

Capital account transactions	<p>1997: deregulation of indicative limits set for current account foreign exchange transactions in respect of payments of subscriptions, director's fees, congress/seminar/conference/examination fees, medical expenses, alimony payments, advertising payments, etc.</p> <p>1997: increase in maximum amount allowed to Namibian residents travelling abroad from N\$60,000 to N\$80,000 and removal of differential allowance for travellers to neighbouring countries (previously set at N\$20,000).</p> <p>1997: introduction of an annual study allowance for Namibians studying abroad of N\$80,000 (N\$160,000 for student accompanied by spouse).</p> <p><u>Recent changes:</u></p> <p>1996: remittance of dividends without prior approval by the Bank of Namibia.</p> <p>1996: free remittance of proceeds from the local sale or redemption of non-resident owned assets.</p> <p>1996: introduction of assets swap facility.</p> <p>1997: increase in limit in respect of foreign direct investment from N\$20 million to N\$30 million</p> <p>1997: introduction of a new facility of N\$50 million for approved projects in SADC.</p> <p>1997: allowance to Namibian corporations to raise foreign financing on the strength of their local balance sheet.</p> <p>1997: allowance to Namibian institutional investors to source in 1997 offshore investment of up to 3% of new inflow of funds during 1996 subject to an overall limit of 10% of total assets.</p> <p>1997: allowance to Namibian institutional investors to invest in 1997 up to 2% of the net inflow of funds during 1996 in securities listed on registered stock exchanges in any SADC member country.</p>

Source: Bank of Namibia.

### (3) Recent Economic Performance

#### (i) Growth

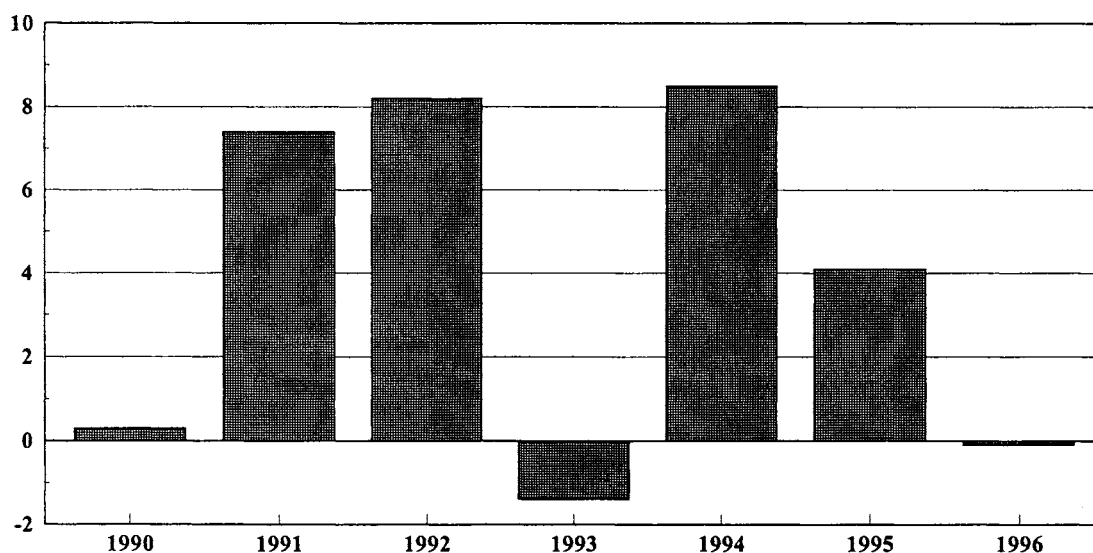
18. The Namibian economy is characterized by erratic up- and down-swings, which result primarily from Namibia's vulnerability to external shocks and adverse climatic conditions. Factors such as the severe drought Namibia experienced over the last few years; the world market recession for mineral products, including the quota for diamonds imposed by the Central Selling Organisation (CSO); adverse climatic conditions affecting fishing in the Namibian Exclusive Economic Zone (EEZ); and the general recession in the world economy of the early 1990s have been serious impediments to economic growth.

19. Overall, Namibia experienced real growth during the period under review, except in 1993 (Chart I.1). This fall can mainly be attributed to the severe drought of 1992/93 and the 25% cutback in the internationally allocated quota to the Namibian diamond industry by the CSO. In 1994 the economy recovered, *inter alia*, due to the lifting of the CSO quota and improved climatic conditions, and real GDP growth showed a marked increase. This was followed by a gradual downward trend, again due to drought and adverse oceanic conditions for the fishing industry, until it reached its 1996 low level. Reduced fishing quotas for the different fish species and the zero catch for pilchards during the 1996 season, as well as the reduction in the output of both mining and agriculture have contributed to this downward trend. The decline in mining production resulted from a depression in world market prices, as well as a prolonged strike at the Tsumeb Corporation Limited (TCL) mine in 1996, while the long and widespread drought resulted in a fall on agricultural production.

20. The composition of GDP by economic activity for 1990 and 1995 is shown in Chart I.2: the services sector (other than government) was the largest contributor to GDP during the period under review, including: tourism, transport and communications, financial services, real estate and business services. Its contribution rose from 29.3% in 1990 to 31.2% in 1995. The share of government services in GDP increased from 25.1% in 1990 to 27.7% in 1995, despite efforts to rationalize and reduce the public service. The contribution of the mining sector dropped from 21.3% in 1990 to 11.2% in 1995. The agricultural and manufacturing sectors both contributed slightly more in 1995 compared to 1990, rising from 10.4% to 11.7% and from 7.3% to 8.9% respectively.

