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TRADE POLICY REVIEW

SOUTHERN AFRICAN CUSTOMS UNION

Report by the Secretariat

This report, prepared for the second Trade Policy Review of the Southern African Customs Union (SACU), has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from the Governments of the SACU Member countries on their trade policies and practices.

Any technical questions arising from this report may be addressed to Mr. Ricardo Barba (tel: 739 5088) or Mr. Jacques Degbelo (tel: 739 5583).

Documents WT/TPR/G/114 contain the policy statements submitted by the Governments of Botswana, the Kingdom of Lesotho, Namibia, South Africa and the Kingdom of Swaziland, respectively.

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2. Since their last Trade Policy Review (TPR) in 1998, the five member states of SACU (Botswana, Lesotho, Namibia, South Africa, and Swaziland), have continued their economic reform programmes. Further liberalization of trade and investment, driven both by their commitments in the WTO, and by their participation in bilateral and regional trade agreements, have been major features in this process.

3. SACU countries have very different levels of economic scale, structure, and development. Botswana and South Africa are upper middle-income countries (although very different in economic structure), Namibia and Swaziland are lower middle-income countries, and Lesotho is a least developed country. However, all SACU countries face common challenges such as eradicating poverty; combating HIV/AIDS; promoting sustainable economic growth and development, and a more equitable income distribution; reducing high unemployment rates; and being more fully integrated into the world economy.

4. Monetary and exchange rate policies within SACU are largely led by South Africa. Indeed, Lesotho, Namibia, South Africa and Swaziland have a Common Monetary Area (CMA) Agreement, where the loti (Lesotho's currency), the Namibian dollar and the lilangeni (Swaziland's currency) are pegged to, and freely convertible into, the South African rand at par. Although a non-member of the CMA, Botswana has pegged its currency (pula) to a basket of currencies, including the rand, and has generally contained its fluctuations against the rand. This monetary stance and the constraint on customs revenue due to SACU membership somewhat discipline fiscal policy within the customs union. This relative harmonization of policies has resulted in comparable levels of inflation (around 7% per year) throughout SACU. Nevertheless, the lack of formal harmonization of fiscal policies leaves substantial leeway for expenditure-induced public deficits. SACU countries have generally been also slow in implementing structural reforms.

5. SACU members (except South Africa) depend on a limited number of products. The share of agriculture in SACU's GDP decreased somewhat during the last few years, but it remains an important sector with linkages to other activities. Food insecurity in Lesotho, Namibia, and Swaziland has increased recently due to several factors, including unfavourable weather conditions (drought and floods), making emergency food aid necessary. Food-security objective has driven the move towards tariffs as the main trade policy instrument in the sector, although some non-tariff measures still exist.

6. Mining and quarrying provides a key anchor for growth and development, particularly in Botswana, Namibia, and South Africa, where mineral taxation, for example, has enabled the improvement of basic infrastructure and social services. Furthermore, the sector is one of the most important foreign exchange sources and a magnet for foreign investment in these countries. Large mineral endowment has meant low tariff protection, and private investment continues to be actively encouraged in the sector.

7. Certain labour-intensive manufacturing activities, particularly textiles and clothing, have expanded strongly in recent years throughout SACU, largely as a result of new incentives provided under non-reciprocal preferential arrangements. The general development of the manufacturing sector, however, has largely been hampered by supply-side constraints, such as high *production costs, limited access to financing, low capacity utilization, and low quality of products. Moreover, subject to concessions, the tariff structure (mainly the relatively high rates on semi-finished goods) is not conducive to investment in certain manufacturing activities.*

8. Export opportunities in the services sector remain largely unexploited, other than in South Africa and to some extent in Botswana and Namibia. In tourism, for example, where SACU's attractions are among the best in Africa, inadequacies in infrastructure and marketing/promotion, financial constraints, and lack of skilled labour have constrained the development of the subsector. Further liberalization and investment in services, in general, should improve the efficiency of other economic activities and the competitiveness of SACU's exports, especially by reducing costs related to, inter alia, telecommunications, transport, and energy.

(2) INSTITUTIONAL FRAMEWORK

9. SACU's trade regime remains basically the same as at the last Review. The 2002 SACU Agreement introduces significant changes in the modus operandi of the common customs area, by creating, inter alia, a new institutional structure (a Council of Ministers, a Customs Union Commission, a Secretariat, a Tariff Board, Technical Liaison Committees, and a Tribunal); a dispute settlement mechanism; the requirement to have common policies on industrial development, agriculture, competition, and unfair trade practices; and a new system regarding the common revenue pool and sharing formula.

10. In terms of coverage of trade policy instruments, the 2002 SACU Agreement is not fundamentally different from the 1969 one. Indeed, applied customs tariffs, excise duties, customs valuation, rules of origin, and contingency trade remedies remain the only domains of trade policy that, so far, are formally harmonized throughout SACU. Nevertheless, democratization of SACU's trade policy formulation is to significantly increase, with the discretion to set customs tariffs moved from South Africa's Board on Tariffs and Trade to the SACU Tariff Board. In addition, further policy harmonization, as recommended by the 2002 SACU Agreement, will increase regional trade and, if combined with multilateral liberalization and outward-orientation, will foster the integration of SACU into the world economy.

11. SACU countries are all original WTO Members. Botswana, Lesotho, Namibia, and Swaziland (BLNS) are neither signatories nor observers to any of the WTO plurilateral agreements, whereas South Africa is an observer to the Agreement on Government Procurement. All SACU countries accord at least MFN treatment to all their trading partners. They support the Doha Development Agenda, which they consider as an opportunity to address some of the current imbalances existing in the WTO Agreements and to improve the conditions of access by their exports into other markets. SACU members have not been directly involved, either as a complainant or as a defendant, in any WTO dispute settlement proceedings. SACU countries have benefited from regular WTO technical assistance. They have also been assisted by other bilateral, regional, and multilateral agencies in trade-related issues; and have requested further assistance to, inter alia, set up the national and regional institutions needed to fulfil the objectives of the customs union enshrined in the 2002 SACU Agreement.

12. All SACU countries participate in the Southern African Development Community (SADC). Some of them are signatories to other trade arrangements. For instance, Namibia and Swaziland are members of the Common Market for Eastern and Southern Africa (COMESA), a waiver so far allowing delayed implementation of trade-related provisions of the COMESA Treaty by them, and the Regional Integration Facilitation Forum (RIFF). The European Union and South Africa have concluded the Trade, Development and Cooperation Agreement

(TDCA). Moreover, South Africa, Botswana, and Namibia are involved in bilateral trade agreements. SACU member states are also currently negotiating trading arrangements with Mercosur, and the U.S., and are consulting on the possibility of negotiating other agreements.

13. SACU members are also eligible for non-reciprocal preferential treatment under the Generalized System of Preferences (GSP); the Cotonou Agreement with the EU (except South Africa); and the U.S. African Growth and Opportunity Act (AGOA), where BLNS receive "Lesser developed beneficiary" status allowing them, at least in the short run, to source textile and clothing inputs from anywhere in the world. As an LDC, Lesotho is eligible for the "Everything but Arms" initiative of the EU and participates in the Integrated Framework for Trade-related Technical Assistance.

14. SACU countries' trading regime is highly complex, as a result of their membership in several trade agreements with different provisions, goals, geographical and product coverage, and trade liberalization agenda. This structure of relationships is difficult for small administrations to manage. The moves to negotiate even more free-trade agreements, risk further complicating their trade regime and detracting from multilateral efforts, given the limited resources available.

(3) TRADE POLICY INSTRUMENTS

15. SACU's applied MFN tariff structure has been somewhat simplified, and the simple average MFN applied rate declined from 15% in 1997 to 11.4% in 2002. By ISIC sector, tariff protection on manufacturing is 11.8% (down from 15.6% in 1997); tariffs average 5.5% in agriculture (down from 5.6% in 1997); and 0.7% in mining and quarrying (down from 1.4% in 1997). Using the WTO definition, tariff protection for agricultural products is 9.6% (up from 9.4% in 1997), against 11.6% for non-agricultural products (down from 15.7% in 1997).

16. The tariff remains complex, still comprising ad valorem, specific, mixed, compound, and formula duties. The application of formula duties, based on reference prices, can hardly ensure compliance by SACU members with their obligations under the WTO Customs Valuation Agreement, nor does the imposition of non-ad valorem tariffs by SACU members while their binding commitments have been made at ad valorem rates. MFN applied tariffs are substantially dispersed, and in aggregate, display mixed escalation (positive from first to second stage of processing and negative from semi-finished to fully-processed products). Tariff reforms have eroded the margins of tariff escalation (more those of negative than positive escalation). Therefore, further tariff rationalization, through simplification of the structure and reduction of rates, should introduce more transparency in the tariff regime, reduce the need for concessions, and provide a more neutral, and hence less distorting, duty structure.

17. During the Uruguay Round, South Africa, on behalf of all SACU countries, bound about 96% of the tariff lines at the HS eight-digit level. However, there are some differences in tariff bindings among some SACU members. For Namibia, South Africa, and Swaziland, the simple average of the final bound rate is 20.9%, with tariffs on agricultural products (WTO definition) bound at ceiling rates averaging 43.5%, and tariffs on non-agricultural products bound at ceiling rates averaging 18.1%. For Botswana, tariff bindings on WTO agricultural products are identical to those of Namibia, South Africa, and Swaziland, with the exception of dairy products, wheat, maize, rice, groundnuts and sunflower seeds, and raw cotton (on which tariffs are bound at 20%). Tariff bindings on non-agricultural products are the same as those of South Africa, except for soda ash, and small tractors, on which tariffs are bound at a rate of 20%. Lesotho's bindings differ from those of Namibia, South Africa, and Swaziland in that tariffs agricultural products are bound at a ceiling rate of 200%, while on non-agricultural products they are bound at a *ceiling rate of 60%. WTO binding commitments by SACU countries leave ample margins for discretionary increases in applied rates.*

18. In addition to customs tariffs, imports are also subject to excise duties (for a group of products), levies, and value added tax (VAT) or sales tax. Each SACU country sets its own VAT or sales tax. Botswana, Namibia, and South Africa levy VAT at different rates; whereas Lesotho, and Swaziland still impose sales taxes at different rates too. Certain key non-tariff trade policy measures, such as quantitative restrictions, customs procedures, standards and technical regulations, sanitary and phytosanitary measures, competition policy, and internal taxes, are also not harmonized. Differences between SACU members in such areas may distort trade flows, and undermine the utility of having a common external tariff (CET). Therefore, harmonizing policies in these areas (as envisaged in the 2002 SACU Agreement) throughout the customs union would be more trade-friendly by reducing transaction costs for traders, and discouraging smuggling and tax evasion. This would help SACU to promote economic integration within the region, and between the SACU area and the rest of the world.

19. Due to their SACU membership, BLNS are required to implement the anti-dumping, countervailing, and safeguard measures determined by South Africa. During the period under review, South Africa, and by extension SACU, continued to be among the leading initiators of anti-dumping actions among the WTO Members. These actions generally reflect South African needs, and may therefore neglect the specific circumstances of BLNS. The need to develop contingency trade legislation at the SACU level is a priority acknowledged by all SACU members, in order to lock in the increasing liberalization of their markets. In general, all SACU countries have individually taken steps to enhance protection of intellectual property rights. Progress in restructuring, including privatizing public enterprises, in each SACU country, has been slow.

20. In South Africa, a wide variety of incentives are still available to local producers in general, and exporters in particular. Some of the incentives are subject to local-content requirements. South Africa has also established export processing zones to foster international competitiveness, particularly of its small, medium, and micro enterprises. With a few exceptions, import permits are maintained on health, sanitary, phytosanitary and environmental grounds, or under international conventions to which South Africa is a signatory. South Africa has continued to reform its government procurement system, with a view to increasing local-content of the purchases. A new Competition Act was enacted in 1998 to further address the high levels of concentration present in the economy, and anti-competitive business practices.

21. BLNS have no competition policy. Their autonomous trade policy initiatives have been confined to, inter alia, preferences to local suppliers under public procurement regimes, some quantitative restrictions, infant industry protection, internal taxation, and tax concessions for exporters and other selected activities. In areas such as standards and technical regulations, and sanitary and phytosanitary measures, practices in BLNS are de facto or de jure based on those of South Africa, with the institutions of the latter being focal points in certain cases.

(4) TRADE POLICY AND TRADING PARTNERS

22. Three SACU members have resident delegations in Geneva and participate actively in the WTO. The two non-resident members plan to open missions in Geneva shortly. In general, SACU members urge for more initiatives which will multilaterally liberalize trade in areas of particular interest to developing countries.

23. Since the last Review, SACU countries have continued the process of economic and trade reforms, although to different degrees. Most of the smaller SACU member states have introduced, or are in the process of formulating, trade-related legislation which will bring their trade regimes both more up to date and into greater conformity with WTO provisions. This development "on paper" needs to be encouraged and stimulated.

24. The 2002 SACU Agreement is meant to further integrate member states, reduce economic distortions, and ensure a more balanced outcome and more stable flow of funds to its members as a result of the new revenue sharing formula, allowing them to plan ahead more effectively their fiscal budgets. However, a decline of SACU's customs and excise revenues could result from further tariff liberalization initiatives, both at the multilateral and preferential levels; for instance, full implementation of the TDCA is expected to reduce SACU's customs revenue. Moreover, increases in health-related budgetary expenditure, notably on HIV/AIDS and poverty-related diseases, will have long-term repercussions throughout the customs union. Therefore, further fiscal reforms, including moving towards other sources of income different from the SACU revenue pool, would be necessary. More generally, the impact of the HIV/AIDS pandemic, combined with acute poverty, is sapping the structure of the domestic workforce and of society in general, and represents the greatest challenge to SACU governments and their partners.

25. SACU member states now face some hard challenges in dealing with trade policy questions. The restructuring of the SACU mechanisms themselves, while increasing democratization of the union, carries risks that the process will become heavier, more bureaucratic and possibly subject to "hijacking" by entrenched national interests. Their membership in an increasing number of overlapping preferential arrangements will make the trade regime more discriminatory, more complex, and more difficult to manage. The combination of free-trade areas and customs unions in SADC and COMESA, the TDCA, and potential free trade agreements with the United States and Mercosur, while maintaining relatively high and dispersed MFN duties, will mean that other developed and developing markets will face substantial discrimination. To this must be added the complexities of rules attached to some of these various agreements.

26. Improvement of SACU's multilateral commitments, both on goods and services, is therefore necessary to increase the evenhandedness, predictability and credibility of the trade regime. MFN liberalization would also ensure that SACU and associated trade agreements did not become inward-looking discriminatory arrangements, thereby benefiting all members. Continued structural reforms, including privatization, and further tariff rationalization would also contribute to better resource allocation. Such efforts will improve SACU's ability to attract investment. Trading partners could help by ensuring that their markets are fully open to goods produced in SACU and by providing more technical assistance.

I. ECONOMIC ENVIRONMENT

(1) MAIN CHARACTERISTICS

1. The five Member States of the Southern African Customs Union (SACU), Botswana, Lesotho, Namibia, South Africa, and Swaziland, cover a land area of 2.7 million square kilometres. In 2001, SACU countries had a combined population of around 51 million (Table I.1); South Africa accounted for 44 million (86.3% of the total). About half of SACU's population lives in urban centres, and is concentrated mainly around the capital cities. Botswana, Namibia, and particularly South Africa, have relatively well developed basic infrastructure, such as transportation and telecommunications networks, and social services (e.g. education and health); whereas Lesotho and Swaziland are rural countries, heavily dependent on their neighbours for access to world markets because of their very limited infrastructure facilities and landlocked position.

Table I.1
SACU's selected socio-economic indicators, 1997-01

	1997	1998	1999	2000	2001
Area ('000 km)	2674.8	2674.8	2674.8	2674.8	2674.8
Population (million)	47.3	48.3	49.4	50.2	50.8
Urban (%)	47.4	47.7	47.9	..	..
Density (per cent per km)	17.7	18.1	18.5	18.8	19.0
Population growth rate (per cent per year)	2.4	2.2	2.2	1.7	1.1
Life expectancy	51.6	50.0	48.6	..	..
GDP (US$ million)	159,770.0	144,082.3	141,386.6	138,583.5	124,323.3
GDP per capita (US$)	3,377.8	2,980.6	2,862.7	2,759.0	2,447.3
Share of real GDP (per cent)					
Agriculture	4.8	4.5	4.6	4.7	4.5
Mining and quarrying	7.8	7.9	7.6	7.4	7.6
Manufacturing	20.0	19.5	19.0	19.1	19.1
Water, electricity and construction	6.8	6.8	6.7	6.8	6.8
Services	60.5	61.3	62.1	62.0	62.0
Exports of goods and non-factor services (US$ million)	42,344.1	39,979.8	38,655.0	42,396.6	40,800.1
Imports of goods and non-factor services (US$ million)	41,306.9	39,221.7	36,413.5	38,848.2	36,248.2
(Exports + imports) /GDP (per cent)	52.4	55.0	53.1	58.6	62.0

.. Not available.

Source: IMF (2003), IFS, January; IMF Staff Country Report N°00/13; Reserve Bank, online www.reservebank.co.za; Bank of Namibia, *Quarterly bulletin*, p.45; Bank of Namibia online information; Central Bank of Lesotho, online information ; and Republic of Botswana (2002), *Annual Economic Report*.

