

II. TRADE AND INVESTMENT REGIMES

(1) THE INSTITUTIONAL FRAMEWORK

1. The Gambia is a unitary democracy, independent since February 1965. It enjoyed nearly thirty years of continuous multi-party democracy until a coup d'état in 1994. Following a period of institutional uncertainty, a new constitution was adopted by referendum in 1997. The constitution provides for the separation of executive, legislative, and judiciary power. The President is elected by direct universal suffrage for a five-year term; there is no constitutional limit on the number of terms. He is the Head of State and commander-in-chief of the armed forces. Executive power is exercised either directly by the President, or indirectly through Cabinet. The Cabinet is appointed by the President, and consists of the Vice-President, not more than fifteen Secretaries of State and the Attorney General. A Secretary of State cannot also be a member of the legislature. The President is responsible, *inter alia*, for the conduct of relations with other states and international organizations, the negotiation, and, subject to ratification by the legislature, conclusion of treaties and international agreements. The President also appoints an Auditor-General, who is a member of the public service, after consultation with the Public Service Commission.

2. Legislative power is vested in a unicameral National Assembly, comprising forty-nine members, of which forty-five are elected by direct universal suffrage and four are appointed by the President. All serve a five-year term, provided a petition of recall is not evoked by the Independent Electoral Commission. The Speaker and Deputy Speaker of the National Assembly are elected by the National Assembly, from among its members. Eligibility criteria include a good track record of service to the country, integrity, experience, and dedication to duty. The National Assembly has the power to summon the President to answer to a vote of no confidence tabled against him by a member of Parliament. Should the motion receive two thirds or more of votes in the House, the President is required to stand down. Legislative power is exercised by bills passed by the National Assembly and assented to by the President.

3. The Gambia's judicial system is based on a combination of: English Common Law and the rules of equity derived therefrom; Sharia law as it relates specifically to marriage, inheritance, and divorce; and treaties and international conventions. Under the 1997 constitution, judicial power is vested in the courts, according to the following hierarchy: the Supreme Court, the Court of Appeal, the High Court and the Special Criminal Court (these four courts collectively comprise the superior courts); the Magistrates court, the Cadi court¹, district tribunals and any lower courts and tribunals established by an Act of the National Assembly. The Supreme Court is the final court of appeal for The Gambia. The Chief Justice is appointed by the President after consultation with the Judicial Service Commission. All other judges of the superior courts – except those of the Special Criminal Court – are appointed by the President on the recommendation of the Judicial Service Commission. A commercial court was established in 1998 to handle cases relating to the Company Act and loan recovery, but most commercial litigation is handled through the High Court. The commercial court has a severe backlog of cases.

4. Local government is based on a system of democratically elected councils, which have competencies in, *inter alia*, infrastructure development, encouragement of commercial enterprises, provision of essential and other services, and raising of local revenue, as provided for in the 2002 Local Government Act. The decentralization process is one part of an overall national programme addressing The Gambia's administrative and institutional structures, known as the Governance Policy Framework. This was adopted in 1999, and its six objectives are to: reform parliamentary structures

¹ The Cadi court has jurisdiction to apply the Sharia in matters of marriage, divorce, and inheritance where the parties or other interested persons are muslims.

and processes; review constitutional and electoral processes; promote civic education; decentralize local government systems; reform legal and judicial processes; and strengthen public management and administrative reform.

(2) TRADE POLICY FORMULATION AND IMPLEMENTATION

5. Each Department of State is responsible for policies in its fields of activity. Bills or motions relating to a policy initiative may be introduced in the National Assembly by the relevant Secretary of State, and must be accompanied by an explanatory memorandum setting out in detail the policy and principle of the bill, the defects it is intended to remedy, and the necessity for its introduction. Any proposed bill must be published in the *Gazette* at least 14 days prior to introduction. The proposed bill may be referred to an appropriate National Assembly Standing Committee.² The constitution does not set a specific time-limit on consideration of the proposed bill by the National Assembly. Once a bill is passed, the President has thirty days to either assent to the bill, or return it to Parliament for reconsideration, along with a statement providing reasons for the request for reconsideration and any recommendations for amendment. Once the bill has been reconsidered, and approved (with or without the amendments proposed by the President) by the Assembly by a majority of at least two thirds, it is forwarded again to the President, who must then assent to it within seven days. A bill that has been passed by the National Assembly and assented to by the President becomes law (an Act of the National Assembly). The President is responsible for ensuring that such Acts are published in the *Gazette* within thirty days of his assent; the Acts come into force at the time of their publication.

6. The Department of State for Trade, Industry and Employment (DOSTIE) has overall responsibility for the formulation, coordination, and implementation of trade, investment, industrial, and competition policies. Acting on the authority of the President, it takes the lead role in trade negotiations, which are conducted in collaboration with the Department of State for Foreign Affairs. Tariffs are set by the Department of State for Finance and Economic Affairs (DOSFEA) and administered directly by the Customs and Excise Department.³ Other departments whose functions have a bearing on trade policy include: the Department of State for Local Government and Lands, which is responsible for, *inter alia*, the allocation of commercial land for industrial development; the Department of State for Justice, which is responsible for, *inter alia*, the registration of businesses and companies; the Department of State for Health, which is responsible for, *inter alia*, the establishment of regulations on quality-control requirements both for imports and exports of processed foods; and the Department of State for Agriculture, which is partly responsible for, *inter alia*, policy related to agriculture and the establishment of technical regulations and controls governing imports and exports of plants, plant material, and livestock, and protection of food.

7. A High-Level Economic Committee (HLEC), consisting of government officials, was established in 1990 to consider policy issues and make recommendations to Cabinet, for example, on the implementation of the privatization process (Chapter III(4)). An inter-departmental task force on trade policy has been established to coordinate trade-related technical assistance. Nevertheless, trade policy still suffers from a lack of coordination, and this has affected the implementation of commitments undertaken in the WTO. The lack of coordination has also limited the integration of The Gambia's trade policy into its overall development strategies. Consultations between Government and the private sector tend to be sporadic and ad hoc. Moreover, pre-budget consultations have not taken place since 2001.

² The National Assembly is empowered to appoint a public appointments standing committee, a finance and public accounts standing committee, a standing committee of privileges, a standing committee on defence and security, and any other committee it considers necessary for the exercise of its functions.

³ The Government intends to establish an independent revenue authority, which would, *inter alia*, be responsible for customs duty collections.

(3) POLICY OBJECTIVES

8. The Gambia recognizes the importance of trade and investment liberalization to its long-term development prospects; the pace of reform has increased since the late 1990s. In addition to tariff reductions, the Government sees the divestiture of state assets, and the implementation of clear regulatory frameworks as essential conditions for the development of the private sector, considered to be the main source of economic growth in the medium and long term. The Government's intention is that policy reforms, together with initiatives such as the development of free zones and the provision of investment incentives, will make The Gambia attractive to local and foreign private investors, and in turn encourage employment creation and the diversification of the relatively narrow productive and export base.

