

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. Haiti's trade policy has developed considerably since 1986, going from a closed and regulated regime (with a high level of State intervention) to a particularly liberal regime. The reforms were carried out under especially difficult political and economic circumstances, but they make Haiti today one of the most open economies in the Caribbean and Latin America. The majority of quantitative restrictions on trade have been abolished, with the exception of those in place for health, security, moral, or environmental reasons or pursuant to international conventions to which Haiti is party.

2. The tariff structure (which is currently the major trade policy instrument in Haiti) has been simplified and the rates greatly reduced. The tariff now comprises six rates with a maximum of 57.8 per cent on imports of gasoline. With the exception of this ceiling, the highest rate is 15 per cent. The simple arithmetic average of Haitian tariffs is 2.9 per cent, with broad dispersion. The modal rate is zero; this applies to around 67 per cent of tariff headings in the eight-digit Harmonized System. Overall, tariffs decline from the first to the second stage of processing and then rise from semi-finished products (second stage of processing) to finished products.

3. In addition to customs duties, imports are also subject to inspection fees of 4 per cent, a 2 per cent tax on all import duties and taxes, a 10 per cent turnover tax, and excise duty where applicable. An *ad valorem* duty of 12 per cent applies to both national and imported tobacco products. Haiti, like the other member countries of the WTO, has not only bound import duties on agricultural products but also on some non-agricultural products; the rate applied to gasoline, however, is well above the level bound. In addition, Haiti had obtained a waiver until 30 January 2003 in connection with implementation of the WTO Customs Valuation Agreement. Nevertheless, the Brussels Definition is still used. Preshipment inspection by the *Société générale de surveillance*, on behalf of the Haitian State, is required for imports of a value of at least US\$5,000 or in "entire containers".

4. Export restrictions have also been abolished. Incentives in the form of tax and customs exemptions are to be found in the Investment Code in order to promote exports, re-exports and certain types of activity. Customs and fiscal benefits are also provided under the Law on free zones for enterprises whose main activity is export or re-export.

5. Haiti does not yet have any legislation on competition, standardization, or contingency trade remedies. The delays in implementing the privatization programme drawn up by the Government help to maintain enterprises whose inefficiency has a negative impact on other sectors of economic activity. The draft trademark law underlines the Government's determination to revise its intellectual property legislation to bring it into line with Haiti's multilateral commitments.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Registration, documentation and procedures

6. Any natural or legal person engaged in a profession, trade, industrial or crafts activity in Haiti, whether or not it involves foreign trade, must have a professional identity card. A tax registration card and an occupation tax certificate must be obtained before a professional identity card can be issued. Any trader, including importers, exercising his activity in Haiti must possess these documents. The professional identity card is issued by the Ministry of Trade and Industry (MCI) against payment of an annual fee of G 5.

7. Application for a tax registration card must be made to the *Direction générale des impôts* (DGI) (Directorate General of Taxes). The annual fee is G 300 for natural persons and G 600 for legal persons. The occupation tax consists of a fixed and a variable levy. The fixed levy depends on the sector of economic activity and the group to which the commune where the activity is carried out belongs.¹ The variable levy is 2/1000 of the difference between the turnover and the payroll.²

8. All goods imported into Haiti require a customs declaration showing the customs regime to which they are subject. The Customs Code (Article 51) provides the following four customs regimes: release for consumption, transit, storage, and temporary entry. In addition to the customs declaration, the original of the bill of lading, the commercial invoice and the original of the inspection certificate for imports subject to preshipment inspection (section (iii) below) are required for imports. Under the release for consumption regime, an import notice or licence³, and a declaration of value (Article 53) must also be attached. Although import licences and notices are still to be found in the legislative texts, in practice they are not required. The transit regime affects goods that are imported and will be re-exported without leaving customs territory. The storage regime applies when importers wish to delay customs clearance and is compulsory if an importer wishes to reshipe the goods. Lastly, temporary entry is for goods imported for processing or use before being re-exported.

9. The following are the customs procedures in order: registration of the shipping manifest identified by a separate reference number, submission and registration of the customs declaration, visit to inspect the goods, control, and payment of the duties and costs due. The latter are collected by the Bank of the Republic of Haiti (BRH) in Port-au-Prince and through the National Credit Bank (BNC) in the rest of Haiti. According to the authorities, customs formalities take between 24 and 48 hours if all the necessary documentation is in order.

10. In order to modernize and simplify customs procedures, the Government has embarked upon a large-scale programme to reform the customs administration, resulting in the adoption of the computerized customs system (ASYCUDA). This computerization programme led to the introduction of ASYCUDA 2.7 in the port (January 1998) and airport (January 1999) in Port-au-Prince and was financed by international donors such as the UNDP, CIDA and IDB, with technical assistance from UNCTAD. The introduction of the 2.7 version has enabled the customs administration to improve some aspects of customs procedures. In order to upgrade further the quality of the services provided and to respond to the new requirements of foreign trade, ASYCUDA ++ has been introduced in the principal customs offices, thus allowing various economic operators (customs agents, importers, transporters, *inter alia*) to send their documents (such as declarations, cargo manifests) to the customs administration electronically so that customs officials do not have to enter the data themselves. With the selection module provided with the ++ version, the system can make an automatic risk analysis based on the predetermination of parameters, which means that all the goods unloaded do not have to be physically examined. This project, amounting to US\$1.43 million, is wholly financed by the Haitian Treasury. A single declaration form (FDU) has also been adopted to replace the numerous declaration documents previously used for imports and exports.

¹ The fixed levy ranges from G 40 to G 2,000 in the metropolitan area of Port-au-Prince, from G 20- G 1,000 in the communes of Cap-Haïtien, Cayes, Gonaïves, Jacmel, Jérémie, Port-de-Paix, Fort-Liberté, Petit-Goâve, Saint-Marc, Miragoâne, Aquin and G 10 to G 500 in the rest of the country.

² The variable levy does not apply to the creation of enterprises. Economic operators coming under the legislation on investment concessions are only subject to a fixed occupation tax of G 7,500. Wage earning professionals or associates of enterprises or partnerships, personally liable for their professional activities, are exempt from the variable levy for that activity as a wage earner or partner.

³ An import notice in principle covers all products not subject to an import licence granted by the Ministry of Trade and Industry (MCI).

(ii) Tariffs, other duties and taxes**(a) Overview**

11. Goods imported into Haiti (especially those imported under the release for consumption regime) are generally subject to a customs tariff, a turnover tax (TCA) and, where applicable, excise duty levied on certain goods. Imports are also subject to a fee for inspection costs, part payment of income tax and a tax levied as a contribution to the *Fonds de gestion et de développement des collectivités locales* (CFGDCT) (Fund for the Management and Development of Local Communities). Transit and storage duties are imposed on imports of goods entering under the relevant regimes. A first registration tax applies to the sale of new vehicles and a so-called "tourist" tax is levied on imports of used vehicles.

12. According to the authorities, Haiti does not apply any tariff quotas or seasonal tariffs on imports. Import duties and taxes, including tariffs, excise duty and the TCA yield around 65 per cent of fiscal earnings.

13. In Haiti, the trend in the level of customs duties is a reflection of the various stages of trade liberalization implemented since the mid 1980s. In March 1987, the authorities decided to adopt a new tariff structure comprising 13 rates, the majority between zero and 40 per cent, with the exception of 50 per cent and 57.8 per cent respectively on imports of rice and gasoline. This tariff regime remained in place until the embargo imposed on the majority of Haiti's trade transactions following the *coup d'état* in 1991.

14. The new tariff reform adopted in February 1995 reduced the number of rates to six, with a maximum of 57.8 per cent on imports of gasoline. For the other products, the highest rate is 15 per cent. This reform has also instituted an important change in the valuation of imports. From 1988 to 1995, the value of imports was calculated by using a preferential exchange rate set at G 6.5/US\$1. Under the new regime, the daily market exchange rate is now used for import valuation.

