

II. TRADE AND INVESTMENT REGIMES

(1) Institutional Framework

1. The Republic of South Africa (RSA) adopted a new Constitution on 8 May 1996, which was enacted on 3 February 1997.¹ The Constitution is the supreme law of South Africa; any law or conduct determined to be inconsistent with the Constitution is invalid. Under the new Constitution, the Republic of South Africa is a parliamentary democracy, with a multi-party system; provisions for "co-operative government" between national, provincial and local spheres are written into the Constitution. The Constitution provides for a bicameral Parliament comprising the National Assembly and the National Council of Provinces (replacing the Senate), and a Cabinet consisting of the President, a Deputy President and Ministers.²

2. The President is the Head of State and exercises executive power in consultation with a Deputy President. The President, whose tenure is limited to two five-year terms, is elected by the National Assembly from among its members; upon election he ceases to be a member of the National Assembly. The President may dissolve the National Assembly; the latter, by a vote of no-confidence, may dismiss the President and/or the Cabinet. The Deputy President and Ministers are appointed by the President, normally from among the members of the Assembly; at most two Ministers may be selected from outside the Assembly. National legislative authority is vested in Parliament and the President: the National Assembly passes legislation; the President assents to, and signs, bills. The National Council of Provinces participates in the legislative process to ensure that provincial interests are taken into account in the national sphere of Government.

3. The National Assembly consists of between 350 and 400 members elected for five years by universal adult suffrage under a system of proportional representation.³ The Speaker and the Deputy Speaker are elected by the National Assembly from among its members; the Speaker presides over sittings of the National Assembly. In general, issues before the National Assembly are decided by a simple majority of votes cast, provided that there is a quorum; the quorum consists of the majority of the members of the Assembly in the case of votes on, or amendments to, bills, and of at least one third of the members of the Assembly for votes on all other issues. The member of the National Assembly presiding at a meeting of the Assembly has no deliberate vote, but must cast a deciding vote when there are an equal number of votes on each side of the question; he may cast a deliberate vote when a question must be decided with a supporting vote of at least two thirds of the members of the Assembly.⁴

¹The political change from apartheid to a democratic regime, initiated in the RSA from 1990, led to the adoption of an interim constitution, which came into effect in April 1994. Under the interim constitution, a multi-racial transitional administration and an interim Government of National Unity (GNU) were established in May 1994.

²Certain provisions of the Constitution will not come into force before the next global election, to be held by end-april 1999. Schedule 6 of the new Constitution provides for transitional arrangements on, *inter alia*, rules and orders of the National Assembly, and the structure of the Cabinet, in force when the new Constitution took effect.

³The National Assembly currently consists of 400 members.

⁴Section 1 of the Constitution (the Founding Provisions) may be amended by a bill passed by the National Assembly with a supporting vote of at least 75% of its members, and by the National Council of

(continued...)

4. The National Council of Provinces consists of 90 members: ten representatives elected by each of the nine provincial legislatures, including the Premier of each province. The Council elects its Chairperson and its two Deputy Chairpersons from among its members. The Chairperson and one of the two Deputy Chairpersons are elected for five years unless their term as a delegate expires earlier⁵; the second Deputy Chairperson is elected for one year from each province in rotation. Provincial legislatures have legislative competence in various functional areas, such as agriculture, industrial promotion, trade, tourism, public transport, regional planning and development, and welfare services. Municipal Councils may also enact by-laws, which must not be inconsistent with the Constitution or any Act of Parliament.

5. The National Economic Development and Labour Council (NEDLAC), which replaced the National Economic Forum and the National Manpower Commission on 18 February 1995, is the vehicle by which Government, labour, business and community organizations seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues, and related challenges facing South Africa. NEDLAC's scope of activity covers all social and economic policy. All its agreements, reports and findings are tabled in Parliament. NEDLAC is funded by the Government from the budget of the Department of Labour. The structure of NEDLAC comprises: an annual National Summit of 300 participants chaired by the President or the Deputy President; an Executive Council; a Management Committee; four Chambers (Public Finance and Monetary Policy, Trade and Industry, Labour Market, and Development) that drive its work programme and make recommendations to the Council; and a Secretariat.⁶ The Trade and Industry Chamber (TIC), for instance, seeks to reach consensus and makes agreements on all matters pertaining to the economic and social dimensions of trade, industrial, mining, agricultural and services policies, and the associated institutions. TIC provides technical assistance to the Government in preparing bilateral, regional and multilateral negotiations and identifies areas that require particular attention.⁷

6. The Constitutional Court, comprising a President, a Deputy President and nine other judges, is the highest court competent to deal with issues relating to, *inter alia*, the interpretation, protection and enforcement of the Constitution. The Supreme Court of Appeal, which consists of a Chief Justice, a Deputy Chief Justice and judges of appeal, may decide appeals and connected issues, as well as matters that are legally referred to it. A High Court may decide any constitutional matter, except a matter that only the Constitutional Court may decide, or a matter assigned by an Act of Parliament to another court of a status similar to a High Court. The other Courts, including

⁴(...continued)

Provinces, with a supporting vote of at least six provinces. Chapter 2 of the Constitution (the Bill of Rights) may be amended by a bill passed by the National Assembly, with a supporting vote of at least two thirds of its members, and the National Council of Provinces, with a supporting vote of at least six provinces.

⁵"Permanent" delegates are appointed for a term that expires immediately before the first sitting of the provincial legislative after its next election.

⁶The participants in the National Summit come from the spectrum of South African society. Government, organized business and organized labour are represented in equal numbers in the four chambers and the Executive Council. Community-based organizations (civics, women, youth, rural people and disabled people) are represented in the Development Chamber, Management Committee and Executive Council. The Minister of Labour coordinates the Government delegation in NEDLAC.