**Chart I.1**  
**GDP growth, 1990-95**

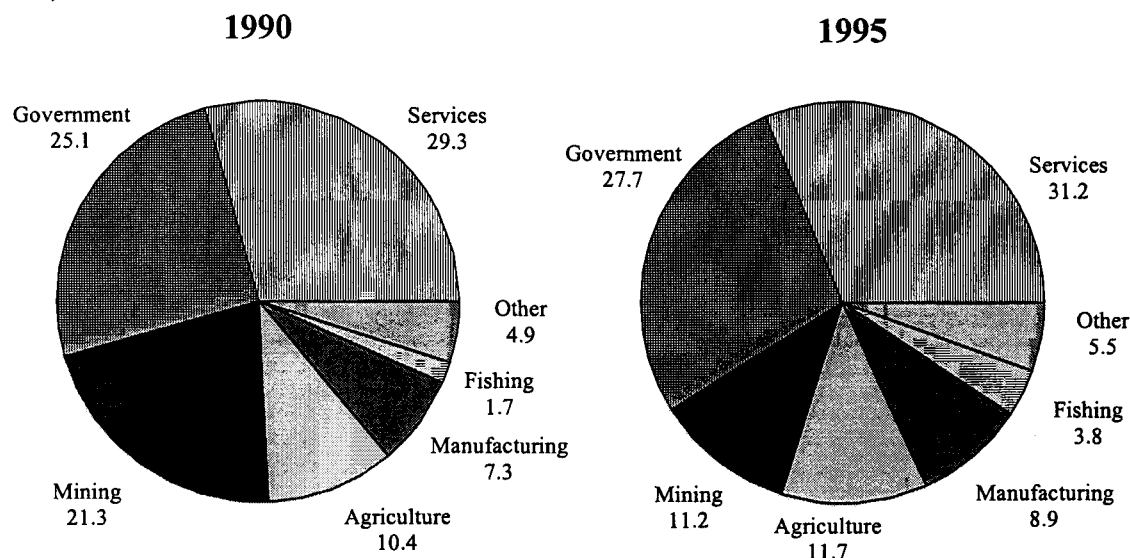
(Per cent)



Source: CSO Statistical Abstract, 1996.

**Chart I.2**  
**Composition of GDP, 1990 and 1995**

(Per cent)



Source: CSO Statistical Abstract, 1996.

21. According to the First National Development Plan (NDP1), covering the period 1995/96-1999/2000, annual economic growth is projected at 5%. The recent performance of the Namibian economy will probably require the downward adjustment of this growth target; however, overall prospects for GDP growth look positive for 1997. With extensive rainfall, agricultural production is expected to increase substantially with positive linkages to the food processing industry. In addition, the Government has recently announced an increase in the total allowable catch (TAC) for pilchards and horse mackerel, primarily motivated by the recovery of the marine environment. This would not only be beneficial to the fishing industry, but also have an accelerating effect on the rest of the economy due to forward and backward linkages.

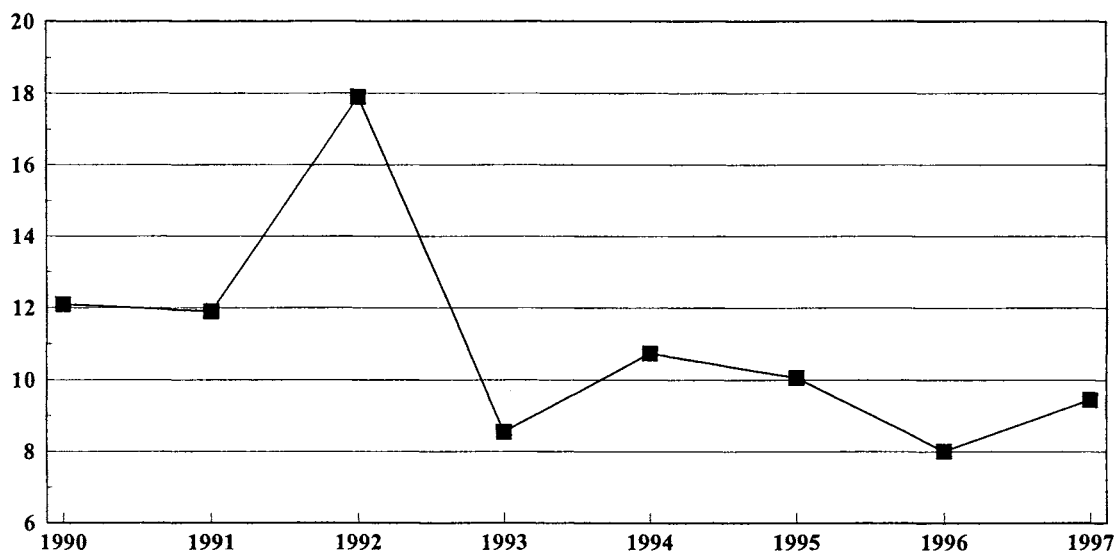
## (ii) Inflation

22. Namibia's inflation rate is measured by the 12-month increase in the Consumer Price Index (CPI) for the capital, Windhoek (Chart I.3).<sup>3</sup> As such, it does not reflect the whole of Namibia. Namibia's inflation is primarily imported from South Africa, since 85% of Namibia's imports are sourced from its southern neighbour. Since 1993, annual average inflation has fluctuated around 10%; the high rate of 18% in 1992 can be attributed to an increase in fuel prices and growth in money supply during that year. Following a considerable reduction in one of the major CPI components, food, inflation for 1993 declined. Average inflation for 1997 was 9.5%, with a peak of 10.3% during May and a low of 7.9 during September.

<sup>3</sup>The CSO intends to develop a National CPI, covering price developments throughout the country, but it is not yet known when this new method will be introduced.