2. The five SACU states are at different levels of economic development. Botswana and South Africa are classified as upper middle-income countries (Annexes 1 and 4, respectively), while Namibia and Swaziland are considered as lower middle-income countries (Annexes 3 and 5), and Lesotho is a least developed country (Annex 2). However, all SACU countries face common challenges relating to acute poverty problems, high prevalence of the HIV/AIDS pandemic (section (4) below), very distorted and unequal income distribution, and high unemployment rates (amongst the highest in the world).

3. The shares of the different sectors in the economy of SACU have remained stable since its last Trade Policy Review (TPR). In 2001, services accounted for 62% of SACU's GDP (up from 60.5% in 1997), followed by manufacturing with 19.1% (down from 20% in 1997), mining and quarrying with 7.6% (down from 7.8%), and agriculture with 4.5% (down from 4.8%). Nevertheless, while the economy of South Africa is relatively diversified (Annex 4, Chapter I(1)), Botswana, Lesotho, Namibia, and Swaziland (BLNS) are dependent on a limited number of products, such as diamonds and beef for Botswana (Annex 1, Chapter I(1)); diamonds, fish and meat for Namibia (Annex 3, Chapter I(1)); water, clothing and textiles for Lesotho (Annex 2, Chapter I(1)); and sugar, and chemicals for food industries for Swaziland (Annex 5, Chapter I(1)).

(2) MACROECONOMIC DEVELOPMENTS

4. SACU countries have individually experienced generally modest economic growth since 1997 (except for Botswana with higher real GDP growth rates). This performance reflects, *inter alia*, low levels of investment, high production costs aggravated by substantial depreciation of local currencies, and bad weather conditions (drought and floods) in recent years. As a result of the depreciation, SACU's total nominal GDP declined from US$159.7 billion in 1997 to US$124.3 billion in 2001, despite the positive growth of its real GDP.

5. Monetary policy within SACU is largely led by South Africa. Lesotho, Namibia, Swaziland, and South Africa form a Common Monetary Area (CMA), within which the loti (Lesotho's currency), the Namibian dollar, and the lilangeni (Swaziland's currency) are pegged to the South African rand at par (Chapter II(3)). Although not a member of the CMA, Botswana has pegged its currency (pula) to a basket of currencies, including the rand, and has contained its fluctuations against the rand (Annex 1, Chapter I(2)). In practice, therefore, BLNS countries follow, to a great extent, South Africa's monetary and exchange rate policies (Annex 4, Chapter I(2)).

6. The monetary stance and the constraint on customs revenue due to SACU membership discipline fiscal policy somewhat within the customs union. This relative harmonization of policies has resulted in comparable levels of inflation (around 7% per year) throughout SACU. Nevertheless, the lack of formal harmonization of fiscal policies leaves room for expenditure-induced public deficit. Moreover, SACU countries have generally been slow in implementing structural reforms.

(3) TRADE AND INVESTMENT PERFORMANCE

7. The economies of the SACU countries are increasingly dependent on international trade. The ratio of their total imports and exports to GDP increased from 52.4% in 1997 to 62% in 2001 (Table I.1).

8. Since the last Review, the SACU, as a whole, has run an increasing goods and non-factor services surplus, which rose from US$1,037.2 million in 1997 to US$4,551.9 in 2001 (Table I.1), partly as a result of the real depreciation of the national currencies led by the South African rand. This increasing trade surplus is mainly the result of the positive performance by Botswana, and South Africa, whereas Lesotho, Namibia, and Swaziland have continued to have trade deficits since the last TPR (Chapter I(3) in end Annex).[1]

[1] There is a lack of reliable trade statistics in the SACU area, partly because of the difficulties of collecting import and export data within the customs union. Once within the SACU area, goods circulate freely; internal border controls within the customs area are not strong; and products originally destined for the smaller markets, like Lesotho and Swaziland, may well be broken-bulk within South Africa, the main port of entry of goods from outside SACU.

9. Traditionally, intra-SACU trade has been characterized by the importance of South Africa in BLNS trade. It is estimated that around three quarters of total BLNS trade is with South Africa, whereas South Africa's trade with its SACU partners is relatively minor, given its diversification in terms of export destinations and import sources (Annex 4, Chapter I(3)). In 1998/99, the total trade surplus between South Africa and the BLNS exceeded R20 billion.2

10. Outside SACU, the EU, especially the United Kingdom, continues to be the main export market for SACU countries, followed by the United States, especially since the introduction of the African Growth and Opportunity Act (AGOA) in April 2000 (Chapter II(6)). Exports from SACU to the Southern African Development Community (SADC) increased from R3 billion to R22 billion during 1990-00, a weighted annual average growth rate of 22%.[3] Amongst the leading export products of the SACU countries outside the common customs union are: diamonds, platinum group metals, meat, fish, textile, clothing, and sugar and related products. Outside SACU, imports largely originate from the EU, United States, and other African countries. Imports consist mainly of machinery, metals, transport equipment (including vehicles), food and beverages, and supplies for the clothing industry.

11. Foreign direct investment (FDI) inflows into SACU have been low, albeit on a rising trend. In terms of sectoral distribution, FDI inflows are largely channelled to mining and quarrying, manufacturing, particularly the clothing industry, and finance and services. By origin, the EU followed by the United States and some Asian countries are the main sources of FDI into SACU. Since the last TPR of SACU, South Africa has become one of the leading investors in the economies of its SACU partners (Annex 4, Chapter I(3)).

(4) OUTLOOK

12. SACU's economic outlook depends on global economic prospects, especially in the EU and the United States, the two principal destinations for products outside the customs union. Within SACU, South Africa remains the engine of growth. An improvement in the performance of certain SACU industries, such as textiles and clothing, is foreseen through continued multilateral liberalization, and market-access conditions under, inter alia, the African Growth and Opportunity Act (AGOA), the Cotonou Agreement, the Trade, Development and Cooperation Agreement (TDCA) between the EU and South Africa, and SADC.

13. Once fully implemented, the 2002 SACU Agreement is expected to: make its members more efficient through economies of scale resulting from the harmonization of certain key non-tariff trade policy measures, such as customs procedures; result in a more cohesive regional market by developing common policies on industrial development, agriculture, competition, and unfair trade practices; and increase intra-SACU trade.

14. The new revenue-sharing formula of the 2002 SACU Agreement is also meant to ensure a more stable flow of funds to its members, allowing them to plan their fiscal budgets more effectively. Nevertheless, a decline of SACU's customs and excise revenues could result from further tariff liberalization initiatives, both at the multilateral and preferential levels. In particular, full implementation of the TDCA might reduce SACU's customs revenue.

15. The average annual growth rate of SACU's population decreased from 2.4% in 1997 to 1.1% in 2001, largely as a result of HIV/AIDS. The high prevalence of this pandemic has compounded SACU countries' development challenges, and has contributed to the reduction of life expectancy from 51.6 years in 1997 to 48.6 years in 1999.

[2] DTI (2001).
[3] DTI (2001).

16. The expected increase in direct HIV/AIDS-related budget expenditure will have long-term budgetary repercussions throughout the customs union. Moreover, continued depreciation of the South African rand, and by extension of the BLNS national currencies, could further undermine the efforts to bring inflation under control, even if this might somewhat enhance SACU's external competitiveness. Increases in world oil prices and unfavourable weather conditions might also exert inflationary pressures.

17. SACU's economic outlook also depends on the evolution of the New Partnership for Africa's Development (NEPAD), aimed at eradicating poverty, placing African countries, both individually and collectively, on a sustainable growth and development path, and promoting the integration of the continent into the globalization process (Annex 4, Chapter I(4)).

II. THE COMMON REGIME

(1) OVERVIEW

1. The Southern African Customs Union (SACU) is the oldest customs union in the world. The ancestry of the present SACU can be traced back to the 1889 Customs Union Convention between the Colony of the Cape of Good Hope, and the Orange Free State. Lesotho (then Basutoland) joined the Union on 1 July 1891, and Botswana (then Bechuanaland) on 1 July 1893. Swaziland acceded to the Union on 11 October 1904. In 1910, Cape Colony, Natal, Orange Free State and Transvaal joined to form the Union of South Africa, and a new Customs Union arrangement was signed between South Africa and the three High Commission territories of the former British protectorates of Botswana, Lesotho, and Swaziland. The arrangement came into force on 1 July 1910.

2. The SACU Agreement was concluded on 11 December 1969[4], and entered into force on 1 March 1970, thereby replacing the 1910 Customs Union arrangement.[5] Namibia became the fifth *de jure* member of SACU on 10 July 1990; it had been a *de facto* member during the time it was administered by South Africa.[6] A revision of the 1969 SACU Agreement was completed in 2002.

3. Under the SACU Agreement, members could enter separately into trade agreements with countries outside the customs union. Therefore, in addition to the Southern African Development Community (SADC), in which all the SACU members participate, some members are signatories to other trade arrangements, such as the Common Market for Eastern and Southern Africa (COMESA)[7], and the Regional Integration Facilitation Forum (RIFF), of which only Namibia and Swaziland are members (Annexes 3, and 5, respectively); and the Trade, Development and Cooperation Agreement between the European Union and South Africa (the TDCA) (Annex 4). However, a waiver allows delayed implementation by Namibia and Swaziland of trade-related provisions of the COMESA Treaty; so far, their trade is not affected by the Treaty.

4. Apart from the TDCA, South Africa also has bilateral trade agreements with Malawi, and Zimbabwe (Annex 4).[8] Botswana has bilateral trade agreements with Malawi and Zimbabwe (Annex 1), while Namibia has a bilateral trade agreement with Zimbabwe (Annex 3). Lesotho and Swaziland do not have any bilateral trade agreements.

5. SACU members are also eligible for non-reciprocal preferential treatment under the Generalized System of Preferences (GSP); the Cotonou Agreement with the EU (except South Africa); and the U.S. African Growth and Opportunity Act (AGOA). None of the SACU members is a signatory to the Agreement on the Global System of Trade Preferences among Developing Countries (GSTP).

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[4] Botswana and Lesotho became independent in 1966, and Swaziland in 1968.

[5] With the exception of the revenue sharing formula, which went into effect retroactively from 1 April 1969.

[6] Namibia became independent on 21 March 1990.

[7] Lesotho withdrew from COMESA in 1997.

[8] South Africa also grants preferential tariff treatment to a list of products from Mozambique, which are admitted duty free, within annual quota limits. See WTO (1998).

(2) SOUTHERN AFRICAN CUSTOMS UNION (SACU)

(i) The 1969 SACU Agreement

6. The 1969 SACU Agreement was aimed at: (i) creating a customs union; (ii) economic development of the customs union as a whole, but in particular of the less advanced members (Botswana, Lesotho, and Swaziland)[9], and diversifying their economies; and (iii) sharing benefits equitably among all the members of the customs union.

7. Under the 1969 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 countries outside the Union.[10] Rebates, refunds, and drawbacks granted by members must be identical, except in specified circumstances. A SACU member country with prior concurrence of all the other members may enter separately into a preferential trade agreement, or amend other trade agreements with a third 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 imported, exported or re-exported within the SACU area, except in specified exceptional circumstances. Each member has its own legislation on quantitative restrictions on goods imported from outside the SACU area. The BLNS countries, but not South Africa, may, following consultation, apply additional duties or increase duties for protection of infant industries.[11] Exceptional trade restrictions by a member may also be justified on, *inter alia*, economic, social, and cultural grounds.

8. Subject to specified conditions, the right of freedom of transit across members' territories is provided for under the 1969 Agreement. Duties are collected at the place of entry into the common customs area. As the external trade of land-locked Botswana, Lesotho, and Swaziland is directed through South Africa, as well as much of Namibia's international trade, South Africa collects virtually all customs duties and excise taxes. All customs, excise, sales, and additional duties collected by the five members are pooled in a Consolidated Revenue Fund (CRF) of South Africa. The shares of Botswana, Lesotho, Namibia, and Swaziland (the BLNS countries) are determined on the basis of a revenue-sharing formula and the residual (after the BLNS countries have been paid) is allocated to South Africa.

9. Awareness that the 1969 Agreement had to be renegotiated dates back to the latter half of the 1970s, when SACU members recognized that the existing Agreement did not encourage greater economic integration. Indeed, during the period 1969-94, the SACU Agreement provided a pragmatic framework for trade, but not for regional integration. The renegotiations were to make SACU more democratic, to develop common sectoral policies and strategies, to further harmonize trade policies, and in general to address the current needs of all the member countries more effectively. Once SACU becomes consolidated, any future trade agreement between any of its members and a third party should flow out of a common SACU mandate (section (ii) below).

10. The Ministers responsible for SACU matters of the five member states met in Pretoria on 11 November 1994 to discuss the renegotiation of the 1969 Agreement, and appointed a Customs Union task team mandated to make recommendations to the Ministers. The key issues on the agenda

[9] Namibia became member of the SACU Agreement in 1990.

[10] Article 5 of the 1969 Agreement requires South Africa to afford the other members adequate opportunity for consultations before imposing, amending or abrogating customs duties, except in specified cases.

[11] Protection of infant industries is normally allowed for a maximum of eight years. Botswana, Namibia, and Swaziland have made limited use of this provision. See WTO (1998).

were: (i) the technical revision of the revenue-sharing formula, including the level of compensation to BLNS states for the disadvantages of forming a customs union with South Africa (loss of fiscal discretion, price-raising, and industrial polarization effects); (ii) time lags in distribution of revenue by South Africa; (iii) the review of the management and institutional aspects of the SACU system; and (iv) the need for a dispute settlement mechanism.[12]

11. Under the 1969 Agreement, the pooled revenue (in the CRF) is distributed to the BLNS countries according to a formula, with South Africa receiving the residual.[13] Shares from the revenue pool motivated the participation of the BLNS countries in the customs union. In 2001/02, receipts from the SACU revenue pool as share of the total revenue were: 51.6% for Lesotho; 51% for Swaziland; and 28.4% for Namibia. Income from the SACU revenue pool accounted for only 13% of total revenue for Botswana in 2001/02, due to the importance of the diamond sector income (Annex 1, Chapter IV(2)).

12. The problem for South Africa with the formula is the steady reduction of its share of the pooled revenue, with the consequent negative effect on its public budget. Receipts from the SACU revenue pool for South Africa decreased from 62.8% of total revenue in 1997/98 to 55% in 2001/02. Moreover, BLNS countries called for increased compensation for the disadvantages of forming a customs union with South Africa, and the incorporation of a development component in the formula to address the economic imbalances and ensure stability in the region.

13. Under the 1969 SACU Agreement, the Customs Union Commission, comprising representatives of all five members, is the supreme consultative body of SACU, with three liaison Committees on customs, trade and industry, and transport, but without a permanent secretariat. The Commission has competence to discuss any matter arising out of the SACU Agreement; it meets at least once a year in member countries by rotation, and the Chairperson is from the host country. Any member country, however, can at any time ask for a meeting of the Commission to be convened to discuss matters connected with the Agreement. It has been necessary to institutionalize the meetings of the Commission and to set up a small permanent secretariat to oversee and coordinate the operations of the customs union. Moreover, the BLNS countries consider the Board on Tariffs and Trade (BTT) as an institution of the South African Government, since it has no BLNS-country representation.

14. The 1969 SACU Agreement does not provide for a dispute settlement mechanism. The Customs Union Commission or member countries settle conflicts or difficulties bilaterally by consensus. The new 2002 SACU Agreement provides for a dispute settlement mechanism, which will provide mutually acceptable solutions to problems that may arise between member countries on the operation and/or interpretation of the Agreement.

[12] The 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. Furthermore, payment of revenue to BLNS countries is made up to two years after 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.

[13] See WTO (1998) for a comprehensive description of the revenue-sharing formula as amended up to 1978.

(ii) The 2002 SACU Agreement

15. On 21 October 2002, after eight years of negotiations, a new SACU Agreement was signed in Gaborone, Botswana. The agreement still has to be ratified by members under their respective constitutional procedures. The Agreement will enter into force thirty days after the deposit of the instruments of ratification by all member states. The objectives of the 2002 SACU Agreement defined in its Article 2 are: (a) to facilitate the cross-border movement of goods between the territories of the member states; (b) to create effective, transparent, and democratic institutions which will ensure equitable trade benefits to member states; (c) to promote conditions of fair competition in the common customs area; (d) to substantially increase investment opportunities in the common customs area; (e) to enhance the economic development, diversification, industrialization and competitiveness of member states; (f) to promote the integration of member states into the global economy through enhanced trade and investment; (g) to facilitate the equitable sharing of revenue arising from customs and excise duties levied by member states; and (h) to facilitate the development of common policies and strategies.

16. Under the Agreement trading arrangements would only be possible with SACU as a whole, and not with individual SACU members. Under Article 31 member states may maintain preferential trade and other related arrangements existing at the time of the entry into force of the Agreement; shall establish a common negotiating mechanism for the purpose of undertaking negotiations with third parties; but shall not negotiate and enter into new preferential trade agreements with third parties or amend existing agreements without the consent of the other members. SACU member states are currently negotiating trading arrangements with MERCOSUR, and the United States, and are consulting on the possibility of negotiating other agreements.