9. "The Gambia Incorporated: Vision 2020", adopted in 1996, calls for the transformation of The Gambia "into a dynamic middle income country".⁴ Broad objectives are set out for six areas: agriculture, industry, trade, tourism, financial services, and human resource development. These objectives include: improving the productivity of the agriculture sector and encouraging crop diversification; increasing the share of manufacturing in GDP to 25-30% by 2020; making The Gambia a hub for regional trade and transit/entrepôt trade; promoting The Gambia as a "tourist paradise and major tourist destination"; and developing The Gambia into a centre for "teleport" and financial services⁵, including off-shore banking services.⁶

10. In the long term, the Government also intends "to eradicate poverty by significantly increasing national income through stable economic growth, and reducing income and non-income inequalities through specific poverty reduction priority interventions". The attainment of this goal rests on achieving five overarching objectives: (i) the creation of "an enabling policy environment"; (ii) enhancing the productive capacity and social protection of the poor and vulnerable; (iii) improving the coverage of basic social-service needs of the poor and vulnerable; (iv) building capacity for local communities and civil society organizations; and (v) "mainstreaming poverty-related cross-cutting issues".⁷ On the whole, however, there has been no attempt to articulate a systematic trade policy agenda for The Gambia linked to poverty reduction. Consequently, the formulation and discussion of a number of trade policy objectives and measures have been, at best, only partially integrated into the overall development strategy framework, and have tended to follow a parallel track.

11. An Export Development Programme, currently under preparation⁸, focuses on the following priority subsectors: groundnuts, tourism, fisheries, horticulture (mainly flowers and fruit), and niche manufacturing (mainly processed fruit and vegetable products). Specific strategies are envisioned for each of the subsectors. The strategies involve a wide range of government actions, notably the provision of extension and information services, training and capacity-building in relation to standards

⁴ Government of The Gambia (1996).

⁵ Teleports are essentially gateways that connect satellite circuits with terrestrial fibre optic and micro-wave circuits. The establishment of teleports is seen as a way of attracting knowledge-based service industries (see also online information. Available at: <http://www.worldteleport.org>).

⁶ The "Vision" document itself identified few concrete policy measures. This is left to a number of different policy statements and programmes, notably the Strategy for Poverty Alleviation (SPAII) / Poverty Reduction Strategy Paper (SPA II - PRSP), adopted in 2002, which succeeds the First Strategy for Poverty Alleviation, implemented from 1994 to 1998. Other relevant policy documents are the Export Development Programme, the National Employment Policy and Action Plan, the National Industrial Policy, and various sector-specific policy documents.

⁷ Government of The Gambia (2002a).

⁸ Supported by The Gambia's participation in the Integrated Framework for Trade-related Technical Assistance and Capacity-building for Least Developed Countries.

and marketing, the creation of specialized financing institutions, and the use of incentives; they also address infrastructure constraints (Chapter IV(2) and (4)).⁹

(4) LAWS AND REGULATIONS

12. The main trade-related laws and regulations of The Gambia are presented in Table II.1. The 1955 Company Act provides for freedom of enterprise and setting prices. It distinguishes between three types of company: limited by shares, limited by guarantee, and unlimited. For a company to be incorporated, a memorandum and articles of association need to be deposited with the Registrar of Companies at the Attorney General's Cabinet. The Act also sets out the required accounting procedures to be followed by enterprises. The Business Registration Act of 1973 further specifies that a certificate of registration (for a business) or a certificate of incorporation (for a company) must be obtained, and prominently displayed in the principal place of business. The registration cost for companies owned by Gambian nationals is D5,500; foreign-owned companies are required to pay a fee of D10,000, and a payroll (expatriate quota) tax of D10,000 per annum. Registration takes about three days to one week.

Table II.1
Main trade-related laws and regulations of The Gambia, July 2003

Area	Instrument/text	Entry into force
Customs legislation	Customs Act, as revised and its subsidiary Customs Regulations Customs Tariff Act 1965, as revised in 1972	1950, last revision 1976 for the Act, 1981 for the Regulation
Taxes, levies, and duties	Tax Code	..
Investment incentives; functioning of The Gambia Investment Promotion and Free Zones Agency (GIPFZA)	Investment Promotion Act, 2001	1 March 2001
Free zones; investment incentives to free-zone operators	Free Zones Act, 2001	1 March 2001
Public procurement; establishment of The Gambia Public Procurement Authority	Public Procurement Act	19 July 2001
Procedures and regulations for the establishment of private commercial enterprises	Company Act	1955
Establishment and operation of public enterprises	Public Enterprise Act	27 June 2002
Procedures for the divestiture of state enterprises, state's interest in other enterprises, and any related matter; establishment of The Gambia Divestiture Agency	The Gambia Divestiture Act	1 March 2001
Operation of the Central Bank	Central Bank Act	31 December 1992
Rules governing the establishment and operation of banks and financial institutions; prudential requirements and supervision	Financial Institutions Act	31 December 1992
Prevention of money-laundering	Money Laundering Bill	2003
Protection of patents, industrial designs, and trade- marks	Industrial Act	1989
Protection of copyright	Copyright Act	15 July 1915
Public health, including food control	Public Health Act Public Health Act (Amendment) Decree	1990 1995
Sanitary measures – animal health	Diseases of Animals Act	1965
Phytosanitary standards	Hazardous Chemicals and Pesticides Control and Management Act	1994

Table II.1 (cont'd)

⁹ The subsectors and measures discussed in the Export Development Programme are also echoed to some extent in the National Employment Policy and the National Employment Action Plan. The use of incentives is underscored in the National Industrial Policy. See Government of The Gambia (2002b); and Government of The Gambia (1997).

Area	Instrument/text	Entry into force
Environmental standards, and environmental impact assessments	National Environment Management Act	1994
Groundnut subsector	Groundnuts Act	1952
	Groundnut (Standard of Quality) Regulations	1965
	Framework of Agreement between the Government of The Gambia and the Agri-Business Plan Association	18 December 1999
Rules governing operators in tourism sector, establishment of The Gambia Tourism Authority	The Gambia Tourism Authority Act	19 July 2001
Fisheries	Fisheries Act	1991
	Fisheries Act (Amendment) Decree	1995
Posts and telecommunications	Post Office Act	1912
	Savings Bank Act	1936
	Telegraph Stations Act	1913
	Telephones Acts	1950
Civil aviation	Civil Aviation Act	1979
Ports	The Gambia Ports Act	1972
Road transport	Road and Highways Act	18 December 1974
River transport	Inland Waterways Act	..
Mining and minerals	Minerals Act	1953
Petroleum	Petroleum Act	1921

.. Not available.

Source: Government of The Gambia.

13. The 1950 Customs Act, as revised¹⁰, and its subsidiary customs regulations (adopted in 1950, and revised on several occasions¹¹) set out the procedures for the arrival, unloading, declaration, and storage of goods in The Gambian territory. The Act also contains provisions on transit trade, coasting trade (trade by sea or by air from one part of The Gambia to the others), bond and other securities payable by agents, the prevention of smuggling, and legal procedures that can be followed in a dispute relating to a customs matter. It also contains a few provisions regarding the remission of duties and drawback procedures, but these are more fully developed in the 1965 Customs Tariff Act, as revised in 1972. The latter is the legal basis for the imposition of import and export duties. It sets out valuation procedures for imposition of import duties, and procedures for duty drawbacks and the granting of duty remissions and exemptions.