**Chart I.3****Annual inflation rate, 1990-97**

(Per cent)



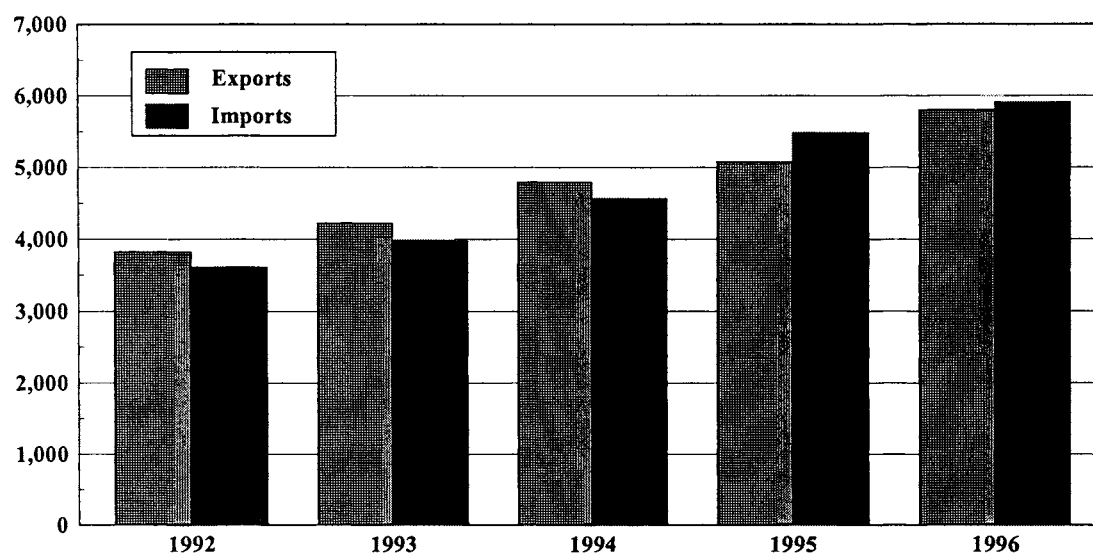
Source: BoN Annual Report, Windhoek, 1992-95; and Government of Namibia.

(iii) Composition and direction of trade

23. Detailed statistics on Namibia's exports are not readily available. Namibia's imports are reasonably well documented for the years 1993 to 1995. Capturing of 1996 imports had only been partially completed by end-June 1997. The Bank of Namibia's trade statistics are presented in Chart I.4 and Table I.5. The figures show an interesting trend-break from 1995 when the value of exports no longer exceeded that of imports. The deficit is small, however, and the external current account has been reasonably in balance over the past five years. The higher value of imports has been mainly due to the depreciation of the rand, resulting in a higher N\$ recorded value.

**Chart I.4**  
**Exports and imports, 1992-96**

(N\$ million)



Source: BoN, 1996.

24. Currently, as noted, some 85% of all Namibia's imports are sourced from South Africa, while only about one third of Namibia's exports go to South Africa. Imports are mainly in the form of consumer and intermediate goods, food products and inputs required for local production purposes. The main export earners for Namibia are: diamonds, other mining products, and food and live animals (including fish and fish products). The principal market destinations for Namibia's exports are listed in Table I.6.

25. Tables AI.1 and AI.2, contain a detailed analysis of the source of imports over N\$1 million in any given year, by HS chapter and by country for 1993-95.

**Table I.5**  
Trade statistics, 1990-96  
(N\$ million and per cent)

	1990	1991	1992	1993	1994	1995	1996
<b>Exports (f.o.b.)</b>	<b>2,809</b>	<b>3,376</b>	<b>3,825</b>	<b>4,221</b>	<b>4,794</b>	<b>5,076</b>	<b>5,796</b>
- Diamonds	849 (30.2%)	1,222 (36.2%)	1,350 (35.3%)	1,515 (35.9%)	1,486 (30.9%)	1,765 (34.8%)	2,282 (39.4%)
- Other mining products	949 (33.8%)	792 (23.5%)	757 (19.8%)	859 (20.4%)	906 (18.9%)	890 (17.5%)	1,070 (18.5%)
- Food and live animals	698 (24.8%)	964 (28.5%)	1,131 (29.6%)	1,139 (26.9%)	1,672 (34.5%)	1,754 (34.6%)	2,096 (36.2%)
- Manufact. products	262 (9.3%)	352 (10.4%)	538 (14.1%)	655 (15.5%)	655 (13.7%)	589 (11.6%)	265 (4.6%)
- Other commodities	51 (1.8%)	46 (1.4%)	49 (1.3%)	75 (1.8%)	75 (1.6%)	78 (1.5%)	83 (1.4%)
<b>Imports (f.o.b.)</b>	<b>2,892</b>	<b>3,092</b>	<b>3,615</b>	<b>3,975</b>	<b>4,564</b>	<b>5,481</b>	<b>5,908</b>

Source: Bank of Namibia.

**Table I.6**  
Principal destinations of exports

	World	RSA	EU	U.S.	SADC	Other
Mining						
Diamonds	x					
Uranium	x					
Copper	x	x				
Gold		x				
Lead/Zinc		x				
Various derivatives		x				
Salt		x			x	
Dimension stone		x	x			
Cement					x	
Marble dust		x				
Fish and fish products						
Hake		x	x	x		
Rock lobster						x
Pilchards		x				
Horse mackerel		x			x	
Fish meal		x				
Live animals						
Weaners		x				
Cattle on the hoof		x				
Smallstock		x				
Hides		x	x			
Processed meat						
Beef carcasses		x				
Beef cuts		x	x			x
Canned meat		x				
Sausages and similar products		x	x			

Table I.6 (cont'd)

	World	RSA	EU	U.S.	SADC	Other
Smallstock carcasses		x				
Ostrich meat and products						
Ostrich cuts		x	x	x		
Ostrich skins		x	x	x		
Ostrich eggs			x	x		
Ostrich feathers		x				
Grains						
incl. re-exports and food aid						
Maize					x	
Wheat					x	
Other agronomic products						
Melons			x			
Grapes			x			
Beverages						
Beer		x	x		x	
Soft drinks		x	x		x	
Furniture						
Furniture kits					x	
Building materials					x	
Chemicals					x	
Other manufactured goods						
Foam mattresses					x	
Packaged sugar					x	

Source: Trend Line Consultants, Windhoek, Namibia, 1997.