(b) Tariff structure

15. The tariff classification is based on the Harmonized System (HS) for the description and coding of goods (1996 text). The customs tariff is virtually *ad valorem*. There are, however, special rates for grated cheese and cheese in powder form (G 0.82 per kg. net) and dried garlic (G 0.71 per kg. net). The highest rate in the tariff, namely 57.8 per cent, is imposed on imports of gasoline. For other goods, the new tariff structure has meant a reduction in the ceiling rates from 50 per cent to 15 per cent and in the number of rates from 13 to five, i.e. 3, 5, 10 and 15 per cent.

16. The simple average tariff is around 2.9 per cent, with a standard deviation of 4.8 per cent (Table AIII.1). The variation coefficient of 1.7 per cent indicates a wide dispersion of rates of duty. The modal rate (the most frequent) is zero per cent and applies to around 67 per cent of the 5,236 eight-digit tariff headings. Duty-free imported goods include *inter alia* live animals; fisheries products; rubber, resins and other vegetable saps and extracts; vegetable plaiting materials and other vegetable products, not elsewhere specified or included; ores, slag and ash; organic chemicals; pharmaceutical products; fertilizers; silk; wool, fine or coarse animal hair, horse hair yarn and woven fabric; impregnated, coated, covered or laminated fabric, and technical articles in textile fabrics; knitted or crocheted fabrics; nickel and articles thereof; lead and articles thereof; tin and articles thereof; other base metals, cermets, and articles thereof; and railway or tramway locomotives, rolling stock and parts thereof, and mechanical traffic signalling equipment.

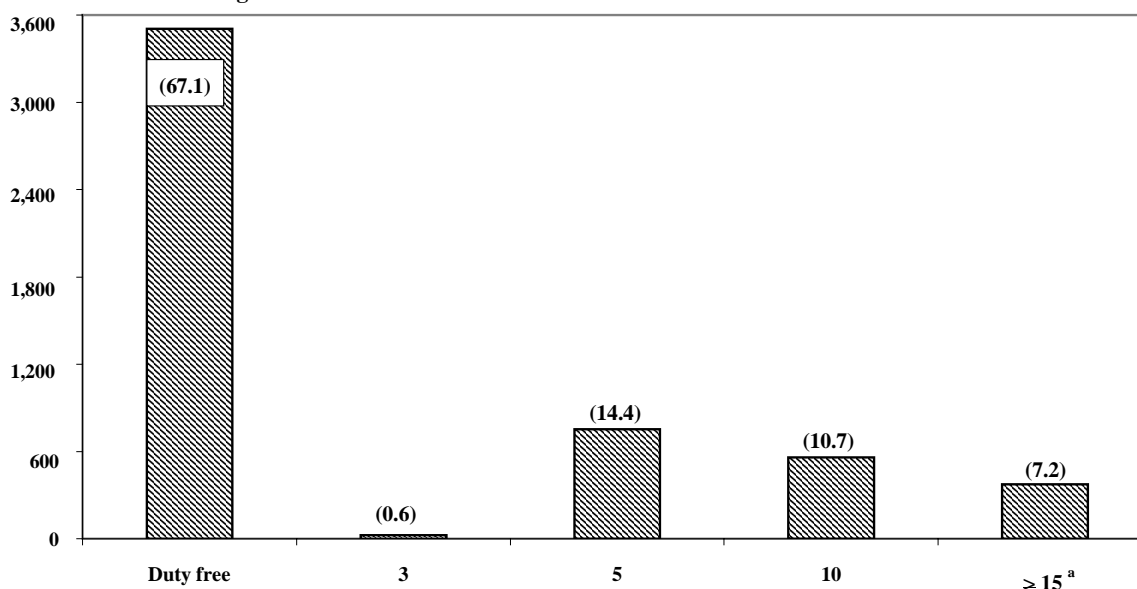
17. With the exception of the modal rate, the 5 per cent rate is the most frequently used and applies to around 14 per cent of tariff headings (Chart III.1). The 15 per cent rate applies, *inter alia*, to pig-meat; poultry meat and offal; mosses and lichens; cut flowers; edible vegetables, plants, roots and tubers, fresh, chilled or frozen; citrus fruit; the majority of sugars and confectionery; manufactures of straw, of esparto, or of other plaiting materials, basketwork and wickerwork; cotton; carpets and other textile floor coverings; and natural or cultured pearls, precious stones and similar articles, jewellery and other articles.

18. Agriculture (Major Division 1 of ISIC Revision 2) is the sector that enjoys the highest tariff protection (Chart III.2), with a simple average tariff of 4.5 per cent and rates ranging from zero to 15 per cent. Tariff protection in the manufacturing industry (Major Division 3 of ISIC Revision 2) is 2.8 per cent, with rates ranging from zero to 57.8 per cent. The mining and quarrying industry (Major Division 2 of ISIC Revision 2) is the least protected sector as far as tariffs are concerned with a simple average tariff of 2.1 per cent and rates ranging from zero to 15 per cent. This sector has the largest share of zero tariff lines (Chart III.2). The tariff rates are nevertheless more dispersed in the mining and quarrying industry, with a variation coefficient of around 2.2 per cent compared with coefficients of 1.3 and 1.7 per cent in agriculture and the manufacturing industry respectively. The simple arithmetic average tariff is 5.5 per cent on agricultural products when the WTO definition is used.⁴

Chart III.1

Breakdown of MFN duties applied, 2002

Number of tariff headings



a These are mainly headings with a 15 per cent rate and one single heading for gasoline (HS 2710.00.11) at a rate of 57.8 per cent.

Note: The brackets indicate the percentage of lines in the total.

Source: WTO Secretariat estimates, based on data provided by the Haitian authorities.

19. Overall, the tariff shows a downward trend from the first processing stage (with a simple average of 3.3 per cent) to semi-finished products (with a simple average of 2 per cent), and an upward trend from semi-finished to finished goods, for which the average customs tariff is 3.3 per

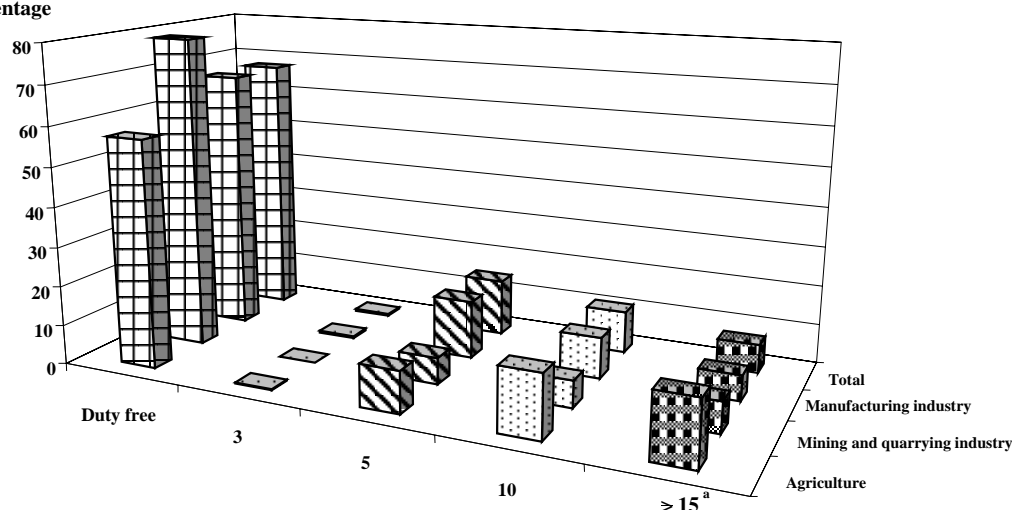
⁴ Products covered by Annex 1 to the WTO Agreement on Agriculture.

cent. This is underpinned by the tariff structure on products such as non-metallic mineral products, with the exception of petroleum and coal; and the activities shown in Table III.1 under "other manufacturing industries" comprising jewellery and goldsmiths' and silversmiths' wares of precious metal, fine jewellery, musical instruments and sports articles, *inter alia*. Haiti applies escalating duties on processed food products, beverages and tobacco; paper, paper products, printing and publishing; articles in wood, including furniture; chemicals derived from petroleum and coal; articles of rubber and plastic materials; manufacture of articles in metal, machinery and equipment.

