

63. Regarding the agriculture sector, the Government will shift its focus from a food self-sufficiency to a food security strategy through market-oriented diversified agriculture based on comparative advantage. The proposed Agricultural Sector Investment Programme will be the basis for the new strategy. The fiscal year 1996/97 saw liberalization of agriculture marketing including removal of restrictions and price controls on maize, sorghum wheat and their products. The Government aims to continue the process to include other commodities.

64. For the industrial sector, the Government aims to promote a conducive investment environment for both indigenous and foreign investors to enable them to undertake export-led growth activities. Socio-political stability and security as well as a stable and consistent macroeconomic policy environment which minimizes disruption are vital to industrial development. The Government will also take effective reform measures to address the issues of competitive utilities prices and services.

65. As far as the tourism sector is concerned, the Government will use the advice of the newly constituted Lesotho Council of Tourism, comprising mainly nominees from the private sector. In order to promote the tourism sector, visa requirements for nationals of a number of European countries have been abolished and the process is being continued.

II. TRADE REGIME

(1) General Framework

1. Lesotho's Constitution, or Basic law, was suspended in January 1970 under declaration of a state of emergency, which lasted until the general elections of April 1993. After the suspension of the Constitution, legislative power was vested in the Prime Minister, the late Dr. Leabua Jonathan. His Government was deposed by the Military in a bloodless coup on 20 January 1986. A chairman of the Military Council and Council of Ministers was established and the leader of the military coup d'état, Major General J. M. Lekhanya, was appointed to the position. King Moshoeshoe II was given both legislative and executive powers. A constitutional crisis in 1991 resulted in the King being exiled. The Chairman of the Military Council was soon after removed by the armed forces and Major General E. P. Ramaema was appointed to the position. The present Constitution of Lesotho is the outcome of the deliberations of a National Constitutional Assembly which was created by the Military Council. It was put into effect after the general elections of April 1993.

2. The Constitution declares the King as a Constitutional Monarch and Head of State. The Prime Minister is Head of Government. The legislative authority in Lesotho is vested in the King's parliament, which consists of the Senate and the National Assembly. The parliament can "confer on any other person or authority the power to make any rules, regulations, by-laws, orders or other instruments having legislative effect as parliament may determine" (Part 2, Section 70 of the Constitution). The 80 Members of the National Assembly are through general elections based on universal adult suffrage. The Senate consists of 22 Principal Chiefs and 11 other members nominated by the King acting in accordance with the advice of the Council of State, which assists the King in the discharge of his functions and other functions as conferred by the Constitution. The Council of State is composed of: the Prime Minister, the Speaker of the National Assembly, two judges or former judges of the High Court or Court of Appeal, the Attorney General, the Commander of the Defence Force, the Commissioner of Police, a Principal Chief nominated by the College of Chiefs, two members of the National Assembly appointed by the Speaker from among members of the opposition party or parties, not more than three persons who shall be appointed by the King on the advice of the Prime Minister, and a member of the legal profession in private practice and nominated by the Law Society.

3. The Constitution established an independent judiciary and an Ombudsman, and also embodies the Protection of Fundamental Human Rights and Freedoms. The Constitution also stipulates the principles of State Policy, as: equality and justice; protection of health; provision for education; opportunity to work; just and favourable conditions of work; protection of workers' rights and interests; protection of children and young persons; rehabilitation, training and social resettlement of disabled persons; economic opportunity; participation in cultural activities; and protection of the environment.

(2) Structure of Trade Policy Formulation

4. Lesotho's industrial and trade policies are formulated, implemented and coordinated by the Ministry of Trade and Industry (MTI). The Ministry aims to enhance the ability and capacity of Lesotho to derive maximum benefits from multilateral arrangements and global trade liberalization. The Ministry has two industrial implementing agents: the Lesotho National Development Corporation (LNDC) and Basotho Enterprise Development Corporation (BEDCO) as well as a Business Advisory and Promotion Services (BAPS) and Lesotho Opportunity Industrialisation Centre. The Ministry has two functional Departments: Industry and Trade, each headed by a Commissioner. The Department of Trade has two main Divisions: Foreign Trade and Internal Trade. There are also two distinct Sections, known

as Consumer and Standards.¹ The Foreign Trade Division, commonly known as the Trade Promotion Unit (TPU), was established in 1978.

5. For trade policy formulation, the legislative process is as follows: the Ministry prepares a memorandum for policy clearance by the Cabinet. Once done, the Ministry initiates instructions for the legal drafters, who then prepare the Bill. When the draft Bill has been finalized, the Ministry prepares an explanatory memorandum outlining the purpose of each section. The Explanatory Memorandum has to be cleared by the legal drafters. The Ministry then drafts a Cabinet Memorandum requesting the introduction of the Bill into the Parliament; copies of both the draft Bill and the Explanatory Memorandum are attached to the Cabinet Memorandum. On Cabinet approval, the draft Bill is introduced and debated first in the National Assembly and then in the Senate. The Senate returns the draft Bill to the National Assembly after the deliberation. The National Assembly finalizes the debate on the draft Bill, which in its agreed final form is sent to the King for Royal Assent. The Bill is then sent to the Government Printer for publishing and thus becomes an Act of Parliament.²

6. For ratification of the Uruguay Round Agreements: The Ministry of Trade and Industry and the Ministry of Foreign Affairs prepared a joint memorandum requesting Cabinet to approve the ratification of the Uruguay Round Agreements. Approval was granted by Parliament and Lesotho became a Member of the WTO on 31 May 1995.