26. Namibia still relies heavily on exports of ores and minerals. In 1996, the export of diamonds alone contributed 39.4% to total export earnings, with a further 18.5% from the export of other mining products. Thus far, prospects look positive for the expansion of exports in other sectors, particularly if the EPZ initiative develops as intended (Chapter II). Other growth sectors for exports are the fish industry and the tourism sector. The positive trend in these sectors since independence is expected to continue. There has also been some expansion since independence, in exports of non-traditional agricultural exports, including ostrich products (skins, meat, eggs, feathers, etc.), melons, grapes, and various medicinal plants (e.g. devils claw). In particular, the ostrich industry is expected to become an important generator of foreign currency.

### Investment

27. Foreign direct investment (FDI) inflows were positive throughout the reporting period 1990-95, peaking at N\$333 million in 1991. The capital account deficit contracted substantially in these years. However, despite the introduction by the Ministry of Finance of a condition that a certain portion of pensions and assurance investments and trust funds have to be invested in Namibia, which resulted in higher net portfolio investments, the deficit expanded substantially between 1993-95 mainly due to a negative trend in long term investments and FDI flows (Table I.7).

28. Both public and private sector investment grew steadily from 1990 to 1995. Gross fixed capital formation was recorded at N\$1,091 million for 1990, increasing to N\$2,558 million for 1995. In terms of GDP composition, gross fixed capital formation trends are shown in Table I.8.

**Table I.7**  
**Capital and financial account transactions, 1990-95**  
(N\$ million)

	1990	1991	1992	1993	1994	1995
<b>Capital transfers (net)</b>	<b>110</b>	<b>81</b>	<b>92</b>	<b>89</b>	<b>154</b>	<b>158</b>
<b>Direct investment abroad</b>	<b>-3</b>	<b>-18</b>	<b>5</b>	<b>-29</b>	<b>21</b>	<b>-8</b>
Equity capital	0	-1	10	-4	2	-5
Re-investment earnings	1	-6	-5	3	17	7
Other capital	-4	-11	0	-28	2	-10
<b>Direct investment in Namibia</b>	<b>76</b>	<b>333</b>	<b>297</b>	<b>127</b>	<b>183</b>	<b>171</b>
Equity capital	94	79	25	13	72	97
Re-investment earnings	-113	63	161	82	123	140
Other capital	95	191	111	32	-12	-66
<b>Portfolio investment</b>	<b>28</b>	<b>-70</b>	<b>73</b>	<b>246</b>	<b>130</b>	<b>381</b>
Equity	-23	-45	-3	-13	84	128
Debt	51	-25	75	259	46	253
<b>Other long-term investment</b>	<b>-414</b>	<b>-679</b>	<b>-828</b>	<b>-774</b>	<b>-1,146</b>	<b>-922</b>
<b>Other short-term investment</b>	<b>-211</b>	<b>-82</b>	<b>154</b>	<b>239</b>	<b>245</b>	<b>106</b>
<b>Foreign exchange assets</b>	<b>-95</b>	<b>34</b>	<b>19</b>	<b>-298</b>	<b>-266</b>	<b>-105</b>

Source: CSO Statistical Abstract, Windhoek, 1996 (Table 15.5a).

**Table I.8**  
**Gross fixed capital formation, 1990-95 (rates of growth)**

1990	1991	1992	1993	1994	1995
21.9%	16.5%	20.9%	22.6%	21.6%	22.3%

Source: Government of Namibia.

29. These increases can mostly be ascribed to large investments in exploration, buildings and construction work, equipment for transportation and the exploitation of minerals. Total capital formation within the public sector expanded by 25.6% during 1994, but only by 6.5% for 1995. It is expected that public sector investments will show an upward trend for the last three years of NDP1 during which a considerable number of capital projects are planned.



## II. TRADE AND INVESTMENT REGIME

### (1) Institutional Framework

1. The Namibian Constitution provides for a clear separation of powers among the Executive, legislature and judiciary. All laws and policies of the Government, including those dealing with trade and with intellectual property, services and foreign direct investment are formulated by the responsible Ministries for presentation in Cabinet. After approval by Cabinet, the draft laws are tabled in Parliament as Bills; on acceptance by the National Assembly, they are referred to the National Council (the second chamber) for endorsement. Only after acceptance by both houses, can a Bill be presented to the President for enactment. The judiciary has no direct influence in policy formulation and implementation; its role in the law-making process is to ensure that laws passed by Parliament conform to the constitutional provisions.

2. Namibia is a parliamentary multi-party democracy. At present, the South West African People's Organisation (SWAPO), has a two-thirds majority in Parliament. The President, as head of the ruling party, appoints Cabinet Ministers. Interaction between Parliament and Cabinet in respect of policy formulation takes place at various levels.

3. Initiative for legislative formulation may be taken by the President, a Cabinet member, a member of the National Assembly, or a member of the National Council. Generally, Cabinet approves the policy decision by the relevant ministry to form or amend legislation; the ministry must then prepare an initial draft of the Bill, which, upon completion, is forwarded to the Ministry of Justice for fine-tuning and legal drafting. The Attorney General must also certify the Bill before it passes to Cabinet for final approval. The Bill is then tabled in Parliament, after it has been introduced by the minister. Every Bill, once passed by Parliament, requires presidential assent and publication in the Official Gazette of Namibia to acquire the status of an Act of Parliament (Article 56).