20. During the Uruguay Round, like the other contracting parties, Haiti bound its import tariffs on all agricultural products (WTO definition). It also bound its tariffs on some non-agricultural products.⁵ The tariffs on non-agricultural products have been bound at rates ranging from zero (on metal ores) to a ceiling of 30 per cent on some hydraulic cements; petrol for engines (gasoline), naphtha and benzine; certain varnishes and paints; manufactures of straw, of esparto or of other plaiting materials, basketwork and wickerwork; certain precious metals and stones and articles thereof; imitation jewellery; coins; and trailers and semi-trailers of the caravan type for camping.

Chart III.2
Breakdown of MFN duties by sector, 2002

Percentage



^a These are mainly headings with a 15 per cent rate and one single heading for gasoline at a rate of 57.8 per cent.

Source: WTO Secretariat estimates, based on data provided by the Haitian authorities.

⁵ The rates for certain products were bound during the Annecy Round. These first bindings have not yet been transposed into the Harmonized System (Chapter II(5)(v)).

Table III.1
MFN tariff escalation by ISIC Revision 2 two-digit heading, 2002

ISIC Code	Description	Number of lines	Simple average ^a	Range	Standard deviation
			(Percentage)		
	Total	5,268	2.9	0-57.8	4.8
	- First stage of processing	645	3.3	0-15	5.4
	- Semi-processed	1,679	2.0	0-15	4.7
	- Fully processed	2,944	3.3	0-57.8	4.6
11	Agriculture and hunting				
	- First stage of processing	228	5.9	0-15	6.0
12	Forestry and logging				
	- First stage of processing	28	0.0	0	0.0
13	Fishing				
	- First stage of processing	49	0.8	0-15	3.1
21	Coal mining				
	- First stage of processing	4	0.0	0	0.0
22	Crude petroleum and natural gas production				
	- First stage of processing	3	0.0	0	0.0
23	Metal ore mining				
	- First stage of processing	23	0.0	0	0.0
29	Other mining				
	- First stage of processing	75	3.0	0-15	5.2
31	Manufacture of food, beverages and tobacco				
	- First stage of processing	84	2.6	0-15	4.3
	- Semi-processed	67	4.7	0-15	5.8
	- Fully processed	323	6.5	0-15	5.3
32	Textiles, wearing apparel and leather industries				
	- First stage of processing	38	4.2	0-15	6.7
	- Semi-processed	412	5.3	0-15	7.1
	- Fully processed	430	5.2	0-15	5.0
33	Manufacture of wood and wood products, including furniture				
	- First stage of processing	5	0.0	0	0.0
	- Semi-processed	33	0.0	0	0.0
	- Fully processed	52	6.3	0-15	5.5
34	Manufacture of paper and paper products, printing and publishing				
	- First stage of processing	19	0.0	0	0.0
	- Semi-processed	67	0.5	0-5	1.5
	- Fully processed	61	1.5	0-10	2.6
35	Manufacture of chemicals and chemical petroleum, coal, rubber and plastic products.				
	- First stage of processing	56	0.0	0	0.0
	- Semi-processed	706	0.7	0-10	2.4
	- Fully processed	288	3.4	0-57.8	5.3
36	Manufacture of non-metallic mineral products, except products of petroleum and coal				
	- First stage of processing	2	15.0	15	0.0
	- Semi-processed	32	1.4	0-5	2.1
	- Fully processed	130	5.2	0-10	4.6

Table III.1 (cont'd)

ISIC Code	Description	Number of lines	Simple average ^a	Range	Standard deviation
			(Percentage)		
37	Basic metal industries				
	- First stage of processing	16	0.0	0	0.0
	- Semi-processed	352	1.3	0-15	3.6
	- Fully processed	1	0.0	0	0.0
38	Manufacture of fabricated metal products, machinery and equipment				
	- Semi-processed	6	0.8	0-5	2.0
	- Fully processed	1,459	1.7	0-15	3.3
39	Other manufacturing industries				
	- First stage of processing	15	8.7	0-15	5.8
	- Semi-processed	4	0.0	0	0.0
	- Fully processed	199	4.2	0-15	4.7
40	Electricity	1	0.0	0	0.0

a Based solely on *ad valorem* rates.

Source: WTO Secretariat estimates, based on data provided by the Haitian authorities.

21. Tariffs on agricultural goods have been bound at rates ranging from zero to a ceiling of 50 per cent. Tariffs have been bound at zero for a number of agricultural products, including powdered milk; certain bones and horn-cores; malt, not roasted; seeds, spores and fruit used for sowing, other than garden seeds; wheat and meslin; hops; certain plants and parts of plants of a kind used in perfumery, medicine or in pharmacy; straw and pellets of unprepared cereals; certain types of fodder; certain resins and fats for industrial use; vegetable saps and extracts; linseed oil; crude glycerol; animal oils and fats (in specific forms); yeast; denatured ethyl alcohol of any type; and some protein materials and their products. The tariff was bound at a ceiling of 50 per cent for maize, rice, buckwheat, millet, canary seed, sorghum and other products of the milling industry.

22. Other duties and levies on these agricultural and non-agricultural products were bound at 16 per cent, except for certain edible products of animal origin (20 per cent) and some types of grape must and cider, as well as vinegar (21 per cent).

(c) Tariff preferences

23. At the moment, Haiti does not grant tariff preferences to any country, but will grant tariff preferences when the provisions of the CARICOM Treaty come into effect (Chapter II(5)(ii)(a)).

(d) Other duties and taxes

24. In addition to customs duties, imports are also subject to inspection fees, which amount to 4 per cent of the c.i.f. value of goods.⁶ There is a waiver for imports of personal effects, for diplomatic missions, and for the transit, storage and temporary entry for final processing regimes.⁷

25. A tax of 2 per cent calculated on the basis of the import duties and taxes paid, (including any fines and additional duties and taxes) is levied as a contribution to the Fund for the Management and Development of Local Communities introduced by the Law of 2 September 1996. Imports of

⁶ Law of 22 July 1996.

⁷ General Customs Administration (1997).

petroleum products, pharmaceuticals and food products, paper, parcels, and agricultural inputs are exempt from this tax.

26. The first registration tax applies to imported new or used automobiles, buses, lorries, and vans. The rates are 5, 10, 15 and 20 per cent and apply to the customs value; the minimum rate of 5 per cent applies to vehicles valued at less than G 35,000 while the maximum rate of 20 per cent applies to vehicles whose value exceeds G 75,000. A single rate of 5 per cent is applicable to lorries not exceeding 2 tonnes and minibuses with a capacity not exceeding 24. Lorries weighing over 2 tonnes and minibuses carrying more than 24 people are exempt. A tax called the tourist tax is also levied on the import of used vehicles at a single rate of 10 per cent calculated on the customs value.

27. Transit duty is payable when declaring goods in international transit.⁸ The highest transit duty is G 5 per parcel or per 100 kg. net. Internal transit is only subject to deposit of security equivalent to one and a half times the duties and taxes payable under the release for consumption regime. A storage duty is levied on goods in warehouses before the payment of duties and taxes or before their reshipment. This duty amounts to 2 per cent of the customs value per month of storage (Article 134 of the Customs Code).