17. The Agreement introduced, *inter alia*, a new institutional structure; a new system of managing and sharing the common revenue pool; a dispute settlement mechanism; and the need to have common policies with respect to industrial development, agriculture, competition policy, and unfair trade practices.

(a) Institutional structure

18. Article 7 of the 2002 SACU Agreement provides for the establishment of six institutions: Council of Ministers, Customs Union Commission, Secretariat, Tariff Board, Technical Liaison Committees, and a Tribunal.

19. The Council of Ministers is the supreme decision-making authority on SACU matters. It is responsible for the overall policy direction and functioning of SACU institutions, including the formulation of policy mandates, procedures, and guidelines for the SACU institutions; overseeing the implementation of the policies of SACU; and approving customs tariffs, rebates, refunds or drawbacks and trade-related remedies. The Council is also responsible for the appointment of the Executive Secretary and the members of the Tariff Board, and for approving the budgets of the Secretariat, the Tariff Board, and the Tribunal. The Council consists of at least one Minister from each member state; and meets at least once a quarter, unless agreed otherwise. It is chaired in turn by each member state for one year.

20. The Customs Union Commission is responsible for the implementation of the Agreement; overseeing the management of the common revenue pool in accordance with the policy guidelines decided by the Council, and supervising the work of the Secretariat. The Commission consists of senior officials from each member state and meets at least once a quarter or at the request of a member state. Its chairperson is appointed by the member state chairing the Council.

21. The Secretariat is responsible for: the day-to-day administration of the Agreement; coordinating and monitoring the implementation of the decisions of the Council and the Commission; arranging meetings, disseminating information and keeping minutes of meetings of the SACU institutions (it is the depositary of all records of SACU); assisting in the harmonization of national policies and strategies of member states in so far as they relate to SACU; keeping a record of all transactions into and out of the common revenue pool; and assisting in the negotiation of trade agreements with third parties. The Secretariat is headed by an Executive Secretary, citizen of a member state, and its staff is determined by the Commission. The Secretariat will be based in Windhoek, Namibia, where the headquarters of SACU will be established.

22. The Tariff Board is responsible for making recommendations to the Council on the level of and changes to customs, anti-dumping, countervailing, and safeguard duties on goods imported from outside the common customs area, and rebates, refunds or duty drawbacks, based on directives by the Council as provided for in Article 8 of the Agreement. The Tariff Board will be an independent institution, consisting of experts drawn from member states. Article 14 of the Agreement calls members to establish specialized, independent and dedicated National Bodies or designate institutions, entrusted with receiving requests for tariff changes and other related SACU issues. The National Bodies will carry out preliminary investigations and recommend any tariff changes necessary to the Tariff Board. The National Bodies will also study, investigate, and determine the impact of tariffs within respective member states, and periodically propose such changes as may be deemed necessary and make recommendations to the Commission through the Secretariat.

23. Four Technical Liaison Committees on matters related to agriculture, customs, trade and industry, and transport will advise and assist the Commission in its work. The Council has the authority to determine and alter the terms of reference of those Committees.

24. The Tribunal will adjudicate on any issue concerning the application or interpretation of the Agreement, or any dispute arising thereunder at the request of the Council. The Tribunal will also play an advisory role on any issue referred to it by the Council. The determination of the Tribunal will be final and binding. The parties to the dispute are to choose the members of the Tribunal from amongst a pool of names, approved by the Council, and kept by the Secretariat. The Tribunal shall be composed of three members, except as otherwise determined by the Council, and will decide by a majority vote. It is to be assisted by the Secretariat in its work. The Tribunal will determine its own rules of procedure.

(b) Common revenue pool and sharing formula

25. Articles 32 to 37, and Annex A of the 2002 SACU Agreement, refer to the new common revenue pool and sharing formula. Article 32 stipulates that all customs, excise, and additional duties collected in the common customs area are paid into the common revenue pool, within three months of the end of each quarter of a financial year (commencing on 1 April). South Africa is to manage the common revenue pool for two years from the entry into force of the Agreement (Article 33). Thereafter, a member state or SACU institution is to be appointed by the Council to manage it, and specify the accounts into which the common revenue pool is to be paid and from which all SACU payments are to be made. All transactions into and out of the common revenue pool are reported to the Secretariat, and are subject to regular audits. A special Task Force has been created to investigate issues relating to the establishment of a long-term management mechanism for the common revenue pool. The Task Force is due to complete its work before September 2003.

26. For distribution purposes, the pooled revenue is categorized and SACU members agreed that their respective shares during any financial year will be calculated from each of the three distinct components, net of the budgeted cost of financing the Secretariat, the Tariff Board, and the Tribunal[14]:

(a) the customs component, consisting of all customs duties actually collected, will be distributed on the basis of each country's percentage share of total intra-SACU imports, excluding re-exports;

(b) the excise component, consisting of all excise duties actually collected on goods produced in the Common Customs area (net of the development component), will be allocated on the basis of each country's share of total SACU GDP; and

(c) the development component (a form of development assistance), will be funded initially from 15% of the total excise component[15], and distributed on the basis of each country's GDP per capita: countries with lower income per capita will receive more.

27. Under the new formula, the concept of South Africa's share being the residual after calculating the shares of the other countries, which was in the 1978 formula, has disappeared. Instead, each member's share is specifically calculated (Box II.1). The new formula also eliminates the revenue floor, and the time-lag between actual trade and distribution of tax receipts is made shorter. Nonetheless, a decline of customs and excise revenues is expected because of further tariff liberalization initiatives, both at the multilateral and preferential levels, particularly from the free-trade agreement between South Africa and the EU. SACU members acknowledge that in order to promote long-term economic growth, they need to move towards sources of income other than the SACU revenue pool, and advance their fiscal reform process.

(c) Dispute settlement mechanism

28. The 2002 SACU Agreement provides for a dispute settlement mechanism in order to solve problems that may arise between member countries about the application and/or interpretation of the Agreement. In the event of any dispute or difference arising from the Agreement, the parties shall first meet and negotiate in an attempt to settle the dispute before referring the matter to the Tribunal.[16] If the matter is not resolved, it is referred to an *ad hoc* Tribunal, an independent body of experts, which shall decide by a majority vote; its determination will be final and binding. At the request of the Council, the Tribunal shall consider any issue and furnish the Council with its recommendations.

29. According to Article 15, any difference or dispute arising out of the 2002 Agreement that does not directly affect the interests of all member states, may be the subject of direct consultations between the affected parties. The affected parties are to report the results of their consultations to the Commission before its next meeting.

[14] SACU members agreed that the budgeted cost of financing the Secretariat, the Tariff Board, and the Tribunal for the related financial year, will be deducted proportionately from each component of the common revenue pool before distribution to member states.

[15] This 15% share of the excise component is to be reviewed from time to time and adjusted if agreed to by all SACU members.

[16] Article 13.6 of the Agreement.

Box II.1: The 2002 SACU Revenue-sharing formula of SACU

The revenue sharing formula of the 2002 SACU Agreement, for a given financial year, is:
Ri = C (Ai/A) + (0.85) E (GDPi/GDP) + 20*(0.15) E (1-((Yi/Y)-1)/10)
where:

Ri	=	revenue share of SACU country i;
i	=	Botswana, Lesotho, Namibia, South Africa or Swaziland;
C	=	all customs duties actually collected on goods imported into SACU, less the cost of financing the Secretariat, the Tariff Board, and the Tribunal, less the customs duties rebated or refunded;
Ai	=	c.i.f. value (at the border) of imports of SACU country i from all other SACU members, less re-exports;
A	=	total c.i.f. value (at the border) of intra-SACU imports, less re-exports;
E	=	all excise duties actually collected on goods produced in the SACU area, less the cost of financing the Secretariat, the Tariff Board, and the Tribunal, less the excise duties rebated or refunded;
GDPi	=	Gross domestic product of SACU country i;
GDP	=	total gross Domestic product of SACU members;
Yi	=	Gross domestic product per capita of SACU country i;
Y	=	average gross domestic product per capita of all SACU members.

After some algebraic manipulations, Ri becomes:

Ri = C (Ai/A) + (0.85) E (GDPi/GDP) + (0.3) E (11- Yi/Y)

The customs component: C (Ai/A)

The pooled customs revenue will be distributed according to intra-SACU imports. On the basis of 1998/99 trade, South Africa would have contributed about 80% to the customs component, and its share of this component would have been 20.5% (in 1998/99 South Africa's intra-SACU imports were R7,520 million, while total intra-SACU imports amounted to R36,706 million). On the same basis, the BLNS would have contributed around 20% to the customs component, and their shares of the customs pool would have been: Botswana (26.6%), Lesotho (13.4%), Namibia (24.9%), and Swaziland (14.6%). These shares are expected to remain stable over time, though the size of the customs pool (C) will depend upon the value of imports and changes to the SACU tariff regime.

The excise component: (0.85) E (GDPi/GDP)

The size of the excise component has been set initially at 85% of the excise pool, and will be distributed on the basis of the GDP of each of the SACU countries. In 1998, South Africa's GDP represented 92.8% of SACU's total GDP, and its share of this component would have been 78.9% (92.8 times 0.85). The remainder of the 85% of the excise component would have been distributed as follows: Botswana (3.0%), Lesotho (0.5%), Namibia (1.8%), and Swaziland (0.8%).

The development component: (0.3) E (11- Yi/Y)

The size of the development component has been set initially at 15% of the excise pool, and will be distributed inversely to each country's GDP per capita: the smaller the GDP per capita, the greater the share of the development pool. In 1998, GDP per capita in the SACU area was: Botswana (R17,968), Lesotho (R2,395), Namibia (R9,615), South Africa (R17,578), and Swaziland (R7,024); this leads to an average GDP per capita of R10,916. On this basis, the 15% share of the development component would have been distributed as follows: Botswana (2.80%), Lesotho (3.23%), Namibia (3.04%), South Africa (2.82%), and Swaziland (3.11%).

The composition of SACU payment by component:

On the basis of the previous figures, the BLNS countries would largely derive their total SACU revenues from the customs component: Namibia (83.7%), Botswana (82.1%), Swaziland (78.9%), and Lesotho (78.2%); while South Africa would receive 20.1% from this component. South Africa would get the majority of its SACU revenue from the excise component (77.2%), followed by Botswana (9.3%), Namibia (6.1%), Swaziland (4.3%), and Lesotho (2.9%). The development component is relatively more important for Lesotho and Swaziland (18.9% and 16.8%, respectively, of their total SACU revenues), followed by Namibia (10.2%), Botswana (8.6%), and South Africa (2.7%).

Source: SACU Agreement 2002, and DTI (2001).

(d) Common policies

30. In an attempt to foster economic integration, the 2002 SACU Agreement recognizes the need to develop common policies amongst the members on industrial development (Article 38), agriculture (Article 39), competition policies (Article 40), and unfair trade practices (Article 41).[17] SACU members agreed to: develop common industrial policies and strategies, so as to achieve balanced industrial development of the common customs area; cooperate on agricultural policies in order to ensure the coordinated development of the agricultural sector within the common customs area; cooperate with each other to have and implement competition policies (including laws and regulations) in each member state (so far only South Africa has enacted competition law); and to develop, on the advice of the Commission, policies and instruments to address unfair trade practices between member states.

31. The 2002 Agreement also calls for customs cooperation (Article 23) to facilitate the simplification and harmonization of trade documentation and procedures. SACU countries shall strive to harmonize product standards and technical regulations within the common customs area (Article 28). Regarding SPS matters, however, the 2002 Agreement reserves the right of each member to apply measures in accordance with their national SPS laws and international standards (Article 30) (see also Chapter III(5) below).

(3) THE COMMON MONETARY AREA (CMA)

32. In July 1986, the Common Monetary Area (CMA) replaced the Rand Monetary Area (RMA)[18], a trilateral agreement between Lesotho, South Africa, and Swaziland. On 6 February 1992, Namibia officially joined the CMA (since then, also known as the Multilateral Monetary Agreement (MMA)) it had been a *de facto* member from the beginning. Botswana is not a member of the CMA.[19] The Agreement aims to achieve monetary stability in the region, better economic and financial cooperation among members for sustained economic development, and encourage the advancement of the less developed members. The administering organ is the Common Monetary Area Commission, comprising a representative of each member country and any advisers the country may appoint. The Commission meets at least once a year and its decisions are by consensus. Members consult regularly on monetary issues.

33. 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 (LNS) to South Africa's capital and money markets The loti (Lesotho's currency), the Namibian dollar, and the lilangeni (Swaziland), are pegged to the South African rand at par, and banknotes issued by LNS are freely convertible into rand. The rand is legal tender in Lesotho and Namibia, but not in Swaziland, although it circulates freely. For flexibility purposes, and to accomodate country-specific needs, each of the LNS countries entered into a bilateral monetary agreement with South Africa to supplement the MMA. Each member is responsible for its monetary policy, and the control of its financial institutions. However, by pegging their currencies to the rand, monetary stability and macroeconomic environment for growth in LNS hinge on the policies pursued by the South African Reserve Bank (SARB).

[17] Article 10 of the 2001 Agreement, stipulates that the Secretariat shall assist in the harmonization of national policies and strategies of members in so far as they relate to SACU.

[18] In December 1974, the RMA, a tripartite arrangement between Lesotho, South Africa, and Swaziland, replaced the informal agreement on money and currency between Botswana, Lesotho, South Africa, and Swaziland. Namibia, still administered by South Africa at the time, also formed part of the RMA.

[19] The Botswana pula is not a currency of the CMA. Nevertheless, Botswana maintains a crawling peg system based on a basket of the South African rand and the IMF's Special Drawing Right (SDR).

34. Any dispute 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.

(4) SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

35. The SADC Treaty was signed in 1992 with the objective of creating a development community that would achieve economic integration, including trade.[20] Through regional cooperation and integration, the Community aims to provide balanced economic growth and development, political stability, and security for all member states. Membership comprises the five SACU countries and nine others.[21] The Treaty provides a framework to coordinate, harmonize, and rationalize policies, and to develop strategies for sustainable development. It is based on the fundamental principles of sovereign equality of member states; solidarity, peace, and security; human rights, democracy, and the rule of law; and equity, balance, and mutual benefit. Decisions and agreements are legally binding on members, and the Treaty provides for several protocols in specific areas, such as trade, finance, and investment.

36. The Trade Protocol, signed in 1996, is aimed at progressively establishing a SADC free-trade area, initially over eight years. However, progress has been slow. The Protocol was implemented in September 2000 after ratification by 11 members.[22] To establish the FTA, products have been grouped under three main categories (A, B, and C). Category A products (mostly capital goods and equipment) were liberalized in the first year. This category constitutes about 76% of SACU's trade with SADC, and carries the zero tariff rate in SACU countries. Category B products (e.g. goods that constitute important sources of customs revenue) are to be liberalized gradually by 2008.[23] Category C consists of products deemed sensitive by member states (e.g. imports sensitive to domestic industries such as sugar for SACU countries); these goods, limited to a maximum of 15% of each member's total merchandise trade, are to be liberalized between 2005 and 2012. In addition, a fourth category of products, Category E, covers products ineligible for preferential treatment under general and security exceptions permissible under Articles 9 and 10 of the Protocol. These are expected to make up a small list of products, so that by 2012 about 98% of SADC merchandise trade will be subject to zero tariffs. The phase-down offers are country specific. Implementation of the Protocol is based on the principle of reciprocity, i.e. tariff preferences will be extended only to member states that have submitted their instruments of implementation.

37. SADC members made "differentiated offers" to non-SACU SADC countries plus Botswana, Lesotho, Swaziland, and Namibia, and "general offers" to South Africa. Moreover, SACU members made offers to the other SADC members for immediate reductions to achieve zero tariffs after five years, except for sensitive products. SADC offers to SACU countries are differentiated. Offers for tariff reduction to BLNS countries are heavily front-loaded, while offers to South Africa are mid- to back-loaded. Offers by the other SADC members to South Africa thereby delay tariff reductions on category A and B products. Moreover, tariff reductions on the sensitive products (Category C) are further delayed from the eighth to the twelfth year. This asymmetrical implementation is seen as a means of enhancing equity in the region since South Africa, the principal SACU member, is far more

[20] SADC replaced the Southern African Development Coordination Conference (SADCC).

[21] Angola, the Democratic Republic of Congo, Malawi, Mauritius, Mozambique, Seychelles, Tanzania, Zambia, and Zimbabwe.

[22] Angola, Democratic Republic of Congo, and the Seychelles have not yet ratified the Protocol. Angola is expected to sign soon, and the Democratic Republic of Congo has indicated its readiness to sign.

[23] Category B was further sub-divided into three categories. Tariff rates are to be reduced gradually, commencing in the third year for sub-category B1 products; in the fifth year for sub-category B2 products; and in the seventh or eighth year for sub-category B3 products. Category A and B products cover an estimated 85% of goods traded among SADC members.

developed than other SADC members. Zimbabwe and Mauritius also agreed to start their tariff reductions earlier than other non-SACU members.

38. At the August 2000 SADC Summit, in Windhoek, member countries were given six months to make the necessary national constitutional amendments and to deposit their respective instruments of implementation.[24] All five SACU countries have ratified the Trade Protocol, and they have a single tariff schedule of concessions *vis-à-vis* the SADC free-trade area. All eleven SADC countries currently participating in the Trade Protocol have deposited their implementation instruments.