14. The Government promotes private investment, both local and foreign, through the Investment Promotion Act and the Free Zones Act, both passed in May 2001; the Acts replace the Development Act of 1988. The Government established The Gambia Investment Promotion and Free Zone Authority (GIPFZA) to act as a "one-stop shop" to ensure implementation of the provisions of these Acts, and to facilitate all aspects of investment in The Gambia. It is mandated, *inter alia*, to review applications by companies for investment incentives or free-zone status, and issue a recommendation to the Secretary of State for Trade, Industry and Employment; and to ensure that investors comply with the requirements of the Investment Promotion Act or the Free Zones Act, as applicable. GIPFZA's Board of directors comprises eight members, which include the Permanent Secretaries of the departments responsible respectively for trade, finance, and communications, as well as three representatives from the private sector. The establishment of the GIPFZA was supported by a World Bank credit of US\$5.1 million disbursed as part of the Trade Gateway Project: US\$1.4 million will be devoted to financing its operating expenditure during the first five years of its operation, after which,

¹⁰ Last revised in 1976.

¹¹ Last revised in 1981.

under the terms of the project, it is expected that GIPFZA is to become self-sustaining. The balance will be devoted to providing technical assistance to GIPFZA management, and financing surveys, studies, and marketing plans.

15. All investors, whether foreign or Gambian, must be registered with the Registrar of Companies, in compliance with the Business Registration Act (see above). No specific restrictions are placed on foreign investors by the Investment Promotion Act or the Free Zones Act. Joint ventures are not required but are encouraged by the Government, and incentives are provided for this purpose under both the Investment Promotion and Free Zones Acts. Likewise, there is no obligation for foreign investors to offer equity participation to the Government, though the Government "may seek" equity participation in projects in areas such as natural resources or infrastructure. Investors face no restrictions on: the transfer of after-tax profits as dividends to non-resident shareholders or as remittances to head office; the repayment of loans or the payment of interest and service charges; the payment of licence fees and royalties due to non-residents; or the repatriation of proceeds from the sale of investment to a resident of The Gambia, or from a reduction of share capital. Expropriation is allowed in where it is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning, or promotion of the public benefit¹²; the prompt payment of adequate compensation is required. The constitution also secures access to a court or other impartial or independent authority, including international arbitration, for the purpose of the determination of a person's interest or right to the property, the legality of the expropriation, the amount of compensation to which the person is entitled, and for the purpose of obtaining prompt payment of that compensation.

16. Investments relating to the exploitation of mineralogical, petroleum, and fisheries resources are subject to certain restrictions as stipulated in the Minerals Act, the Petroleum Act, and the Fisheries Act. A lease or a licence must be granted by the State, and investors are expected to reach a comprehensive agreement with Government on the terms and conditions for exploration and production (Chapter IV(3)(2)). Gambian law also created statutory state monopolies in certain areas of activity (mainly utilities). Some consideration has been given to enacting legislative amendments to permit the participation of domestic and foreign private investors in these areas of activity, but to date no concrete steps have been taken.

17. Under the Investment Promotion Act, special incentives are available to encourage investment in "priority" sectors and activities (Table II.2). In addition to investing in these sectors, other eligibility criteria are that: investment must be organized as a company or partnership under the Law of The Gambia; the minimum investment of fixed assets must be US\$100,000 or the equivalent in local or any other freely convertible currency; and that investments are outside the free zones. Any investor satisfying the eligibility criteria may apply to GIPFZA for a Certificate of Special Investment. These certificates are valid for five years, and are renewable. In considering an application for a certificate for special investment, GIPFZA is required to carry out an appraisal of the proposed project or business to contribute to the achievement of the following objectives: (a) the generation of new foreign-exchange earnings or savings through exports, or import substitution, or service activities; (b) the use of local materials, suppliers, and services; (c) the creation of employment opportunities in The Gambia; (d) the introduction of advanced technology or upgrading of indigenous technology; (e) the contribution to locally or regionally balanced socio-economic development; and (f) any other objectives that the Agency may consider relevant for achieving the objectives of the Investment Promotion Act. It is not required for a project to meet each of these criteria. No specific benchmarks or objective indicators have been developed to date to assess the

¹² Article 22 (1) of the Constitution of The Gambia.

performance of a project or business against these desired objectives, giving GIPFZA a certain degree of discretion in awarding investment incentives.

Table II.2
Priority sectors and activities under the Investment Promotion Act

Sector	Qualifying activities
Agriculture	- Crops: groundnuts, cashew, sesame, cotton, cereals - Animal husbandry: livestock, poultry including meat processing, tannery, export of live animals - Floriculture and horticulture, agro-processing
Fisheries	- Aqua-culture: fish and shrimp farming - Fishing and fish processing at industrial level
Tourism	- Eco-tourism: national heritage and others - Up-country tourism: motels, tourist camps, sport fishing, river cruising - Hotel development for a 4 or 5 stars
Forestry	- Development of private/community forest parks agro-forestry plantation
Manufacturing	- Assembling and packaging processing - Foundry and forging - Light pharmaceuticals and cosmetics
Energy	- Electricity generation and distribution - Renewable energy sources: solar, wind, hydro-energy
Skills development	- Vocational training: carpentry, welding, masonry - Development of specialized skills: electronics, computing, others
Other services	- Financial services - Off-shore services - Health and veterinary services - River and air transportation - Information technology
Minerals exploration and exploitation	- Petroleum exploration: refer to Petroleum Act and regulations - Mining of precious stones and others: refer to Mineral Act.
Communications	- Transportation (land, sea, and air) - Communication equipment.

Source: Government of The Gambia.

18. Following the adoption of the Free Zones Act, the Government took steps to establish a free zone covering 160 hectares in the vicinity of Banjul Airport.¹³ The physical investment required for the establishment of the free zone has been supported in part by a World Bank credit of US\$5.35 million as part of the Trade Gateway Project. The credit has been allocated to financing physical preparation of the site, the construction of fencing and access roads, the installation of common utilities (power, telephone, water, and sewage) inside the zone, the construction of a common user warehouse, and the recruitment of consultants to supervise work carried out.

19. The legislation distinguishes between three different types of operator: zone developers; zone operators; and zone enterprises. Zone developers are real estate financiers, who mobilize financing for the development of infrastructures within free zones, such as factory buildings, warehouses, and any other specialized structures that may be in demand by zone investors. Zone operators are essentially estate managers employed by zone developers. Zone enterprises are the operators actually involved in the production of goods and services.

¹³ The Free Zones Act gives the Secretary of State responsible for Trade the power to declare any area of The Gambia to be a free zone, on recommendation by the GIPFZA.

20. Investors seeking to claim any of these designations must satisfy specific criteria. Zone developers need to:

- attach engineering designs and studies of buildings and infrastructure, together with the timeframe for their erection, and thereafter maintenance of facilities as per agreed maintenance plan.¹⁴ Designs should make provision for the movement of persons, conveyances, vessels, and goods entering or leaving the zones;
- specify a strategy for intervention in the free zones, i.e. whether to operate simultaneously as zone operators; form joint ventures or partnerships; or sub-lease the management of such facilities out to individual zone operators;
- keep and maintain adequate and proper accounts and other records in relation to the business, in English, and report to the Agency annually; and
- provide in the zones at the developer's own expenses and free of charge, adequate facilities and offices for personnel of the Agency, Customs and Excise Department, and other officials of government agencies whose presence is necessary in the zones to ensure compliance with the Free Zones Act and other laws of The Gambia.

