formal PPPF mechanism. When re instituted its practices regarding agenda setting, participation, and follow-up must be strengthened and the concept extended to the regions.</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>21</td>
<td>Institutional development</td>
<td>Establish a national transport association to address the significant lack of human capacity in modern business transport practices and technology within the transport sector, and provide a focal point for identification and resolution of industry issues. The RTA could spearhead this effort and it or the Chamber could be funded to provide training that would significantly increase fleet efficiency and lower costs.</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>22</td>
<td>Strategy development/Training</td>
<td>Develop a plan to establish, manage, and operate a fully functional dry port system to maximize cost and time reduction. This would include outside experts and training on procedures and operational requirements. Private stakeholders should become full partners in ongoing dialog. The trade’s knowledge of trade patterns, practices, and problems in the private sector can be used to minimize mistakes on implementation and ensure competitive pricing for services. Issues such as inefficient and redundant processing must also be resolved within this framework.</td>
<td>Medium</td>
<td>Long</td>
</tr>
<tr>
<td>23</td>
<td>Institutional strengthening/Analysis</td>
<td>Improve the quality of the Customs Clearance Agent sector and create a partnership between it and the Customs Service. Establish a working group of Customs Clearance Agents and Customs officials to promote a better working relationship.</td>
<td>Low</td>
<td>Long</td>
</tr>
</tbody>
</table>
relationship. This could start by identifying training needs and scheduling short seminars for the trade. As this relationship progresses, plans could be developed for effective shared oversight of the industry and voluntary reporting of suspected activity. Without acknowledgement of the valuable contribution a reliable and professional Customs Clearance Agent community can make to facilitation of the Customs process, reform will remain a slow and difficult process.

24. Strategy development
Redesign the Coffee Exporters Association to align with the current reality of the industry. Traditional roles within the sector are changing, and one party often plays multiple roles, such as producer and exporter.

### Flow of Money

<table>
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<tr>
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<th>Type</th>
<th>Recommendation</th>
<th>Priority</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Legal reform</td>
<td>Ethiopia should open up the banking sector to greater competition, including foreign investment.</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>2.</td>
<td>Legal reform</td>
<td>Currency requirements that are trade-restrictive and inconsistent with IMF Article VIII should be identified and eliminated. The overwhelming documentary requirements to obtain foreign currency, especially when it comes to the private sector, should be significantly reduced.</td>
<td>High</td>
<td>Short</td>
</tr>
<tr>
<td>3.</td>
<td>Policy strategy</td>
<td>Access to credit, which under current circumstances represents a serious and specific impediment to income growth, should be addressed in a broad-based manner, involving changes at both the policy level and the grass-roots initiatives level for individuals and small borrowers. In particular, access to financial services for the poor should be a priority, with an emphasis on rural areas.</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>4.</td>
<td>Legal reform</td>
<td>Treatment of MFIs under the same regulatory framework as commercial banks ignores the lessons learned in other African countries and should be modified.</td>
<td>High</td>
<td>Short</td>
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</tbody>
</table>

### Flow of People

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<tr>
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<th>Priority</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Institutional development</td>
<td>Continue to upgrade and modernize the Investment Commission. The Government should assist the Investment Commission in attracting more</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>No.</td>
<td>Type</td>
<td>Recommendation</td>
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</tr>
<tr>
<td>2.</td>
<td>Technology update</td>
<td>Modernize and upgrade automation for people-processing at the border. Development of a stronger information technology system should be pursued. This upgrade should include an enhanced risk-analysis system.</td>
<td>Medium</td>
<td>Short</td>
</tr>
<tr>
<td>3.</td>
<td>Strategy development/Outreach</td>
<td>Promote Ethiopia’s brand. Ethiopia’s brand as a place to do business is currently very weak. A promotion campaign that includes further streamlining of the process for entry of people should be carried out.</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>4.</td>
<td>Outreach</td>
<td>Continue to upgrade and modernize the Investment Commission. The Government should assist the Investment Commission in attracting more foreign investors to Ethiopia and in assisting them in their trade and investment activities across the country. The Government should also develop a comprehensive personnel system for the Investment Commission that would upgrade candidate qualifications, improve recruitment procedures, and establish job-specific performance and evaluation standards.</td>
<td>High</td>
<td>Long</td>
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### Financial Crimes