⁷The areas so far emphasized by the Trade and Industry Chamber are training, investment incentives and incentives relating to upgrading technology, human resource development and productivity enhancement.

Magistrates Courts, may judge any matter falling under an Act of Parliament, but they may not enquire into, or rule on, the constitutionality of any legislation or any conduct of the President.⁸ The President and the Deputy President of the Constitutional Court, the Chief Justice and the Deputy Chief Justice, and all other judges, including those of the Constitutional Court, are appointed by the President after consulting with, or on the advice of, relevant organs or persons.

(2) Policy Formulation and Implementation

7. The national executive formulates and implements policies, and the President and Parliament enact related legislation. Each Ministry formulates policies in its field of activity. The bills relating to the policies are submitted by means of memoranda to the Cabinet for comment. Bills are reviewed by the State Law Advisors, before introduction into Parliament.⁹ Only a Cabinet member, a Deputy Minister, or a member or committee of the National Assembly may introduce a bill in the Assembly. Money bills may only be introduced in the Assembly by the Cabinet member responsible for national financial matters.¹⁰ Bills, excluding money bills, falling within functional areas, may be introduced in the National Council of Provinces by its members or its committees; bills, such as those amending Chapter 1 (Founding Provisions) and 2 (the Bill of Rights) of the Constitution must also be passed by the Council. A bill passed by the Council must be referred to the Assembly. When passed by the National Assembly, bills affecting provinces (bills referred to in Sections 76(3), (4) or (5) of the Constitution) must be referred to the National Council of Provinces.

8. After introduction of a bill in the National Assembly it is submitted, after a first reading, to the portfolio committee that deals with that area of policy for consideration. Trade-related legislation is debated before the Portfolio Committee on Trade and Industry. The bill goes back to the National Assembly for a "second reading" with the Committee's report. Members debate the issue and the bill may be returned to the Portfolio Committee for amendments before its submission for a vote in the National Assembly. Then, if applicable, the bill is tabled in the National Council of Provinces. The bill is referred to the applicable committee on provincial level, in the same manner as with the Portfolio Committee. Once that procedure has been completed, the bill is put to vote in the National Council of Provinces. If the bill is rejected or passed with amendments, it must be passed back to the National Assembly for reconsideration. If necessary, the bill will be referred to a Mediation Committee for final agreement. If agreement is not reached within 30 days, the bill lapses unless the National Assembly passes it again with a two-thirds majority. The bill finally becomes an Act and passes into law when the President assents by signing the document. The President has the authority to refer the bill back to the National Assembly if he believes that it may not be Constitutional. If the bill is not amended to the President's satisfaction, it will be referred to the Constitutional Court for a final decision. The signed Act is published in the Government Gazette for public information.

9. Under the provisions of Article 231 of the Constitution, the national executive negotiates and signs all international agreements. Such agreements, except those of, *inter alia*, technical, administrative or executive nature, bind the Republic of South Africa only after they have been approved by resolution in both the National Assembly and the National Council of Provinces. Any

⁸Special Courts are composed for a particular purpose, for example the Water Court, the Special Court for Revenue Appeals, the Patents Court and the Special Court regarding Harmful Business Practices.

⁹The State Law Advisor may also draft bills on the basis of information provided by a Ministry that initiates a policy.

¹⁰Money bills appropriate money or impose taxes, levies or duties.

international agreement becomes law in the Republic of South Africa when it is enacted into law by national legislation; however, a self-executing provision of an agreement approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. The WTO Agreements have been ratified by Parliament but have not been enacted into law; therefore, they have no standing before national courts.

10. The Department of Trade and Industry (DTI) formulates and coordinates South Africa's trade and industrial policies. Initiatives on trade and investment issues may also come from other departments and agencies, such as the Departments of Finance, Agriculture, National Health, and Mineral and Energy Affairs, and the South African Reserve Bank. Proposals and recommendations to the DTI may come as well from public and private sources, including the National Economic Development and Labour Council (NEDLAC), the Board on Tariffs and Trade (BTT), the Industrial Development Corporation (IDC) and the South African Chamber of Business (SACOB). The private sector enters the debate through its delegation in NEDLAC and in the President's Economic Advisory Council.¹¹ The IDC and Parliamentary Committees assist the DTI in carrying out periodic reviews and assessments of trade policies.

11. Under the provisions of Section 48 of the Customs and Excise Act, the Minister of Finance may amend customs duties at the request of the Minister of Trade and Industry, provided that such amendments comply with the technical requirements, such as the International Convention on the Harmonized System, that apply with regard to the customs tariff. Such duty amendments are implemented, with immediate effect, by way of a notice in the Government Gazette, and are tabled annually by the Minister of Finance in the National Assembly. Amendments made in any calendar year and not tabled in the National Assembly lapse at the end of the following calendar year. Enquiries with regard to the Act must be directed to the Commissioner for Customs and Excise, who is responsible for its administration.

12. The Board on Tariffs and Trade (BTT) is an investigative and advisory body; its members (at least four) are appointed by the President. The objectives of the Board are to promote industrial growth, within the framework of South Africa's economic policy, by conducting investigations into any matter that affects or may affect the trade and industry of South Africa or the common customs area of the Southern African Customs Union, and to advise the South African Minister of Trade and Industry in this regard.¹² At the request of the private sector, the Board also may investigate alleged dumping, subsidized imports or "disruptive competition", and the development of industries by the levying of customs duties. By order of the Minister of Trade and Industry, it may also investigate any matter, including amendments to the customs tariff and the Customs and Excise Act, that affects or may affect trade and industry.