21. Zone operators need to:

- provide evidence of the necessary expertise required to manage and administer all or any part of a free zone as determined by GIPFZA;
- submit suitable operational plans; and
- prove that the operations proposed are commercially viable and have adequate equity base.

22. Zone enterprises need to:

- be registered as entities authorized to do business in The Gambia;
- engage in at least one eligible activity for an enterprise within the zone, and avoid activities that have a deleterious impact on the environment or public health;
- submit evidence that trade, business or industry to be carried on within the free zone is primarily for export outside The Gambia;
- have an adequate equity base and be commercially viable;
- submit a suitable development plan; and
- have the potential to create employment for the citizens of The Gambia within the zone and increase output and value added to boost the economy.

23. In its capacity as administrator of free zones, the GIPFZA has developed criteria that all investors (regardless of the category to which they belong) must satisfy in order to benefit from free-zone incentives¹⁵:

- investments must be in the following activities: warehousing, breaking bulk, assembling, storage, grading, cleaning, mixing, labelling, packaging and repackaging, processing, manufacturing, telecommunication, information technology, energy, financial and offshore services, health and veterinary services, or transportation services;

¹⁴ Developers of single factory or stand-alone free zones should provide adequate enclosure to segregate the free-zone areas from the national customs territory.

¹⁵ The criteria are not specified in the Free Zones Act itself. Please see online information. Available at: http://www.gipfza.gm/Free_Zones_/body_free_zones_.html

- transactions are to be carried out in specified foreign exchange;
- activities must significantly add value to qualify finished products for conferment of origin status;
- investments must generate employment and train nationals;
- a substantial portion of output (the benchmark currently used by GIPFZA is 70%) must be exported to foreign markets, the remainder can be sold on the domestic market, in which case they are treated as imports; and
- investment must contribute positively to domestic capital formation.

24. Applications to operate within the free zone are submitted to GIPFZA, which is required to make a decision within a period of 30 days. Licences are granted for a period of not less than one year, and not greater than 30 years, and are renewable. GIPFZA may suspend, amend or revoke a licence if the licensee fails to carry out any authorized activity within six months of the issue of the licence; substantially ceases, for a reasonable length of time, its activities in the zone; or contravenes the provisions of the Free Zones Act or conditions attached to the licence. Appeals may be lodged with the Secretary of State responsible for trade.

25. Investment incentives generally take the form of customs duty exemptions on selected items, exemptions from various domestic indirect taxes, tax holidays, and a special scheme for accelerated depreciation (Chapter III(4)(i)). The incentives provided to free-zone investors take the form of tax and duty concessions or exemptions (Chapter III(3)(v)), and apply equally to all three classes of investor.

26. The Gambia has signed double taxation agreements with United Kingdom, Norway, Sweden and Chinese Taipei. Bilateral investment agreements have been concluded with Guinea, Mauritania, the Netherlands, Qatar, Ukraine, and the United Kingdom.

(5) TRADE AGREEMENTS AND ARRANGEMENTS

(i) Multilateral agreements

27. The Gambia has been a Member of the WTO since 23 October 1996; it had been a contracting party to the GATT since 22 February 1965. The Gambia is neither a signatory nor an observer to any of the WTO's plurilateral agreements. Mainly owing to a lack of capacity, The Gambia's notifications to the WTO are few and are made sporadically (Table II.3). The Gambia has not been involved in any dispute under the WTO Dispute Settlement Mechanism, either directly or as a third party.

28. The Gambia is a UN-designated least developed country, and as such may avail itself of the special and differential treatment provisions applicable to least developed countries under WTO Agreements. The implementation of WTO Agreements by The Gambia and its ability to derive benefits from its participation in the multilateral trading system will require significant investment in developing trade-related capacity (section (6) below).

29. The Gambia's participation in multilateral trade negotiations has been restricted by weak inter-ministerial coordination on trade policy, and by its lack of representation in Geneva. Its main areas of interest are special and differential treatment, market access, and the extension of protection afforded through geographical indications to products of regional interest. A WTO study showed that Gambian exports of agricultural products have tended to face high tariff barriers, with average tariffs between 25-26%, even when trade preferences are taken into account.¹⁶ Exports of fish and fisheries

¹⁶ See WT/COMTD/LDC/W/17.

products from The Gambia face low rates of duty in developed markets (a simple average of less than 1% when preferences are taken into account) and relatively high tariff barriers in developing country and transition economy markets (a simple average of 25%).¹⁷ The Gambia also believes that implementation-related issues under existing Agreements should be tackled expeditiously, and that WTO Members should consider ways of alleviating the supply-side constraints of least developed countries.

Table II.3
Selected notifications by The Gambia to the WTO, July 2003

WTO Agreement	Description of requirement	Periodicity	Document symbol of latest notification
Agriculture, Article 10 and Article 18.2	Export subsidies	Annual	G/AG/N/GMB/2 23 January 1998
Agriculture, Article 10 and Article 18.2	Domestic support	Two years	G/AG/N/GMB/1 23 January 1998
Anti-Dumping, Article 16.4	Anti-dumping actions taken	Semi-annual	G/ADP/N/9/Add.1/Rev.6 20 March 1998 and G/ADP/N/47/Add.1 20 April 1999
Agreement on Import Licensing Procedures, Article 7.3	Questionnaire on import licensing procedures	Annual	G/LIC/N/3/GMB/1 5 December 1997
Agreement on Subsidies and Countervailing Measures, Article 25.1 and GATT 1994 Article XVI.1	Subsidies	Annual	G/SCM/N/48 30 March 1999
Agreement on Subsidies and Countervailing Measures Article 25.11	Preliminary report of final actions taken with respect to countervailing duties	Semi-annual	G/SCM/N47/Add.1 21 April 1999
Decision on Notification Procedures for Quantitative Restrictions (G/L/59)	Quantitative restrictions	Biennial	G/MA/NTM/QR/1/ADD.5 19 November 1998
GATT 1994 Article XVII:4(a) and Understanding on the Interpretation of Article XVII (state trading enterprises)	Activities of state trading enterprises	Triennial for full notifications; changes in activities to be notified in intervening years.	G/STR/N/1/GMB 14 November 1997

Source: WTO Secretariat.

(ii) Regional agreements

(a) The African Union and African Economic Community

30. The Gambia is a founding member of the African Union, which succeeded the Organization of African Unity (OAU) in 2001. The Charter establishing the OAU was signed by 30 African nations on 25 May 1963. The Gambia, like the other members of the OAU, signed the Abuja (Nigeria) Treaty Establishing the AEC in June 1991, as provided for by the 1980 Lagos Plan of Action. Its main aim is to promote integration and harmonization within Africa. The treaty provides for the creation of a pan-African economic and monetary union (with a parliament) in six stages, over a period of 34 years. The organs and headquarters of the AEC are those of the AU.

¹⁷ As discussed in Chapter IV(2)(iii)(a), The Gambia's exports of groundnuts, its chief cash-crop, are particularly affected by tariffs and subsidies used by large developing-country producers.