28. Goods that are imported under the temporary entry regime to be processed or worked before re-export are subject to deposit of security in an amount equivalent to one and a half times the duties and taxes payable under the release for consumption regime.⁹ The security is deposited in the form of a "*chèque de direction*" (banker's cheque) that is only released once the customs is certain that the goods have in fact been re-exported. Goods that originally entered Haiti under the temporary entry regime and are then used for consumption purposes are taxed on the amount of their depreciation when they are re-exported.

29. Advance payment of income tax (AIR) is levied in the form of a payment that can be deducted from the tax. The rate is 2 per cent calculated on the customs value when the imported products are released for consumption. Imports by firms producing under one of the regimes eligible for concessions under the Investment Code and exempt from payment of income tax are also exempt from the AIR (Chapter III(4)(i)).¹⁰

Excise duty is levied on a series of imported or locally produced goods (Table AIII.2).¹¹ These include tobacco, alcohol, sugar, flour, aerated waters and some "luxury food products" (Law of 3 September 1971 as amended). Excise duty may be either *ad valorem* or specific. Additional excise duty is payable on beer and cigarettes. This supplement amounts to G 7 per kg. of locally manufactured cigarettes and G 14.5 per kg. of imported cigarettes. In addition, petroleum products (petrol, diesel fuel, kerosene, heating oil and fuel oil, lubricating oil and grease, aviation fuel) are subject to excise duty calculated on the c.i.f. value, with the highest amount (90 per cent) on petrol and the lowest (2 per cent) on heating oil and fuel oil, and lubricating oil and grease. Variable excise duty is also levied on petroleum products (petrol, diesel fuel and kerosene). Its amount is calculated on the basis of a reference price (per litre) of G 6.80 for petrol, G 4 for diesel fuel, and G 0.44 for kerosene. The duty is readjusted upon each shipment in order to take into account fluctuations in the overall cost price and may increase or decrease the price at the pump in an amount exceeding 5 per

⁸ Article 128 of the Customs Code.

⁹ Articles 136 to 164 of the Customs Code.

¹⁰ This advance payment was introduced by the Law of 6 March 1995. It is also payable on any contract for sale of goods or supply of a service between the State, NGOs or religious institutions and third parties.

¹¹ The Finance Law of 2002-2003 abolished the excise duty applied to imports of tobacco, tobacco products and alcoholic beverages, which was discriminatory in comparison with like goods produced locally.

cent.¹² There is also a 10 per cent excise duty on ex-customs value (c.i.f. value plus customs duties) on the import of automobiles exceeding 2,200 cc.¹³ Heavy agricultural and public works machinery is exempt from the excise duty.

30. The TCA introduced by the Law of 19 September 1982 is a general tax on local sales of goods, supply of services, and imports. It is calculated at each stage of production, distribution or import, with the possibility of crediting the tax paid on certain purchases. The rate of the TCA is 10 per cent of the price of goods or services, including the other duties or taxes. As regards imports, the 10 per cent tax is payable on the c.i.f. value plus the customs duty, inspection fees and excise duty. It applies to all products with the exception of petroleum products; local agricultural products; agricultural, livestock breeding and fishing inputs; inputs used to manufacture medicines sold in pharmacies; newspapers, books, magazines and paper used for school materials; agricultural, fishing and livestock breeding machinery and equipment; and legal services. Goods coming under the transit, storage and temporary entry regimes are also exempt, including those to be used in processing and assembly industries that produce solely for export.

(e) Exemptions and refund of duties and taxes

31. Tariff reductions and waivers are granted as part of the incentive mechanism provided in the Investment Code in order to promote the development of certain types or branches of activity (section (4)(i)). Enterprises eligible for such concessions enjoy full exemption from customs duties on the import of machinery, equipment, spare parts, raw materials and semi-finished products needed for their production throughout their lifespan.

32. Educational and teaching materials are also exempt from import duties and taxes. Non-profit making institutions whose activities can be controlled by the competent ministries are also fully exempt from all duties and taxes on food products, imported medical materials and equipment not to be commercialized. Recognized NGOs enjoy total exemption from duties and taxes on the import of vehicles, with the exception of the inspection fees and the CFGDCT. During the fiscal year 1997/98, these exemptions amounted to G 526.9 million.

33. Other goods that can be imported free of duties and taxes (Customs Code, Articles 95 to 122) include, *inter alia*, articles for the President of the Republic, materials, equipment and products needed for national defence, travellers' luggage, objects imported when changing residence, goods imported under diplomatic or consular privileges and covered by the Vienna Convention, correspondence courses and the related teaching materials, agricultural equipment, including instruments, tools and agricultural machinery, samples with no commercial value, and goods reimported after having been temporarily exported.

(iii) Preshipment inspection and customs valuation

34. On 5 May 2003, Haiti signed a preshipment inspection agreement with the *Société générale de surveillance* (SGS).¹⁴ Under this agreement, all goods whose value is at least US\$5,000 or which are in entire containers (irrespective of their value) must be inspected by the SGS before being shipped to Haiti. In principle, the SGS inspects the quantity and quality of the goods and then makes a recommendation on their value and tariff classification (according to the HS version in effect in Haiti). The SGS issues a verification certificate which the importer of the goods concerned must submit for the purposes of customs formalities. Basic goods (rice, wheat flour, sugar, *inter alia*)

¹² Law of 9 March 1995.

¹³ Law of 15 July 1996.

¹⁴ Agreement of 5 May 2003 implementing the Decree of 3 October 1983.

imported in bulk are inspected at their destination. The Haitian State pays the SGS inspection fees amounting to 0.80 per cent of the f.o.b value of the goods inspected, with a minimum charge of US\$200 per inspection. The following are exempt from inspection by the SGS: precious stones and metals; works of art; ammunition and arms other than for hunting and/or sporting purposes; explosives and pyrotechnical articles; live animals; scrap metal; newspapers and magazines; personal effects and used household articles, including a used vehicle; parcels; commercial samples; supplies for diplomatic or consular missions; supplies for bodies belonging to the United Nations Organization, imported for their own use; equipment, machines, machinery for international subcontracting enterprises working exclusively for export and exempt from payment of fees for the endorsement of consular invoices according to the Decree of 19 September 1958, as amended by the Decree of 8 November 1982; petroleum and petroleum products; donations by foreign governments or international organizations to foundations, charitable works and philanthropic organizations recognized as being of public utility¹⁵.

35. The principal valuation methods used are those provided in Articles 59 to 64 of the Customs Code, which are based on the Brussels Definition of 1950. A draft law is currently being reviewed by the Commission on Fiscal Reform and will be submitted to Parliament shortly so as to ensure that the national provisions are in conformity with the WTO Agreement on Customs Valuation.

36. Customs duties are paid on the c.i.f. value of goods. Port fees (charges for unloading and handling goods in Haiti) are included in the c.i.f. value. Adjustments are made when the price paid or payable indicated in the invoice differs from the "normal" price. According to Article 59 of the Customs Code, the normal price corresponds to the price that can be fixed for the goods concerned in the course of sales that occur under fully competitive conditions between independent buyers and sellers. The reference values are used when the declared value is more than 10 per cent lower than the "normal" c.i.f. price. They are fixed on the basis of the import price for similar or like goods or the catalogue price. They are regularly reviewed by the valuation service of the customs administration, noted in a register and transmitted to the various customs offices.

37. The procedure for verifying the declared c.i.f. value takes place in two stages: a first control during the customs clearance process and a second after the goods have been cleared. The first control consists of examining the documents submitted and, if needed, actual inspection of the goods. Where necessary, the customs office makes the necessary adjustments. The second control is carried out by the revision section of the valuation service. It concerns the exactitude of the value declared. At this stage, the controller checks whether the invoiced price might not have been affected by the privileged situation of the importer. Other documentary proof is then required (commercial contracts, insurance contracts, etc.). The valuation service also administers an "importer" and a "product" index that allows it to follow trends in the value of products, make comparisons and so be aware of discrepancies between values declared for the same product.