13. The Department of Trade and Industry has a mandate to promote South Africa as an investment destination, more specifically, direct fixed investment into the industrial sector. After a consultative process in NEDLAC and in cooperation with the provincial governments, the DTI established a non-profit organization, Investment South Africa (ISA), in January 1997. The agency, under the authority of its Board, works closely with the private sector, provincial governments and the various promotion agencies. It is tasked with promoting foreign direct investment into South Africa in all sectors of the economy. Funded by the Government, ISA plays a facilitation role. Prospective

¹¹The President's Economic Advisory Council gives advice on the appropriate mix of policy measures to achieve priority economic goals.

¹²Article 3 of the Board on Tariffs and Trade Act, 1986.

investors are required to apply to the Department of Home Affairs (DHA) via South Africa's missions abroad for residence/working permits. The permits are issued to prospective investors after the DHA has received documentary motivation and evidence of the applicants' intention to invest in South Africa. A consultative forum exists between the DTI and the DHA on matters pertaining to immigration of prospective foreign investors to South Africa.

(3) Policy Objectives

14. In South Africa, trade and investment policies are aimed at contributing to the success of the Reconstruction and Development Programme (RDP), established in 1994, and are in consequence integrated into the overall restructuring of the economy. The RDP is designed, *inter alia*, to achieve sustainable economic growth and a socially acceptable distribution of income, to meet the social and economic basic needs of the population, to develop human resources, and to seek mutual economic cooperation and balanced development in Southern Africa.¹³ Annual economic growth of 6% is deemed necessary to achieve these goals.

15. In light of the deterioration of the current account since 1994 (Chapter I(2)(ii) and (3) and with a view to achieving a sound balance of payments, the Government decided in 1995 to seek to accelerate the growth of non-gold exports, mainly manufactured products, as these are less subject to price fluctuations. Tariff reforms (rationalization and simplification of the tariff structure) combined with a variety of incentives (Chapter III) are to contribute to an improvement in the productivity and international competitiveness of the manufacturing sector by reducing production costs and increasing the performance of production factors.¹⁴ Such an improvement also requires investment in new capacity, i.e. an increase in private investment. As a result of reform, tariffs will be the main trade policy instrument in South Africa: however, tariff protection will remain high for the manufacturing sector (end-products in particular) but will substantially drop for capital equipment and primary products (Chapter III(2)(iii)(b)). Tariff escalation will consequently be more pronounced.

16. Public investment will be aimed at meeting the basic needs (access to modern and effective services) of all South Africans and, in particular, the disadvantaged. The Government hopes to boost investment both by South Africans and foreigners by creating an enabling environment that will facilitate efficient markets and better allocation of resources. Transparent, stable and consistent market-oriented reforms, including commercial services reforms, the deregulation of prices and the relaxation of exchange controls on residents, the restructuring of State assets, and the success of the RDP and the related climate of political stability and economic growth are designed to contribute to the creation of such an environment. Thus, the relaxation of capital controls will facilitate access to foreign credits for long-term investment by the private sector and reduce overall financing costs. Investment incentives, such as the Tax Holidays, Accelerated Depreciation, and Small/Medium Manufacturing Development Programme schemes, are available for both local and foreign investors. The abolition of the non-resident shareholders' tax of 15% in 1995, the National Industrial Participation Programme launched in 1996 (Chapter III(2)(xi)) and the establishment in 1997 of Investment South Africa (ISA), together with the expected establishment of branches of international

¹³Government of South Africa (1994a).

¹⁴NEDLAC recognizes the necessity of trade liberalization in South Africa; it is reviewing the timing of tariff reforms and their consequences on the economy.

banking groups, are also aimed at contributing to a rapid increase in foreign direct investment, mainly in the export-oriented manufacturing sector.¹⁵ Human resource development and training incentives are available to improve the employment intensity of investment, especially in the manufacturing sector, and to address the unemployment problem; the promotion of small and medium-sized businesses (seen as labour-absorbing enterprises) is also to enhance growth in employment.

17. The Government has identified the economic development of the southern African region (especially the Southern African Development Community area) as critical to South Africa's growth; mutual cooperation in the region and the development of the other southern African countries will increase their potential as markets for South African exports and help to curb migration to South Africa. South Africans are encouraged to invest in the region.

(4) Laws and Regulations

18. Two main laws govern South Africa's foreign trade: the Customs and Excise Act and the Board on Tariffs and Trade Act. The Customs and Excise Act regulates: the levying of customs and excise duties and other charges (e.g. the fuel levy); the importation, exportation, transit and coastwise carriage of goods; customs and excise warehouses; customs valuation, clearance and origin of goods; emergency measures; and tariff concessions. Under the Board on Tariffs and Trade Act, the Board is established to promote industrial growth; the Board influences the imposition, amendment and removal of import duties. Import and export control measures are applied pursuant to powers conferred on the Minister of Trade and Industry by the 1963 Import and Export Control Act.

19. South Africa does not have an Investment Act. However, sector-specific Acts (Table II.1) regulate investment. A variety of schemes and Government Notices provide incentives to investors (Chapters III and IV). According to the authorities, national treatment applies to all foreign investors; foreigners are free to invest in all industries open to local investors and to repatriate the proceeds and earnings after payments of taxes. The only limitations are made in pursuance of exchange control and immigration regulations and are on local borrowings (in rand and South Africa's capital markets) by non-residents investing and operating in South Africa.

Table II.1
Main trade related legislation in South Africa

Area	Legislation	Date of entry into force
Foreign trade, customs and excise duties and other charges; emergency measures; tariff and tax concessions; clearance and origin of goods; and customs valuation	Customs and Excise Act (Act 91) and various amendments	1964
Trade and industry; customs duties and emergency measures; tariff and tax concessions	Board on Tariffs and Trade Act (Act 107) and various amendments	1986
Price controls and regulations in the manufacturing sector	Price Control Act (Act 25)	1964
Control of the industrial price of sugar	Sugar Act (Act 9)	1978
Competition	Maintenance and Promotion of Competition Act (Act 96)	1979

Table II.1 (cont'd)

¹⁵In 1996, the Government was to allow the establishment of branches of international banking groups (Marx and Hough, 1996).