4. International agreements, including those related to trade, are negotiated and signed by the President, who is entitled to delegate that authority, usually to a minister. However, in terms of Article 63(2)(e) of the Constitution, it is Parliament's prerogative to agree to ratification. An international agreement requiring ratification is tabled in Parliament for that purpose, normally by the Minister of Foreign Affairs.

### (2) Policy Formulation

#### Consultative mechanisms

5. A number of consultative fora exist in Namibia involving the Government and private sector, to discuss trade and investment related matters, linked to Government decision-making mechanisms. These include:

- the Technical Working Group (TWG) in support of the Cross Border Initiative;

the Cross Border Initiative (CBI) is a comprehensive region-wide effort to encourage trade and investment amongst its 13 participating countries (Burundi, Comoros, Kenya, Madagascar, Malawi, Mauritius, Namibia, Seychelles, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe). CBI targets barriers to trade in the form of import tariffs, regulations restricting cross-border investments, and barriers put up by the applied foreign exchange regime. The European Union, the World Bank, the International Monetary Fund and the African Development Bank are co-sponsors of the CBI. The

Initiative is meant to serve as a catalyst to trade liberalization and investment promotion over and above the commitments by its members under similar programmes of any of the regional economic groupings (SACU, SADC and COMESA). It provides for a compensation facility to offset the economic adjustment costs resulting from trade and foreign exchange regime liberalization. In Namibia, under CBI, the Ministry of Trade and Industry (MTI) with the financial assistance of the EU, is embarking upon a comprehensive Transitional Trade and Investment Development Programme to strengthen MTI's capacity in policy development, trade analysis, trade promotion, investment facilitation, etc. In addition, direct budget support for export-processing zone (EPZ) infrastructural development has been granted. The Namibian TWG comprises public and private sector representatives from a broad range of institutions and interest groups in the Namibian economy;

- the Namibia National Chamber of Commerce and Industry (NNCCI) Private Sector Forum and Trade Facilitating Committee;
- EMERGE 2001: this consultative forum is a joint initiative by representatives from the Ministry of Finance, the Standard Bank of Namibia, and the Namibia Stock Exchange (NSE). EMERGE 2001 will focus on macroeconomic matters and evaluate alternative strategies for macroeconomic policies to take Namibia into the next millennium;
- Namibian Economic Working Group: this is a mainly private-sector forum for discussion of contemporary economic issues on an ad hoc basis.

6. In addition, the Government of Namibia may call, on an ad hoc basis, for consultative meetings with the private sector on various issues related to trade and investment policy development. The first National Development Plan (NDP1) was also supported by extensive consultations with various interest groups in Namibian society.

7. Regional and international fora for consultation and dispute resolution are, *inter alia*:

- The SACU Commission: Customs Technical Liaison Committee; Trade and Industry Committee; and the Transport Committee.

The SACU Commission, composed of Ministers of the SACU member countries, is charged with the administration of the SACU Agreement. The three Committees meet regularly, usually once a quarter, while the Commission meets once a year. In addition two committees (the Technical Committee and the Customs Advisory Committee) meet on an ad hoc basis to address urgent matters.

- Joint Permanent Commissions (JPC) with Brazil, Cuba, Ghana, Romania, Tunisia, Zambia and Zimbabwe.

JPCs provide fora, in which issues like crime control, drug trafficking, sharing of water resources of border rivers, veterinary control, energy sources, etc. are discussed at official and ministerial level.

- Various SADC and COMESA consultative fora, including the Summit of Heads of State, the Council of Ministers, the sectoral ministerial meetings, the sectoral senior officials meetings, and the secretariats for both COMESA and SADC.

In support of the operationalization and implementation of the 1996 SADC Trade Protocol, a Trade Negotiating Forum has been established, consisting of officials from the SADC member countries.

- EU/ACP consultative fora under Lomé IV: the EU/ACP Summit, the EU/ACP Council of Ministers and the ACP Secretariat.
- World Trade Organization consultative fora, including the Ministerial Conference, the General Council and Councils and Committees. Namibia is not represented through a mission in Geneva and has, therefore, limited capacity to participate in the various on-going consultative fora.
- Multilateral Investment Guarantee Agency (MIGA)
- Overseas Private Investment Corporation (OPIC)

(3) Policy Objectives

8. The Namibian Government's central policy objective is to promote economic growth; trade is seen as an important element in improving the standard of living for all Namibians. Regional and bilateral agreements constitute important elements in the trade policy framework, aimed at promoting Namibia's participation in the world economy, and increasing and improving market access for its exports.

9. In the First National Development Plan (NDP1) the general trade policy objectives for Namibia are defined as follows:

- To foster export-led economic growth in order to achieve a balanced and diversified trade pattern.
- To diversify the economic base of the country by developing non-traditional exports, through the creation of industrial parks, the promotion of the export-processing zones (EPZ's), and export incentives for manufacturers in Namibia.
- To ensure sufficient gateway linkages of the Namibian infrastructure to the Southern African region, with access to the strategic harbour of Namibia: Walvis Bay, via the Trans-Caprivi and Trans-Kalahari Highways.
- Through export diversification, to build sufficient foreign exchange reserves to increase import cover from one month to three to four months.
- To increase the domestic value added of exported items.

10. The Government is embarking upon a mix of policy initiatives to expand the manufacturing base in Namibia, including: reducing the anti-export bias for extra-SACU exports produced in Namibia; tax based incentives for manufacturing enterprises and traders; budget based training subsidies for manufacturing enterprises; support to small and medium enterprises; development of export processing zones and development of industrial infrastructure.

11. Given Namibia's limited industrial base, the Government recognizes a need for close coordination in trade and investment policy development. Promotion of foreign direct investment has been identified as a priority; to encourage such investment, tax and non-tax incentive packages with

an emphasis on manufacturing and export have been introduced (Chapter III). Export-oriented investments are also encouraged through the Namibian EPZ Development Programme.