7. In Lesotho, international agreements have to be enacted into domestic legislation to allow their provisions to be invoked before national courts. Some national laws already comply with the provisions of the WTO Agreements, but others require amendment. By the same token, private persons can invoke the provisions of the WTO before national courts only if those provisions have been enacted into domestic legislation. An example of a national law that needs to be amended to comply with the provisions of WTO Agreements, is the Lesotho Industrial Property Order of 1989. The amendment needed is to enable Customs Officials to seize goods that the patent holder presumes infringe rights. The Registrar-General's Office is identifying other areas that need to be streamlined in the amendment process.

8. Lesotho has no statutory advisory and review bodies for government trade and industrial policies. The existing forum for consultation on economic and trade policy questions is the National Planning Board, established under the Constitution. The Board consists of the following members: (i) not more than three persons designated by the King, acting in accordance with the advice of the Council of State; (ii) not more than six persons designated by a Minister specified by the Prime Minister and who possess such professional qualifications as, in the opinion of the relevant Minister, will enable them to make a special contribution to the work of the Board; (iii) not more than three persons designated by such organizations representative of local government authorities as may be so designated by the Minister responsible for local government; (iv) not more than three persons designated by such organizations representative of the private sector as may be appointed by the Minister responsible for trade and industry; and (v) not more than three persons designated by livestock farmers and other agro-allied associations.⁴ The total number of members of the Board should not exceed 24.

¹The Consumer Section deals with consumer protection issues and the Standards Section deals with standards and quality assurance.

²Information provided by the Legal Department of the Ministry of Trade and Industry.

⁴The Constitution of Lesotho, Section 105, 1993.

9. The consultation process for trade and industry reform policies is initiated by the Ministry of Trade and industry through the organization of workshops, seminars and/or meetings which involve stakeholders: relevant Ministries and Departments, public semi-autonomous business support institutions, private-sector organizations, NGOs, institutes of higher learning and individuals with special skills and abilities.

(3) Trade Policy Objectives

(i) General trade policy objectives

10. Until the beginning of the 1980s, Lesotho's industrialization strategy was inward-looking. Import substituting public enterprises aimed to serve the domestic markets (e.g. Loti Brick, Lesotho Flour Mills, and Maluti Mountain Brewery). The exceptions were the Lesotho Pharmaceutical Corporation and the vegetable and fruit cannery which also produced for external markets.

11. With the fifth Five Year Development Plan (1990-94), the Government recognized the key role of foreign trade in economic development. Trade policy aims shifted towards increasing domestic employment opportunities; addressing unfavourable balance of payments through expansion of exports and rationalisation of imports; reducing Lesotho's dependence on South Africa as an export market and import supplier by exploring other markets and through greater local processing and utilization of indigenous raw materials.⁵

12. The Government further recognized that the drive to expand Lesotho's exports was acutely limited by the relatively small production base and the limited number of exportable products. In order to address the problem, the Government, through the LNDC, embarked on a more aggressive drive to attract foreign direct investment to establish export-led industries. The export potential of Lesotho's natural resources, such as precious and semi-precious stones, sandstone and clay, and animal resources, became a focus of industrial and trade policies. At the same time, the external trade sector was challenged to support the handicraft sector through development of exportable sweaters; product adaptation to crocheted items; introduction of fashion jewellery; and new designs for basketware and mohair products.

(ii) Sectoral trade policy objectives

13. Lesotho has a limited base of natural resources but a rapidly growing labour force. Therefore, the development of its industrial sector will depend to a large extent on success in establishing competitive, labour-intensive manufacturing and assembly enterprises. So far Lesotho has been successful in promoting and expanding the subsectors of textile and clothing, footwear, and consumer electronics. The focus of these subsectors has mainly been on export-oriented goods.

14. The development of industries using domestic natural resources such as clay-based bricks, ceramic tiles and edible oil has also been given high priority, with the aim of exporting to the neighbouring South African market. The long-term objective is to diversify the industrial sector.

15. The current three-year rolling Sixth National Development Plan outlines the trade policy objectives in both the internal and foreign trade sectors of the economy, with particular focus on the manufacturing subsectors of industry.⁶ The main internal trade policy objectives are to:

⁵Ministry of Economic, Planning and Manpower Development (1992).

⁶Ministry of Economic, Planning and Manpower Development (1996b).

- (i) develop an efficient system for distribution that facilitates the improved performance of the economy;
- (ii) strengthen the marketing of goods produced in Lesotho in order to increase the share of local produce in trade;
- (iii) facilitate access to capital goods, raw materials and other production inputs for producers. In this regard, existing regulation of the establishment of trading enterprises will be reviewed with the aim of removing unnecessary impediments;
- (iv) promote efficient and competitive trading as a means to supplying commodities to consumers at reasonable prices, particularly essential goods. A corollary is to ensure that the quality of products marketed to consumers is maintained at internationally accepted standards, so as to protect consumers from sub-standard products, some of which may be hazardous to their health;
- (v) curb unfair trade practices arising from monopolies, amalgamation measures and collusion. In this regard the Government will formulate a competition policy; and
- (vi) encourage an increased level of participation of Basotho in the distribution sector.