38. The Haitian authorities have asked to delay application of the Agreement on the Implementation of Article VII of the GATT 1994, which developing countries may do pursuant to Article 20 of the Agreement.¹⁶ A further extension has been granted until 30 January 2003 (Chapter II(5)(v)(g)). The Brussels Definition is still being used, however, and it is expected that a new customs valuation law will be submitted in November 2003.

¹⁵ In the case of pharmaceuticals, colouring matter, paint, insecticides and chemical treatments, complex branded chemicals, cosmetics, wine other than in bulk, spirits and like products, the SGS simply identifies their quantity, verifies the batch numbers and expiry dates, and that the packaging is not damaged, if need be. The Haitian State may, on an exceptional basis, request the SGS to carry out quality controls on the products it specifies.

¹⁶ See WTO document WLI/101 of 3 July 1998.

(iv) Import prohibitions, restrictions and licensing

39. Some imports are prohibited for reasons of health, security or morality. They include brochures, printed matter or films of a pornographic nature; military tanks and armoured vehicles and parts thereof, boats (including warships and lifeboats other than those propelled by oars), arms and ammunition not intended for the Government; narcotics; and equipment to be used to manufacture or print counterfeit currency or securities.¹⁷

40. The import of certain goods is subject to controls. This is for reasons of security and health, but is also intended to conserve Haiti's flora and fauna, including livestock, from certain dangerous diseases. The ministries responsible for these controls are generally the Ministry of Public Health and Population (MSPP), and the Ministry of Agriculture, Natural Resources and Rural Development (MARNDR). Imports of ethyl alcohol (95°) and generic chemicals and pharmaceuticals require a prior authorization from the MSPP. An authorization from the MARNDR is required for agricultural inputs, cattle feed and animal products, whether or not processed.

41. Animal health and phytosanitary controls are carried out on imports of meat and plant products. Their import requires a permit issued by the MARNDR and the submission of a health certificate issued by the exporting country. The import of live animals, plants or seeds is subject to quarantine. An animal health certificate is required for imports of bovine animals and swine and it must indicate that the country of origin is free of foot-and-mouth disease, contagious bovine pleuropneumonia, rinderpest, vesicular stomatitis and lumpy skin disease. In the case of swine, the certificate must show that the animals come from countries free of vesicular exanthema, African swine fever, ordinary swine fever, and swine encephalomyelitis. Haiti is not party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) but, according to the authorities, it applies the CITES directives.

42. According to the authorities, Haiti has not applied any quantitative restrictions on imports since November 1997. Following the reform during the 1986/1987 fiscal year, quantitative restrictions and the import licensing system were dismantled for all products with the exception of flour, sugar, peas, rice, maize, millet, pork offal and poultry cuts which are still subject to a non-automatic licensing system. After the trade and financial embargo was lifted in 1994 and the new customs tariff entered into force, quantitative restrictions on these agricultural products were also held in reserve and were no longer applied. The legal provisions relating to these measures have not, however, been repealed. According to the Customs Code still in force¹⁸, all imports into Haiti must be the subject of an import notice or licence issued by the MCI for a period of six months.

(v) Trade sanctions

43. At present, Haiti does not apply any trade sanctions against any other country, with the exception of those decided upon by the United Nations Security Council.

(vi) Contingency trade measures

44. Haiti does not have any legislation on anti-dumping, countervailing or safeguard measures. According to the authorities, Haiti has never taken any anti-dumping, countervailing or safeguard measures.

¹⁷ Article 52 of the Customs Code and the 1996 edition of the Nomenclature for Customs Clearance of Products.

¹⁸ Article 53 of the Customs Code.

(vii) Rules of origin

45. As a general rule, Haiti does not have any rules of origin.¹⁹ As it does not grant a preferential regime to any trade partner, Haiti does not have any rules of origin for preferential purposes. Nevertheless, after ratification of the CARICOM Treaty by Parliament, the rules of origin provided in the Treaty will have to enter into force in Haiti (Chapter II (5)(ii)(a)).

(viii) Local content requirements

46. The new Investment Code does not specify what content of national origin would allow an investor to become eligible for tax and/or customs concessions. Nevertheless, value added of at least 35 per cent makes investment in the processing of local or imported raw materials eligible for preferential investment status and, hence, for customs and tax concessions (section (4)(i)).²⁰

(ix) Government procurement

47. Haiti is neither a signatory to nor an observer of the Plurilateral Agreement on Government Procurement. In Haiti, there are three procedures for awarding government procurement contracts: adjudication, invitations to tender, or mutual agreement. Both domestic and foreign enterprises can take part in these procedures.

48. The *Commission Nationale des marchés publics* (National Government Procurement Commission) is responsible for coordinating and supervising all activities concerning government procurement contracts. It is responsible, *inter alia*, for defining the general criteria for government procurement, collecting data on contracts between the Government and various suppliers or entrepreneurs, and appointing a jury to serve whenever there is an adjudication or tender. In each department in Haiti, there is also a departmental government procurement commission that plays a role similar to that of the National Government Procurement Commission within the geographical area of the department concerned.

49. Adjudication is the norm wherever a simple service has to be provided or an ordinary service exceeding G 500,000 but less than G 1 million. The only criteria for adjudication is price, but the Government first of all ensures that the entrepreneur or supplier awarded the contract has the necessary technical and financial capacity. Adjudication is open (any candidate can make a bid) or restricted (bidding is only open to candidates identified in advance by the Government according to special pre-qualification criteria defined by the National Government Procurement Commission).

50. Tenders are compulsory for all services costing at least G 1 million. The procedure does not only take into account the price criterion but also the quality of the product, the competence of the bidder and the delivery time. As is the case with adjudication, invitations to tender may be either open or restricted to candidates selected in advance by the administrative body concerned according to the criteria defined by the National Government Procurement Commission.

51. Simple agreement is a procedure usually used for purchases that do not exceed G 5,000. In certain special cases, simple agreement is authorized as an exception without taking into account the amount. This is the case, for example, for supplies manufactured under a patent, services that can only be obtained from a single entrepreneur or services that can only be given to a specific entrepreneur because of technical requirements or large-scale prior investment. For any purchase

¹⁹ See WTO document G/RO/N/20/Rev.1 of 27 July 1998.

²⁰ Article 34 of the Law of 26 November 2002 on the Investment Code.

exceeding G 20,000, an agreement procedure must be put before the National Government Procurement Commission.

52. According to the Decree of 23 October 1989 governing the terms and criteria for the award of government procurement contracts, any foreign government procurement concessionaire must recruit Haitian personnel in all categories accounting for at least 50 per cent of its labour budget provided that the technical expertise is available in Haiti.²¹ Furthermore, in order to obtain a contract with the State, international enterprises must associate a Haitian firm in the execution of the contract for at least 20 per cent of its total cost.²²

53. The WTO Secretariat is not aware of any preferential margins in favour of local suppliers. No statistics on government procurement are available.

(x) Other measures

54. According to the authorities, no agreement with foreign governments or enterprises has been signed with a view to affecting the quantity or value of goods or services directly exported to Haiti. Likewise, the authorities are not aware of any such agreements between Haitian and foreign enterprises. In addition, no trade measure has been taken recently for balance-of-payments reasons and there have been no counter purchase transactions. Lastly, stocks of strategic reserves are not required for any product.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and documentation

55. The exercise of any profession in trade, industry or crafts, as well as export activities, requires a tax registration card, proof of payment of the occupation tax and a professional identity card, which are issued under the conditions described above (section (2)(i)).