Area	Legislation	Date of entry into force
Formation, conduct of affairs and liquidation of companies; and smaller businesses (one to ten natural persons)	Companies Act (Act 61)	1973
	Close Corporations Act (Act 69)	1984
	Trust Property Control Act	1988
Use of natural resources - mining	The Minerals Act (Act 50)	1991
Re-insurance facilities	The Export Credit and Foreign Investments Re-Insurance Act (Act 78)	1957
Standards	Standards Act (Act 29)	1993
	Agricultural Products Standards Act (Act 119)	1990
International payments, capital movements and foreign exchange transactions	Currency and Exchanges Act (Act 9)	1933
	Exchange Control Regulations, Orders and Rules	1961
Financial Services	Banks Act	1990
	Financial Markets Control Act	1989
	Stocks Exchanges Control Act	1985
	Mutual Banks Act (Act 124)	1993
	Insurance Act (Act 27)	1943
	Corporation for Public Deposits Act (Act 46)	1984
Mining	Minerals Act (Act 50)	1992
	Minerals and Energy Laws Rationalization Act (Act 47)	1994
Agriculture	Marketing of Agricultural Products Act (Act 47)	1996
	Co-operatives Act (Act 91)	1981
	Wine and Spirit Control Act	[?]
	Livestock Improvement Act (Act 25)	1977
Government procurement	State Tender Board Act (Act 86)	1968
	Government Notice R1237	1988
Import and Export Controls	Import and Export Control Act (Act 45)	1963
	Government Notice R2263	1992
Intellectual Property Rights	Patent Act	1978
	Trade Marks Act	1993
	Designs Act	1993
	Copyright Act	1978
	Merchandise Marks Act	1941
	Tourism Act (Act 72)	1993
Tourism	Tourism Act (Act 72)	1993
Telecommunications	Telecommunications Act (Act 103)	1996
	Government Notice 293	1997

Source: Information provided by the South African authorities.

(5) Agreements

20. South Africa is an active participant in all major multilateral organizations¹⁶; it has on several occasions expressed its support for an open multilateral trading system and its readiness to comply with the rules and obligations of such a system. South Africa views the World Trade Organization as providing the comprehensive regulatory framework necessary to the ongoing processes of integration and interdependence of national economies, which will ensure a sustainable and equitable path to growth and development for all WTO Members.¹⁷ South Africa's accession to regional and bilateral agreements is determined not only by economic considerations but by traditional, political and cultural links with partner countries, mainly in the Southern African region; thus, considerable emphasis is placed on the development of the Southern African Development Community (SADC), and renegotiation of the Southern African Customs Union (SACU) agreement is under way. The authorities have clearly indicated their view that such agreements complement those of the WTO, with which they must be consistent.

21. South Africa relies on rules and procedures laid down in the WTO Agreements for the settlement of its trade disputes with other Members. Bilateral and regional trade agreements to which South Africa is a signatory make provisions for consultations on actions taken by a party that affect or may affect other member countries. Negotiations are ongoing for the establishment of dispute settlement mechanisms under regional trade agreements, including SACU and SADC. Between the first Trade Policy Review of South Africa in 1993 and May 1997, South Africa has not been directly involved, either as a complainant or as a defendant, in any dispute settlement proceedings.

(i) Multilateral agreements

22. South Africa is a founding member of the World Trade Organization (WTO), having signed the Marrakesh Agreements subject to ratification, on 15 April 1994, and achieved Parliamentary ratification on 6 April 1995. South Africa accords at least MFN treatment to all WTO Members. South Africa is a signatory to the Agreements on Bovine Meat and Dairy Products, and is an observer to the Agreement on Government Procurement. South Africa was a founding member of the GATT and had participated in, or had observer status in, several Agreements and Arrangements negotiated under the Tokyo Round.¹⁸

23. South Africa has entered into concessions and commitments under all the WTO Agreements and was generally satisfied with the results of the Round. Coinciding with the end of apartheid, the authorities saw the conclusion of the Uruguay Round as providing South Africa with an opportunity for its reintegration into the international system of political and economic cooperation, and thus accelerated the liberalization of the trade regime.

¹⁶South Africa hosted the Ninth United Nations Conference on Trade and Development (UNCTAD) in April 1996, it retains the Presidency of UNCTAD until the year 2000.

¹⁷Government of South Africa (1996b).

¹⁸See GATT (1993).

24. As at mid-April 1997, South Africa had made 70 notifications to the WTO in several areas, including agriculture, subsidies and countervailing measures, sanitary and phytosanitary measures, textiles and clothing, trade-related investment measures, trade-related aspects of intellectual property rights (Table II.2). However, neither the Southern African Customs Union (SACU) agreement nor the Southern African Development Community (SADC) treaty to which South Africa is a party have been notified; the Government of South Africa has undertaken to do so once the current renegotiations are completed.