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<tr>
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<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Institutional reform/Legal reform</td>
<td>Technical assistance projects are badly needed. Financial crimes law, investigation, and enforcement are complex. For Ethiopia to comply with international standards and become party to the latest money-laundering and anti-terrorism conventions, Customs, the police, and the NBE badly need help developing implementation skills.</td>
<td>High</td>
<td>Long</td>
</tr>
<tr>
<td>2.</td>
<td>Legal reform</td>
<td>Pass the draft proclamation into law. Too much time has passed since the law was drafted. Virtually nothing can be done in the way of investigation or enforcement until there is a law in place.</td>
<td>High</td>
<td>Short</td>
</tr>
<tr>
<td>3.</td>
<td>Legal education</td>
<td>Train lawyers. The legal profession will gradually become the watchdog component of a financial crimes framework. The lawyers will work with the FIU in investigation, prosecute the crimes, become the judges that adjudicate the cases,</td>
<td>Medium</td>
<td>Long</td>
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</table>
and will be the principal organs for defending liberties that may be at risk under the law itself or the poor/political application of the law.

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<tbody>
<tr>
<td>4.</td>
<td>Legal education</td>
<td>Introduce programs in the law faculty. New financial crimes faculty, curricula, and possibly a clinical program to defend civil liberties threatened in prosecutions are an excellent way to use law faculty resources, train the next generation of judges and lawyers, train law faculty members, and benefit the public.</td>
<td>Medium</td>
<td>Long</td>
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</tbody>
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### Intellectual Property Rights

**NOTE:** The following recommendations draw on the Five Year IPR Strategic Plan (2006/2007–2009/10) drafted by the EIPO. The Plan sets forth a number of goals and objectives, including the ones listed below.

<table>
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<tr>
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<th>Duration</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Legal reform</td>
<td>Develop a national IPR policy that will be integrated into the national development policy to be submitted to the Government by the end of 2006; which will include development of a model of institutional IPR policies to HLRIs and R&amp;D organizations based on the national IPR policy, to be submitted to institutions by the end of the second quarter of 2007.</td>
<td>Medium</td>
<td>Medium</td>
</tr>
</tbody>
</table>
| 2.  | Legal reform                        | Develop legislation to make the national IPR legal framework comprehensive and integrate it with the international IPR system; which will include:  
• Preparing draft laws on geographical indications and trade secrets for submission to the Council of Ministers by March 2007;  
• Preparing draft trademark and copyright regulations for submission to the Government by December 2006;  
• Amending the Proclamation Concerning Inventions, Minor Inventions and Industrial Designs by the end of 2008 for purposes of making it TRIPS-compliant; and  
• Studying three WIPO-administered IPR treaties and submitting accession proposals to the Government by June 2007. | High     | Short    |
| 3.  | Institutional reform and outreach   | Increase the number of users of the IPR system by 15% each year during the plan period, which will include:  
• Initiating and strengthening IPR awareness programs in universities, R&D organizations, and business establishments during the plan period;  
• Undertaking at least three IPR awareness programs for the general public | Medium   | Long     |
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<th>Duration</th>
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<tbody>
<tr>
<td>4.</td>
<td>Institutional strengthening</td>
<td>Improve the quality of service delivered to EIPO customers in the protection of IPR and the provision of technological information contained in patent documents.</td>
<td>Medium</td>
<td>Long</td>
</tr>
<tr>
<td>5.</td>
<td>Legal reform</td>
<td>Initiate protection and exploitation of intangible assets related to export products.</td>
<td>Low</td>
<td>Medium</td>
</tr>
<tr>
<td>6.</td>
<td>Legal reform/Education</td>
<td>Promote commercialization of IPR assets.</td>
<td>Medium</td>
<td>Long</td>
</tr>
<tr>
<td>7.</td>
<td>Compliance reform</td>
<td>Strengthen enforcement of IPR.</td>
<td>Medium</td>
<td>Long</td>
</tr>
<tr>
<td>8.</td>
<td>Strategy reform</td>
<td>Enhance cooperation with local and foreign organization on IPR matters.</td>
<td>Medium</td>
<td>Long</td>
</tr>
<tr>
<td>9.</td>
<td>Strategy reform</td>
<td>Use IPR to enhance export revenue.</td>
<td>Medium</td>
<td>Long</td>
</tr>
</tbody>
</table>
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