16. The primary policy objective of the external trade policy of Lesotho is to accelerate the expansion of the industrial sector and the diversification of economic activities. The policy focus is on increasing export earnings, generating employment, and encouraging utilization of local raw materials for production of export goods. Garments, shoes, and electronic goods, which account for a large share of exports, use imported materials but are labour intensive and are therefore accorded priority. The current National Development Plan places specific emphasis on achieving the following objectives: reduction of the large unfavourable balance of trade through expansion of exports and rationalization of imports; diversification into new exportable products and new markets; increasing the domestic value-added content of export products through greater local processing; and utilization of indigenous raw materials.

17. In the foreign trade sector, the Plan highlights the Government's commitment to improving the economic and business policy framework conducive to the development of exports. In this regard, the export incentive package will be reviewed.

18. The agricultural sector has particularly been characterized by heavy government intervention. This has resulted in distortions in the areas of pricing, marketing, production and processing. The rationale for the approach has been to protect Basotho against "unfair" foreign competition and by the same token, to protect local producers.

19. The policy objectives for the agricultural sector are to introduce and pursue commercial trading and marketing practices whilst improving the capacity of the private sector to engage in profitable and sustainable agricultural or agriculture-related activities.⁷ In essence, the Government aims to abolish price fixing, relax import controls, reduce or eliminate input and credit subsidies, and privatize state monopolies and agro-industries.

⁷Ministry of Economic, Planning and Manpower Development (1996b).

20. In general, Lesotho's sectoral trade policy objectives are an integral part of the national goal of economic growth and development, i.e. to create employment opportunities; to deepen the industrial and agro-industrial export base; and to continually appraise and improve the investment climate and revise legislation to meet current investment needs.⁸ The sectoral trade policy objectives are supported by a comprehensive Export Financing Scheme which provides exporters with working capital on concessionary terms.⁹

(iii) Objectives in the WTO

21. Lesotho joined the Uruguay Round multilateral trade negotiations very late and did not therefore put forward specific proposals to address its national concerns. However, it views the WTO as an avenue to safeguard its interests in the globalization of investment, production and trade. As a least developed country, Lesotho seeks to identify niches for its comparative advantages within the context of lowering and binding tariffs.

22. Lesotho's concerns relate to textile and clothing as well as agricultural and agro-industrial products. These concerns arise from its membership in the Lomé agreement and the application of rules of origin. Although Lesotho is a least developed country its offer in the Uruguay Round was to be compatible with that of South Africa despite South Africa's classification as a developed country. Under the offer Lesotho has tariffed its agricultural quantitative restrictions and bound some 98% of its tariff lines.

23. Lesotho has so far made only one notification to the WTO, by which maintains its right to use the transitional safeguard mechanism for textiles and clothing.¹⁰

(4) Trade Laws and Regulations

24. Statutory instruments that deal with trade policy in Lesotho include the Customs and Excise Act of 1984, Export and Import Control Act of 1984 and its 1996 Amendment, Pioneer Industries Encouragement Act of 1969, Industrial Licensing Act of 1969, Trade Enterprises Order of 1989, Trading Enterprises Regulations of 1988, Industrial Property Order of 1989, Copyright Order of 1989, Industrial Property Regulations of 1989, Companies Act of 1967, Exchange Control Regulations of 1989, Sales Tax Act of 1995, Import Restrictions Regulations of 1998 and its 1996 Amendment, and Trading Enterprises (Amendment) Act of 1997.

25. The following Agricultural Marketing Regulations are in place for enforcement in accordance with the Agricultural Marketing Act No. 26 of 1967, as amended by Act No. 18 of 1973 and Order No. 6 of 1991: (i) Agricultural (Trading) Regulations of 1974; (ii) Price Control Regulations No. 33 of 1973, No. 19 of 1974, No. 154 of 1989 and No. 5 of 1977; (iii) Import Control Regulations No. 57 of 1952, No. 35 of 1969, No. 5 of 1977, No. 78 of 1982 (repealed June 1996), No. 178 of 1986, No. 176 of 1989, No. 53 of 1990 (repealed June 1996), No. 14 of 1992, No. 141 of 1992 and No. 241 of 1992; (iv) Export Control: Cereal and legumes for export 1972; Preparation of sunflower for export 1975; and (v) Institutional framework : National Agricultural Marketing Committee Regulations, Notice No. 132 of 1994 (not yet operative); National Dairy Board, Notice No. 246 of 1981. These Regulations individually and severally impact on both the domestic and external trade of Lesotho.

⁸Ministry of Economic, Planning and Manpower Development (1996b).

⁹Central Bank of Lesotho. Comprehensive Export Financing Scheme. Maseru, September 1988.

¹⁰WTO document G/TMB/N/123, 9 August 1995.

26. Within the context of SACU, the Customs and Excise Act is the most important. It is similar to that of South Africa and provides the enabling legislation for tariffs, other import charges including surcharges, anti-dumping and countervailing duties as well as duty refunds and rebates. The Export and Import Control Act provides statutory authority to the Minister of Trade and Industry "whenever he deems it necessary or expedient in the public interest, by notice in the Gazette to prescribe that no goods other than goods of a specified class or kind shall be:

- (i) imported into Lesotho;
- (ii) imported into Lesotho, except under the authority of and in accordance with the conditions stated in a permit issued by him or by a person authorised by him;
- (iii) exported from Lesotho; or
- (iv) exported from Lesotho, except under the authority of and in accordance with the conditions stated in such a permit".¹¹

(5) Trade Agreements and Arrangements

(i) Bilateral and multilateral agreements

27. As a Protectorate of the United Kingdom, Lesotho applied the GATT de facto. This status was maintained beyond political independence in October 1966 but Lesotho was also a signatory to the Tokyo Round Agreement on Implementation of Article VII (Customs Valuation Code) which had legal status under the Customs and Excise Act.¹² Lesotho became a member of the World Trade Organization on 31 May 1995. It is currently reviewing and finalizing its Customs Valuation Code within the context of the Southern African Customs Union (SACU).¹³

28. Lesotho accords at least most-favoured-nation (MFN) treatment to all Members of the WTO. Since 1981, Lesotho has entered into various bilateral and multilateral trade agreements, in addition to those with Mozambique, Zambia and Yugoslavia which were effected before 1981 (Table II.1).