56. The export regime is administered by the MCI and by the General Customs Administration. Goods to be exported must be the subject of an export declaration specifying all the packages to be included in the bill of lading and must be accompanied by a separate invoice showing the name of the enterprise, the nature of the goods and their price, as well as an export permit issued by the MCI. These formalities are applied for statistical purposes and to monitor banned exports. The issue of an export permit is subject to presentation of a professional identity card and a commercial invoice. An export attestation, countersigned by the BRH, is also required.²³

57. The export of certain products requires a certificate of origin, which is issued by the MCI and given to the economic operator upon presentation of his export permit. If the product is eligible for the Generalized System of Preferences (SGP), a type A certificate to be handed over to the customs administration in the importing country is also required. For coffee exports, the MCI stamps a type O certificate and the test certificate issued on the basis of the "tasting tests" carried out by the Ministry. For cacao exports, the MCI stamps a ICC-1 certificate. Lastly, the export of all agricultural products (for example, coffee, cacao, mangoes, animal products) also requires a phytosanitary or animal health certificate issued by the MARNDR.

²¹ Article 14 of the Decree of 23 October 1989.

²² Article 18 of the Decree of 23 October 1989.

²³ Article 166 of the Customs Code.

58. According to the authorities, the issue of export permits is non-discriminatory and does not depend on the destination of the goods.

(ii) Export taxes, charges and levies

59. According to Article 167 of the Customs Code currently in effect, goods for export are subject to payment of duties that appear in the tariff as exit duties. However, the liberalization process initiated in 1986 has led to the gradual and complete abolition of customs duties on exports. The obligation on exporters to sell part of their export revenue to the BRH has also been abolished. These reforms have not been backed up by the necessary legislative amendments.

(iii) Prohibitions, controls and export licensing

60. Controls are carried out in order to prevent tax fraud, particularly in the case of re-export. These are carried out when an export permit is issued (section (i) above). The General Customs Administration is responsible for inspecting goods and verifies their conformity with the declaration made by the exporter.

61. As a general rule, the export of animal and plant products requires prior authorization by the MARNDR. Some types of live animals belonging to endangered species (green anoles, mabuyas, snails) may not be exported so as to protect the national heritage. The shipment of mangoes without proper fumigation treatment is also banned. Quality controls and phytosanitary and animal health measures also apply to exports of coffee, cacao, mangoes and animal products (Chapter IV(2)(ii)(b)).

(iv) Quotas and voluntary restraints

62. Haiti has not concluded any voluntary restraints agreements for its exports and did not participate in the Multifibre Arrangement. Nevertheless, there are quotas for certain textile products exported by Haiti and eligible for preferential treatment on the markets of developed countries, especially the United States. Two distinct programmes have been established for this purpose (Tables III.2 and III.3). The first defines the specific limits (SL) for which fixed annual quotas have been allocated to different categories of the textile products concerned, with the related guarantees of flexibility. These provide for an automatic annual increase of 6 per cent in the quotas throughout the term of the agreement, the possibility of transferring 6 per cent of the quotas from one category to another, carrying forward 11 per cent of quotas not utilized in any particular year until the following year, and the possibility of using 6 per cent of the quotas in advance. The second programme has introduced guaranteed access levels (GAL) as of 1986 within the framework of the CBI (Chapter II(5)(iv)); this programme gives annual quotas for certain products principally made with raw materials of American origin.

Table III.2
Annual quotas for exports of textile products (SL) by Haiti to the United States (in dozens)

Category (HS)	Product	Quota
331	Cotton gloves (in pairs)	716,336
350	Indoor clothing in cotton	98,416
340/640	Shirts in cotton or synthetic fibre	716,336
341/641	Blouses in cotton or synthetic fibre	687,672
347/348	Cotton trousers	805,881

Source: Information provided by the Haitian Authorities.

Table III.3
Annual quotas for exports of textile products (GAL) by Haiti to the United States (in dozens)

Category (HS)	Product	Quota
331	Cotton gloves (in pairs)	500,000
350	Indoor clothing in cotton	120,000
340/640	Shirts in cotton or synthetic fibre	440,000
341/641	Blouses in cotton or synthetic fibre	400,000
347/348	Cotton trousers	800,000

Source: Information provided by the Haitian Authorities.

(v) Subsidies, duty and tax concessions, promotion, assistance for export

63. The incentive scheme in the Investment Code gives customs and/or tax concessions to enterprises exclusively oriented towards export or re-export (section (4)(i) below). Any enterprise whose services or production are intended for export or re-export is given customs and tax exemption for imports of the capital goods and equipment needed for its establishment, operation and production. It is also allowed temporary entry for finishing for raw materials and packaging materials, general exemption from the bond or security required for their temporary entry, exemption from payroll tax and other direct internal taxes for 15 years at the most, and exemption from inspection charges.

64. The Republic of Haiti does not currently have a structured framework to promote exports. Any initiatives in this area are isolated and individual.

(vi) Free zones and industrial zones

65. A law on free zones entered into force on 2 August 2002. It sets out the conditions for operating, creating and managing economic free zones, together with the exemption or incentive regime applicable to investment in such zones.²⁴ The law is not intended for any particular branch of activity. It defines free zones as geographical areas to which a special regime on customs duties and customs controls, taxation, immigration, capital investment, and foreign trade applies, where domestic and foreign investors can provide services, import, store, produce, export and re-export goods. Free zones may be private or joint ventures (State and private initiatives). Work is currently under way on developing a free zone of some 65 hectares in the north-east of Haiti. An agreement on the creation of another 40-hectare free zone (to be carried out in four phases) in the west of Haiti was signed in June 2003.

66. An interministerial commission, called the Free Zones National Council (CNZF), comprising representatives of the public and private sectors, is responsible for the following: receiving

²⁴ One of the criteria for eligibility for free zone status is that the project must comply with the ISO-14001 and subsequent standards (on the environment).

applications for approval as a free zone; deciding on whether or not to approve applications for admission to the free zone regime and the relevant changes; ensuring that the projects approved are carried out in accordance with the terms; authorizing the operation of free zones; defining and regulating free zones; approving and monitoring the implementation of procedures and operating methods in free zones; and approving its own rules of procedure. The Free Zones Directorate, set up within the Ministry of Trade and Industry, acts as the CNZF's Technical Secretariat; it implements and ensures implementation of the decisions taken by the CNZF, receives investors and potential investors; sends a quarterly report on the establishment and operation of free zones to the CNZF for approval; examines applications for approval as a free zone; at the national and international levels, participates in all negotiations likely to lead to agreements or conventions on free zones; monitors the operation of all free zones approved; and ensures that the activities of free zones are regularly controlled.

67. The law provides the following incentives or benefits for enterprises situated in free zones:

- Full exemption from income tax for a maximum period of 15 years, followed by a period during which there is partial exemption that gradually decreases;²⁵
- customs and fiscal exemption (including registration taxes) for the import of capital goods and equipment needed to develop the area, with the exception of tourism vehicles;
- exemption from all communal taxes (with the exception of the fixed occupation tax) for a period not exceeding 15 years; and
- registration and transposition of the balance due for all deeds relating to purchase, mortgages and collateral.

68. Goods and services provided from the customs territory to operators in free zones are deemed to be considered exports. Selling goods or services from free zones on domestic markets is considered as importing and is subject to payment of the relevant duties and taxes. Furthermore, the volume allowed for sale on domestic markets may not exceed 30 per cent of the total production of the enterprise in the free zone. Such sales are deemed to be imports and are therefore subject to customs duties and related charges.

(vii) Other provisions

69. According to the authorities, Haiti does not at present have any national export guarantee or insurance mechanism. No company has a *de jure* monopoly or exclusive export rights for goods produced in Haiti.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Incentives

70. The Investment Code contains exemption regimes to promote certain types of investment likely to enhance the competitiveness of sectors considered to be priorities or of strategic importance. Certain tax and/or customs concessions are given to enterprises according to their activities. Eligibility for these incentives is restricted to investment that is exclusively oriented towards export or

²⁵ Income is taxed in full at the end of the sixth year following the period of full exemption.

re-export (section (3)(v)) and/or other sectors of activity (agriculture, handicrafts, domestic industry, tourism and related services, free zones, *inter alia*). The eligibility criteria concern the contribution of the investment to value added, the creation of permanent jobs, renewal of the domestic production structure, economic growth, lowering the balance-of-payments deficit, and training of Haitian labour.