39. On 31 March 2000, a draft regulation on mutual assistance and cooperation in customs matters was approved (Appendix I to Annex II of the SADC Protocol on Trade as amended), which, *inter alia*, allows for joint inspections. The SADC Subcommittee on Customs Cooperation and Trade Facilitation finalized discussions on customs documentation (i.e. the format of bills of entry and certificates of origin), and commenced the monitoring process for removal of non-tariff barriers by member states by establishing systems in place for the electronic validation of the certificates of origin. Substantial progress has already been made on harmonizing customs and trade documentation. SADC rules of origin are being negotiated in many cases on a product-by-product basis. Protracted negotiations on specific rules of origin are continuing for certain products, including wheat flour and products thereof, electrical products, and optical, photographic, measuring, and surgical instruments.[25]

40. On sugar, the long-term objective is to establish full liberalization of trade within the SADC region from 2013. This will depend on a review of the prevailing conditions five years after entry into force of the agreement. SACU improved its initial tariff-free quota (45,000 tons per annum cumulative to be shared amongst all the SADC surplus producers) with an additional 20,000 tons (per annum at a reduced rate) only available to non-SACU SADC surplus producers. The SADC sugar market access and cooperation agreement has now been incorporated as an Annex to the amended Trade Protocol.

41. A derogation for textiles and clothing has been granted to least developed members of SADC (Malawi, Mozambique, Tanzania, and Zambia) allowing them to export to SACU countries (duty-free but subject to quota) single-stage produced textiles and clothing, for five years starting from 1 August 2001.[26] Exports above the quota are subject to "double stage transformation" rules of origin. There will be a mid-term review of performance under these arrangements in 2003.

42. While the Trade Protocol has identified several non-tariff measures to be eliminated, such as import quotas, customs procedures, and export subsidies, it excludes other important non-tariff barriers, such as local-content requirements, levies and other border charges, and import (and export) licensing.[27]

43. The SADC Protocol on Tribunal provides for a tribunal to be established to adjudicate members' disputes arising from the treaty, and from subsidiary instruments, that cannot be settled by consultation.[28] Its composition, powers, functions, procedures, and other related matters are prescribed in the Protocol; the rules of procedure were agreed by SADC members in August 2000.[29]

[24] There is no deadline, as such, for the implementation of the Trade Protocol.

[25] For example, for electrical machinery, some members want to prevent "single assembly" of white goods, while for plastics they want to prevent the use of imported plastic waste. See Imani Development (Malawi) Ltd. (2001a), p. 24.

[26] Coughlin and Undenge (2001).

[27] Imani Development (Malawi) Ltd. (2001b).

[28] Article 32 of the Treaty.

[29] SADC online information. Available at: http://www.sadc.int/overview/works.htm.

Creation of the Tribunal, however, will not take place until after the conclusion of current reorganization plans for SADC; decisions will be final and binding. In the meantime, Annex IV of the SADC Amendment Protocol of 2000 provides a dispute settlement mechanism for trade dispute issues based on the WTO model.

44. SADC intends to extend trade liberalization to services, but negotiations are yet to commence. The SADC Free Trade Area has not yet been notified to the WTO. However, according to the authorities, the Protocol will be notified under Article XXIV of GATT 1994.

(5) PARTICIPATION IN THE WTO

45. SACU countries are individually original WTO Members.[30] BLNS countries are neither signatories nor observers to any of the WTO plurilateral agreements, whereas South Africa is an observer to the Agreement on Government Procurement. SACU members have not been directly involved, either as complainant or as defendant, in any WTO dispute settlement proceedings. All SACU countries accord at least MFN treatment to all their trading partners.

46. SACU countries attach great importance to the outcome of the Doha Ministerial Conference of 2001. They note that the Doha Ministerial Declaration puts development at the centre of the WTO agenda and the agreed negotiating process. The Doha Development Agenda (DDA) offers the WTO an opportunity to correct some of the imbalances and inequities existing in current WTO agreements, and gives a fresh impetus to addressing developmental issues. For instance, the agreement to put anti-dumping rules on the negotiating agenda will provide an opportunity to tackle some of the concerns raised by many developing and least developed countries about the abuse of these trade remedies by other trading partners. Notwithstanding the opportunities it offers, the DDA bears unique challenges and implications for SACU countries. These include the broadening of the scope and depth of issues under negotiation, e.g. environment.

47. The DDA puts development concerns at the centre of the multilateral trade agenda. According to SACU countries, to achieve a truly developmental outcome, the WTO must ensure: (i) that the outcomes of Doha negotiations support poverty-reducing economic growth, and (ii) provide space for developing and least developed countries to pursue appropriate national policies that enhance welfare and foster economic development. The outcome of these negotiations must also strengthen and support the regional integration initiatives in the SACU countries and other regional trading arrangements on the African continent.

48. To determine how to participate fully in the Doha development process, SACU countries must have the capacity to define and analyse negotiating positions in the light of clearly identified national and regional development priorities. They have indicated that technical assistance and capacity building must extend well beyond the fifth WTO Ministerial Conference in view of the enormity of the challenge facing developing countries. This assistance should support analytical and operational research at the country and regional levels, be aimed at mobilizing constituencies that have an interest in domestic policy reform, and be provided through multilateral initiatives. Technical assistance, including in capacity building, will be required for SACU countries to set up the institutions necessary to fulfil the objectives of the customs union enshrined in the 2002 SACU Agreement.

49. SACU's priorities in the WTO include: the need to address the outstanding implementation issues emanating from the Uruguay Round and as mandated by the DDA; the commitment to ensuring

[30] Botswana joined the GATT on 28 August 1987, Lesotho on 8 January 1988, Namibia on 15 September 1992, South Africa on 13 June 1948, and Swaziland on 8 February 1993.

that the developmental concerns of developing and least-developed countries are reflected in the final outcome of these negotiations; the elimination of all tariff and non-tariff barriers, particularly those on products of export interest to developing and least developed countries; and the provision of meaningful technical assistance, including in capacity building, that will allow developing and least developed countries to participate fully and effectively in all negotiations, and ultimately to take advantage of the opportunities offered by the multilateral trading system. In addition, SACU countries want developed WTO Members to meet their market-access commitments in sectors of export interest to developing countries, including agriculture, and adopt special arrangements for least developed countries through bound duty-free and quota-free market access for all their products.

(6) OTHER COMMON TRADE ARRANGEMENTS

(i) The Cotonou Agreement

50. SACU members are signatories to the Cotonou Agreement (successor to the Lomé Convention), between the EU and 77 countries in Africa, the Caribbean, and the Pacific (ACP).[31] South Africa, however, was excluded from most of the trade provisions of the Lomé IV Convention and, as a result, it is excluded from the trade provisions of the Cotonou Agreement. South Africa has a separate, bilateral free-trade agreement with the EU (Annex 4). The Cotonou Agreement maintains most non-reciprocal trade preferences granted by the EU to ACP States, and has been ratified by all SACU members. A decision to grant the waiver requested by the parties to the Agreement from the obligations under Article I:1 of GATT 1994 (MFN treatment) was taken by WTO Members at the Doha Ministerial Conference, for the period up to 31 December 2007.[32] By then, new WTO-compatible trading arrangements are to be concluded, removing barriers progressively between the parties and enhancing cooperation in all areas relevant to trade, including the formation of free-trade areas within a transitional period. ACP-EU negotiations began in September 2002, and are aimed at establishing economic partnership agreements (EPAs) on a bilateral basis or between the EU and regional groupings (regional economic partnership agreements). The latter agreements are expected to commence by 1 January 2008 at the latest. BLNS countries are eligible for EPAs, which would be based on reciprocal liberalization, thereby requiring in principle ACP states to extend preferential access progressively to EU exports.

51. Under the Cotonou Agreement, the EU grants non-reciprocal trade preferences to most imports originating from ACP states, subject to a safeguard clause and rules of origin.[33] For certain products (bananas, beef and veal, and sugar), the EU provides special market access under "commodity protocols". The Cotonou Agreement abolished STABEX, SYSMIN, and the rum protocol of the Lomé Convention.

52. The EU is an important market for SACU's main exports of sugar, meat, and meat products, which enter the EU at zero tariffs. According to BLNS authorities, complex procedures, including rules of origin, undermine the preferences. Moreover, the recent Everything But Arms (EBA) initiative, which grants additional preferences to least developed countries (Annex (2)), and the EU's own multilateral tariff reductions, have reduced their importance.

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

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

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

53. BLNS countries have received financial assistance from the EU under, *inter alia,* the European Development Fund (EDF) through the National or Regional Indicative Programmes; and the European Investment Bank for commercial loans.

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

54. The African Growth and Opportunity Act (AGOA), contained in the U.S. Trade and Development Act of 2000, offers free access to some manufacturing products originating in sub-Saharan African countries. A high-level dialogue on trade and investment under the U.S.-Sub-Saharan Africa Trade and Economic Forum has also been established and is now operational. African countries eligible for preferential treatment under the AGOA will receive GSP treatment (exempt from the "competitive needs" limitations of the general GSP treatment by the United States) in the U.S. market until the end of September 2008 (in contrast to general GSP treatment which is renewed on an annual basis in the United States), and will qualify for an expanded list of GSP products (beyond that available to other countries).[34] All eligible African countries are entitled to duty-free and quota-free access to the U.S. market for apparel made from U.S. fabric, yarn or thread. The legislation provides for an upper volume limit on such imports, rising from 1.5% of "aggregate square metre equivalent" of all U.S. apparel imports to 3.5%, over an eight-year period.

55. To be eligible, African countries must make progress in establishing a market-based economy; developing political pluralism and the rule of law; eliminating discriminatory barriers to U.S. trade and investment; protecting intellectual property; combating corruption; protecting human and worker rights; and removing certain practices of child labour.[35] Although the apparel benefits in principle took effect from 17 October 2000, countries must have in place an effective visa system to prevent illegal trans-shipment and use of counterfeit documentation, as well as effective enforcement and verification procedures. On 31 December 2001, after the required annual review, all five SACU countries were declared eligible for tariff preferences under the AGOA, and recognized as qualifying for textile and apparel benefits.

56. By modifying certain provisions of AGOA, the Trade Act of 2002 (also known as AGOA II), expanded preferential access for imports from beneficiary sub-Saharan African countries. These modifications are effective immediately upon enactment. Among other changes, AGOA II allows producers from Botswana and Namibia to profit from the "lesser developed beneficiary sub-Saharan country" provision, and to use third-country fabric in qualifying apparel.

(iii) The African Union (AU) and African Economic Community (AEC)

57. All SACU countries are members of the African Union (AU). The AU, launched in July 2001, replaced the Organization of African Unity (OAU) in July 2002. The Charter establishing the OAU was signed by 30 African nations on 25 May 1963.[36] All SACU countries, like the other members of the OAU, signed the Abuja (Nigeria) Treaty Establishing the AEC in June 1991, as provided for by the 1980 Lagos Plan of Action. Its main aim is to promote integration and harmonization within Africa. The Treaty provides for the creation of a pan-African economic and monetary union (with a parliament) in six stages, over a period of 34 years. The organs and headquarters of the AEC are those of the AU.

[34] The list of manufactured goods (some 1,800 tariff lines) covered by AGOA includes products such as footwear, luggage, handbags, and watches. See WTO document WT/COMTD/N/1/Add.3, 1 March 2001 for the list of eligible products notified by the United States to the WTO.

[35] African Growth and Opportunity Act [Online]. Available at: www.agoa.gov/index.html.

[36] All African countries are members of the AU, except Morocco.

(iv) Generalized System of Preferences (GSP)

58. SACU countries also benefit from non-reciprocal preferential treatment from many industrialized countries under the Generalized System of Preferences (GSP).[37]

[37] SACU countries are not signatories to the Agreement on the Global System of Trade Preferences (GSTP) among Developing Countries.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. Trade policies and practices within the SACU have remained basically the same since its last Trade Policy Review in 1998. However, the recent re-negotiation of the SACU Agreement will mean significant changes in the *modus operandi* of the common customs area. In particular, "democratization" of SACU's trade policy will increase significantly with the transfer of discretion to set tariff rates from South Africa's Board on Tariffs and Trade to the SACU Council of Ministers.

2. Applied customs tariffs, excise duties, customs valuation, rules of origin, and contingency trade remedies are the only areas of trade policy that have been harmonized throughout SACU. The tariff structure has been somewhat simplified, and the simple average MFN duty rate declined from 15% in 1997 to 11.4% in 2002 (Table III.1). However, the tariff remains complex, still comprising *ad valorem*, specific, mixed, compound, and formula duties. The application of formula duties, based on reference prices, does not ensure compliance by SACU members with their obligations under the WTO Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation); nor does the imposition of non-*ad valorem* tariff rates while SACU members have made their binding commitments *ad valorem* rates. Moreover, differences in internal taxes between SACU members distort trade flows, and somewhat undermine the utility of a common external tariff.

3. Due to their SACU membership, BLNS countries apply the anti-dumping, countervailing, and safeguard measures imposed by South Africa. Over 1995-01, South Africa, and by extension SACU, was among the leading initiators of anti-dumping actions in the WTO. These actions are generally tailor-made to South African needs, and therefore neglect the specific circumstances of BLNS countries. The need to develop contingency trade legislation at the SACU level is a priority acknowledged by all SACU members, in order to lock-in the increasing liberalization of their markets.

4. SACU countries currently lack a common policy on certain key trade areas such as customs procedures, and standards and technical regulations. Developing common trade policies and strategies in these areas, as provided for by the 2002 SACU Agreement, would help to reduce transaction costs for traders by creating a single cohesive regional market, and would provide SACU members with a more solid basis towards greater integration into the world economy.

Table III.1
Structure of MFN tariffs of SACU, 1997-02
(Per cent)

	1997	2000	2001	2002	U.R.[a]
1. Bound tariff lines (% of all tariff lines)[b]	96.4	96.4	96.4	96.2	96.4
2. Duty-free tariff lines (% of all tariff lines)	42.4	44.6	44.5	43.7	9.9
3. Non-*ad valorem* tariffs (% of all tariff lines)	25.6	24.8	24.6	25.0	0.0
4. Tariff quotas (% of all tariff lines)	8.1	7.4	7.2	7.3	7.2
5. Non-*ad valorem* tariffs with no AVEs (% of all lines)	25.6	24.8	24.6	25.0	0.0
6. Simple average bound rate	..	..	..	..	20.9
Agricultural products (HS01-24)	..	..	..	..	46.8
Non-agricutural products (HS25-97)	..	..	..	..	18.1
Agricultural products (WTO def.)[c]	..	..	..	..	43.5
Non-agricultural products (WTO def.)[d]	..	..	..	..	18.1
7. Overall standard deviation of bound rates	..	..	..	..	25.5
8. Simple average applied rate	15.0	12.8	12.0	11.4	n.a.
Agricultural products (HS01-24)	11.4	11.3	11.4	11.5	n.a.
Non-agricutural products (HS25-97)	15.4	12.9	12.0	11.4	n.a.

Table III.1 (cont'd)

	1997	2000	2001	2002	U.R.[a]
Agricultural products (WTO def.)[c]	9.4	9.3	9.4	9.6	n.a.
Non-agricultural products (WTO def.)[d]	15.7	13.1	12.3	11.6	n.a.
9. Domestic tariff "spikes" (% of all tariff lines)[e]	4.0	5.8	4.5	3.9	2.1
10. International tariff "spikes" (% of all tariff lines)[f]	39.4	34.4	34.1	34.8	50.9
11. Overall standard deviation of applied rates	17.8	15.1	13.9	12.6	n.a.
12. "Nuisance" applied rates (% of all tariff lines)[g]	0.2	0.0	0.0	0.0	n.a.

.. Not available.

n.a. Not applicable.

a Namibia, South Africa, and Swaziland's final bound rates statistics. Botswana concessions are the same except on some products (see Table III.4 note b and c). Lesotho bound its tariff at a ceiling rate of 200% on agricultural products and of 60% on non-agricultural products.
b Refers to Botswana, Namibia, South Africa, and Swaziland. Lesotho bound 100% of its tariff.
c WTO Agreement on Agriculture.
d Exclude petroleum.
e Domestic tariff spikes are defined as those exceeding three times the overall simple average applied rate (indicator 8.).
f International tariff peaks are defined as those exceeding 15%.
g Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: Indicators 1 and 4 are calculated taking into account all tariff lines (i.e. in-quota and out-of-quota lines).

Source: WTO Secretariat calculations, based on data provided by South Africa.

(2) CUSTOMS PROCEDURES

5. There have been no major changes to customs procedures within the SACU area since its last TPR. In general, all SACU countries apply the customs laws set by South Africa (mainly the Customs and Excise Act, Act No. 91 of 1964 of South Africa, as amended) to goods imported into the common customs area from outside the union. However, customs procedures are not completely harmonized throughout SACU, and some differences exist at the borders.

6. Article 23 of the 2002 SACU Agreement calls for all five members to take appropriate measures, including customs cooperation, to ensure that the provisions of the Agreement are effectively and harmoniously applied. In particular, members shall take measures necessary to facilitate the simplification and harmonization of trade documentation and procedures. The harmonization of SACU's customs procedures would foster economic development of the region by facilitating cross-border movement of goods, both within the customs union, and with the rest of the world. Ensuring common and modern customs administration would reduce transaction costs for shippers, and would increase predictability and transparency of the customs regime, while taking advantage of economies of scale in processing data.