Table II.2
Status of South Africa's selected notification requirements to the WTO, as of mid-April 1997

WTO Agreement	Description of requirements	Periodicity	Document No. of most recent notification (if none, ...)	Comments
Anti-dumping (Art. 16.4)	Laws and regulations	Once by 3.95, then changes	G/ADP/N/1/ZAF/1, 30.10.95	BTT Act; Extracts from Customs & Excise Act; & Guide
Anti-dumping (Art. 16.4)	Anti-dumping actions taken	Semi-annual	G/ADP/N/22/ZAF/Rev. 1, 15.4.97	As at mid-April 1997, 49 actions were taken of which 31 definitive duties
Agriculture (Art. 5.7)	Special safeguard provisions	Annual (end of marketing year)	G/AG/N/ZAF/4, 11.9.96	No special agricultural safeguards were invoked in 1995
Agriculture (Art. 18.2)	Aggregate measure of support	Annual (end of marketing year)	G/AG/N/ZAF/5, 15.11.96	
Agriculture (Art. 10 and 18.2)	Export subsidies	Annual (end of marketing year)	G/AG/N/ZAF/6/Rev.1, 6.1.97	Any food aid notifiable was not provided in 1995
Agriculture (Art. 16.2)	Decision on measures concerning the possible negative effects of reform programme	Not specified	G/AG/N/ZAF/7, 6.1.97	Technical and financial assistance was provided to Angola, Botswana, Mozambique and Zambia
Agriculture (Art. 18.2)	Tariff quotas	Once, then changes	G/AG/N/ZAF/1/Rev.1, 8.11.95	
Subsidies and countervailing measures (Art. 32.6)	Laws and regulations	Once by March 95	G/SCM/N/1/ZAF/1, 30.10.95	
Subsidies and countervailing measures (Art. 28.1)	Existing programme	Once by March 95	G/SCM/N/2/ZAF, 12.5.95	The General Export Incentive Scheme (GEIS) is being scaled down and will be terminated by the end of 1997
Subsidies and countervailing measures (Art. 25.11)	Countervailing actions taken	Semi-annual	G/SCM/N/7/Add.1, 1.11.95	As at 30 June 1995, no countervailing duty actions were taken
Safeguards (Art. 12.7)	Pre-existing Art. XIX measures	End of February 95	G/SG/N/2/ZAF, 6.3.95	No measures were maintained
Safeguards (Art. 12.7)	As Art. 11.1 measures	End of February 95	G/SG/N/3/ZAF, 6.3.95	A list of products was provided
Safeguards (Art. 11.2)	Phasing out of safeguards under Art. 11.1	End of June 1995	G/SG/N/5/ZAF, 23.5.96	Timetables for phasing out

Table II.2 (cont'd)

WTO Agreement	Description of requirements	Periodicity	Document No. of most recent notification (if none, ...)	Comments
Sanitary and phytosanitary measures (Art. 7, Annex B)	SPS to be notified promptly	Once, then changes	G/SPS/N/ZAF/1, 9.4.96	Temporary suspension of importation of beef from the United Kingdom
Understanding on the implementation of Art. XVII	State trading enterprises	Not specified	G/STR/N/1/ZAF, 4.8.95	
Textiles and clothing (Art. 2.7)	Transitional safeguard mechanism	End February 95	G/TMB/N/197/Rev.1, 26.11.96	A list of products to be integrated in Stage I was provided
TRIPS (Art. 63.2)	Laws and regulations	Not specified	IP/N/1/ZAF/1, 20.2.96	
TRIMS (Art. 5.1)	TRIMS taken	End of March 95	G/TRIMS/N/1/ZAF/1, 20.4.95	Motor vehicle industry, telecom equipment, tea and coffee
Implementation of Art. VII of the GATT (Art. 22.2)	Customs valuation (laws and regulations)	Once, then changes	G/VAL/N/1/ZAF/1, 9.8.96	
Dairy (Art. II:1 and III.3)	Market data	semi-annual	IDA/STAT/4, 22.3.95	
Bovine meat (Art. III:1)	Inventory of domestic policies	Annual	IMA/INV/9/Rev.1, 21.5.96	
TBT (Annex 3C)	Acceptance of the WTO Code of Good Practice	Once	G/TBT/CS/N/4, 8.5.95	The South African Bureau of Standards is the standardization body in South Africa

Source: WTO documents.

25. South Africa is a member of, *inter alia*, the International Monetary Fund, the World Bank, the United Nations and its agencies, the Commonwealth, the Organization of African Unity (OAU), the International Wheat Council, and the International Cottonne Advisory Committee; it has acceded to the Convention on International Trade in Endangered Species (CITES) of Wild Fauna and Flora and to the Montreal Protocol on Chlorofluorocarbons.

(ii) Regional agreements

(a) The Southern African Customs Union (SACU)

26. On 1 March 1970, the Southern African Customs Union (SACU) agreement, concluded on 11 December 1969, replaced the 1910 Customs Union arrangements, which linked the former British protectorates of Botswana, Lesotho and Swaziland (BLS) with South Africa. Namibia became a *de jure* member on 10 July 1990, after having been a *de facto* member during the time it was administered by South Africa.¹⁹ The aims of the SACU, as expressed in the preamble to the 1969 agreement, are to encourage economic development and diversification, in particular in the less-advanced member countries, and afford all parties equitable benefits arising from intra-Union and international trade. The Customs Union Commission, comprising representatives of all the contracting parties, is the supreme consultative body of SACU; the Commission meets annually in

¹⁹Namibia became independent on 21 March 1990.

each member's capital city in turn. SACU also has three liaison committees: the Customs Technical Liaison Committee, and those for Trade and Industry, and for Transport.

27. Under the SACU agreement, members apply the customs, excise, sales, anti-dumping, countervailing and safeguard duties, as well as related laws, set by South Africa, to goods imported to the common customs area from third countries outside the Union.²⁰ A SACU member may enter separately into, or amend, trade agreements with a country outside the common customs area, provided the terms of such agreements or amendments do not conflict in any way with the provisions of the SACU agreement. Members may not impose duties or quantitative restrictions on goods grown, produced or manufactured in the SACU area (Article 2 of the agreement). Members may not impose any duties on importation, from any other member, of goods which were imported from outside the common customs area (Article 3). Each member has its own legislation on quantitative restrictions on goods imported from outside the SACU area. Botswana, Lesotho, Namibia and Swaziland (the BLNS States), but not South Africa, may, following consultation, apply additional duties or increase duties for protection of infant industries (Article 6 of the agreement).²¹ The BLNS States may, with the concurrence of all the parties, specify industries which are of major importance to their economies. During a specified period, the duties applicable to goods imported from outside the common customs area and competing with those produced by the specified industries, may not be decreased or abrogated without the consent of the BLNS State which may have specified such industries (Article 7 of the agreement).²² Rebates, refunds and drawbacks granted by member countries must be identical, except in specified circumstances, including emergency situations, obligations under multilateral or international agreements or technical assistance agreements. Exceptional trade restrictions by a member may also be justified on, *inter alia*, economic, social and cultural grounds. Moreover, members participate in marketing arrangements under which agricultural imports from other SACU countries may be restricted, particularly at harvest time.