29. As a least-developed country, Lesotho participated in the 1997 High-Level Meeting for Trade-Related Technical Assistance held in the WTO. It has presented a needs assessment, which has been analyzed and responded to by the relevant multilateral agencies.¹⁴ Further discussions on the Integrated Framework for Trade-Related Technical Assistance are to follow.

¹¹Export and Import Control Act No. 16 of 1984.

¹²Customs and Exercise (Amendment) Act No. 3 of 1984.

¹³Together with other SACU members South Africa, Botswana, Namibia and Swaziland.

¹⁴WTO document WT/COMTD/IF/21, dated 26 February 1998.

Table II.1
Lesotho's bilateral and multilateral trade and investment agreements

Country/Organization	Agreement	Place & date of signature	Status
United Kingdom	Promotion and Protection of Investment	Maseru 18/02/81	Upon signature
Republic of Korea	Trade, Economic & Technical co-operation	Maseru 15/05/81	Upon signature
United Nations	UN Convention on contracts for International Sales of Goods	Vienna 11/4/80	Signed & ratified
Federal Republic of Germany	Encouragement & Reciprocal Protection of Investment	Maseru 11/11/82	Subject to ratification
Chinese Taipei	Promotion & Protection of Investment	Taipei 01/12/82	Upon ratification
Zimbabwe	Trade Agreement	Harare 02/07/82	Ratification
P.R. China	Economic, Industrial & Technical Co-operation Trade Exchange	27/05/83	Upon ratification
P.R. Bulgaria	Economic, Industrial & Technical Co-operation	Sofia 21/05/83	Upon ratification
D.P.R. of Korea	Agreement and Protocol on Economic & Technical Co-operation	Maseru 12/08/83	Upon signature
EU	Financing Agreement Trade & Tourism Promotion	Brussels 20/07/83	Upon signature
Kenya	Trade Agreement		Upon signature

Source: Ministry of Trade and Industry.

(ii) Regional agreements

30. Until end-1997 Lesotho participated in four main regional arrangements and these impact on its investment, production and trade interests; they are the Southern African Customs Union (SACU), a customs union arrangement between South Africa and Botswana, Lesotho, Namibia and Swaziland; the Common Monetary Area (CMA), which offers a multilateral monetary framework to its members; the Southern African Development Community (SADC), a successor to the SADCC; and the Common Market for Eastern and Southern Africa (COMESA), successor to the Preferential Trade Area (PTA), which focuses on enhancing intra-regional trade through a progressive reduction of barriers across sectors such as finance and road transport. These regional arrangements highlight the role of South Africa as the central core of such arrangements (as in the cases of SACU and CMA). The emergence of a post-apartheid, democratic and pluralistic South Africa - and its recent joining in SADC - is exerting a fundamental influence on the underlying *raison d'être* for some of these arrangements.

(a) The Southern African Customs Union (SACU)

31. SACU dates back to the Customs Union arrangements of 1910 made by Basutoland, Bechuanaland and Swaziland with the Union of South Africa. The three then UK Protectorates attained formal political independence from Britain in the mid-1960s and Bechuanaland and Basutoland became Botswana and Lesotho.

32. The 1910 Customs Union arrangements were replaced on 1 March 1970 by a renegotiated Southern African Customs Union Agreement concluded on 11 December 1969. The membership remained four until 10 July 1990, when Namibia joined.¹⁵ The aims of the 1969 SACU Agreement were declared to be to encourage economic development and diversification, especially in the less developed member countries, and afford all parties equitable benefits that emanate from intra-SACU and international trade. The institutional framework of SACU comprises the Commission and three liaison committees:

¹⁵Botswana, Lesotho, South Africa and Swaziland. Since Namibia was until then administered as part of South Africa, it had de facto membership status until its independence and became a *de jure* member on 10 July 1990.

the Customs Technical Liaison Committee, the Trade and Industry Committee and the Transport Committee. For Lesotho, the Agricultural Committee, established informally, has also proved to be important in terms of its agenda and frequency of dispute settlement meetings. The Commission is the administration organ of SACU and meets annually in rotation in each member capital city. There is equal representation to the Commission and Liaison Committees.

33. Within the context of the SACU Agreement, South Africa sets the tariffs, and excise, sales, anti-dumping, countervailing and safeguard duties, as well as legislation related to goods imported into the common customs area from countries outside the SACU area. The other members apply the set laws. However, a SACU member may enter separately into, or amend, trade arrangements with a country outside the common customs area on condition that the terms of such agreements or amendments do not conflict in any way with the provisions of the SACU Agreement.

34. SACU members may not impose duties or quantitative restrictions on goods imported, exported or re-exported within the common customs area, except in specified exceptional cases.¹⁶ Articles 6 and 7 of the Agreement also allow Botswana, Lesotho, Namibia and Swaziland, after consultation, to impose additional duties or increase duties for infant-industry protection as well as for protection of industries deemed to be of major importance to the economy of that member.¹⁷ The protection of local producers in Lesotho has been invoked mainly for beer and certain agricultural goods, such as eggs, milk, and raw meat. Restrictions on imports of these goods have been imposed through the discretionary issuance of import licences/permits.