(i) Customs clearance and valuation

7. Goods imported from outside the SACU area must be declared on a bill of entry[38], while those traded within the customs union have to be declared on a transfer traffic form. Goods entering the SACU area may be declared at the first port of entry into the customs union (usually a South African port), or may be removed in bond from the port of entry to a bonded warehouse in a SACU

[38] In general, within seven days from the date goods are deemed to have been imported into a SACU country, importers must declare their entry to customs on the bill of entry (WTO, 1998).

country, where they are cleared for home consumption.[39] Imports of goods are randomly checked by the relevant customs administration.

8. There has been no change to customs valuation provisions in the SACU area in recent years; SACU countries did not request delayed application of the WTO Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement). Under the 1964 Customs and Excise Act of South Africa, as amended, the value, for customs duty purposes, of merchandise imported into the SACU area is the actual f.o.b. transaction price of the goods.[40] In the case of suspected under- or over-valuation, the goods concerned are detained by customs officers for examination and investigation. The importer is made aware of the suspicion and is required to submit acceptable evidence in respect of the actual price. The documents provided by the importer are compared with those relating to previous imports of similar items.

9. If the transaction value cannot be ascertained in terms of the Act, the customs administration can determine a value, subject to appeal by the importer to the Courts. Appeals against a valuation decision must be made within one year from the date of determination. According to the authorities, no appeal has gone as far as the High Court; all queries have been handled by the customs administration. Nevertheless, the application of formula duties (based on reference prices) to certain products, does not ensure compliance by SACU members with their obligations under the WTO Agreement on Customs Valuation (sections (3)(i) and (3)(ii)).

(ii) Rules of origin

10. SACU countries have both preferential and non-preferential rules of origin. The non-preferential rules of origin have so far been set for the union by South Africa. Under the 1964 Customs and Excise Act of South Africa (Section 46), as amended, a good is regarded as having been produced or manufactured in any particular territory if at least 25% of its production cost is represented by materials produced and labour performed in that territory, and if the last process in its production or manufacture has taken place in that territory.[41]

11. SACU countries also apply rules of origin for preferential purposes (on a reciprocal basis) under regional trade agreements such as the Southern African Development Community (SADC) Trade Protocol (Chapter II(4)), and under bilateral trade agreements to which they are individually signatories (see Annexes). Moreover, origin criteria are specifically set for the purpose of non-reciprocal preferential treatment by more developed countries, including the United States under AGOA, the EU under the Cotonou Agreement, and some industrialized countries under the GSP (Chapter II(6)).

[39] Containers, temporarily imported, human remains, goods deemed not to have commercial value, goods imported under an international carnet, and goods of a dutiable value not over R500, do not need to be cleared through customs (WTO, 1998).

[40] The Laws and Regulations on customs valuation were notified to the WTO (WTO document G/VAL/N/1/ZAF, 30 August 1996.

[41] The South African Commissioner for Customs and Excise may, from time to time, at the request of the Board on Tariffs and Trade, add other criteria or increase the prescribed percentage in regard to specific imported goods from a particular territory (WTO, 1998).

(3) TARIFFS, AND OTHER CHARGES AND TAXES

(i) General features

12. Under the 1969 SACU Agreement, South Africa's Board on Tariffs and Trade (BTT) sets customs, sales, and excise duties to be applied by SACU members. Under the 2002 Agreement, however, the SACU Council of Ministers will have responsibility for policy decisions including tariff changes. Recommendations on tariff changes are to be made by a Tariff Board, and suggestions by National Bodies (Chapter II(ii)(a)). This may reduce the ability of domestic producers from any SACU country (not only South Africa) to obtain tariff protection. BLNS countries may, as a temporary measure, levy additional duties on imports (including those from South Africa) to protect their infant industries.[42] Protection afforded to an infant industry cannot exceed eight years, unless otherwise determined by the Council of Ministers. A similar provision already exists in the 1969 SACU Agreement.

13. In general, goods imported to the SACU area may be subject to four types of charges: ordinary customs duties, excise duties, levies, and VAT or sales tax. Although the tariff structure has been somewhat simplified since the previous Review of SACU in 1998, it remains complex. The 2002 tariff is based on the 2002 Harmonized Commodity Description and Coding System (HS). The total number of eight-digit tariff lines increased slightly from 7,814 in 1997 to 7,909 in 2002, mainly due to the change in HS nomenclature from the 1996 version.

14. The tariff still comprises the same types of duties as in 1998, i.e. *ad valorem*, specific, mixed, compound, and formula duties based on reference prices (Table III.2). Around three-fourths of all tariff lines (5,933 lines at the HS eight-digit level) bear *ad valorem* rates (39 bands), of which more than half are duty-free (3,430 lines); the rates range from 0 to 55%.[43] In 1997, 74.4% of all tariff lines were *ad valorem* (45 bands), with rates ranging from 0 to 57.5%.[44] The number of lines with specific duties fell from 218 in 1997 to 195 in 2002; those with compound duties from 6 to 2; and with formula duties from 28 to 5; lines with mixed duties increased from 1,738 to 1,774.[45] *Ad valorem* components of certain non-*ad valorem* duties range up to 60%.

15. Mixed duties (three different types) apply mainly to fish, beverages, sugar, wool and apparel products (Table III.2). Specific duties apply mainly to agricultural products (181 lines) such as products of the milling industry, fishing products, beverages, spirit and vinegar, sugar and sugar confectionery, and petroleum products. Formula duties are levied on preserved tomatoes, corn-flour, cherries, and two kinds of tobacco. Compound duties apply to two lines: wheat or meslin flour, and mineral water in sealed containers (Table III.3).

16. In the Uruguay Round, South Africa on behalf of SACU countries committed itself to apply tariff quotas to a range of agricultural products, under the minimum market-access commitments, at maximum tariffs of 20% of the bound rates. Products subject to the commitments include animal products, potatoes, vegetables, fruits, cereals, coffee, tea, oil seeds, sugar, food preparations, wine and spirits, vinegar, tobacco, and cotton. Initial quotas are expected to increase for, *inter alia*, meat of sheep, fresh milk and cream, cheese, eggs, certain cereals, potatoes, and sugar (Table AIII.1).

[42] An infant industry is defined as an industry established in the area of BLNS for not more than 8 years. Article 26 of the 2001 SACU Agreement.
[43] The conversion of non-*ad valorem* duties into *ad valorem* tariff rates would substantially increase the number of tiers, the maximum value, and certain averages.
[44] WTO (1998), Trade Policy Review of SACU, Geneva.
[45] The number of mixed duties in WTO (1998) comprises both mixed and "other" duties.

Table III.2
MFN tariff distribution, by type of duty, 2002

Type of duty	Number of lines (8-digit HS)	Examples (HS chapters)
Ad valorem	5,933	All HS chapters
Specific	195	02, 03, 04, 07, 08, 09, 10, 11, 12, 16, 17, 19, 20, 21, 22, 24, 27, 38, 52, 63
Compound	2	11, 22
Mixed	1,774	
Type 1 (25% or 70c/kg.)	65	03, 16, 20, 62 , 63, 64
Type 2 (325c/kg with a maximum of 39%.)	114	07, 16, 19, 20, 27, 52, 55, 63
Type 3 (22% or 27% with a maximum of 2880c/kg.)	1,595	51, 52, 54, 55, 58, 59, 60, 61, 62
Formula	5	19, 20, 24
Total lines	7,909	

Source: WTO Secretariat estimates, based on data provided by South Africa.

Table III.3
Formula and compound duties, 2002

HS Heading	Product description	Duty
Formula duties		
20021090	Other tomatoes prepared or preserved otherwise than by vinegar or acetic acid	110¢/kg. less 80%
19019010	Cornflour	10% or 55¢/kg. less 90%
20060030	Cherries, drained or glace	20% or 215¢/kg. less 80%
24011000	Tobacco, not stemmed or stripped	15% or 860¢/kg. less 85%
24012000	Tobacco, partly or wholly stemmed or stripped	15% or 860¢/kg. less 85%
Compound duties		
11010000	Wheat or meslin flour	20% plus 29.4¢/ kg.
22029020	Other non-alcoholic beverages: in sealed containers holding 2.5l or less (excluding those in collapsible plastic tubes and those with a basis of milk)	25% plus 1.04¢/ litre

Source: WTO Secretariat, based on data provided by South Africa.

(ii) MFN applied tariff structure

17. For the purpose of tariff analysis, specific duties, as well as specific components of compound duties, have been ignored. Only *ad valorem* duties, even when referred to as minima or maxima, as well as the *ad valorem* components of compound duties, are used for the calculations.[46] For this reason, the analysis may, to a certain extent, be misleading. For instance, the elimination of the specific components of compound duties is likely to introduce a downward bias in the estimates. Furthermore, the *ad valorem* equivalents of certain non-*ad valorem* duties may be relatively high; formula duties in particular may range up to extremely high rates (Box III.1).

[46] Thus the analysis is based on 7,713 tariff lines, out of a total number of 7,909 lines, i.e. 196 lines (195 specific duties, and 1 formula duty) were not taken into account.

Box III.1: Selected aspects of the SACU tariff structure

Formula duties were designed to combat "disruptive competition" (e.g. dumping, export subsidies, distress selling in cases of temporary surplus, arbitrary pricing in non-market economies, and price manipulation in intra-group transactions) by maintaining domestic prices above set floors. For this purpose, formula duties are automatically adjusted with changes in international prices. The formula duty generally applies the higher of two rates and is based on the relationship between the f.o.b. import price and a reference price: either an *ad valorem* duty applies, or the amount of customs duty payable on each unit of the good is calculated as the difference between the reference price and the f.o.b. price net of the otherwise payable *ad valorem* amount of duty.

Let θ be the ad valorem rate, P_m the reference price and P_z the f.o.b. import price, the formula-duty system can be summarized as follows: if $P_z \geq P_m$, then the *ad valorem* rate θ applies; otherwise, i.e. if $P_m > P_z$, the amount of duty payable (D_c) is calculated using the following formula:

$D_c = P_m - (1 - \theta)P_z$.

The *ad valorem* equivalent rate θ_c that yields D_c is:

$\theta_c = D_c/P_z = (P_m - (1 - \theta)P_z) / P_z = (P_m /P_z) + \theta - 1$.

This expression means that, for a given reference price P_m and an *ad valorem* rate θ, the *ad valorem* equivalent, θ_c, increases as f.o.b. prices decline. Since (P_m/P_z) is higher than 1, then $\{(P_m/P_z)-1\}$ is positive and θ is lower than θ_c, which may take any value between θ, its lowest level, and infinity. Therefore, the maximum tariff protection is indefinite, the maximum *ad valorem* rates formerly set for certain formula duties having been eliminated.

For example, on drained or glacé cherries, the formula duty applies 20% if the import price is at least 215¢/kg., otherwise if the f.o.b. import price is lower than 215¢/kg., the amount of duty payable will be 215¢/kg. less 80% of the import price. If the import price is 100¢/kg. for example, the duty payable will amount to: Dc = 215¢ - (1 - 0.2)100¢ = 135¢/kg.; therefore, the *ad valorem* equivalent rate θ_c will be 135%. On products such as tomatoes prepared or preserved otherwise than by vinegar or acetic acid, no minimum *ad valorem* rate is explicitly specified.

Likewise, the level of protection afforded domestic producers by means of specific duties is not immediately obvious and needs to be assessed; the duty-collection ratio (the ratio of tariff revenue to the import value) and the *ad valorem* equivalent (the ratio of specific duties to import prices) are generally used as estimates.

The duty-collection ratio underestimates the level of tariff protection because the actual tariff revenue, as a result of tariff exemptions and concessions, preferential tariff treatment, and inefficiencies in collection, does not reflect the real tariff burden borne by fully dutiable imports. Since it is based on data that already included the impact of tariff protection, this method can only be used (with caution) for a retrospective assessment; it cannot be used to assess the impact of a change in tariff for which revenue and import value have not been observed. Therefore, the method based on *ad valorem* equivalents (AVEs), although limited by the estimate of an average price for the wide variety of goods embodied in each tariff line, is generally preferred.

Variations in import prices through fluctuations of world prices and/or exchange rates may continually affect the structure of a given tariff with specific duties and make it difficult to assess the level of tariff protection (inversely linked to the world prices and to the exchange rates) afforded domestic producers. In a world of floating exchange rates, such an assessment should be continual even if the tariff and world prices (in the currencies of exporting countries) remain fixed.

Specific duties provide disparate levels of protection to domestic production of similar goods: the basis of the tariff being the unit of imported goods, its impact tends to be higher for relatively heavy/voluminous and cheap products than for sophisticated high-value supplies within the same tariff category. Since, for a given product, import price may vary from one importer to another, so (inversely) does the level of tariff protection. Moreover, although the use of specific duties removes certain constraints resulting from obligations under the relevant WTO Agreement, it provides no gains in terms of customs valuation, which has to be undertaken in any case for internal-taxation purposes, for instance, the value-added tax (which is worldwide *ad valorem*) or the sales tax, depending on the SACU country. Therefore, despite the seeming simplicity of their administration, specific duties lack transparency and predictability.

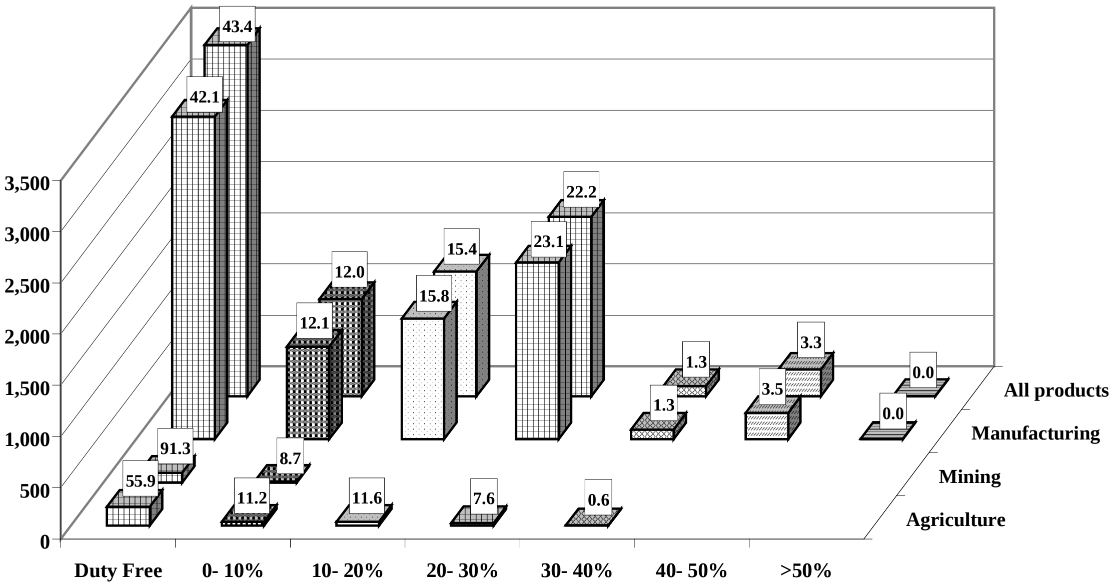
Awareness of the shortcomings of the tariff, including its complexity, has led to widespread duty and tax concessions granted to ensure positive escalation, with a view to further increasing the effective rate of protection.

Source: WTO (1998), Trade Policy Review: Southern African Customs Union, Geneva.

18. Subject to the preceding observations, the simple average rate of the 2002 applied MFN tariff is 11.4% (Table AIII.2), down from 15% in 1997; while the standard deviation was reduced from 17.8% in 1997 to 12.6% in 2002. The coefficient of variation of 1.10 (down from 1.18 in 1997) still depicts substantial relative dispersion of the tariff rates. The modal rate (the rate occurring most frequently) is zero, and applies to some 43.4% of all tariff lines (down from 43.6% in 1997) (Chart III.1). Duty-free items include: live animals, products of animal origin, ores, fertilizers, cork, pulp of wood, silk, some minerals (e.g. nickel, lead, zinc), and other base metals. Subject to the limitations of the present analysis, relatively high tariffs apply to: some textile products (over 60% on worn clothing and other worn articles (HS 6309 items)); 30% or above for articles of apparel, tobacco, and carpets; and higher than 20% for footwear, umbrellas, beverages, preparations of cereals, fish and crustaceans, and meat and edible meat offal.

Chart III.1
MFN tariff distribution by sector (ISIC1 definitions)[a],

Number of lines



a Labels are share by sector. Due to non-*ad valorem* duties, they may not sum up to 100%.