28. The SACU agreement also provides for non-discriminatory transport rates and freedom of transit within the common customs area. In general, duties are collected at the place of entry into the common customs area. The provision for duty-free circulation of goods within the SACU area favours the collection by South Africa of applicable customs duties and excise taxes on virtually all the external trade of land-locked Botswana, Lesotho and Swaziland, which is directed through RSA, as well as on much of Namibia's international trade.²³ All customs, excise, sales and additional duties collected by members are pooled in the Consolidated Revenue Fund of South Africa. The pooled revenue is subsequently distributed to members. The shares of the BLNS countries are determined on

²⁰Article 5 of the SACU agreement requires South Africa to afford the other members adequate opportunity for consultations before imposing, amending or abrogating customs duties, except in specified cases.

²¹Protection of infant industries is normally allowed for a maximum of eight years.

²²The use of duties for the protection of infant industries and industries of major importance to a BLNS economy has been restricted by various quantitative and qualitative requirements, including proof of the non-availability in the common customs area of the good to be produced if a reduction of duties is requested on industrial inputs. The supply of more than 60% of the SACU market is required for an increase in the duty on a final product for the protection of a new industry.

²³GATT (1993).

the basis of a revenue-sharing formula and the residual (after BLNS countries have been paid) is allocated to South Africa.

29. The original 1910 revenue-sharing formula was based on the respective contribution of the BLS countries to total imports into, and consumption of excisable goods produced within, the SACU area. The 1969 formula provided for an enhancement factor of 42% of the shares of the BLS countries; this factor was introduced to compensate the BLS countries for negative effects resulting from their participation in SACU. The formula was renegotiated in 1975 and a "stabilization factor" was added in 1978, operating retrospectively to 1974/75, to reduce fluctuations in the revenue shares accruing to the BLS (the BLNS since 1990) countries (Box II.1).

30. All members have been dissatisfied with the existing arrangement since the latter half of the 1970s; they unanimously recognized that certain aspects of the agreement have become outdated. The key issues on the agenda of the ongoing negotiations comprise the technical revision of the revenue-sharing formula (the level of compensation for the price-raising and the industrial polarization effects, and for the loss of fiscal discretion, as well as the stabilization factor), the time lags in distribution of revenue by South Africa, the management of the SACU system and the need for a dispute settlement mechanism.²⁴ Significant changes are expected following the renegotiations.

²⁴The loss of fiscal discretion results from the fact that South Africa sets the common tariff and excise tax schedules for the customs union; such import duties are to protect South African producers from non-SACU competition (this is the price-raising effect). The industrial polarization effect results from the fact that industries serving the customs union market were located primarily in South Africa in detriment of other member countries. Furthermore, a two-year lag exists between the date of payment of revenue to BLNS countries and the relevant statistics on which the distribution is based. In order to address the problem relating to lagged payment, initial estimated amounts, are calculated and remitted in the year that the payment is due, and revised when final data are made available two years later. The differences between the initial estimates and subsequent estimates are then remitted to the countries involved.

Box II.1: The revenue-sharing formula of the Southern African Customs Union (SACU)

The original formula negotiated in 1969 (Article 14 of the Agreement) was, for a given financial year, as follows:

$S = 1.42 \{R(A+B+C)/(D+E+F+G)\}$, where:

S = the amount allotted to a specific member country;

R = the total revenue pool of SACU, i.e. E+G;

A = c.i.f value (at the border) of imports into the country irrespective of their origin: imports from the common customs area are thus included;

B = value of excisable and sales duty goods produced and consumed in the country;

C = excise and sales duties paid on B;

D = c.i.f value of imports into the SACU;

E = customs and sales duties paid on D;

F = value of excisable and sales duty goods produced and consumed in the SACU;

G = excise and sales duties paid on F;

S can be rewritten as follows:

$S = 1.42RX/Y$; where:

$X = A+B+C$; and

$Y = D+E+F+G$;

By denoting by s_0 the basic share (X/Y), and s_e the enhanced share ($1.42s_0$), the above formula becomes:

$S_e = 1.42s_0R = s_eR$.

The Agreement, as amended in 1978, provides for a stabilization factor. For the normalization purposes, the amount S_e accruing to each BLS (BLNS since 1990) country, as calculated from the above formula, is compared with X (i.e. $A+B+C$): S_e is divided by X. The 1978 amendments clearly extended A to include all duties paid or payable on imports to each BLS country; the 1969 Agreement was not clear on this point although this factor was taken into account right from 1969/70.

The 1978 stabilization clause normalized the enhanced shares at 20% of X ($0.2X$), and provided for a lower and an upper boundary. If the amount accruing to each BLS/BLNS country is less (more) than $0.2X$, an amount equal to 50% of the difference between the calculated amount S_e and 20% of X - the standard level is thus $0.2X$ - is added (subtracted), provided that the resultant amount, which will be called S_s below, is not less (more) than 17 (23)% of X, i.e.:

$S_s = S_e \pm 0.5 \pm S_e - 0.2X$ |; and $(0.17 \leq (S_s/X) \leq 0.23)$.

After calculation, taking into account the constraints on the variables, the formula becomes:

$S_s = 0.5S_e + 0.1X$, with a floor amount of $0.17X$ (17% of X) and a ceiling amount of $0.23X$ (23% of X).