(4) Laws and Regulations

(i) Trade

12. Namibia regards its membership of the Southern African Customs Union (SACU) as the core of its regional and global trade relations. On 1 March 1970, the SACU Agreement, signed in 1969, replaced the 1910 Customs Union, 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 as part of South Africa.

13. The aims of the SACU, as expressed in the preamble to the 1969 Agreement, are to advance economic development, in particular in the less-developed member countries, diversify their economies, and afford all parties equitable benefits arising from intra-Union and international trade. The Customs Union Commission, the administering body of SACU, meets annually in each member's capital city in turn. SACU has three technical liaison committees covering Customs, Trade and Industry, and Transport. The SACU is a full customs union, with free trade between members, a common external tariff (Chapter III), and a revenue-sharing formula by which the commonly collected revenue is distributed among members (section (5)(ii)(a) and Box II.1). The 1969 SACU Agreement has been under renegotiation since 1994, with democratization of the governance and administration of the customs union as an important objective.

14. SACU membership provides access to a "domestic" market of over 45 million people, representing close to 29% of Africa's GDP. SACU membership, however, also imposes constraints in the sense that accelerated tariff reductions cannot be pursued without joint endorsement. The Namibian authorities believe that the structure of the CET as determined by, and largely reflecting, the industrial structure of South Africa, imposes an anti-export bias on Namibian industries and limits Namibia's freedom to negotiate preferential trade agreements (PTA) with non-SACU countries. For example, it is noted, the Namibia-Zimbabwe PTA of 1992 has boosted trade between the two countries. Namibia also intended to sign such an agreement with Zambia, but this process has been put on hold for the duration of SACU renegotiations.

15. SACU is not recognized formally by the WTO as a customs union in terms of Article XXIV. In principle, SACU does not need to be subjected to the test of Article XXIV as it was already in existence before the GATT was established, and thus covered by the so-called "grandfather clause".<sup>1</sup> The authorities believe that, if it were to be notified, SACU would meet the definition of a customs union as covering "substantially all trade".

16. Imports and exports are regulated by the Import Control Act, No. 33 of 1987, and the Import and Export Control Act. There is at present no centralized point of issue for import and export certificates; no less than seven directorates in six ministries, two marketing boards and the South African Bureau of Standards (SABS) are involved in the management of import and export licences. Generally, such licences are granted automatically, except for products on a short negative list (Chapter III).

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<sup>1</sup>GATT (1947), Article I, paragraph 2 and Annex A.

(ii) Investment

17. The legislation guiding and promoting foreign direct investment (FDI) in Namibia is the Foreign Investment Act (No. 27 of 1990, amended in 1993). The Act establishes the principles regarding foreign investment, the certification of status investments and the right and obligations of holders of a Certificate of Status Investment. Foreign investors are free to set up any kind of business activity that a Namibian may undertake, and are generally subject to the same taxation and regulations as a Namibian company, except firstly, where rights are granted to a company for the exploitation of natural resources, in which case the Government is entitled to take a stake in the exploitation of those rights. Under the 1993 amendment, the Government may, in the case of natural resource allocation, choose to offer more favourable terms to Namibians. This "Namibianization" process, implemented with respect to agricultural land, mining and fishing, is motivated by the aim to integrate previously disadvantaged members or groups in society into the mainstream of economic activity, in particular natural resource oriented production. There are no equity participation limits on foreign investment, other than those that may be defined under the Namibianization process. The Act further protects the investor from expropriation and guarantees settlement of any disputes by international arbitration. The Act further established the Investment Centre within the Ministry of Trade and Industry.

18. The Certificate of Status Investment guarantees that, should in future any subsector of the economy be reserved for Namibians only, the foreign investor will still be able to continue in business, regardless of nationality. In order to qualify for Certificate of Status Investment, foreign investors are either required to invest a minimum of N\$2,000,000 or in case of the acquisition of shares in a company incorporated in Namibia, not less than 10% of the share capital for the investment must be held by the foreign national conducting the investment, or the Minister of Trade and Industry must be satisfied that the foreign investor will be actively involved in the management of the company.

19. The decision to issue a Status Investment Certificate is also influenced by the nature of the investment, e.g. its contribution to Namibia's development objectives, particularly in previously underdeveloped areas; its contribution to employment creation in Namibia, provision of training for Namibians, or use of local raw materials and locally produced goods; its potential for earning foreign exchange; or its impact on the environment.

20. Statutory guarantees for foreign investment are supported by international agreements. The laws protect investors' property from expropriation except for public purposes under an Act of Parliament; in this event, just compensation is guaranteed. In addition, Namibia is a member of the Multilateral Investment Guarantee Agency (MIGA). Bilateral Investment Protection Treaties (IPTs) have been concluded with Malaysia, Germany and Switzerland. Investment Protection Treaties usually follow the pattern of direct investment flows. In case of dispute, an investor can seek arbitration through the Namibian Courts, the International Centre for the Settlement of Investment Disputes, the United Nations Commission on International Trade Law (UNCITRAL) or any other appropriate body.

(5) Trade Agreements and Arrangements

(i) Multilateral

WTO

21. Namibia is a signatory to the Marrakesh Agreement establishing the WTO; the Government ratified the Agreement in December 1996. As a SACU member, Namibia endorsed South Africa's offer to the WTO, with a number of exceptions, notably in the Schedule on Agriculture (Chapter III).<sup>2</sup> Namibia is bound by the common SACU regime applicable to customs valuation, rules of origin and other border measures. Namibia has made specific commitments in respect of the tourism and energy (off-shore petroleum exploration) sectors under the General Agreement on Trade in Services (GATS), to attract foreign investment into these sectors (Table II.1). To the extent that private individuals are directly affected and specifically included in the WTO provisions and granted rights, such individual may invoke these provisions under Namibian law. Namibia has fulfilled the notification requirements of the WTO to the extent set out in Table II.2.