31. At the 2001 Lusaka Summit, African heads of state also adopted the New Partnership for African Development (NEPAD), which calls for a new relationship between Africa and the international community, in particular industrialized countries. The NEPAD seeks to encourage internal reform within African countries through a peer review system, and to mobilize additional debt relief and donor support to fund poverty alleviation programmes.

(b) The Economic Community of West African States (ECOWAS)

32. ECOWAS is the main regional trade agreement of which The Gambia is a member. ECOWAS was established in 1975, and, in addition to The Gambia, its 15-country membership consists of Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.¹⁸ It was initially envisioned that free trade between ECOWAS countries would be achieved by 1996 through the Trade Liberalisation Scheme (TLS) adopted in 1990. However, the revision to the treaty founding ECOWAS, adopted in 1993, reset the date creating a free-trade area to 2000, and an economic and monetary union by 2005.¹⁹ Provision was made through the 1993 revision for the creation of five regional institutions: a Central Bank, a Parliament, a Court of Justice, an Executive Secretariat, and an Economic and Social Council. In 1994, the Francophone member countries, which already shared a common currency (the CFA franc), formed the West African Economic and Monetary Union (WAEMU). Six non-WAEMU ECOWAS members, including The Gambia²⁰, signed an agreement in April 2000, aimed at establishing their own monetary union by the end of 2003, the West African Monetary Zone (WAMZ); this would merge with WAEMU by the end of 2004, ushering in an ECOWAS-wide monetary union.

33. The pace of integration at ECOWAS level (excluding developments within the WAEMU) has been slow, and the deadline for intra-regional trade liberalization was missed. The TLS had identified three groups of countries based on a number of criteria, including the level of industrial development and transportation problems; the speed of liberalization required varied across each group. The Gambia, along with Cape Verde, Guinea-Bissau, Burkina Faso, Mali, Mauritania, and the Niger were to have eliminated tariffs by 2000, by annual reductions of 10%.²¹ This time-table has not been fully adhered to, and the first stage of liberalization, largely limited to unprocessed products, has not generally been implemented. The Gambia should also have allowed duty-free preferential access for many nominated handicrafts and local speciality products.²² All tariff preferences are subject to rules of origin requirements. A finished product has Community origin if at least 60% of the raw materials used in its manufacture come from members, or if the value-added is at least 35% of the ex-works cost price, excluding taxes. Products must be approved according to the scheme adopted by the ECOWAS Council of Ministers.

34. A community levy is collected on imports originating from non-ECOWAS countries to finance the contributions of ECOWAS member states to the common budget, and the compensation for customs revenue lost through liberalization. However, this proved to be largely ineffectual, as

¹⁸ Mauritania withdrew in 2000.

¹⁹ The ECOWAS treaty has not been notified to the WTO.

²⁰ The others are Ghana, Guinea, Liberia, Nigeria, and Sierra Leone.

²¹ Ghana, along with Côte d'Ivoire, Nigeria, and Senegal were to have eliminated tariffs by 1996 by reductions of 16.6% per year over six years. Benin, Guinea, Liberia, Sierra Leone, and Togo were to have removed tariffs over eight years, by 1998, by reducing duty rates annually by 12.5%.

²² Since January 1990, handicrafts appearing on a list established by the Community are, in principle, duty free provided they are accompanied by a certificate of origin issued by the competent authority designated by the exporting country. In The Gambia, this is the Department of State for Trade, Industry and Employment.

members have, by and large not kept up their contributions. Discussions are under way concerning the development of a common external tariff.

35. A West African Monetary Institute (WAMI) was established in December 2000, as a precursor to a common central bank for the WAMZ. The WAMI was to develop an exchange rate mechanism for the six countries, with specified parities, as an interim mechanism prior to the establishment of the common currency. Current arrangements, which were introduced in March 2002 provide for a 15% fluctuation band around parities established on the basis of the currencies' value against the U.S. dollar.²³ Members also agreed to the following primary convergence criteria, which they were required to meet by the end of 2003 as a precondition for monetary union: inflation at 5% or lower; gross foreign exchange reserves at six months of import cover at least; central bank financing of the budget deficit not to exceed 10% of the previous year's tax revenue; and a ratio of the budget deficit, excluding foreign grants, to GDP not in excess of 4%.²⁴ While The Gambia would have met all four criteria in 2000, slippages in economic policy elements and adverse exogenous developments in 2001 and 2002 meant that it was in breach of the first two criteria in those years, and is expected to be in breach in 2003. Six secondary convergence criteria were also agreed to: the prohibition of new domestic arrears and the liquidation of previous ones; a tax revenue to GDP ratio of at least 20%; a wage bill to tax revenue ratio not exceeding 35%; domestically financed capital expenditure to tax revenue ratio of at least 20%; stability of the exchange rate; and positive real interest rates.

36. ECOWAS has launched donor-supported projects to extend and make compatible the communication, transport, and energy networks within the community. These include the West African Transnational Highway; West African Power Pool; West African Gas Pipeline; and INTELCOM 1&2.

37. ECOWAS has, through its Ceasefire Monitoring Group (ECOMOG), been active in the area of regional security. Recent peace-keeping missions have been undertaken in Sierra Leone (1997), Guinea-Bissau (1998), Côte-d'Ivoire (2003), and Liberia (2003).

(iii) Bilateral agreements and arrangements

38. The Gambia has signed bilateral trade agreements with Cuba, Iran, Nigeria, Senegal, and Tunisia. These agreements mainly cover cooperation in trade promotion activities, and do not entail any preferential market access.

(iv) Non-reciprocal preferential treatment arrangements

(a) Overview

39. The Gambia benefits from non-reciprocal preferential treatment from many industrialized countries under the Generalized System of Preferences (GSP). In the case of the European Union, The Gambia is eligible for preferences for ACP countries, and to LDCs generally through the

²³ At end March 2003, the dalasi was trading at 17.8 against the U.S. dollar. As a result of the sustained depreciation of the dalasi through the first half of 2003, The Gambia is considering invoking a clause that would allow it to renegotiate its parity.

²⁴ At end 2000, performance was within the limits set by the four criteria; slippages in macroeconomic policy management in 2001 meant that the criteria for inflation and the ratio of the budget deficit to GDP were exceeded.

Everything But Arms (EBA) initiative.²⁵ On 1 January 2003, Canada expanded the coverage of its preferential scheme for LDCs to provide duty-free treatment for all LDC exports, with the exception of dairy, poultry, and egg products, the importation of which is duty free in-quota and subject to the MFN regime out-of-quota.²⁶ As of April 2003, Japan implemented enhanced preferences for LDCs under its GSP scheme, expanding duty-free and quota-free treatment to over 90% of imports, by value, from LDCs.²⁷

40. The Gambia makes varying use of the preferences schemes of the Quad (Table II.4). The Gambia has usually exported to the European Union, its largest market, under preferences available through the EU's arrangements with the ACP countries, rather than under preferences made available to LDCs under the EU's Generalized System of Preferences. This is demonstrated by the very low utilization rate by The Gambia of the EU's general preferences to LDCs. The Gambia's choice of preferential scheme is largely because, historically, the EU's preferential schemes with ACP countries have been perceived as more advantageous in terms of the level of preferences and product coverage, and as having less onerous rules of origin and documentation requirements.²⁸