35. The SACU Agreement further stipulates that rebates, refunds and drawbacks granted by countries must be identical or similar, except in specified situations, including emergency circumstances, obligations under multilateral international agreements or technical assistance agreements.¹⁸ Exceptional trade restriction measures instituted by a member may also be justified on, *inter alia*, economic, social and cultural grounds (Article 11). Article 12 of the SACU Agreement allows members to regulate imports of agricultural products from other SACU countries, especially at harvest time. Lesotho has been doing this by restricting the issue of import permits/licences for fruit and vegetables.

36. The SACU Agreement makes provision for non-discrimination in transport rates and freedom of transit.¹⁹ Generally, duties are collected at the point of entry into the common customs area. The provision of duty-free circulation of goods within the SACU area favours the collection by South Africa of applicable customs duties and excises on almost all the external trade of Botswana, Lesotho and Swaziland. These members are land-locked and therefore their external trade and production, especially Botswana's are directed through South Africa and also Namibia.

37. All customs, excise, sales and other duties collected by member countries of SACU are pooled in the Consolidated Revenue Fund of South Africa and distributed to members in accordance with a revenue-sharing formula: the BLNS member countries receive their shares according to the

¹⁶SACU Agreement, Article 2 and 3.

¹⁷Infant industry protection is normally permitted for a maximum period of eight years under strict qualitative and quantitative requirements.

¹⁸SACU Agreement, Article 8.

¹⁹SACU Agreement, Articles 15 and 16.

revenue-sharing formula, and South Africa receives the residual part of the pooled revenue (Article 13 and 14).

38. The original revenue-sharing formula was based on the respective contribution of the BLS countries to total imports into, and consumption of excisable goods and services produced within, the common customs area. The formula established for the 1969 Customs Union Agreement included an enhancement factor of 42% of the shares of the BLS countries. The factor was introduced specifically to compensate the BLS countries for negative effects associated with their participation in the Union. The formula was renegotiated in 1975 and a "stabilization factor" was added in 1977 to reduce fluctuations in the revenue shares accruing to the BLS countries (the BLNS since Namibia's membership in 1990) at 20%, and to allow them to fluctuate between 17 and 23% (Box II.1). The 17% minimum has determined shares in recent years.

Box II.1: The Revenue Sharing Formula of the Southern African Customs Union (SACU)

The formula whereby the member countries, other than South Africa (RSA), share in the revenue pool is as follows:

$$S = 1.42 \{ R [A + B + C] / (D + E + F + G) \}$$

where:

- S = share allotted to a specific member country
- A = c.i.f. value (at the border) of imports into the country irrespective of their origin and including all duties paid or payable thereon
- B = value of excisable and taxable (sales tax) goods produced and consumed in the country
- C = excise and sales duties paid on B
- D = c.i.f. value of imports into the SACU are, excluding intra-regional trade in common customs area
- E = customs and sales duties paid on D
- F = value of excisable and taxable (sales tax) goods produced and consumed in the SACU
- G = excise and sales duties paid On
- R = the total revenue pool of customs, excise and sales duties, i.e. E + G

Member countries therefore receive a (variable) percentage of the total revenue pool, plus 42%.

If the formula yields a revenue rate of less (more) than 20% an additional amount is added (subtracted) equal to the difference between the amount calculated and the amount commensurate with 20% revenue rate, provided that the resultatory rate is not less (more) than 17 (23)%, thus the formula is applied subject to

$$0.17 \leq [S / (A + B + C)] \leq 0.23$$

where S, A, B and C have the same meanings as in the formula above.

South Africa's share is the residual after the BLNS countries have been paid.

39. For some time there has been concern among members that certain provision of the SACU Agreement are outdated and require revision. South Africa effectively sets the common tariff and excise schedules for the whole common customs area, with other members worried about their own interests

including a certain loss of fiscal discretion and the price-raising effect of tariffs that they do not necessarily set. Moreover, a two-year lag exists between the date of payment of revenue to BLNS countries and the relevant statistics which will form the basis for revenue distribution. Renegotiations started in 1994, focused on the technical revision of the revenue-sharing formula, including the level of compensation for the price-increasing effects and the loss of fiscal discretion; the time lags in distribution of pooled revenue by South Africa; the democratization of the management of the SACU system; and the need for a dispute settlement mechanism.

40. The proposals provide for the exclusion of excise duties (which would be set independently) and for having a consistent set of calculations for all five members, rather than treating South Africa as the residual. This could require more structured regulation of individual countries' use of special drawbacks or other concessions, as effects on the total revenue to be distributed would then affect the actual shares paid.

(b) The Common Monetary Area

41. The Multilateral Monetary Agreement (MMA) came into effect on 6 February 1992 when Namibia joined its predecessor the Common Monetary Area (CMA); the CMA remains the operative name. The membership of the MMA consists of Lesotho, Namibia, South Africa and Swaziland.²⁰ The MMA's aims are to achieve monetary stability in member countries and to promote economic and financial cooperation among members for sustained economic development.

42. The administrative organ of the MMA is its Commission which comprises representatives of each member and such advisers as the countries may appoint. The Commission meets at least once a year; its decisions are by consensus. In addition, members regularly consult each other.