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<sup>2</sup> These exceptions are contained in Schedule XC - Namibia.

Table II.1  
Namibia's specific commitments under GATS

Mode of supply: 1) cross-border supply 2) consumption abroad 3) commercial presence 4) presence of natural persons

Subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<b>1. HORIZONTAL COMMITMENTS</b>			
All sectors included in Schedule for Specific Commitments	<p>3) Commercial presence requires that foreign service providers incorporate or establish the business locally in accordance with the provision of the Namibian Companies Act, No.61 of 1973. Enterprises with foreign investment in Namibia have the same rights and responsibilities as domestic enterprises (with two exceptions, see section 2.19).</p> <p>4) The entry and residence of foreign natural persons (service providers) are subject to the Namibian Immigration Control Act of 1993 and the Labour Act of 1995. In accordance with Namibian legislation, the employment of foreign natural persons shall be agreed upon by the contracting parties and subject to approval by the Namibian Government, and such personnel shall be employed in management and expert jobs only.</p>	None	None
<b>II. SECTOR SPECIFIC COMMITMENTS</b>			
<b>1. Business Services</b>			
<b>F. Other</b>			
f) related scientific and technical consulting services; offshore oil and gas exploration (CPC 86751)	<p>1) none</p> <p>2) none</p> <p>3) none</p> <p>4) none</p>	<p>1) none</p> <p>2) none</p> <p>3) none</p> <p>4) none</p>	
<b>9. Tourism and Travel Related Services</b>			
<b>A. Hotels &amp; Restaurants</b>	<p>1) none</p> <p>2) none</p> <p>3) none</p> <p>4) none</p>	<p>1) none</p> <p>2) none</p> <p>3) none</p> <p>4) none</p>	
<b>B. Travel Agencies &amp; Tour Operators Services</b>	<p>1) none</p> <p>2) none</p> <p>3) none</p> <p>4) none</p>	<p>1) none</p> <p>2) none</p> <p>3) none</p> <p>4) none</p>	

Source: WTO document GATS/SC/60, April 1994.

Table II.2  
Namibia's notifications under WTO Agreements as at mid-January 1998

WTO Agreement	Description of requirements	Periodicity	Document No. of most recent notification	Comments
Anti-dumping (Art. 18.5)	Laws and regulations	Once by 3.95, then changes	G/ADP/N/1/NAM/1, 13.3.97	No anti-dumping legislation
Anti-dumping (Art. 16.4)	Anti-dumping actions taken	Semi-annual	G/ADP/N/22/Add.1, 21.4.97	No actions taken up to end-1996
Agriculture (Art. 10 and 18.2)	Export subsidies	Annual (end of marketing year)	G/AG/N/NAM/1, 13.3.97	No export subsidies to end-1996
Agriculture (Art. 5.7)	Special safeguard provisions	Annual (end of marketing year)	G/AG/N/NAM/2, 13.3.97	No special agricultural safeguards were invoked in 1995 or 1996
Agriculture (Art. 18.2)	Aggregate measure of support	Annual (end of marketing year)	G/AG/N/NAM/3, 13.3.97	List of 'Green Box' measures
Agriculture (Art. 18.3)	Domestic support measures, new or modified	Ad hoc	G/AG/N/NAM/4, 13.3.97	Details of incentives through drought relief scheme introduced in June 1996
Subsidies and countervailing measures (Art. 32.6)	Laws and regulations	Once by March 95	G/SCM/N/1/NAM/1, 14.3.97	Namibia has no laws relevant to the Agreement
Subsidies and countervailing measures (Art. 25.11)	Countervailing actions taken	Semi-annual	G/SCM/N/23/Add.1, 22.4.97	As at 3 Dec. 1996, no countervailing duty actions were taken
Understanding on the implementation of Art. XVII	State trading enterprises	Annual	G/STR/N/1/NAM, 14.3.97	Enterprises in grains, meat, wool
Import licensing (Art. 7.3)	Provisions and coverage of import licensing regimes	Not specified	G/LIC/N/3/NAM/1, 18.3.97	Seasonal permits required for certain agricultural products. Phytosanitary restrictions on plants. Veterinary restrictions on animals.
Preshipment Inspection (Art. 5)	Laws and regulations	On entry into force	G/PSI/N/1/Add.6, 6.6.97	No legislation

Source: WTO documents.

## (ii) Regional

22. Namibia participates in three regional arrangements, namely: the Southern African Customs Union (SACU), the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA). Namibia is also a member of the Lomé Convention.

### (a) SACU

23. Under the SACU Agreement, members are required to apply the customs duties, including tariffs, and excise, sales, anti-dumping, countervailing and safeguard duties as well as related law, set by South Africa, to goods imported into the common customs area from third countries outside the customs union. 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 with the provisions of the SACU Agreement. Members may not impose duties or quantitative restrictions on goods imported, exported or re-exported within the SACU area (Articles 2



and 3 of the Agreement), except in specified exceptional circumstances.<sup>3</sup> Botswana, Lesotho, Namibia (since 1990) and Swaziland (the BLNS States), but not South Africa, may, following consultation, apply additional duties or increase duties for protection of infant industries and of industries deemed to be of major importance to their economy (Articles 6 and 7 of the Agreement).<sup>4</sup> Namibia has never used this provision. Exceptional restrictions 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 (Chapter IV).<sup>5</sup>

24. Rights of transit across South African territory are provided to SACU member countries under the Agreement. 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 and production of land-locked Botswana, Lesotho and Swaziland, which is directed through RSA, as well as much of Namibian trade.<sup>6</sup> All customs duties, and sales and excise taxes collected by member counties are pooled in a Consolidated Revenue Fund administered by the South African Reserve Bank. The pooled revenue is distributed to member countries. The shares of the BLNS countries are determined on the basis of a revenue-sharing formula and the residual (after BLNS countries have been paid) is allocated to South Africa.