Source: SACU Agreement 1969, as amended; and WTO Secretariat.

(b) The Common Monetary Area

31. In December 1974, the Rand Monetary Area (RMA), a tripartite arrangement between Lesotho, South Africa and Swaziland, replaced the informal agreement on money and currency which had existed between Botswana, Lesotho, South Africa and Swaziland.²⁵ Namibia, still administered by South Africa at this time, also formed part of the RMA. In July 1986, the Common Monetary Area (CMA) replaced the RMA. The trilateral agreement (between Lesotho, South Africa and Swaziland) that established the CMA was in turn replaced by a Multilateral Monetary Agreement (MMA) on 6 February 1992 when Namibia officially joined the CMA of which it had been a de facto member from the beginning; Lesotho, Namibia, South Africa and Swaziland have since been the four members of the CMA. The MMA aims to achieve monetary stability in the region, better economic and financial cooperation among member States for sustained economic development, and to encourage the advancement of the less developed members. The administering organ of the MMA is the Common Monetary Area Commission comprising a representative of each member country and such advisers the country may appoint. The Commission meets at least once a year and its decisions are by consensus. Members have regular consultations with each other on monetary issues.

32. The Agreement provides for free flow of funds within the monetary area (with the possibility of limited exceptions) and a right of access by Lesotho, Namibia and Swaziland to the South African capital and money markets. The Namibian dollar, the lilangeni (the currency of Swaziland) and the loti (the currency of Lesotho) are pegged to the South African rand at par, and banknotes issued by Lesotho, Namibia and Swaziland (LNS) are freely convertible into rand. The rand is legal tender in Lesotho and Namibia but not in Swaziland. For flexibility purposes and with a view to accommodating country-specific needs, each of the LNS countries entered into a bilateral monetary agreement with South Africa to supplement the MMA.²⁶ Each member is responsible for its monetary policy and the control of its financial institutions.

33. Any dispute between members relating to the Agreement must be settled amicably and in good faith. Otherwise, the dispute must be submitted to a tribunal which will be appointed jointly by the members.

(c) The Southern African Development Community (SADC)

34. In August 1994, South Africa became a member of the Southern African Development Community (SADC), which replaced the Southern African Development Coordination Conference (SADCC) in 1992.²⁷ The organs of SADC include the Summit of Heads of State and Government (the supreme policy-making body), the Council of Ministers, and its Secretariat based in Gaborone (Botswana). SADC aims to promote regional cooperation and economic integration towards a single regional common market, with a common currency system, and balanced and equitable mutual benefits; its ultimate goals are development and economic growth of southern Africa. To achieve its objectives, SADC seeks to develop policies aimed at the progressive elimination of barriers to free movement of capital, labour, goods and services, and to mobilize support for national and regional projects.

²⁵Botswana was not a member of the RMA.

²⁶African Development Bank (1993).

²⁷SADC has 14 members: Angola, Botswana, the Democratic Republic of Congo (since 1997), Lesotho, Malawi, Mauritius (since 1995), Mozambique, Namibia, the Seychelles (since 1997), South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

35. SADC promotes cooperation in sectoral activities (e.g. transport, communications, tourism, energy, industry, and mining) between members, and runs projects partially financed by foreign sources. Specific sectoral tasks with coordination offices are allotted to members; South Africa is in charge of coordinating SADC's finance and investment. In late 1994, a decision was taken to set up a regional rapid-deployment peacekeeping force. The creation of a regional development bank and a regional Parliament is provided for in the SADC Treaty. SADC holds consultative conferences with cooperating governments and international agencies. In September 1994, SADC and the EU launched a joint cooperation programme in areas such as trade promotion and control of illegal drug trafficking.²⁸

36. The SADC treaty provides for protocols that will set out principles and procedures under which member States will conduct their cooperation in specified areas. A Protocol on Shared Watercourse Systems was signed in 1995 and four others were signed at the Maseru (Lesotho) Summit in August 1996. The four protocols deal with: illicit drug trafficking; energy; transport, communication and meteorology; and trade. The Trade Protocol, which was expected to be finalized in 1997, had been ratified only by Mauritius.²⁹ The Protocol aims to establish a Free Trade Area (FTA) in the SADC region: it provides for intra-SADC trade liberalization, with the removal of tariff and non-tariff barriers within eight years from its entry into force.

37. The timeframe and the process that would lead to the establishment of the FTA will be determined by the Committee of Ministers responsible for trade matters, and may be asymmetrical; countries with higher tariff rates would be the first to start lowering their tariffs.³⁰ The Committee will also take into account sensitive sectors or products in each Member. SACU members will make a common tariff commitment. Provisions exist under the protocol for freedom of transit within the community and rules of origin (Chapter III(2)(vii)). Intra-SADC trade - particularly in food and beverages; agricultural, mining and chemical products; textiles and clothing; and wood products - increased by about 12.4% between 1990 and mid-1996.³¹

38. The treaty also provides for a protocol to constitute a dispute tribunal. The tribunal will adjudicate those disputes arising from the treaty between Members that cannot be settled amicably (Article 32 of the treaty). Members of the tribunal will be appointed for a specified period. Decisions of the tribunal will be final and binding.

(iii) Bilateral agreements

39. South Africa has bilateral trade agreements with two southern African countries, Malawi and Zimbabwe. The agreements apply only to imports into South Africa (but not into the rest of the SACU area). The goods specified in the 1964 trade agreement between South Africa and Zimbabwe are subject to various conditions: certain items are subject to concessional tariff rates or tariff quotas, including dairy products, potatoes, birds, eggs, cheese and curd, and certain cereal groats and meals, oil seeds and oleaginous fruits on which 100% concessions are granted; others, including live horses, asses, mules and hinnies; cotton waste, including yarn waste and garnetted stock; metal bedsteads are exempted from customs duty; certain products (e.g. specified types of woven fabrics of cotton) are subject to concessional tariff rates when they meet specified levels of Zimbabwean content, 75%

²⁸EIU (1996) and Europa (1995).