Table II.4
Utilization rates by The Gambia of trade preferences granted by the Quad

Preference scheme/year	Exports from the Gambia (US\$'000)	Exports MFN dutiable ^(b) (US\$'000) (1)	Exports GSP covered ^(c) (US\$'000) (2)	Exports GSP received ^(d) (US\$'000) (3)	Potential cover rate (2/1)	Utilization rate (3/2)	Utility rate (3/1)
EU 1999	66,503	10,576	10,556	247	99.8	2.3	2.3
EU 2000	28,822	6,701	6,576	74	98.1	1.1	1.1
EU 2001 ^a	18,387	8,526	8,499	35	99.7	0.4	0.4
Japan 1999	19,119	18,655	15,801	15,700	84.7	99.4	84.2
Japan 2000	3,597	2,877	1,758	1,428	61.1	81.3	49.6
Japan 2001	597	565	565	241	100.0	42.6	42.6
USA 1999	186	55	27	12	48.6	43.8	21.3
USA 2000	342	139	47	24	33.9	51.8	17.6
USA 2001	229	115	51	1	44.5	1.6	0.7
Canada 1999	83	42	27	0	64.3	0.0	0.0
Canada 2000	283	52	47	0	90.4	0.0	0.0
Canada 2001	2,122	10	10	0	100.0	0.0	0.0
EU –ACP preferences, 2001 ^e	18,274	8,449	9,981	6,620	100.0	66.3	78.4

a As of March 2001: Everything But Arms Initiative.

b That is, the value of imports from The Gambia under tariff lines where the MFN applied rate is strictly positive.

c That is, the value of imports from The Gambia under tariff lines eligible for LDC-specific preferential treatment.

d That is, the value of imports from The Gambia which actually enter the reporting country's market under preferential duties.

e Transitional trade preferences provided under the Cotonou Agreement.

Source: UNCTAD Secretariat 2003.

41. Gambian exporters' utilization of the EU's LDC-specific preferences remains low, even after the introduction of the EBA Initiative (EBA), although EBA-preferences are, on paper, more

²⁵ The EU's Everything But Arms (EBA) Initiative, implemented from March 2001, has extended duty-free and quota-free access to imports of all products from least developed countries, except for arms. Extension of this preferential treatment to sugar, rice, and fresh bananas will follow specified schedules (WTO, 2002; and Europa online information. Available at: <http://europa.eu.int/comm/trade/miti/devel/eba4.htm>).

²⁶ See WTO document WT/COMTD/N/15/Add.1.

²⁷ See WTO document WT/COMTD/N/2/Add.12.

²⁸ See Solignac-Lecomte (2001), and Brenton (2003).

extensive than ACP preferences (Table II.4).²⁹ This is because EBA does not generate additional access in relation to the current structure of The Gambia's exports. Furthermore, rules of origin relating to fishing vessels are less flexible than under ACP preferences, and could act as a deterrent to the utilization of the EBA for fish products, in view of The Gambia's low fleet capacity.³⁰ It is also possible that, in the absence of fresh market-access opportunities, Gambian exporters had no incentive to invest the time and resources required to familiarize themselves and comply with the procedural and documentation requirements of the EBA, which differ substantially from those required for the use of ACP preferences. The Gambia can make effective use of the EBA only if it is able to develop non-traditional products (such as horticultural products) for which the EBA provides additional access over existing EU-ACP preferences, and to adapt to the EBA's stricter rules of origin and specific requirements, relating to procedures and SPS measures. Such adaptation will be necessary, as preferences accorded to ACP countries are due to end by 2008, while the EBA is not time-limited. Though there is a focal point at DOSTIE to inform the public on EBA, very little work has been undertaken to inform Gambian exporters about preferences available under the initiative, or to train exporters to deal with procedural and documentation requirements.

42. In relation to Canada, the low level of preference utilization by The Gambia is because most of its exports are traditional products, which are subject to zero-duty MFN rates; taking advantage of recent improvements to Canada's GSP is predicated on The Gambia's ability to branch out into non-traditional products. In relation to Japan, data indicate that The Gambia was able to almost fully exploit the preferences available in 1999, particularly on fish products; it received preferences on almost 85% of its exports that would otherwise have been subject to MFN duties. However, since 1999, the value of The Gambia's exports has declined, together with its ability to take advantage of preferences available to it, a trend most evident for live animals and animal products. The Gambia appears to have made low to moderate use of the preferences applying to its exports to the United States.

(b) The Cotonou Agreement

43. The Gambia is a signatory to the Cotonou Agreement (successor to the Lomé Convention) between the EU and 77 countries in Africa, the Caribbean, and the Pacific (ACP).³¹ The Agreement maintains most non-reciprocal trade preferences granted by the EU to ACP States.³² As at December 2003, the Agreement had not yet been ratified by The Gambia. At the Doha Ministerial Conference, WTO Members granted the waiver from the obligations under Article I:1 of GATT 1994

²⁹ A pattern observed for the exports of a number of LDCs (see Brenton, 2003).

³⁰ The major differences with regard to fishing vessels are: (1) under the EBA, the vessel must be registered in the beneficiary country or the EU and sail under the flag of the beneficiary country or the EU; while under the Cotonou Agreement, the vessel must be registered in the EU or any ACP State and fly under the flag of the EU or any ACP State; (2) under the EBA initiative, vessels must be at least 50% owned by nationals of the EU or the beneficiary country, or by companies headquartered in either the EU or the beneficiary country, and of which the chairman and majority of the board are nationals of either; whereas under the Cotonou Agreement, these provisions are extended to cover all ACP States; (3) under the EBA initiative, the master and the officers must be nationals of the beneficiary country or an EU member and at least 75% of the crew must be nationals of the beneficiary country or the EU; under the Cotonou Agreement, 50% of the crew, along with the master and officials, must be nationals of any ACP State or the EU (See Brenton, 2003).

³¹ The Cotonou Agreement was signed on 23 June 2000. The fourth Lomé Convention had expired at the end of February 2000.

³² South Africa was excluded from most of the provisions of the Lomé Conventions and now the Cotonou Agreement, but has a separate Trade Development and Cooperation Agreement with the EU, signed in October 1999, which provides for asymmetrical trade liberalization between the two parties to form a free-trade area by 2012.

(MFN treatment), requested by the parties to the Agreement, for the period up to 31 December 2007.³³ By then, new WTO-compatible trading arrangements are to be concluded, removing barriers progressively between the parties and enhancing cooperation in all areas relevant to trade, including the formation of free-trade areas within a transitional period. During this period, the EU is to enter into negotiations with ACP countries, to start in September 2002, aimed at establishing partnership agreements on a bilateral basis, or between the EU and regional groupings (regional economic partnership agreements) to commence by January 2008 at the latest. These would be based on reciprocal liberalization, thereby requiring, in principle, The Gambia and other ACP states to extend preferential access progressively to EU exports.

44. Under the Cotonou Agreement, the EU grants non-reciprocal trade preferences to most imports originating in ACP states, subject to a safeguard clause and rules of origin.³⁴ For certain products (bananas, beef and veal, and sugar), the EU provides special market access under "commodity protocols". The Cotonou Agreement abolished STABEX, SYSMIN, and the Rum Protocol of the Lomé Conventions.