71. In general, enterprises eligible for the exemption regimes do not pay income tax or communal tax, subject to the same conditions as enterprises in free zones (section (3)(vi)). They are also allowed more rapid depreciation of the majority of inputs used in their equipment and materials, tools, and the start-up costs, as well as development, survey and research costs. Other benefits such as tax and customs exemption for imports of capital goods, equipment and raw materials, and exemption from the payroll tax and other direct domestic taxes for 15 years at most are also granted depending on the sector of activity.²⁶

72. Through the *Bureau de crédit agricole* (BCA) (Agricultural Credit Bureau), the Government gives low interest rate loans for certain agricultural activities. In the context of some development programmes that focus on the agricultural sector, the Government also grants a subsidy of around 33 per cent on the f.o.b. price of fertilizer. Seeds are also subsidized in the amount of 55 per cent and for tools the figure is 33 per cent. As part of these programmes, the MARNDR has undertaken the following activities:

- Leasing equipment to farmers to allow them to prepare the soil;
- subsidies in the form of support for the management of irrigation systems;
- distribution of materials for fishing and stocking natural lakes and ponds so as to promote fishing and aquaculture; and
- providing credit and technical support.

(ii) Standards and other technical requirements

(a) Standards, testing and certification

73. Haiti has no special legislation on standards, testing, approval and certification. International standards are used as a reference but they have not yet been officially adopted. The main international standards used are those of the ISO, the WHO and the FAO Codex Alimentarius for food products. After Haiti's accession to the CARICOM has been ratified, it also should adopt the standards laid down by the Caribbean Organization of Standards and Quality (COSQ), which is the CARICOM body responsible for defining standards for goods and services at the regional level.

74. A framework law on quality intended to harmonize and update the current laws on quality control is being drafted. The technical services and government bodies involved in quality control will be reorganized, strengthened and/or made operational. In particular, a metrology service should be set up. The State will build inspection capacity by establishing national testing and calibration laboratories and integrating them in the regional and/or international networks, and approving private or university laboratories at the local level. Inspection posts will also be set up at strategic points.

75. The national quality system should be guided and coordinated by the following bodies²⁷:

²⁶ Law of 26 November 2002 on the Investment Code, Title IV.

²⁷ These bodies have not yet been officially established.

- The *Conseil national de la qualité* (CNQ) (National Quality Council), composed of representatives of the public and private sectors and civil society; it will define the national quality policy and be responsible for coordination and follow-up. The Council will be assisted by a small executive structure supported by technical committees, including a technical committee on accreditation;
- the *Centre des normes et des standards* (CNS) (Standards Centre), a joint autonomous body that will be administered by a management committee and will be under the supervision of the CNQ. It will deal with standardization aspects, training and information on quality, and its role will be to provide advice and promote quality among Haitian entrepreneurs; and
- the *Commission nationale de contrôle officiel de la qualité* (CNCOQ) (National Commission for Official Quality Control), an interministerial quality control commission responsible for coordinating all the State's quality-related activities. It will be composed of representatives of the authorities which, pursuant to the legislation in effect, will be responsible for controls or may have a role to play in the area of quality.

(b) Animal health, phytosanitary and environmental protection measures

76. Sanitary and quality inspection is the joint responsibility of the MCI, the MSPP and the MARNDR. Animal health and phytosanitary controls are carried out on the domestic sale, import or export of live animals, meat, food and products of animal origin for human or animal consumption, and products of plant origin in order to verify their quality (Chapter IV(2)(i)). The MARNDR issues the entry and exit certificates needed for the import or export of certain goods. For meat and plant products, an import permit issued by the MARNDR and a sanitary certificate issued by the exporting country are required (section (2)(iv)). The export of all agricultural goods (for example, coffee, cacao, mangoes, animal products) also requires an animal health or phytosanitary certificate issued by the MARNDR (section (3)(i)). The MARNDR has offices at ports, airports and borders, and it applies quarantine measures to the import of live animals, plants or seeds (Chapter III(2)(iv)).

77. According to the authorities, Haiti generally finds difficulty in meeting the standards in effect in countries that import its products and also in setting up its own system, one reason being its inadequate technology.

(c) Marks, labelling and packaging

78. Haiti does not apply any provisions regarding marks, labelling and packaging.

(iii) Competition policy and price controls

79. Haiti does not at present have any competition legislation. In principle, the MCI is responsible for this aspect. Its action goes no further than following price trends, particularly those of food products. If the trend becomes abnormal, the MCI can seek the reasons for this from the producers and/or distributors of the products concerned. According to the authorities, after such an investigation has been carried out there is no provision for any action. Price controls currently apply to petroleum products, electricity, water, fixed telephony services and passenger road transport. The laws on price controls are out of date, but they have not been repealed or amended recently.

(iv) State enterprises and privatization

80. Until the mid-1990s, State control extended to some 33 units including the following:

- Service enterprises including *Electricité d'Haïti* (EDH) (Haiti Electricity), *Télécommunications d'Haïti* (Téléco) (Haiti Telecommunications) and the *Centrale autonome métropolitaine d'eau potable* (CAMEP) (Autonomous Metropolitan Drinking Water Station);
- the *Autorité portuaire nationale* (APN) (National Ports Authority), which administers the ports, and the *Autorité aéroportuaire nationale* (AAN) (National Airports Authority) responsible for managing airports;
- financial institutions including the *Banque nationale de crédit* (BNC) (National Credit Bank) and the *Banque populaire haïtienne* (BPH) (Haitian People's Bank); and
- production units including one cement works (*Le ciment d'Haïti*) and a mill (*La minoterie d'Haïti*).

81. In 1996, a programme to modernize State enterprises was launched in order to overcome their financial and management problems. The aims of this programme are:

- To increase investment by calling on Haitian or foreign private businessmen;
- to improve the efficiency of State enterprises by making the private sector responsible for their management; and
- to promote local development by distributing some of the programme's earnings and/or profits to local authorities.

82. The institutional framework and the forms of private sector participation are specified in the Law on the Modernization of State Enterprises of 10 June 1996. The programme is supervised by the *Conseil de modernisation des entreprises publiques* (CMEP) (Council for the Modernization of State Enterprises) composed of members of the Council of Ministers and representatives appointed by Parliament. The CMEP will be assisted by a technical secretariat that will act as its implementation arm.

83. The forms of modernization of State enterprises are management contracts, concessions and capitalization. In the case of management contracts, the Law provides that the management of a State enterprise should be handed over for a specified period to a private company to which the State pays management fees that depend on the enterprise's performance. As regards concessions, the State gives concessionaires the right to exploit the enterprise for a specified period. In return, the concessionaire pays rent for the premises and is bound to make the investment expenditure specified in the concession agreement.²⁸ For capitalization, the State associates private investors by setting up a semi-public company (SEM) to which it contributes the enterprise's assets. The private sector brings the cash needed to finance the company's investment expenditure. Contracts for management, concession and participation in the capital of SEMs are awarded to the highest bidder following an international invitation to tender.

²⁸ According to the Law, any development or improvement made to the enterprise's physical framework remains State property.

84. State participation in the capital of SEMs may exceed 50 per cent but may not be less than 20 per cent. Moreover, five years after an SEM has been set up, a share not exceeding 50 per cent of the assets held by the State can be transferred to small shareholders.²⁹ The dividends accruing to the State and the earnings from concessions are shared as follows: 50 per cent to municipalities, 35 per cent to other local authorities, and 15 per cent for social security. These resources are used for projects in agriculture, health and education in rural areas.