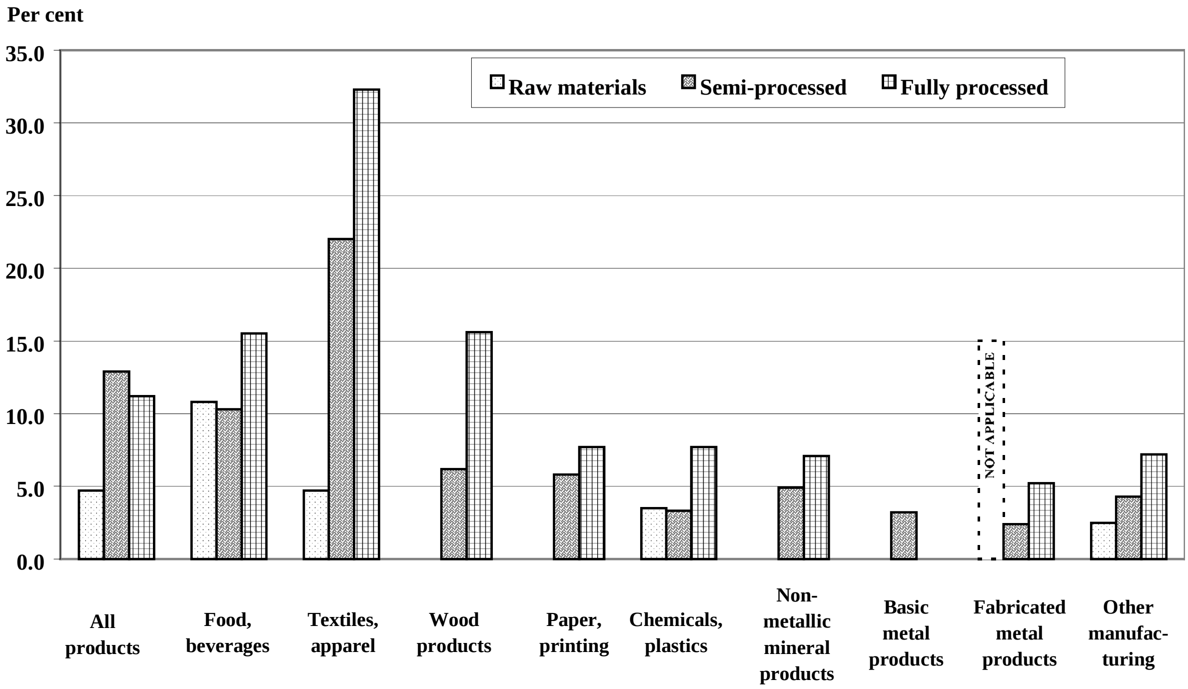
Source: WTO Secretariat calculations, based on data provided by South Africa.

19. By the International Standard Industrial Classification (ISIC) (Revision 2) of the UN, tariff protection on manufacturing averages 11.8%, down from 15.6% in 1997. Tariffs average 5.5% in agriculture (Major Division 1 of ISIC; down from 5.6% in 1997), and 0.7% in mining and quarrying (down from 1.4% in 1997). Using the WTO definition[47], tariff protection is 9.6% for agricultural products (up from 9.4% in 1997), against 11.6% for non-agricultural products (down from 15.7% in 1997).

[47] WTO definition of agriculture: HS Chapters 01-24 less fish and fishery products (HS 0301-0307, 0509, 051191, 1504, 1603-1605 and 230120) plus some selected products (HS 290543, 290544, 290545, 3301, 3501-3505, 380910, 382311-382319, 382360, 382370, 382460, 4101-4103, 4301, 5001-5003, 5105-5103, 5201-5203, 5301 and 5302).

20. Tariff reforms have eroded the margins of tariff escalation (affecting negative more than positive escalation). Nevertheless, in aggregate, the tariff still displays: positive escalation from first-stage processed products, with an average tariff rate of 4.7% (down from 4.9% in 1997), to semi-finished products, with an average rate of 12.9% (down from 18.6% in 1997); and negative escalation from semi-finished to fully-processed products on which tariffs average 11.2% (down from 13.8% in 1997) (Chart III.2). Tariff escalation is mixed in chemicals, petroleum, coal, rubber and plastics, and basic metal industries. It is positive in all the other industries. This result is somewhat misleading for the reasons discussed in the preceding observations and the provision of duty concessions (not taken into account in the analysis). Therefore, further tariff rationalization, through simplification of the structure and reduction of rates, should introduce more transparency in the tariff regime and reduce the need for concessions.

Chart III.2
Tariff escalation by ISIC 2-digit, 2002



Source: WTO Secretariat estimates, based on data provided by South Africa.

(iii) MFN bound tariffs

21. During the Uruguay Round, South Africa, on behalf of all SACU countries, bound about 96% of the tariff lines at the HS eight-digit level (Table III.4).[48] However, Botswana and Lesotho have some differences in tariff bindings compared to the other SACU members. All bindings are at *ad valorem* rates, including lines to which specific, mixed, compound, or formula duties apply (section (ii) above, and Box III.1).

[48] Calculated on the basis of the 2001 tariff schedule. This differs from the percentage in the previous report because the total number of tariff lines fell from 12,681 to 7,819.

Table III.4
Tariff bindings in SACU, post-Uruguay Round [a]

Description	Number of tariff lines[a]	Average	Maximum	Fully bound	Partially bound	Unbound
		(per cent)				
All products	7,817	20.9	597.0	96.1	0.1	3.9
HS 01-24	913	46.8	597.0	82.4	0.0	17.6
HS 25-97	6,904	18.1	185.0	97.9	0.1	2.0
WTO agriculture [b]	846	43.5	597.0	99.5	0.0	0.5
- Animals and products thereof	96	44.8	160.0	100.0	0.0	0.0
- Dairy products	20	93.7	96.0	100.0	0.0	0.0
- Coffee and tea, cocoa, sugar etc.	178	54.0	597.0	99.4	0.0	0.6
- Cut flowers, Plants	44	10.6	60.0	100.0	0.0	0.0
- Fruit and vegetables	182	30.7	99.0	100.0	0.0	0.0
- Grains	16	30.8	72.0	100.0	0.0	0.0
- Oil seeds, fats and oils and their Products	75	49.0	81.0	100.0	0.0	0.0
- Beverages and spirits	49	145.2	597.0	100.0	0.0	0.0
- Tobacco	13	51.7	54.0	100.0	0.0	0.0
- Other agricultural products n.e.s.	173	16.9	72.0	98.3	0.0	1.7
WTO Non-agriculture [c]	6,948	18.1	185.0	96.0	0.1	3.9
- Wood, pulp, paper and furniture	273	11.4	30.0	100.0	0.0	0.0
- Transport equipment	202	25.2	50.0	100.0	0.0	0.0
- Non-electric machinery	638	10.8	30.0	100.0	0.0	0.0
- Metals	760	13.9	30.0	99.7	0.1	0.3
- Electric machinery	374	18.1	30.0	99.5	0.0	0.5
- Chemicals and photographic supplies	1,290	13.3	185.0	99.5	0.0	0.5
- Textile and clothing	2,162	26.8	45.0	99.4	0.0	0.6
- Non-agriculture articles n.e.s.	463	13.0	30.0	94.4	0.2	5.4
- Leather, rubber, footwear and travel goods	213	21.0	30.0	93.4	1.4	5.2
- Mineral products, precious stones and precious metals	406	10.3	30.0	86.2	0.2	13.5
- Fish and fishery products	167	21.1	37.0	4.2	0.0	95.8
Petroleum	23	-	-	0.0	0.0	100.0

a The table covers all SACU members excluding Lesotho, which bound duties on all agriculture products at a ceiling rate of 200% and on non-agricultural products at a ceiling rate of 60%.

b Botswana's concessions on agriculture products are the same except on dairy products (HS 04), wheat, maize and rice (HS 1001, 1005 and 1006), groundnuts and sunflowers oil-seed (HS 1202 and 1206) and raw cotton (HS 5201), on which tariff rates are bound at 20%.

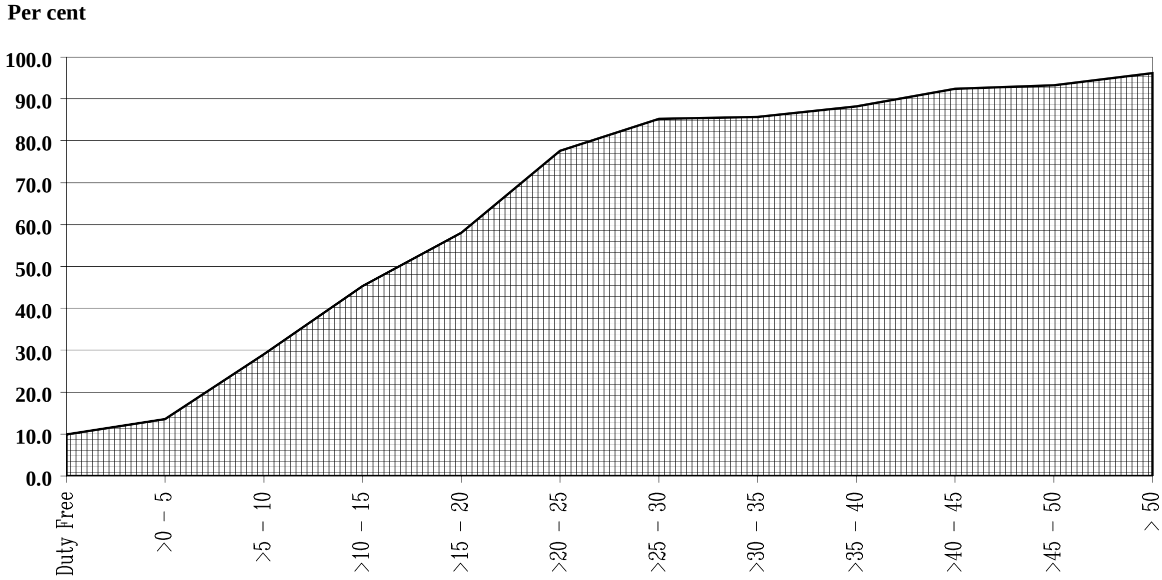
c Botswana's concessions on non-agricultural products are the same except on soda ash (ex HS 28) and small tractors (ex HS 9701), on which tariff rates are bound at 20%.

Source: WTO Secretariat, based on South Africa's Uruguay Round Schedule XVII.

22. The simple average of the final bound rate for Namibia, South Africa, and Swaziland is 20.9%, with a maximum rate of 597% on products such as alcoholic beverages, and spirits (HS Chapters 21, and 22). More than three-fourths of the tariff is bound at 25% or lower, and 9.9% is bound at zero (Chart III.3). Unbound tariff lines cover mostly: fish and fish products (HS Chapters 03, 15, and 16); mineral fuels, oils and products of their distillation, bituminous substances and mineral waxes (HS Chapter 27); and arms and ammunition (HS Chapter 93). Tariffs on agricultural products

(WTO definition) are bound at ceiling rates averaging 43.5%, while tariffs on non-agricultural products are bound at ceiling rates averaging 18.1%. These leave margins for discretionary increases in applied rates.

Chart III.3
Cumulative distribution of post-Uruguay Round bound tariffs



Note: The cumulative percentage does not add up to 100% due to unbound duty items.

Source: **WTO Secretariat calculations, based on South-African Uruguay Round Schedule XVII.**

23. For Botswana, tariff bindings on WTO agricultural products are identical to those of Namibia, South Africa, and Swaziland, with the exception of dairy products (HS Chapter 04); wheat, maize, and rice (HS headings 1001, 1005 and 1006); groundnuts and sunflower seeds (HS headings 1202 and 1206); and raw cotton (HS heading 5201), on which tariffs are bound at 20%. Tariff bindings on non-agricultural products are the same as those of South Africa, except for soda ash (HS Chapter 28ex), and small tractors (HS heading 8701ex), on which tariffs are bound at 20%.

24. Lesotho's bindings differ from those of Namibia, South Africa, and Swaziland in that agricultural products are bound at a ceiling rate of 200%, and non-agricultural products at 60%.

(iv) Tariff preferences

25. Under the SACU Agreement, goods originating in a member country are traded free of duties within the customs union (Chapter II(2)(i)). Under the SADC Trade Protocol, all SACU countries also grant duty-free access, on a reciprocal basis, to imports of Category A products from SADC members (Chapter II(4)). SACU countries also grant tariff preferences on a reciprocal basis under trade agreements in which they participate individually. Consequently, tariff preferences may differ from one SACU country to another.

(v) Other duties and charges

26. In addition to customs tariffs, certain products are also subject to excise duties, levies, and VAT or sales tax. Table III.5 shows SACU members' binding commitments on other duties and charges.

Table III.5
Binding of other duties and charges (ODCs) by SACU members[a], January 2003

HS code	suffix	Description	Bound ODCs
07134000		Lentils	9.60R/T (Normal levy)+2.40R/T(Special levy)
07135000		Broad beans (Vicia faba var. major) and horse beans (Vicia faba var. equina, Vicia faba var. minor)	9.60R/T (Normal levy)+2.40R/T(Special levy)
07139010		Whole	9.60R/T (Normal levy)+2.40R/T(Special levy)
07139020		Skinned or split manioc, arrowroot, salep, jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh, chilled, frozen or dried, whether or not sliced or in the form of pellets; sago pith	9.60R/T (Normal levy)+2.40R/T(Special levy)
10019000		Other	585c/T (Normal levy)
10030000	01	- Barley: purchased for feed purposes	657c/t (Normal levy)+3353c/T(Special levy)
10030000	02	- Other	657c/T (Normal levy)+7202c/T(Special levy)
10040000		Oats	586c/T (Normal levy)+3330c/T(Special levy)
10051000		Seed	3.93R/T (Normal levy)+70.06R-141.80R/T(Special levy)
10059000		Other	3.93R/T (Normal levy)+70.06R-141.80R/T(Special levy)
10070000		Grain sorghum	5R/T (Normal levy)+19.95R/T(Special levy)
11071020		Of barley	821c/T (Normal levy)+450c/T(Special levy)
11072020		Of barley	821c/T (Normal levy)+450c/T(Special levy)
12010000		Soya beans, whether or not broken	3.90R/T (Normal levy)
12021000		In shell	11.35R/T (Normal levy)+10.00R/T(Special levy)
12022000		Shelled, whether or not broken	8.23R/T (Normal levy)+7.25R/T(Special levy)
12060000		Sunflower seeds, whether or not broken	4.40R/T (Normal levy)
12092100		Lucerne (alfalfa) seed	18.48R/70kg. (Normal levy)
12129910		Chicory roots	89.10R/T (Normal levy)+44R/T(Special levy)
24011000	00	Tobacco, not stemmed/stripped	
24011000	01	- Flue-cured tobacco	3.3c/kg. (Normal levy)+75.9c/kg.(Special levy)
24011000	02	- Burley tobacco	3.3c/kg. (Normal levy)+42.9c/kg.(Special levy)
24011000	03	- Air-cured tobacco	3.3c/kg. (Normal levy)+16.5c/kg.(Special levy)
24011000	04	- Oriental tobacco	3.3c/kg. (Normal levy)+16.5c/kg.(Special levy)
24012000	00	Tobacco, partly or wholly stemmed/stripped	
24012000	01	- Flue-cured tobacco	3.3c/kg. (Normal levy)+75.9c/kg.(Special levy)
24012000	02	- Burley tobacco	3.3c/kg. (Normal levy)+42.9c/kg.(Special levy)
24012000	03	- Air-cured tobacco	3.3c/kg. (Normal levy)+16.5c/kg.(Special levy)

Table III.5 (cont'd)

HS code	suffix	Description	Bound ODCs
24012000	04	- Oriental tobacco	3.3c/kg. (Normal levy)+16.5c/kg.(Special levy)
24013000	00	Tobacco refuse	
24013000	01	- Flue-cured tobacco	3.3c/kg. (Normal levy)+75.9c/kg.(Special levy)
24013000	02	- Burley tobacco	3.3c/kg. (Normal levy)+42.9c/kg.(Special levy)
24013000	03	- Air-cured tobacco	3.3c/kg. (Normal levy)+16.5c/kg.(Special levy)
24013000	04	- Oriental tobacco	3.3c/kg. (Normal levy)+16.5c/kg.(Special levy)
51011100		Shorn wool	7.5% of gross selling price (Normal levy)+5.0% of gross selling price(Special levy)
51011900		Other	7.5% of gross selling price (Normal levy)+5.0% of gross selling price(Special levy)
51012100		Shorn wool	7.5% of gross selling price (Normal levy)+5.0% of gross selling price(Special levy)
51012900		Other	7.5% of gross selling price (Normal levy)+5.0% of gross selling price(Special levy)
51013010		Not bleached, dyed or otherwise processed	7.5% of gross selling price (Normal levy)+5.0% of gross selling price(Special levy)
51013020		Bleached, dyed or otherwise processed	7.5% of gross selling price (Normal levy)+5.0% of gross selling price(Special levy)
51021110		Not further processed than bleached or dyed	11.5c/kg. (Normal levy)+10.5c/kg. +(5*Ac)/100 where A=average gross yield/kg. mohair sold through the Mohair Board(Special levy)
51021190		Other	11.5c/kg. (Normal levy)+10.5c/kg. +(5*Ac)/100 where A=average gross yield/kg. mohair sold through the Mohair Board(Special levy)
51021910		Not further processed than bleached or dyed	11.5c/kg. (Normal levy)+10.5c/kg. +(5*Ac)/100 where A=average gross yield/kg. mohair sold through the Mohair Board(Special levy)
51021990		Other	11.5c/kg. (Normal levy)+10.5c/kg. +(5*Ac)/100 where A=average gross yield/kg. mohair sold through the Mohair Board(Special levy)
51022010		Not further processed than bleached	11.5c/kg. (Normal levy)+10.5c/kg. +(5*Ac)/100 where A=average gross yield/kg. mohair sold through the Mohair Board(Special levy)
51022090		Other	11.5c/kg. (Normal levy)+10.5c/kg. +(5*Ac)/100 where A=average gross yield/kg. mohair sold through the Mohair Board(Special levy)
52010010		Not ginned	4.4c/kg. cotton fibre (Normal levy)+3.3c/kg. cotton fibre(Special levy)
52010020		Ginned but not further processed	4.4c/kg. cotton fibre (Normal levy)+3.3c/kg. cotton fibre(Special levy)
52010090		Other	4.4c/kg. cotton fibre (Normal levy)+3.3c/kg. cotton fibre(Special levy)

a The table is for Botswana, Namibia, South Africa, and Swaziland. With the exception of the products contained in the table, these countries have bound ODCs on all the other goods covered by their tariff binding at zero. Lesotho has bound ODCs on all products at zero.