43. The MMA provides for the free flow of funds within the monetary area and the right of access by Lesotho, Namibia and Swaziland to the South African capital and money markets. The currencies of Lesotho (the loti), Namibia (dollar) and Swaziland (lilangeni) are pegged at par to the South African rand. The bank notes of Lesotho, Namibia and Swaziland are freely convertible into rand, which is legal tender in these countries. The loti, lilangeni and the Namibian dollar are not legal tender in South Africa. In the case of Lesotho, the neighbouring South African towns accept loti bank notes for the settlement of accounts.

(c) The Southern African Development Community

44. The SADC is the successor of the Southern African Development Co-ordination Conference (SADCC), which was established in 1980. SADC replaced SADCC in August 1992. While the SADCC focused primarily on improving investment coordination in key infrastructural and productive sectors, such as power and transport, the SADC aims to achieve economic integration among member States.²¹

45. The SADC Treaty provides for protocols incorporating principles and procedures under which member countries organize their cooperation in specified areas. At the Maseru, Lesotho Summit meeting

²⁰Namibia was a *de facto* CMA member, but not *de jure*, since it was administered by South Africa. Botswana left the CMA's predecessor, the Rand Monetary Area, in 1976. The Democratic Republic of Congo and the Seychelles were accepted in 1997.

²¹SADC members are Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

in August 1996, protocols for energy, illicit-drug trafficking, transport, communications and meteorology, and trade were signed.

46. The Trade Protocol aims to establish a Free Trade Area (FTA) in the SADC region; it provides for intra-SADC trade liberalization, including the removal of tariff and non-tariff barriers, within eight years from its entry into force. The implementation schedule for establishing the Free Trade Area is left to the Committee of Ministers responsible for trade matters. The Committee is expected to consider country-specific concerns; SACU is to offer a common tariff commitment. The trade protocol was to be finalized in 1997 but at present it has been ratified only by Mauritius, Botswana and Tanzania.

(d) Common Market for Eastern and Southern Africa (COMESA)

47. Lesotho withdrew from COMESA at the end of December 1997.

(e) The Lomé Convention

48. Lesotho is a signatory to the Lomé Convention, a trade and aid agreement signed by the European Union (EU) and countries in Africa, the Caribbean and the Pacific (ACP): South Africa, a member since April 1997, has qualified rights. The current Lomé Convention (Lomé IV), was concluded for ten years starting 1990. Under the Lomé Convention, non-reciprocal trade preferences are granted to ACP States. Exports except those covered by the Common Agricultural Policy, enter the EU free of customs duties and quantitative restrictions. EU support to ACP States also includes financial assistance through the European Development Fund, commercial loans by the European Investment Bank, and risk-reducing mechanisms to compensate for fluctuations in export earnings from primary commodities (STABEX) and minerals (SYSMIN).

49. EU assistance to Lesotho under the four Lomé Conventions has been concentrated on support to the Lesotho Highlands Water Project. Under Lomé IV, the National Indicative Programme amounts to ECU 48.4 million, of which ECU 34 million is for the Muela Hydro-electric Power Project.²²

50. The clothing industry has been the main beneficiary in Lesotho of the Lomé agreement, since, as in other ACP States, Lesotho textile and clothing exports to the EU are not restricted. Rules of origin requirements, however, seem to have constrained the potential impact of this preference, by limiting the capacity of Lesotho producers to source yarn from non-ACP/EU countries, such as east Asian countries; most of the Lesotho clothing industry relies on suppliers from south-east Asia, which is a major source of investment in the sector. Although Lesotho has twice been exempted from the sourcing requirements, a request for a third derogation was rejected.

51. Cases of fraudulent "transshipping" have been reported, where producers in Lesotho were alleged to have shipped clothing items to the EU that did not meet rules of origin requirements; these have resulted in legal action by some EU member States.

²²EU support was supplemented by ECU 10 million from the regional indicative programme for Southern Africa and ECU 15 million in the form of risk capital managed by the European Investment Bank.

(f) Other agreements

52. Under its Generalized System of Preferences scheme (GSP), the United States accords duty-free access to all products that are wholly produced in Lesotho. Goods that have undergone a substantial transformation, and are manufactured wholly or partly from imported materials or components are also granted duty-free access by the United States; clothing and duty-free textile exports are quota-free for most categories. Under its GSP scheme, Japan grants preferential entry at a variety of levels for listed agricultural products. Most industrial products from Lesotho are accorded either duty free entry or entry at 50% of the MFN rate of duty into Japan. Commonwealth countries such as Canada, Australia and New Zealand, operate GSP schemes under which tariff reductions are granted to specified lists of agricultural and industrial products. Handicrafts from Lesotho enter these markets duty free.

53. Switzerland allows duty-free entry for some agricultural products from Lesotho.

54. Lesotho is in the Commonwealth and is a member of the United Nations and its agencies, as well as the Organization of African Unity (OAU), the International Monetary Fund, the World Bank, and the African Development Bank. Lesotho has also acceded to the Convention on International Trade in Endangered Species (CITES) and the Multilateral Investment Guarantee Agency (MIGA).