85. The privatization programme originally called for two distinct stages. During the first stage, modernization would affect nine enterprises including *La minoterie d'Haïti*, *Le ciment d'Haïti*, an oil mill, Téléco, EDH, APN, AAN, the BNC and the BPH. The second stage was supposed to cover the privatization of other enterprises. Until now, however, the privatization programme has only been implemented in the case of two enterprises: *Les moulins d'Haïti*, originally called *Minoterie d'Haïti* (in 1999) and *Le ciment d'Haïti* (in 2000) (Table III.4). *Les moulins d'Haïti* has become a semi-public company in which the State holds 30 per cent of the shares; the remaining 70 per cent are shared among the partners belonging to the Uni-Finance Consortium (11 per cent of the shares), Sea Board and Continental Grant (59 per cent of the shares). *Le ciment d'Haïti* is also now a semi-public company governed by a capitalization agreement signed between the UMAR Holderbank Colinker Consortium and the Haitian State. The State holds 35 per cent of the shares and the consortium 65 per cent. Lastly, the process of restructuring the BNC has begun, reducing the staff by half and reorganizing the accounts.

Table III.4
Current status of certain Haitian enterprises, July 2003

Enterprise	Sector of activity	State shareholding (%)	Current status
Les Moulins d'Haïti (formerly Minoterie d'Haïti)	Production of wheat flour and bran	30	Modernized – SEM
Cimenterie Nationale, SEM (Ciment d'Haïti)	Cement production	31.84	Modernized – SEM
Electricité d'Haïti (EDH)	Generation, distribution and marketing of electric power	100	To be modernized. Financial surveys completed, decisions to be taken by the Government in order to facilitate the modernization of the sector.
International Port (APN)	Management of commercial activities and regulation of the port	100	To be modernized. Surveys completed, options defined, decisions to be taken by the Government regarding the choice of options.
International Airport of Port-au-Prince	Air traffic	100	To be modernized. Work completed prior to launching the process for selecting the operator to modernize the airport.
Téléco SAM	Telecommunications	97	To be modernized. Surveys completed, work returned to the Government, decisions to be taken.

Source: Information provided by the Haitian authorities.

²⁹ Priority will be given to shareholders who are employees of SEMs and taxpayers whose annual income does not exceed G120,000 (Article 27 of the Law on the Modernization of State Enterprises).

86. As far as the other State enterprises mentioned above are concerned, the privatization process has not made any progress. Enterprises such as the EDH, APN and AAN are the subject of financial surveys, whose recommendations are awaiting a decision. A draft law on the regulatory framework for the telecommunications sector has already been prepared and should be submitted to Parliament.

(v) Protection of intellectual property rights

87. Haiti has been a Member of the World Intellectual Property Organization (WIPO) since 1983 and is party to a number of treaties including the Paris Convention for the Protection of Industrial Property of 1883, as revised at Stockholm in 1967, the 1886 Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris in 1971, the 1910 Buenos Aires Convention, the 1946 Inter-American Convention on Copyright and Literary Property, and the Universal Copyright Convention signed at Geneva in 1952. Haiti has also signed the 2000 Patent Law Treaty, although it has not yet entered into force. As an LDC, Haiti has until 1 January 2006 to bring its legislation into conformity with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

88. Haiti's Constitution guarantees the protection of intellectual property rights.³⁰ Copyright is the responsibility of the Ministry of Culture and Communication, which recently set up the *Cellule haïtienne des droits d'auteurs* (Haitian Copyright Unit). The copyright protection regime is governed by the Decree of 9 January 1968, which replaces the Law of 6 October 1885 on the ownership of literary and artistic works. Under this Decree, literary, musical and artistic works, as well as cinematographic and photographic works, *inter alia*, can be protected. The Decree does not specifically cover all related rights (the rights of producers of phonograms or broadcasting organizations, for example), neither does it cover computer programs and databases, which are protected as literary works under the TRIPS Agreement. The Decree gives owners of copyright the exclusive right of publication, reproduction, performance, adaptation, broadcasting, translation, distribution and arrangement.³¹ It also recognizes intangible and inalienable moral rights that may not be seized.³² The term of protection of copyright is the life of the author plus 25 years after his death (Table III.5). Infringement of copyright may not only lead to the confiscation of the infringing copies but also to an order that the infringer should pay damages to the owner of the rights.

Table III.5
Main Haitian legislative texts on intellectual property rights

Type of rights	Main legislative text	Term of protection	Minimal term of protection provided in the TRIPS Agreement
Copyright and related rights	Decree of 9 January 1968 on copyright in literary, scientific and artistic works	Author's lifetime plus 25 years (for all types of copyright covered by the Decree)	Author's lifetime plus 50 years (copyright); 50 years as of the date of performance or fixation (performers and producers of phonograms); 20 years as of the year of the broadcast (broadcasting organizations)
Patents; industrial designs	Law of 14 December 1922 on patents and industrial designs	5, 10 or 20 years	20 years (patents); 10 years (industrial designs)
Trademarks	Trademark Law of 17 July 1954 (amended by Decrees in 1956, 1960 and 1970)	..	7 years; renewable indefinitely

Table III.5 (cont'd)

³⁰ Scientific, literary and artistic property are protected (Article 38 of the Constitution).

³¹ Article 7 of the Decree.

³² Article 5 of the Decree.

Type of rights	Main legislative text	Term of protection	Minimal term of protection provided in the TRIPS Agreement
Geographical indications	None	None	Indefinite
Layout-designs (topographies) of integrated circuits	None	None	10 years

.. Not available

Source: WTO Secretariat, based on information provided by the Haitian authorities.

89. To a large extent the promotion and protection of industrial property rights (patents, trademarks, industrial designs, *inter alia*) are the responsibility of the MCI. The legal provisions in this respect include, on the one hand, the Law of 14 December 1922 on Patents and Industrial Designs and, on the other, the Law of 17 July 1954 on Trademarks (as amended by the Decrees of 1956, 1960 and 1970). A draft trademark law has been prepared. The WTO Secretariat, however, has no information on the provisions currently in force or on those contained in the draft trademark law. On 31 December 1996, the number of applications for trademarks was 9,091 and between 1996 and 2001 there were 34 applications for patents.

90. A patent is granted for any new method of manufacturing industrial products, any new machine or mechanical or manual apparatus used to manufacture such products, any discovery of a new industrial product, any application of known means with a view to obtaining better results, and any new, original or ornamental design for an industrial article. It is granted without prior examination, at the applicant's own risk and without any guarantee as to the existence, novelty or merit of the invention or the veracity or exactitude of the description.

91. A patent application may be rejected if the invention or discovery has been made public in any country one year prior to the application being filed in Haiti or if the invention is contrary to morality or the law. The term of protection for a patent is 5, 10 or 20 years as of the date on which it is granted.³³ The fee payable is G 125 for the grant of a five-year patent, G 250 for a ten-year patent and G 500 for a twenty-year patent. A patent that has not yet expired may be granted again in a new form for the remaining period if it is ineffective or has no legal value because its registration is incomplete or deficient provided that the error is not the result of fraud.³⁴ No new element may be introduced into the patent. Any infringement of patent rights constitutes an offence and the infringer is liable to a fine ranging from G 100-G 500. This is combined with a term of imprisonment of one to six months if the offence is repeated.

92. The most common infringements concern, *inter alia*, fraudulent use of trademarks or counterfeiting regional trademarks. Such disputes do not always go before the courts because it is often difficult to find competent judges.

93. In most cases, infringements of intellectual property rights are discovered and reported by the owners of the rights, and officials from authorities such as the customs service and the police do not have the necessary training. Some national seminars have nevertheless been organized recently for these officials in order to make them aware of intellectual property rights issues.

³³ Article 4 of the Law of 14 December 1922.

³⁴ There have not yet been any cases of incomplete or deficient registration.