Source: CTS file. WTO Consolidated Tariff Schedules database (CTS).

(a) Excise duties

27. SACU countries levy specific, *ad valorem* or formula excise duties on certain products; the duties are generally the same on goods of the same class or kind, whether domestically produced or imported. However, specific excise duties on certain imported beverages such as mineral water, lemonade, and flavoured mineral water, are higher than those collected on similar locally produced goods (R 0.136 per litre on locally produced non-alcoholic beverages, against R 0.1466 per litre on imports). Specific excise duties are also levied on prepared foodstuffs; beverages and spirits; tobacco; mineral products; and products of the chemical or allied industries.

28. *Ad valorem* excise duties are levied on certain manufactured products. The value for *ad valorem* excise duty purposes of imports includes an uplift of 15% of the transaction value and any non-rebated customs duties. The value for locally-manufactured products is the full and final price (before deductions of any discount other than cash discounts) at which the goods are offered for sale

or consumption in the local market. The modal (i.e. the most frequent) rate of *ad valorem* excise duties has decreased from 15% to 7% since the last Review; the minimum rate is 5% (Table III.6). The excise duty on certain categories of tractors, motor vehicles, and chassis, are calculated on the basis of a formula, with a maximum rate of 20%.

Table III.6
Products subject to *ad valorem* excise duties

Product description	Rate(%)
Essential oils (terpeneless or not)	7
Perfumes and toilet waters	7
Beauty and make-up preparations for the care of skin (other than medicaments)	5
Preparations for use on the hair	5
Shaving preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included	5
Prepared room deodorisers whether or not perfumed or having disinfectant properties	5
Articles of apparel, clothing accessories and other articles of furskin	7
Artificial fur and articles thereof	7
Single loudspeakers, mounted in enclosures, other loudspeakers, audio-frequency electric amplifiers and electric sound amplifier sets	7
Turntables (record-desks), record-players, cassette-players and other sound reproducing apparatus, not incorporating a sound recording device	7
Magnetic tape recorders and other sound recording apparatus whether or not incorporating a sound reproducing device	7
Video recording or reproducing apparatus whether or not incorporating a video tuner	7
Prepared unrecorded media for sound or similar recording of other phenomena, other than photographic or cinematographic goods	7
Records, tapes and other recorded media for sound or other similarly recorded phenomena, excluding photographic or cinematographic goods	7
Reception apparatus for radio-telephony, radio-telegraphy or radio-broadcasting, whether or not combined in the same housing, with sound recording or reproducing apparatus or a clock; lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of, or fittings for, instruments or apparatus, other than such elements of glass not optically worked	7
Sunglasses	7
Refracting telescopes, binocular or monocular, prismatic or not (excluding astronomical instruments)	7
Photographic (excluding cinematographic) cameras, photographic flashlight apparatus and flashbulbs (excluding certain discharge lamps)	7
Cinematographic cameras and projectors, whether or not incorporating sound recording or reproducing apparatus	7
Slide projectors and other image projectors (excluding cinematographic projectors and overhead projectors)	7
Photographic plates and film of any material, excluding paper, paperboard or textile	7
Side-cars, motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars, and with a cylinder capacity exceeding 800cm^3	7
Wrist-watches, pocket-watches and other watches, and clocks, excluding braille watches, tower, astronomical and observatory clocks, instrument panel clocks, and clocks of similar types for vehicles aircrafts and vessels	7
Revolvers and pistols (excluding target shooting pistols of 5.6 mm calibre), muzzle-loading firearms, other sporting, hunting or target-shooting shotguns or rifles, and spring, air or gas guns and pistols, excluding those designed to project missile suitable for the injection of animals.	7
Certain categories of motorcycles, cycles and side-cars, with cylinder capacity exceeding 200 cm^3 but not exceeding 800 cm^3	5
Automatic goods-vending machines, television receivers, video games of a kind used with a television receiver, games of skill or chance and related machines and parts thereof, excluding bowling alley equipment	7
Printing machines, automatic typewriters and work-processing machines, calculating machines, automatic data processing machines, facsimile transmission apparatus, certain external modems and parts thereof, and certain photo-copying apparatus	5
Under Schedule 1(2)(B), certain categories of tractors (HS8701.20), and motor vehicles, and chassis (HS 8702.00; 8703.00; 8704.00; and 8706.00)	C, with a maximum of 20%[a]

a C is the rate of excise duty (in percentage) calculated on the basis of the following formula: $C = 35B.10^{-4} - 50$, where B is the value for the *ad valorem* excise duty purposes.

Source: WTO Secretariat, based on information provided by South Africa.

(b) VAT or sales tax

29. Each SACU country sets its own value-added tax (VAT) or sales tax. Botswana, Namibia, and South Africa levy VAT at different rates (Annexes 1, 3, and 4); Lesotho and Swaziland still impose sales taxes, also at different rates (Annexes 2 and 5). Differences in internal taxation between SACU members increase transaction costs for traders, encourage smuggling and tax evasion, and distort trade flows. In practice, when goods are exported from one SACU country to another, the shipper applies for VAT/sales tax refunds from the exporting country, and then pays the relevant tax to the importing country. Filing paperwork with two different countries unnecessarily increases the costs of conducting international trade.[49] In the absence of harmonization, border controls have to be maintained within the SACU area. Harmonizing the taxation system would be more trade-friendly, and would foster economic integration within the region, and between the SACU area and the rest of the world.

(vi) Duty and tax concessions

30. The 2002 SACU Agreement provides that members apply identical rebates, refunds or drawbacks of customs duties on imported goods (Chapter II(2)(ii)). Throughout the SACU, products exempt from normal customs formalities, such as diplomatic imports, are also exempt from payment of both customs and excise duties. Rebates of customs and excise duties and temporary rebates of customs duties on various categories of products are also available (Table III.7).

Table III.7
Products eligible for rebates of customs and excise duties

Products	Schedule
Building material worked monumental building stone and articles thereof, tools and stores, for use by the War Graves Commission and similar international organizations	4, Part 1
Goods for cultural, educational, charitable, welfare or youth organizations or purposes	4, Part 1
Goods for heads of State, diplomatic and other foreign representatives, provided that the government of the mission or the person who is claiming the rebate facility accords reciprocal treatment to South Africans in similar positions	4, Part 1
Goods imported by immigrants, tourists, returning residents and other passengers, for their personal use and under specified conditions	4, Part 1
Cups, medals and other trophies, awarded abroad to any person, and such articles for presentation; goods formerly exported (re-imported goods), provided that specified conditions are met (for instance, a permit for re-importation issued by the Director-General of Agricultural Economics and Marketing is required for the admission under rebates of re-imported butter, cheese, maize and maize products, sugar, wine, brandy and spirituous beverages)	4, Part 1
Goods, such as wooden cases, empty containers, master models and base oils for lubricating oil, for industrial or commercial purposes	4, Part 1
Goods (excluding corn or grain seed), for purposes of experimenting therewith as the department controlling or supervising such experimenting may allow by specific permits, food containing soya-bean concentrates, specially prepared for infants	4, Part 1
Goods imported for the relief of distress of persons in cases of famine or other national disaster, under technical assistance or multilateral international agreements to which South Africa is a party	4, Part 1
Printed matters imported by airlines for their own use	4, Part 1
Parts and materials of plastics of a kind used for the manufacture of design engineering models of factories, installations and the like	4, Part 1

Table III.7 (cont'd)

[49] For example, the difference between South Africa's 14% VAT and Lesotho's 10% sales tax creates an economic border of its own. When goods exit South Africa and enter Lesotho, the shipper applies for a VAT refund from South African authorities, and then pays a sales tax to Lesotho.

Products	Schedule
Textiles fabrics woven from six different fibres, for testing dyestuff fastness	4, Part 1
Office furniture and equipment (excluding motor vehicles) for the official use by an organization (excluding a business enterprise) approved by the Commissioner for Customs and Excise, transferring its administrative operations to South Africa.	4, Part 1
Potatoes, dried leguminous vegetables and fruit, cereals and oil seeds (solely for planting or sowing), rape seed, sunflower seed, meat, fish, dairy products, plastics, rubber and rubber products, paper, not carded or combed cotton, worn clothing and other worn items and chemical products.	4, Part 2[a]
Under specified circumstances, lost, destroyed or damaged goods, in respect of which the fuel levy, together with the customs duty, amounts not less than R 2500	4, Part 4[b]
Petrol and distillate fuels for use by the State President, diplomatic and other foreign representatives	6, Part 3[c]
Distillate fuels used for road and rail transport in agriculture or forestry, for the production of agricultural goods, or used in forestry, whalers, trawlers and other ocean-going fishing or non-South African vessels.	6, Part 1[c]

a Temporary rebates of customs duties.
b Rebates of the fuel levy.
c Refunds of fuel levy.

Source: Information provided by South Africa.

(4) CONTINGENCY TRADE REMEDIES

31. Because of their membership of SACU, BLNS countries apply anti-dumping, countervailing, and safeguard measures imposed by South Africa. These measures are mainly relevant to items produced in South Africa, since the domestic industries of BLNS countries do not produce most of the items concerned. Therefore, BLNS countries could be penalized by the imposition of these measures. There has been no major change to the legislation on contingency trade remedies since the last TPR of SACU. Chapter 6 of the 1964 Customs and Excise Act, and Section 4 of the Board on Tariffs and Trade (BTT) Act, 1986, as amended in 1995 and 1997[50], provide the legal basis for anti-dumping, countervailing, and safeguard measures in South Africa, and by extension in the SACU. The 2002 SACU Agreement recognizes the need to develop such legislation (as a priority) at the regional level, with a view to consolidating the increasing liberalization of their markets.

32. Anti-dumping, countervailing, or safeguard actions are initiated by the BTT at the request of a domestic (i.e. SACU) industry. After investigation, the BTT makes recommendations to the South African Minister of Trade and Industry (MTI). The Minister of Finance may, by notice in the official Gazette and in accordance with a request of the MTI, impose, withdraw, or reduce anti-dumping, countervailing, or safeguard duties, with or without retrospective effect. However, anti-dumping, countervailing, and safeguard duties may only be imposed retroactively to the date of the imposition of a provisional payment.

33. In April 1996, South Africa undertook, in the WTO Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures, to amend its legislation (by extension also SACU's) on these matters with a view to ensuring its compliance with the requirements of the WTO Agreements. At the request of the South African Ministry of Trade and Industry, the BTT investigated the restructuring of the anti-dumping and countervailing system. The recommendations of the BTT will be published in the second half of 2003, together with the proposed regulations.

(i) Anti-dumping and countervailing measures

34. Under the 1986 BTT Act, as amended, dumping occurs when the price of a good exported to South Africa or the SACU area (the export price) is lower than the "normal value", defined as the

[50] Board on Tariffs and Trade Amendment Act, No. 39 of 1995, and Board on Tariffs and Trade Amendment Act, No. 16 of 1997.

comparable price actually paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or countries of origin.[51] In the absence of the price as defined, the normal value will be the highest comparable price at which similar goods are actually exported to any third country in the ordinary course of trade, or the constructed cost of production of goods in the country of origin plus a "reasonable" addition for selling costs and profit.[52]

35. An export or a proposed export of goods to South Africa or the SACU area is deemed to be subsidized if the authority of the exporting country or any other country provides any form of financial aid or other assistance in respect of those goods, including assistance in respect of production, manufacture, transport, or export.[53] Procedures for anti-dumping and countervailing actions are essentially the same as at the time of the previous TPR of SACU.[54]

36. South Africa reported initiating 157 anti-dumping investigations and applying 106 anti-dumping measures during the period 1 January 1995 through 30 June 2002, making it the fifth largest user of anti-dumping actions (after the United States, the EU, India, and Argentina).[55] As at 30 June 2002, South Africa had 98 definitive anti-dumping duties in force (Chart III.4), compared with 35 at the end of 1996. In terms of anti-dumping initiations by country of origin during 1995-June 2002, 30.8% were against members of the EU, 9.6% each against China and India, and 8.3% against the Republic of Korea. The South African anti-dumping measures have mostly affected chemical and products thereof, basic metal products, glass and glassware products, and textiles and clothing (Chart III.4).

37. Between August 1998 and 30 June 2002, South Africa initiated ten countervailing investigations. In one case no subsidization was found, while in three others, definitive duties were imposed; one was still reported as at 30 June 2002 regarding welded galvanized steel pipe (Table III.8).

[51] The export price is defined as the price actually paid or payable for goods sold for export net of all taxes, discounts, and rebates actually granted and directly related to the sale under consideration. In the absence of an export price or where it is unreliable, the export price is constructed by the BTT.

[52] Allowance is made for differences in conditions, terms of sales and taxation, and for other differences affecting price comparability.

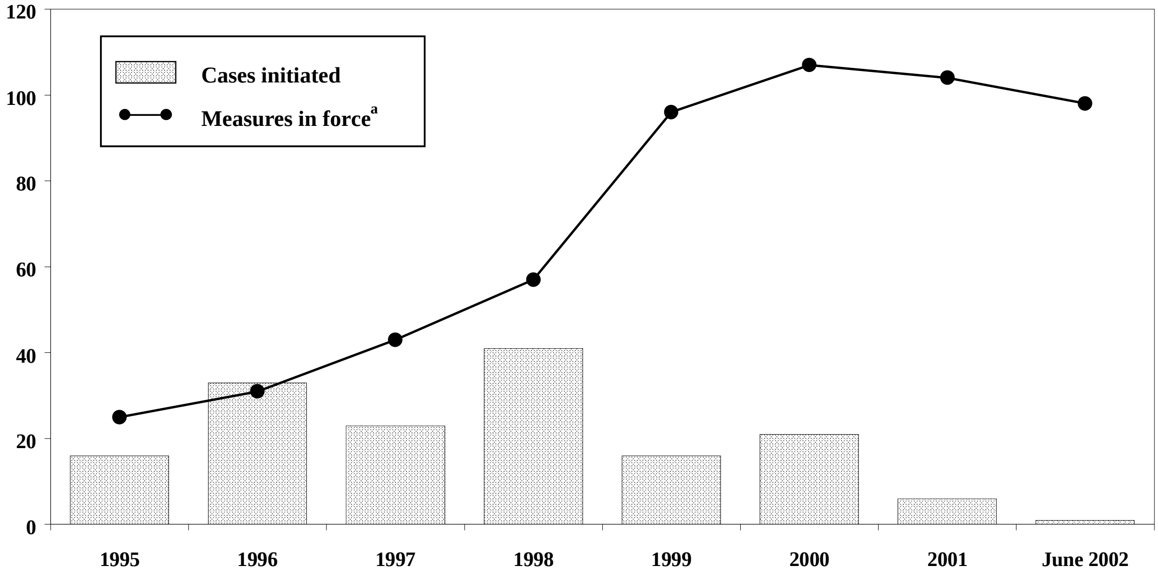
[53] Board on Tariffs and Trade Act (as amended).

[54] For a complete description about the procedures for anti-dumping and countervailing actions, see WTO (1998).

[55] WTO (2002).

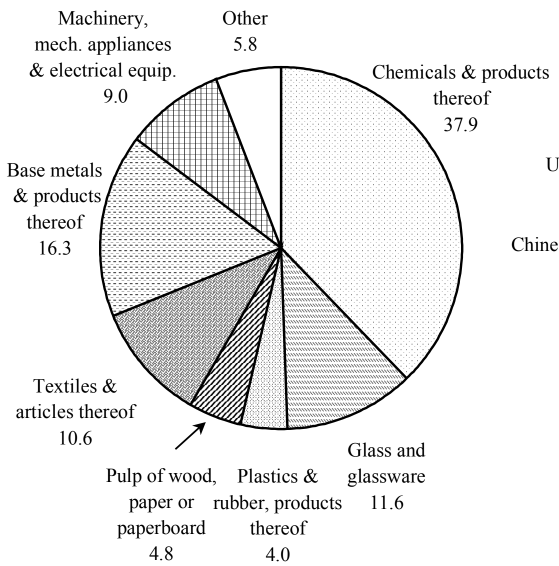
Chart III.4
Anti-dumping measures, January 1995 to June 2002

(a) Number of cases initiated and measures in force

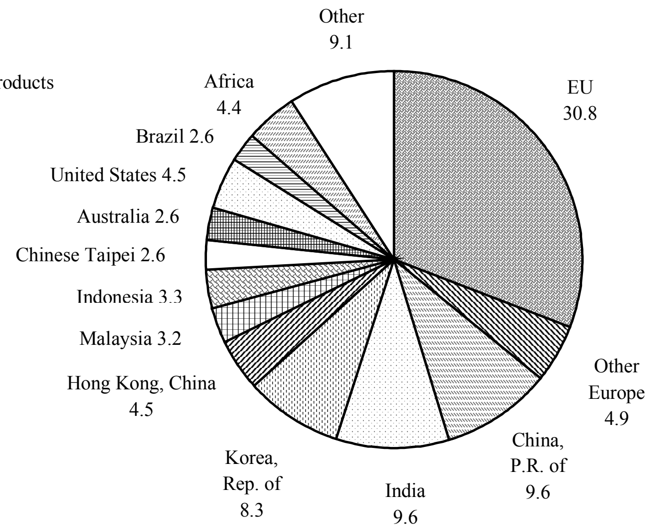


a Anti-dumping measures in force on 31 December, except for 2002 which refer to 30 June.