²⁹The Protocol on Trade was not signed by Angola.

³⁰Marchés Tropicaux, 30 August 1996, and Jeune Afrique Economie, No. 225, 16 September 1996.

³¹SADC (1997).

in most cases. Concessional customs duties are granted by Zimbabwe on certain products exported by South Africa.

40. The 1990 agreement with Malawi allows duty-free imports (free of customs duty but not excise tax) of all goods grown, produced or manufactured in Malawi; 25% Malawian content - unless otherwise specified - and final processing in Malawi are required for duty-free imports of manufactures. South African rough and uncut diamonds may be exported to Malawi exempt from export duty, provided they are to be used for industrial purposes. Provisions exist under the agreement for anti-dumping, countervailing and safeguard actions on imports from the other member country.³²

41. South Africa also grants preferential tariff treatment to a list of products from Mozambique, including fish, shrimp, prawns, rock lobsters, cashew nuts, citrus fruit, coconut oil, wooden furniture, cigarettes, tyres and tubes, clothing, textiles, and cotton-seed oilcake. These goods are admitted duty free, within annual quota limits (Table II.3), if the *ad valorem* MFN rate is lower or equal to 3%; they are subject to rates up to 3% if the *ad valorem* MFN rate is higher than 3%. The goods must be for consumption only in South Africa and Botswana and 35% of their production cost must have been incurred in Mozambique.

Table II.3

Quotas on imports from Mozambique

Tariff heading	Description	Annual quota
03.02	Fish, fresh or chilled	2,000 tonnes
03.03	Fish, frozen	
03.05	Fish, dried	
03.06.11	Crayfish	200 tonnes
03.06.13	Shrimps and prawns	2,500 tonnes
03.06.14	Crabs, frozen	500 tonnes
03.06.19	Langoustines	1,000 tonnes
03.07.4	Squid	100 tonnes
03.07.5	Octopus	
ex 03.07.91 ex 03.07.99	Clams, live, fresh, chilled, frozen, dried, salted or in brine	50 tonnes
08.01.30 2006.00.90	Cashew nuts	1,000 tonnes
08.05	Citrus fruit	5,000 tonnes
15.13.1	Coconut oil	5,000 tonnes
15.18	Cashew nut shell liquid	500 tonnes
23.06.10	Cotton-seed oil-cake	6,000 tonnes
24.02.20	Cigarettes	US\$600,000
40.11	New tires	800 tonnes
40.13	Inner tubes	30 tonnes
52.08 to 52.12	Cotton fabrics	US\$500,000
55.15.11.37	Texlene/Trevira woven fabrics (70% polyester, 30% viscose)	US\$835,000
61.01 to 61.14 62.01 to 62.12	Clothing	US\$790,000
63.01.30 63.01.40 63.01.90	Blankets	US\$250,000
68.11.20.10	Asbestos-cement roofing tiles	US\$300,000
94.03	Wooden furniture	US\$500,000
Several	Handicrafts	US\$300,000

Source: Information provided by the South African authorities.

³²GATT (1993).

42. South Africa is negotiating an agreement for trade and development with the European Union (EU). The bilateral agreement is expected to cover economic development and cooperation, as well as political dialogue; it will contain a clause to confirm both parties' obligations in terms of the General Agreement on Trade in Services (GATS) of the WTO. It is expected that the agreement will provide for a free trade area between South Africa and the EU after a transition period during which trade barriers will be dismantled. It will be asymmetrical in both content and timing; the EU will open its market to South African exports at a faster pace than vice versa. Detailed negotiations in this regard are expected to start during the second half of 1997.

43. The adoption of a proposed agreement has been delayed, *inter alia*, by the exclusion of some of South Africa's agricultural exports from the accord. Products excluded from the negotiating mandate voted by the EU Council of Ministers represent some 39% of South Africa's exports of goods to the EU and include wine, cut flowers, fruit, fruit juice and jams.³³

44. According to the authorities, the future agreement will take into account South Africa's obligations under the WTO Agreements. During the negotiations, South Africa will also be sensitive to the impact the agreement may have on the regional economy. According to the authorities, costs involved by the future agreement for both South Africa and southern Africa have to be fairly distributed between South Africa and the EU. An Agreement on Science and Technology was signed in December 1996 and two other agreements (on wine and spirits, and on fisheries) are to be negotiated.

45. A protocol to the Lomé Convention to accommodate South Africa's partial accession was finalized in April 1997. The protocol provides for the eligibility of South African companies to tender for European Development Fund (EDF) projects in ACP states.³⁴ However, South Africa will not be eligible for non-reciprocal trade preferences and access to EDF funding.

46. South Africa has double taxation avoidance agreements with Botswana, France, Germany, Israel, Lesotho, Malawi, Namibia, Netherlands, Romania, Swaziland, Sweden, Switzerland, Tanzania, Uganda, the United Kingdom, Zambia and Zimbabwe. South Africa has also entered into sea and air transport agreements with Belgium, Brazil, Chinese Taipei, Denmark, Finland, France, Greece, Ireland, Italy, Japan, Norway, Portugal and Spain.

(iv) Other agreements

47. South Africa participates in the Multilateral Investment Guarantee Agency (MIGA) of the World Bank. Canada, the EU, Hungary, Japan, Norway, Switzerland and the United States grant GSP status to South Africa.

³³The Courier No. 159, September-October 1996, and International Trade Reporter, Vol. 13, No. 14, 3 April 1996.

³⁴ACP is the acronym of African, Caribbean and Pacific.