45. The Gambia received financial assistance from the EU under, *inter alia*, the European Development Fund (EDF); the European Investment Bank for commercial loans; and the National Indicative Programme (NIP).

(c) The African Growth and Opportunity Act (AGOA)

46. AGOA, contained in the U.S. Trade and Development Act of 2000, and as modified by the Trade Act of August 2002³⁵, offers free access to some manufactured products originating in African countries. A high-level dialogue on trade and investment under the U.S.-Sub-Saharan Africa Trade and Economic Forum has also been established. To be eligible, African countries must make progress in establishing a market-based economy; developing political pluralism and the rule of law; eliminating discriminatory barriers to U.S. trade and investment; protecting intellectual property; combating corruption; protecting human and worker rights; and removing certain practices of child labour.³⁶

47. African countries eligible for preferential treatment under the AGOA will receive GSP treatment in the U.S. market (exempt from the competitive needs limitations) until the end of September 2008, and will qualify for an expanded list of GSP products (beyond that available to other countries). The countries are entitled to unlimited duty-free and quota-free access to the U.S. market for apparel made from U.S. fabric, yarn or thread.³⁷ Less developed countries, including The Gambia, 27 other eligible African countries with a per capita GNP below US\$1,500 in 1998, plus Botswana and Namibia, may use non-U.S. fabric and yarn until end-September 2004.³⁸ Although the apparel benefits in principle took effect from 17 October 2000, countries must have in place an effective visa system to prevent illegal trans-shipment and use of counterfeit documentation, as well as effective

³³ WTO document WT/MIN(01)/15, 14 November 2001. The full text of the Cotonou Agreement was communicated to WTO Members (WTO document G/C/W/187/Add.3 of 14 April 2000).

³⁴ The rules of origin require that qualifying products be either "wholly obtained or significantly worked or processed" in one or more ACP States. The latter definition is based on the product being sufficiently modified in the ACP State for it to be classified under a different four-digit HS tariff line.

³⁵ The modifications are collectively referred to as AGOA II.

³⁶ African Growth and Opportunity Act. Available online at <http://www.agoa.gov/index.html>.

³⁷ The list of manufactured goods (some 1,800 tariff lines) covered by AGOA includes products such as footwear, luggage, handbags, and watches.

³⁸ Botswana and Namibia were accorded less developed country status under AGOA II. The possibility of using non-U.S.-origin yarn was introduced under AGOA II.

enforcement and verification procedures. The Trade Act of August 2002 extended duty-free and quota-free access to certain types of apparel products previously excluded, specifically "knit-to shape" articles, and "hybrid" apparel articles, i.e. articles containing both U.S. and sub-Saharan Africa beneficiary components and/or articles containing both fabric and knit-to-shape components.

48. The Gambia was declared eligible for AGOA's benefits following the 2002 review of AGOA conducted by the Government of the United States.³⁹ As at December 2003, Gambian exporters had not made use of preferences available under AGOA. The Gambia had not taken steps required by AGOA rules that would allow it to benefit from special provisions regarding exports of apparel.⁴⁰

(6) TRADE-RELATED TECHNICAL ASSISTANCE

(i) General needs

49. The Gambia's assistance requirements relate to: (i) the harmonization of laws and regulations with WTO requirements; (ii) notifications; (iii) staff training, and establishment of institutional structures to facilitate the implementation and observance of Agreements; and (iv) the formulation of policies that allow maximum benefit from trade reforms and the application of the WTO Agreements, and minimize any costs.⁴¹

50. Customs reform and capacity-building have been a long-standing item on The Gambia's policy agenda.⁴² The implementation of modern, WTO-consistent customs procedures is a priority. The Gambia currently applies a hybrid valuation system, under which both transaction values and reference values are taken into account, though the latter is used when it is higher. The Gambia has not applied to the WTO for a waiver granting it an extended transition period for the implementation of the WTO Customs Valuation Agreement, although it is not yet applying the method based on the transaction value. The main technical assistance needs in relation to valuation are: the training of officials in the principles of the transaction value method and content of the Agreement; assistance in the drafting of legislation; and training on valuation, post-clearance auditing, and anti-fraud techniques and control, within the framework of the Agreement. The delivery of technical assistance in these areas would be part of a wider programme for the development of customs capacity, which is being supported by the International Monetary Fund and bilateral donors.

51. The development and implementation of standards and other technical requirements, including sanitary and phytosanitary measures, are a key priority. The Gambia does not have an

³⁹ The review stated that The Gambia has made "significant progress in implementing political reforms, recognizing basic human rights, and favorably addressing allegations of complicity in the illicit trade in conflict diamonds. The Gambia's progress includes holding multi-party presidential, legislative, and local elections; qualifying for the HIPC initiative, and making significant progress in meeting performance targets; proceeding successfully with privatization and deregulation plans; making substantial improvements in social infrastructure, and implementing an IMF Poverty Reduction and Growth facility; and ratifying ILO convention 182 on the worst forms of child labour."

⁴⁰ AGOA rules on apparel require beneficiaries to "establish effective product visa systems to prevent illegal transshipment and the use of counterfeit documentation, as well as [to have] instituted required enforcement and verification procedures"

⁴¹ The Gambia was one of five countries (with Bangladesh, Haiti, Tanzania, and Uganda) to have held trade-related roundtables under the first version of the Integrated Framework for Trade-Related Technical Assistance and Capacity Building for Least-developed Countries. The main outcome from this roundtable has been the preparation of an Export Development Strategy and specific sector studies in the areas of fisheries, groundnuts, horticulture, niche manufacturing, and tourism, in association with the joint WTO/UNCTAD/International Trade Centre.

⁴² McNamara and McPherson (1995).

operational standards bureau that could act as a focal point for the development of national standards. This hampers The Gambia's ability to control the quality of imported goods, and reduces its capacity to set and enforce standards that would enable Gambian exporters to signal the quality of their goods in competitive international markets. Regulations on sanitary and phytosanitary measures are dispersed across a number of legislative texts, meaning that specific issues are addressed in a piecemeal fashion. This reduces transparency, and also means that specific topics (such as food safety or animal health) are not supervised by a single institution, thus hampering monitoring and enforcement. Furthermore, the provisions relating to sanitary and phytosanitary measures in legislation such as the Public Health Act (1990), various public health regulations adopted under the former Public Health Act of 1935, the Groundnuts Act of 1952, and the Diseases on Animals Act of 1965, do not meet the requirements of the Codex Alimentarius, or the Organisation Internationale des Epizooties (as applicable). In the case of the Groundnut Act, the insufficient attention given to the issue of minimum pesticide residue contents is liable to jeopardise the competitiveness of Gambian groundnuts in major industrialized markets. The Gambia is reviewing existing legislation, and has prepared new draft legislation in a number of areas (Chapter III(2)(vii)(b)). Technical assistance could focus on ensuring that revised or newly drafted legislation is in conformity with rules and practices provided for in relevant international agreements, the development of implementing legislation, and the development of institutional capacity required for enforcement.