(b) Initiations by product
Per cent



(c) Initiations by origin
Per cent



Source: Notifications to the WTO; and information provided by South Africa.

Table III.8
Countervailing measures, 1 July 1998 to 30 June 2002

Country/ Product	Initiation	Provisional measure/de-termination	Final measure		No final measure	
			Definitive duty	Price undertaking	No subsidization	Other
India						
Footwear	15.09.99	06.07.01	../n.a.	../n.a.	../n.a.	../n.a.
Wire ropes	22.09.00	17% 08.02.02	../n.a.	../n.a.	../n.a.	../n.a.
Welded galvanized steel pipes	16.03.01	7.3% 08.02.02	7.3% 14.06.02	../n.a.	../n.a.	../n.a.
Suspension PVC	24.03.00	15.12.00	21.77% 15.06.01	../n.a.	../n.a.	../n.a.
PVC rolled goods	25.08.00	No duty 09.11.01	../n.a.	../n.a.	../n.a.	28.06.02
Acetamino-phenol	02.02.99	../n.a.	24.11.00	../n.a.	../n.a.	29.06.01
Overhead aluminium steel reinforced conductor cable	30.04.99	No duty 20.04.00	../n.a.	../n.a.	25.05.01	../n.a.
Paper insulated covered electric cable	21.08.98	No duty 07.05.99	../n.a.	../n.a.	../n.a.	05.11.99
Korea, Rep. of						
Wire ropes	22.09.00	../n.a.	../n.a.	../n.a.	../n.a.	../n.a.
Pakistan						
Bed linen	24.03.00	30.07.01	../n.a.	../n.a.	../n.a.	../n.a.

../n.a. Not available or not applicable.

Source: WTO documents G/SCM/N/47/ZAF, 16 April 1999; G/SCM/N/52/ZAF, 14 October 1999; G/SCM/N/56/ZAF, 5 April 2000; G/SCM/N/62/ZAF, 25 September 2000; G/SCM/N/68/ZAF, 9 March 2001; G/SCM/N/75/ZAF, 2 August 2001; G/SCM/N/81/ZAF, 18 March 2002; and G/SCM/N/87/ZAF, 26 September 2002; and information from the authorities of South Africa.

(ii) Safeguard measures

38. In South Africa, and by extension in SACU, safeguard actions are taken in the case of "disruptive competition". Under the BTT Act, as amended in 1997, disruptive competition is "the export of goods to South Africa or the common customs area of the SACU in such increased quantities, absolute or relative to domestic production in South Africa or the common customs area of the SACU which produces like or directly competitive products".[56] The 1997 amendments to the BTT Act were to bring the definition of disruptive competition fully into line with the WTO

[56] Board on Tariffs and Trade Act (as amended).

Agreement on Safeguards. The 1997 amendments to the Customs and Excise Act provide a legal mechanism for the institution of provisional safeguard measures.[57]

39. During the period under review, South Africa, and by extension SACU, has not introduced any new safeguard measure. However, some items under HS Chapter 27 (mineral fuels, mineral oils, and products of their distillation), and new tyres (40.11), were notified by South Africa under Article 11.1 of the WTO Agreement on Safeguards.[58] In accordance with the phasing-out/removal timetable provided by South Africa in this regard, import control on Chapter 27 products were to be phased out or brought into conformity with the WTO by the end of 1998, and import control on new tyres would have been removed since 1996. However, import controls still apply to these products, for strategic reasons in the case of mineral fuels/oils, or for monitoring quality specifications purposes with respect to new tyres (Annex 4, Table III.1).

40. South Africa, and by extension SACU, retained the right to use the transitional safeguard mechanism of Article 6 of the WTO Agreement on Textiles and Clothing, but has not made use of it. As reported in the previous Review, South Africa notified on time the list of textile and clothing products integrated into GATT 1994 during Phases I and II.[59] However, South Africa has yet to notify its schedule for Phase III.

41. As at the end of October 2002, South Africa, and by extension SACU, had not invoked the special safeguard right it retained under Article 5 of the WTO Agreement on Agriculture. There is no provision for special safeguards in the SACU Agreement.

42. SACU members have taken no trade measures for balance-of-payment purposes since 1998.

(5) STANDARDS AND TECHNICAL REGULATIONS

43. SACU countries do not have a common policy on standards and technical regulations. South African standards, however, are generally used in Lesotho and Namibia, whereas Botswana established its own Bureau of Standards in 1995, and Swaziland enacted its Standards and Quality Act in 2001 (Annexes). Article 28 of the 2002 SACU Agreement provides that members shall harmonize product standards and technical regulations within the common customs area, and apply product standards and technical regulations in accordance with the WTO Agreement on Technical Barriers to Trade.

44. Article 30 of the 2002 SACU Agreement indicates that members reserve the right to apply sanitary and phytosanitary (SPS) measures in accordance with their national SPS laws and international standards. Subject to the provisions of Article 18 of the Agreement, SACU countries recognize the importance of measures prescribing zoo-sanitary and phytosanitary requirements aimed at preventing the spread of animal and plant diseases, parasites and insects, and agree to consult from time to time to achieve such an aim in the common customs area, with due regard to the need to facilitate the flow of trade in products affected by such measures.

[57] The amendments also provide for the application of provisional measures in respect of safeguard duties in a similar manner as is currently provided for in respect of anti-dumping and countervailing duties.

[58] WTO document G/SG/N/5/ZAF, 18 June 1995.

[59] WTO documents G/TMB/N/114, 10 August 1995, and G/TMB/N/197/Rev.1, 26 November 1996 for Phase I products, and WTO document G/TMB/N/307, 24 November 1997, for Phase II.

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APPENDIX TABLES

Table AIII.1
Tariff quotas on agricultural products, 15 April 1994[a]

HS code	Description of products	Initial quota	Final quota
		Quantity (tonnes)	Quantity (tonnes)
0201 & 0202	Meat of bovine animals	26,254	26,254
0203	Meat of swine	2,814	4,691
0204	Meat of sheep	3,601	6,002
0206	Edible offal	2,544	2,544
0207	Meat and edible offal of poultry	17,420	29,033
0401	Milk and cream, fresh	32,194	53,657
0402	Milk powder	4,470	4,470
0403	Buttermilk and yoghurt	213	213
0404	Whey	2,786	2,786
0405	Butter	1,167	1,167
0406	Cheese	1,557	1,989
0407 & 0408	Eggs	5,400	9,000
0701	Potatoes	28,897	48,161
0705.20	Chicory, fresh	4	4
0708	Peas and beans, fresh	263	263
0710	Vegetables frozen	583	583
0712	Dried vegetables	860	860
0713.20 & 0713.90	Dried peas	5,184	5,184
0713.30	Dried beans	11,063	11,063
0713.40	Lentils	1,601	1,601
0806.20	Grapes, dried	238	397
0813	Dried fruit	259	349
0901	Coffee	15,746	15,746
0902	Tea	11,375	11,375
1001 & 1100 Ex	Wheat or wheat equivalent	97,333	108,279
1002	Rye	50	83
1003	Barley	14,552	14,552
1004 & 1100 Ex	Oats or oats equivalent	7,333	7,333
1005 & 1100 Ex	Maize or maize equivalent	161,400	269,000
1007	Grain Sorghum	12,670	21,116
1008	Other cereals	145	145
1100 Ex	Barley equivalent	96,248	96,248
1201	Soya beans	1,030	1,717
1202	Groundnuts	7,908	7,908
1204	Linseed	202	202
1205	Rapeseed	871	871
1206	Sunflowerseed	8,709	14,514
1209.21	Lucerne seed	576	576
1507, 1508, 1510, 1511, 1512, 1513, 1514, 1515.	Vegetable oils	61,083	61,083
1701	Sugar	46,667	62,037
1702	Other sugars	6,391	6,391
1703	Molasses	20,720	34,533

Table AIII.1 (cont'd)

HS code	Description of products	Initial quota	Final quota
		Quantity (tonnes)	Quantity (tonnes)
1901	Malt extracts	6,119	6,119
1902	Pasta	1,749	1,749
1903	Tapioca	5,448	5,448
2008 Ex	Preserved fruit and nuts	1,636	1,636
2106	Food preparations	3,109	3,109
2204, 2205, 2206, 2207, 2208	Wine and spirits (litres)	9,572,405	9,572,405
2209	Vinegar (litres)	15,000	15,000
2303	Corn gluten feed	3,960	3960
2304, 2305, 2306	Oilcake	120,667	120,667
2306			
2401	Tobacco	16,773	16,773
5201	Cotton	17,101	17,101

a In the Uruguay Round, South Africa on behalf of SACU countries, committed itself to apply quotas to a range of agricultural products, under the minimum market-access commitments, at maximum tariffs of 20% of bound rates.

Source: Schedule XVIII – South Africa.

Table AIII.2
SACU's tariff by HS chapter, 2002

HS code	Number of lines	Description	Simple average	Range	Standard deviation
	7,909	**Total**	**11.4**	**0 - 60**	**12.6**
	948	HS 01-24	11.5	0-55	12.3
	6,961	HS 25-97	11.4	0-60	12.6
	876	WTO agriculture	9.6	0-55	11.8
	7,033	WTO industry (including petroleum)	11.6	0-60	12.6
01	23	Live animals	0.0	0	0.0
02	65	Meat and edible meat offal	20.2	0 - 40	18.4
03	122	Fish and crustaceans, molluscs and other aquatic invertebrates	20.8	0 - 30	9.5
04	28	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	8.2	0 - 22	10.1
05	24	Products of animal origin, not elsewhere specified or included	0.0	0	0.0
06	12	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	8.3	0 - 20	10.3
07	71	Edible vegetables and certain roots and tubers	11.0	0 – 39	10.0
08	61	Edible fruit and nuts; peel of citrus fruit or melons	7.6	0 – 35	8.2
09	39	Coffee, tea, maté and spices	2.4	0 – 25	6.7
10	16	Cereals	2.5	0 – 25	6.9
11	50	Products of the milling industry; malt; starches; inulin; wheat gluten	8.3	0 – 20	8.8
12	51	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	6.7	0 – 20	7.5
13	16	Lac; gums, resins and other vegetable saps and extracts	5.6	0 – 25	8.1
14	10	Vegetable plaiting materials; vegetable products not elsewhere specified or included	1.5	0 – 15	4.7
15	54	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	7.4	0 – 10	4.4
16	65	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	19.5	0 – 50	15.4
17	16	Sugars and sugar confectionery	4.2	0 – 25	9.7
18	12	Cocoa and cocoa preparations	9.3	0 – 21	9.8
19	28	Preparations of cereals, flour, starch or milk; pastrycooks' products	21.2	0 – 30	7.1
20	68	Preparations of vegetables, fruit, nuts or other parts of plants	18.0	0 – 55	11.0
21	31	Miscellaneous edible preparations	14.1	0 – 30	9.5
22	38	Beverages, spirits and vinegar	21.3	0 – 25	8.8
23	35	Residues and waste from the food industries; prepared animal fodder	4.1	0 – 20	5.9
24	13	Tobacco and manufactured tobacco substitutes	31.8	0 – 45	16.9
25	72	Salt; sulphur; earths and stone; plastering materials, lime and cement	1.0	0 – 10	2.7
26	37	Ores, slag and ash	0.0	0	0.0
27	79	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	4.4	0 – 20	6.8
28	194	Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes	0.9	0 – 20	3.2
29	450	Organic chemicals	1.5	0 – 22	4.1
30	34	Pharmaceutical products	0.6	0 – 20	3.4
31	26	Fertilizers	0.0	0	0.0
32	54	Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	2.8	0 – 10	4.5

Table AIII.2 (cont'd)

HS code	Number of lines	Description	Simple average	Range	Standard deviation
33	46	Essential oils and resinoids; perfumery, cosmetic or toilet preparations soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articl	9.8	0 – 20	9.1
34	27	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes and dental preparations with a basis	13.5	0 – 20	7.8
35	20	Albuminoidal substances; modified starches; glues; enzymes	2.8	0 – 20	5.9
36	8	Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	3.1	0 – 15	5.9
37	50	Photographic or cinematographic goods	5.4	0 – 15	6.8
38	107	Miscellaneous chemical products	2.9	0 – 10	4.6
39	301	Plastics and articles thereof	8.2	0 – 20	7.3
40	133	Rubber and articles thereof	9.4	0 – 43	9.6
41	46	Raw hides and skins (other than furskins) and leather	3.9	0 – 10	4.9
42	22	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)	25.2	0 – 30	8.7
43	14	Furskins and artificial fur; manufactures thereof	10.7	0 – 30	12.4
44	80	Wood and articles of wood; wood charcoal	8.0	0 – 30	8.4
45	7	Cork and articles of cork	0.0	0	0.0
46	6	Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork	16.7	0 – 20	8.2
47	20	Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper and paperboard	0.0	0	0.0
48	122	Paper and paperboard; articles of paper pulp, of paper or of paperboard	7.1	0 – 20	6.1
49	27	Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	4.3	0 – 15	6.6
50	10	Silk	0.0	0	0.0
51	53	Wool, fine or coarse animal hair; horsehair yarn and woven fabric	9.4	0 – 24	10.5
52	446	Cotton	22.7	0 – 24	3.5
53	29	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	2.8	0 – 20	7.0
54	346	Man-made filaments	22.3	0 – 24	5.2
55	598	Man-made staple fibres	23.0	0 – 24	4.1
56	42	Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	14.6	0 – 20	5.0
57	23	Carpets and other textile floor coverings	30.0	30	0.0
58	52	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	18.6	0 – 25	8.9
59	65	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	12.7	0 – 27	9.6
60	181	Knitted or crocheted fabrics	21.9	5 – 24	5.3
61	148	Articles of apparel and clothing accessories, knitted or crocheted	43.7	0 – 47	10.5
62	148	Articles of apparel and clothing accessories, not knitted or crocheted	42.4	0 – 47	11.2
63	82	Other made up textile articles; sets; worn clothing and worn textile articles; rags	27.8	0 – 60	9.8
64	56	Footwear, gaiters and the like; parts of such articles	22.6	0 – 30	11.4
65	13	Headgear and parts thereof	20.0	0 – 30	10.8
66	7	Umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof	25.0	20 – 30	5.0

Table AIII.2 (cont'd)

HS code	Number of lines	Description	Simple average	Range	Standard deviation
67	8	Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair	17.5	0 – 20	7.1
68	56	Articles of stone, plaster, cement, asbestos, mica or similar materials	5.6	0 – 15	7.3
69	29	Ceramic products	8.6	0 – 30	11.6
70	102	Glass and glassware	7.7	0 – 20	6.0
71	58	Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin	4.4	0 – 20	8.3
72	175	Iron and steel	3.1	0 – 5	2.4
73	183	Articles of iron or steel	6.7	0 – 30	6.4
74	69	Copper and articles thereof	5.1	0 – 20	6.1
75	17	Nickel and articles thereof	0.0	0	0.0
76	68	Aluminium and articles thereof	6.0	0 – 30	6.7
78	10	Lead and articles thereof	0.0	0	0.0
79	10	Zinc and articles thereof	0.0	0	0.0
80	8	Tin and articles thereof	0.0	0	0.0
81	51	Other base metals; cermets; articles thereof	0.0	0	0.0
82	117	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	10.0	0 – 30	10.1
83	47	Miscellaneous articles of base metal	12.1	0 – 20	8.4
84	629	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	2.7	0 – 30	6.1
85	403	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	6.1	0 – 25	7.7
86	25	Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds	0.4	0 – 10	2.0
87	156	Vehicles other than railway or tramway rolling-stock,and parts and accessories thereof	12.5	0 – 35	12.0
88	17	Aircraft, spacecraft, and parts thereof	0.0	0	0.0
89	18	Ships, boats and floating structures	2.2	0 – 10	4.3
90	167	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	0.4	0 – 20	2.5
91	53	Clocks and watches and parts thereof	0.0	0	0.0
92	23	Musical instruments; parts and accessories of such articles	0.0	0	0.0
93	28	Arms and ammunition; parts and accessories thereof	11.8	0 – 15	6.3
94	46	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings	13.9	0 – 20	9.3
95	44	Toys, games and sports requisites; parts and accessories thereof	2.3	0 – 30	7.4
96	56	Miscellaneous manufactured articles	9.4	0 - 20	8.7
97	7	Works of art, collectors' pieces and antiques	0.0	0	0.0

Source: WTO Secretariat calculations, based on data provided by South Africa.