(6) Trade Disputes and Consultations

55. The Kingdom of Lesotho has no specific domestic statutory procedures for conducting negotiations or consultations with trading partners in the case of trade disputes. As a WTO Member, Lesotho has access to the WTO dispute settlement procedures for settling disputes that may arise in its trade relations with other Members. However, Lesotho has never been involved either as a complainant or defendant in any dispute settlement case.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Overview

1. Lesotho's trade policies and practices that directly affect import and export flows are in line with those of South Africa, which sets the common SACU tariff policy. In recent years, however, the Government's effective pursuance of structural adjustment programmes as well as the implementation of the Lesotho Highlands Water Project (with water transfer and hydropower generation components) have also influenced Lesotho's trade policies and practices.

2. Following the post-independence strategy of import substitution, aimed at reducing Lesotho's unfavourable trade balance and also creating domestic employment opportunities, Lesotho's current trade policies and practices are aimed at promoting increased exports of both agricultural and manufactured goods. In this context, Lesotho aims to privatize and liberalize state enterprises and markets.

(2) Measures Directly Affecting Imports

(i) Registration and documentation

3. All importers are required to register with the Ministry of Trade and Industry (MTI) in order to be able to apply for import permits or licences, while clearing agents are required to register with the Department of Customs and Excise that administers clearing of goods.¹ The MTI has a Handbook on Procedure and Guidelines for processing of import permits, surcharge permits and rebate permit applications. The permits are valid for a year. They are used to restrict imports of certain locally produced goods, such as beer, for which, according to the authorities, import permits/licences are rarely granted. Other restricted products include eggs, raw meat, milk and sugar. Imports of vegetables and fruits are also subject to seasonal restrictions through the permit/licence system.

(ii) Tariffs

4. As stated earlier, within the context of the SACU Agreement, South Africa sets the customs duties including tariffs, excise, anti-dumping, countervailing and safeguard duties, as well as related legislation to goods imported into the common customs area from third countries. Lesotho applies at least MFN treatment to all WTO Members.

5. As a member of SACU, Lesotho applies the Common External Tariff for the SACU area. The tariff classification is based on the Harmonized System (HS), and has some 7,800 lines at the eight-digit HS level. The simple average MFN tariff is 15.1%, with rates ranging from 0% to 72% and a standard deviation of almost 18%. Table III.1, based on information supplied by South Africa, summarizes average nominal levels of MFN tariffs by ISIC industry group as at mid-1997. As noted in the report on South Africa, nearly three-fourths of all tariffs lines (at the HS eight-digit level) bear *ad valorem* rates. More than half of these (44% of all lines) are duty free, with other *ad valorem* rates ranging up to 57.5%. Mixed duties apply to 72 lines (including certain fishery products, prepared foods, footwear and preparations of agricultural products); specific rates cover 227 lines in the areas of agricultural, food and petroleum products. Formula or compound rates now apply to some 34 lines at the eight-digit level.² 98% of tariff lines in the common external tariff are bound under the WTO Agreement.

¹Export and Import Control Act of 1984 and Customs and Excise (Amendment) Act of 1984.

²WTO (1998).

Table III.1
Tariff escalation and tariff ranges, 1997

ISIC	Product and processing	Tariff 1997				
		Number of lines	Simple average	Range (%)	Standard deviation	Coefficient of variation
All tariffs		7,814	15.1	0-72	17.8	1.18
1	Agriculture					
	- raw materials	279	5.6	0-35	8.9	1.59
2	Mining and quarrying					
	- raw materials	106	1.4	0-18	3.4	2.47
311	Food products					
	- 1st stage of processing	65	12.4	0-30	11.8	0.95
	- semi-processed	47	10.9	0-50	12.0	1.10
	- fully processed	283	15.6	0-55	13.6	0.88
312	Food manufacturing					
	- 1st stage of processing	24	4.5	0-22	9.0	1.99
	- semi-processed	2	0.0	0-0	0.0	..
	- fully processed	54	10.6	0-30	10.3	0.97
313	Beverages					
314	Tobacco manufactures					
	- fully processed	9	35.6	0-45	16.5	0.46
321	Textiles					
	- 1st stage of processing	48	5.8	0-60	13.3	2.29
	- semi-processed	1,569	32.7	0-39	8.3	0.25
	- fully processed	347	41.7	0-72	26.2	0.63
322	Clothing					
	- fully processed	163	59.0	0-72	23.0	0.39
323	Leather products					
	- 1st stage of processing	1	0.0	0-0
	- semi-processed	28	7.4	0-15	7.1	0.96
	- fully processed	20	26.3	0-30	8.3	0.31
324	Footwear					
	- fully processed	48	24.9	0-45	15.2	0.61
331	Wood products					
	- 1st stage of processing	5	0.0	0-0	0.0	..
	- semi-processed	34	6.3	0-18	7.3	1.17
	- fully processed	33	15.3	0-30	10.6	0.69
332	Furniture except metal					
	- fully processed	34	20.8	0-24	3.9	0.19
341	Paper products					
	- 1st stage of processing	19	0.0	0-0	0.0	..
	- semi-processed	81	8.4	0-22	5.1	0.61
	- fully processed	38	9.5	0-22	8.5	0.90
342	Printing					
	- fully processed	43	7.9	0-20	8.3	1.04
351	Industrial chemicals					
	- 1st stage of processing	53	4.1	0-19	6.4	1.55
	- semi-processed	855	4.8	0-36	8.0	1.68
	- fully processed	24	6.3	0-17	6.7	1.06
352	Other chemicals					
	- 1st stage of processing	5	4.0	0-10	5.5	1.37
	- semi-processed	83	4.4	0-25	6.7	1.53
	- fully processed	223	7.1	0-35	9.3	1.32

Table III.1 (cont'd)