52. The development of structures for certification and the implementation of technical, sanitary, and phytosanitary regulations constitute a second level of needs. For example, the implementation of the Hazardous Chemicals and Pesticides Control and Management Act of 1994 required the establishment of a Pest Management Unit. Laboratory facilities exist at the National Agriculture Research Institute, but financial support is needed for their further development, as is technical assistance for the training of staff. Laboratory facilities will also be critical for the implementation of various texts prepared in 2002 on hazardous chemicals and pesticides (Chapter III(2)(vii)(b)), required to enhance consumer protection and the quality of exports, and to allow The Gambia to fulfil international obligations.

53. Technical assistance needs for intellectual property protection relate to the revision of existing legislation, the drafting of new legislation, and the development of implementation capacity. Steps are being taken to develop a new copyright law to replace the existing legislation dating from 1915. The enforcement of legislation protecting trade marks is currently hampered by the lack of an adequate system for trade mark registration. The current backlog in the publication of trade marks is estimated at 12 years; this has led to several cases being filed by individuals claiming infringement.

54. The Gambia does not have legislation on contingency trade remedies. The Government is of the view that further liberalization may lead to increased pressure for the use of such measures. Technical assistance in this area would focus on developing capacity to use contingency trade remedies to address cases of unfair competition without allowing their capture by protectionist lobbies.

55. The Gambia is currently involved in trade negotiations with regional partners in the context of ECOWAS; with the European Union under the Cotonou Agreement; and within the WTO under the Doha Development Agenda. The different negotiating mandates and timetables are liable to place considerable stress on The Gambia's institutional capacities. Technical assistance could focus on helping The Gambia to identify negotiating priorities, and to anchor these in its overall programme of trade reform. It could also focus on strengthening the Diplomatic Academy established by the Government in 2002 in order to strengthen commercial diplomacy.

56. The Gambia's participation in the work of the WTO generally, and in negotiations specifically, is hampered by its lack of representation in Geneva⁴³, as well as by a shortage of staff trained in WTO matters.⁴⁴ An inter-departmental coordination committee on the WTO exists, on paper, but is currently not operational. A WTO reference centre was established in DOSTIE in November 1998, but is currently not operational. Assistance to the Government to enable it to make better use of information and on-line technology may help to alleviate some of the problems it faces in keeping abreast of the WTO's work programme. The Gambia also needs assistance in making notifications corresponding to its obligations under various WTO Agreements in a timely manner.

(ii) Supply-side constraints

57. Supply-side constraints affecting The Gambia are both of a generic (cross-cutting) nature and a sector-specific nature. The former include the high cost and unreliability of certain public services – notably electricity and telecommunication services – and the high cost of private credit; bank lending rates are between 20% and 24%. Banjul's port and the renovated Yumtum airport provide The Gambia with a gateway to export markets. The role of these facilities in The Gambia's trade infrastructure could be enhanced through specific support for initiatives that would help to reduce transport costs, including reforms in port management (Chapter IV(5)(iii)(b)), road maintenance (Chapter IV(5)(iii)(a)), and trade facilitation, notably through the reform of customs practices and procedures. Many of these constraints are singled out for policy action in the current version of The Gambia's Poverty Reduction Strategy Paper, and tackling them will support traditional exports such as groundnuts and fisheries, as well as sectors identified as having an important growth potential, notably tourism, horticulture, and non-traditional agricultural exports.

58. Most sector-specific constraints are discussed in detail in Chapter IV. The most frequently identified needs are training in modern production and marketing techniques, and the provision of inputs and physical support facilities. For example, the fisheries subsector would benefit from the provision of cold storage facilities; and the groundnut subsector would benefit from measures to introduce new harvesting and storage techniques, as current techniques contribute to the high aflatoxin content of Gambian groundnuts. In addition, Gambian exporters would generally benefit from better information about market access opportunities, including trade preferences, offered by trading partners.

59. The Government sees its divestiture programme and the reform of state-owned enterprises as a means of addressing some of these supply-side constraints, and also as a necessary complement to trade liberalization in order to create a suitable environment for private-sector-led growth. To ensure that the divestiture programme yields efficiency gains, the Government is preparing legislation on competition policy and consumer protection, and regulatory frameworks for the specific sectors to be opened to the private sector under track I of the privatization programme (Chapter III(4)(ii)). It intends to review existing legislation and develop new sectoral policies in areas critical to the country's infrastructure, such as energy, communications, transport, maritime, and water resources.

⁴³ The Gambia's mission in Brussels handles WTO matters.

⁴⁴ The Gambia benefited from 22 technical assistance (TA) activities in 2002 and 23 TA activities in 2003, organized mainly at a regional level. Activities in which The Gambia has participated in 2003 included the 23rd Trade Policy Course in Geneva from 13 January to 4 April 2003; the three-month trade policy course held in Kenya for English-speaking African countries; the 4th and 6th dispute settlement courses, the briefing for high-level officials from LDCs held in Switzerland on 19-21 August 2003; the regional workshop on the implementation of the textiles and clothing agreement for selected African countries, held in Lesotho on 28-30 July 2003; the regional workshop on market access negotiations and IDB/CTS databases for selected English-speaking African countries, held in Zambia on 13-16 October 2003; and the second WTO/ADB/ECA trade policy course for African countries, held in Ghana from 13 to 24 October 2003.

Technical assistance would focus on the preparation of legislation; ensuring the consistency between overall framework for competition policy and regulatory frameworks applying to individual sectors; and on building institutional capacity, particularly the envisioned multi-sector regulatory agency, required to implement legislation. The policy framework for private competition will also be enhanced through support for reforms enabling the judiciary to expedite cases of commercial litigation and enforce collateral recovery for commercial loans, and through legislative reforms such as the drafting of a new financial institutions bill. Many of these technical assistance needs are likely to be addressed through the Trade Gateway Project, sponsored by the World Bank.

60. Technical assistance could also focus on helping the Government to harmonize incentives provided through newer legislation with those already existing, in order to avoid overlapping incentive schemes and to increase the transparency of the investment regime. With a number of different departments and agencies currently claiming competence for the granting of incentives (Chapter III(4)(i)), technical assistance could focus on developing a streamlined procedure for approvals, in order to reduce procedural costs for investors. Some of the newly established agencies lack capacity to perform even basic tasks such as maintaining time-series data. Regarding the free trade zone, technical assistance could be geared towards helping the Government devise strategies for enhancing linkages between the zone and the rest of the economy.

(iii) Integration of trade into development plans

61. Despite the Government's recognition of the importance of trade and trade policy reform to the development prospects of The Gambia, trade policy has yet to be systematically integrated with other aspects of development policy. As pointed out elsewhere, trade policy does not feature explicitly in The Gambia's current Poverty Reduction Strategy Paper, and the discussion of trade policy tends to be dispersed across a number of policy statements whose relationship to each other is unclear. One basic reason for this lack of integration is that trade policy-making itself is not fully coordinated, as there is no operational structure to coordinate the work of the various departments and agencies involved in the formulation and implementation of trade policy. A critical first step would be to achieve such coordination in trade policy-making. A second step would be to find a way of bringing trade policy discussions into fora addressing development and poverty-reduction issues, such as the State Poverty Alleviation Coordination Office (SPACO). As many of the institutions involved in poverty-reduction strategies are also involved in trade policy-making, this second step is as much a question of political will as it is of capacity. One way in which technical assistance could help would be to identify a set of trade policy actions that would have the most impact on poverty reduction, which could then be integrated into future versions of The Gambia's Poverty Reduction Strategy Paper.