25. The original revenue-sharing formula was based on the respective contribution of the BLS countries (Botswana, Lesotho and Swaziland, Namibia not at the time being independent) to total imports into, and consumption of excisable goods produced within, the SACU area. The 1969 formula provided for a compensation factor of 42% of the shares of the BLS countries; this factor was introduced to compensate the BLS countries for the fiscal lags in the distribution of revenue, the "price-raising" (trade diversion) and "industrial polarization" effects, and the "loss of fiscal discretion" related to the Agreement. The formula was re-negotiated in 1975 and a "stabilization factor" was added in 1977 to stabilize the revenue shares of the BLS (the BLNS since 1990) countries at 20%, and allow them to fluctuate between 17 and 23%.<sup>7</sup> In recent years, 17% has been the operative figure.

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<sup>3</sup>Article 5(1) of the SACU Agreement requires South Africa to afford the other members adequate opportunity for consultation before imposing, amending or abrogating customs duties, except in specified cases.

<sup>4</sup>Protection of infant industries is normally allowed for a maximum of eight years. However, Article 7 allows a member State to apply for protection under the Common External Tariff but the use of such protection has been restricted by various quantitative and qualitative requirements, e.g. proof of the non-availability, in the common customs area, of the good to be produced is required if a reduction of duties is requested on industrial inputs; and the supply of more than 60% of the SACU market is required if an increase in duties on final products is requested to protect new industries.

<sup>5</sup>Under the SACU Agreement, each individual member country may set and grant rebates, refunds and drawbacks.

<sup>6</sup>GATT (1993).

<sup>7</sup>The former homelands of Transkei, Bophuthatswana, Venda and Ciskei (TBVC) were subject to the same provision regarding the movement of goods and share of customs and excise revenue as the non-South African member countries, but were not accepted as members by the latter. Davies (1994).

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

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

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

where:

S = share allotted to a specific member country.

A = c.i.f. value (at the border) of imports into the country irrespective of their origin and including all duties paid or payable thereon; imports from the customs area (in particular the RSA) are thus included.

B = value of excisable and taxable (sales tax) goods produced and consumed in the country.

C = excise and sales duties paid on B.

D = c.i.f. value of imports into the SACU area, excluding intra-regional trade in common customs area.

E = customs and sales duties paid on D.

F = value of excisable and taxable (sales tax) goods produced and consumed in the SACU.

G = excise and sales duties paid on F.

R = the total revenue pool of customs, excise and sales duties, i.e. E + G.

Member countries therefore receive a (variable) percentage of the total revenue pool, to which a surcharge of 42% is added.

If the formula yields a revenue rate of less (more) than 20% an additional amount is added (subtracted) equal to the difference between the amount calculated and the amount commensurate with a 20% revenue rate, provided that the resultatory rate is not less (more) than 27 (23)%; thus the formula is applied subject to

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

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

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

**(b) SADC**

26. The Southern African Development Community (SADC) was established in 1992, replacing the Southern Africa Development Co-operation Conference (SADCC) as a vehicle for closer regional integration and balanced regional development in agricultural research, energy, transport and communication, etc. Namibia attaches great importance to this arrangement and views it as a strategy to broaden regional trade and hence economic growth for all contracting parties. SADC has 14 members: Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

27. The organs of SADC include the Summit of Heads of State and Government (the supreme policy-making body), the Council of Ministers, and the Secretariat, based in Gaborone, Botswana. SADC aims to promote regional cooperation and economic integration towards a single common

regional market, with a common currency system, 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. Specific sectoral tasks with coordination offices are allotted to member States; Namibia holds the secretariat function for the fisheries sector (Chapter IV).

28. SADC promotes cooperation in sectoral activities such as transport, communications, tourism, energy, industry and mining between member States, and runs projects partially financed by foreign sources. 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 also envisaged. SADC holds consultative conferences with cooperating Governments and international agencies once per year. In September 1994, SADC and the EU launched a joint cooperation programme in areas, such as trade promotion and control of illegal-drug trafficking.<sup>8</sup>

29. The SADC Treaty provides for protocols which 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, dealing with: illicit drug trafficking; energy; transport, communication and meteorology; and trade.

30. Namibia has signed, but not yet ratified, the August 1996 Protocol on Trade in the Southern African Development Community (SADC) Region. This protocol sets out the general framework for the establishment of a Free Trade Area amongst the SADC members over a period of eight years. It includes rules of origin to guide the implementation of the Protocol. Namibia will await the tariff reduction schedules which will guide the implementation of the Protocol, before ratification.

31. The SADC Trade Protocol stipulates the following origin criteria for intra-SADC free trade: goods "wholly produced" in the member States are either mineral products extracted from the ground or sea-bed of the member States; vegetable products harvested within the member State; live animals born and raised within the member States; products obtained from live animals within the member States; products obtained from the sea and from rivers and lakes within the member State by a vessel of the member State; products manufactured in a factory of a member State, exclusively obtained from within the member State; used articles fit only for the recovery of materials, provided that such articles have been collected from users within the member State; scrap and waste resulting from manufacturing operations within the member State; or goods produced within the member State exclusively or mainly from the above, or from materials containing no element imported from outside the member State or of undetermined origin.

32. Manufactured goods are classified as originating if the c.i.f. value does not exceed 60% of total costs of materials used in the production process, (i.e. a 40% local-content requirement), or if there is local value added of at least 35% of ex-factory costs.

33. The Treaty also provides for a protocol to establish a disputes tribunal, which will adjudicate upon disputes arising from the Treaty between member States 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.

34. Currently, Namibia's major imports from Zimbabwe (the most industrialized non-SACU, SADC partner) include chicken, sugar and confectionery, dairy products, textiles, cement, coke and

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<sup>8</sup>EIU (1996a).