ISIC	Product and processing	Number of lines	Tariff 1997			
			Simple average	Range (%)	Standard deviation	Coefficient of variation
353	Petroleum refineries					
	- 1st stage of processing	7	4.3	0-15	7.3	1.71
	- semi-processed	6	7.3	0-14	5.9	0.80
	- fully processed	20	5.3	0-20	7.3	1.38
354	Petroleum and coal products					
	- 1st stage of processing	7	3.6	0-10	4.8	1.33
	- semi-processed	8	8.3	0-20	9.9	1.21
	- fully processed	2	17.0	17-17	0.0	0.00
355	Rubber products					
	- 1st stage of processing	2	0.0	0-0	0.0	..
	- semi-processed	32	13.0	0-19	6.1	0.47
	- fully processed	79	17.2	0-45	13.7	0.80
356	Plastic products					
	- fully processed	41	12.3	0-28	9.4	0.77
361	Pottery and china					
	- fully processed	15	11.3	0-30	13.0	1.15
362	Glass and products					
	- semi-processed	26	5.0	0-17	5.7	1.15
	- fully processed	81	9.0	0-20	6.7	0.75
369	Non-metallic mineral products					
	- 1st stage of processing	2	0.0	0-0	0.0	..
	- semi-processed	13	0.3	0-4	1.1	3.61
	- fully processed	76	5.4	0-23	8.3	1.55
371	Iron and steel products					
	- 1st stage of processing	9	0.0	0-0	0.0	..
	- semi-processed	210	4.5	0-15	3.9	0.87
372	Non-ferrous metal					
	- 1st stage of processing	7	0.0	0-0	0.0	..
	- semi-processed	197	3.2	0-15	5.3	1.68
	- fully processed	1	0.0	0-0
381	Metal products					
	- semi-processed	6	1.7	0-10	4.1	2.45
	- fully processed	327	9.1	0-30	9.1	1.00
382	Non-electrical machinery					
	- semi-processed	1	10.0	10-10
	- fully processed	646	3.7	0-30	7.3	1.99
383	Electrical machinery					
	- fully processed	408	6.6	0-50	9.2	1.39
384	Transport equipment					
	- fully processed	243	12.3	0-57.5	16.6	1.34
385	Professional and scientific equipment					
	- fully processed	229	1.2	0-32	5.4	4.33
390	Other manufactured products					
	- 1st stage of processing	17	3.5	0-20	7.9	2.23
	- semi-processed	4	5.5	0-12	6.4	1.16
	- fully processed	218	8.0	0-45	11.2	1.39
400	Electrical energy					
	- fully processed	1	0.0	0-0

Not available.

Source: WTO Secretariat estimates.

6. Customs and excise duties are set by South Africa and are automatically applied throughout SACU. The tariff structure thus enforced does not primarily reflect the specific circumstances of Lesotho's economy, but rather reflects South Africa's production structures and priorities. Therefore, imports competing directly with South African products tend to be relatively heavily taxed in Lesotho, for example, textiles and clothing, while products imported as inputs into South Africa may be taxed relatively lightly. Lesotho has the right, under the SACU Agreement, to levy additional duties on imports (including those from South Africa) to protect its infant industries. This provision has never been invoked due to the complexities of administering such arrangements and the costs involved.

7. Under the Tariff Rationalisation Process (TRP), South Africa's tariff is to be further simplified: the number of lines and tiers, and tariff peaks are to be reduced. In general, imports of products that are not manufactured in, and do not have a "suitable substitute" in the SACU are to be duty free; the reform will not take into account fiscal considerations. Formula and specific duties are to be converted into *ad valorem* rates and ordinary customs duties will not be used where anti-dumping and countervailing actions are justified. Insignificant specific duties and *ad valorem* rates of up to 3% are generally to be reduced to zero. In general, *ad valorem* rates of customs duty of 30% on final products, 20% on intermediate goods and 10% on primary products are regarded as levels not to be exceeded.³ Therefore, following the reform, tariff escalation could be more pronounced in some sectors. In addition, the agricultural sector, which has been afforded protection through import control is to be protected "primarily" by means of customs duties.

8. The common external tariff (CET) contains provision for duty-free entry of certain goods which are normally subject to tariffs, e.g. raw materials or components required for use in manufacturing, processing, finishing or packaging goods produced for export.⁴ Machinery, plant and equipment are generally either duty free or attract very low duties. For certain industries, there are also some industrial rebates on a limited range of raw materials.

9. Goods provided in the context of foreign aid to the Lesotho Government, or as part of technical assistance programmes, are exempted from duties. There are also provisions for duty rebates on goods imported for use by the Government.

10. Registration for such rebates and control of eligible goods is the responsibility of the Customs Department. A bond guarantee must be lodged by the importer before registration can be effected to cover the duties on rebatable goods. It takes at least one month for refunds of duties, drawbacks and taxes to be paid to the exporter.

11. According to the authorities, tariff evasion in Lesotho has recently become an increasing problem. Evasion takes several forms, the most common of which include misrepresentation of goods and therefore mis-classification; undervaluation of goods; diversion of commodities entered under duty rebate to unauthorized purposes, for example, diversion of imported goods for use in manufacturing exports into the local market without payment of the relevant duties; and smuggling goods into the country. The goods most commonly smuggled into the Common Customs Area are electronic goods, such as radios, television sets, calculators, etc.; clothing in general; bedding articles such as duvets, bed-sheets, etc.; and food products.

³Government of South Africa (1996).

⁴WTO (1998).