

ANNEX 2
KINGDOM OF LESOTHO

CONTENTS

	<i>Page</i>
I. THE ECONOMIC ENVIRONMENT	111
(1) MAIN FEATURES	111
(2) RECENT ECONOMIC DEVELOPMENTS	112
(3) OUTLOOK	117
II. TRADE AND INVESTMENT REGIMES	118
(1) INTRODUCTION	118
(2) TRADE AGREEMENTS	119
(3) INVESTMENT FRAMEWORK	121
(4) TRADE-RELATED TECHNICAL ASSISTANCE	122
(i) Implementation of WTO Agreements and participation in the WTO	123
(ii) Supply-side constraints	124
(iii) Mainstreaming trade into Lesotho's development framework: the Integrated Framework	124
III. TRADE POLICIES AND PRACTICES BY MEASURE	126
(1) OVERVIEW	126
(2) MEASURES DIRECTLY AFFECTING IMPORTS	126
(i) Registration, and import duties and related measures	126
(ii) Import prohibitions and licensing	128
(iii) Government procurement	129
(iv) Standards and other technical requirements	129
(v) Countertrade and related provisions	129
(3) MEASURES DIRECTLY AFFECTING EXPORTS	130
(i) Registration and taxes	130
(ii) Export prohibitions, controls and licensing	131
(iii) Export subsidies and assistance	131
(iv) Other measures	132
(4) MEASURES AFFECTING PRODUCTION AND TRADE	132
(i) Incentives	132
(ii) State-owned enterprises and privatization	132
(iii) Competition policy and price controls	134
(iv) Intellectual property protection	134
IV. TRADE POLICIES AND PRACTICES BY SECTOR	136
(1) OVERVIEW	136
(2) PRIMARY SECTOR	136
(i) Agriculture and related activities	136
(ii) Mining and quarrying	139
(iii) Water and energy	139
(3) MANUFACTURING	140
(4) SERVICES	143
(i) Financial services	144
(ii) Telecommunications	145
(iii) Tourism	146

	<i>Page</i>
(iv) Transport	147
REFERENCES	149

TABLES

I.	THE ECONOMIC ENVIRONMENT	
I.1	Main economic indicators, 1996-02	113
I.2	Sectoral breakdown of Lesotho's GDP at constant 1995 prices, 1996-01	115
I.3	Export and import data, 1996-00	116
I.4	Direction of Lesotho's trade, 1996-00	117
II.	TRADE AND INVESTMENT REGIMES	
II.1	Lesotho's trade-related legislation, December 2002	119
III.	TRADE POLICIES AND PRACTICES BY MEASURE	
III.1	Structure of sales tax revenue, 2001-02	127
III.2	Sales tax collection on imports by border posts, 2000-01	128
IV.	TRADE POLICIES AND PRACTICES BY SECTOR	
IV.1	Production and exports of agricultural products, 1999-01	139

I. THE ECONOMIC ENVIRONMENT

(1) MAIN FEATURES

1. Lesotho is a small, mountainous, landlocked country of 30,355 km², entirely contained within the geographical territory of South Africa. Its population, estimated at around 2.2 million, grew by some 2.2% annually between 1990 and 2000.

2. Lesotho is classified as a least-developed country by the United Nations and as a low income, food deficit country by the World Food Programme.¹ Several factors have increased food insecurity, including severe weather in recent years and encroachment of building on the limited arable land.² In 2002, only 60% of the cultivable area was planted, because of heavy rains, and it was projected that, with domestic cereal production estimated at 33% lower than in 2001, already a deficit year, a shortfall of 338,000 tonnes would need to be covered in the 2002/03 marketing year. The government estimates that some 900,000 people require food aid.

3. To deal with the food crisis, the Government established a three-part plan in June 2002. This comprises fully funded free maize distribution to the most vulnerable sections of the population (the elderly, the disabled, child-headed households, and orphans, and through food-for work schemes for the unemployed); a 20-30% subsidy to the wholesale price of maize sold throughout the country; and a supplemental feeding programme for children under five years old. As part of its ongoing efforts to address the current food crisis, the Government has expanded the reach of its feeding programme. The government is actively soliciting international assistance to meet the growing demands for food aid.

4. The severe food deficit is exacerbated by the high incidence of HIV/AIDS, which has hollowed out the structure of the population, reduced life expectancy³, and which will have considerable negative effects on the social structure and the country's future economic performance. This may be particularly serious in the rural sector where the effects of the pandemic are seen not only in immediate production difficulties – exacerbating the food crisis – but also because land is often left uncultivated and, under existing land reform policies, ownership of land left fallow for two years can be revoked.⁴ UNAIDS reports that 31% of the population of Lesotho aged 15-49 is infected, making it the third most seriously affected country in southern Africa for this age group⁵; as this estimate is based only on statistics of cases known to health centres, it is judged by others to reflect the minimum.⁶ One study suggests that the medium-term impact (10-15 years) of HIV/AIDS on per capita income in Lesotho, under "open-economy" assumptions, would be a reduction of nearly 7% from what it would otherwise be, stemming from declines in productivity due to increased mortality

¹ WFP (2002).

² Some 80% of the population lives in rural areas but less than 10% of the land is considered arable (WFP, 2002). In a speech on 24 July 2002, the Governor of the Central Bank of Lesotho said that "the time has come for the agricultural sector to be improved. The fact that many residential houses are springing up on cultivable land shows that Basotho are disillusioned with agriculture. The view of the Central Bank of Lesotho is that...there should be incentives given to farmers who perform well to encourage them to do even better." (*Mopheme News*, 31 July-6 August 2002 [Online]. Available at: <http://www.lesoff.co.za/>). For a discussion of the effects of climate on the economy in Southern Africa, see Clay et al. (forthcoming).

³ According to World Bank information, average life expectancy at birth in Lesotho declined from 53 years in 1980 to 45 in 1999.

⁴ See United Nations (2002), reporting on a study carried out by the FAO and the Southern African Regional Poverty Network.

⁵ Following Botswana and Swaziland (UNAIDS Fact Sheet 2002, Sub-Saharan Africa).

⁶ South African Broadcasting Corporation News (2002).

among the labour force.⁷ Recently, the Prime Minister has made a strong call for a nationwide, multi-sectoral effort to fight the pandemic through changing traditional customs, increasing communication and education.⁸

5. The Government of Lesotho, with the assistance of its development partners, formulated and launched the national AIDS strategic plan in 2001. To enhance the coordination and implementation of this strategy, the Government established the LAPCA office, which has overall authority for coordination issues. The Government has submitted a request for funding the Global Fund and is still awaiting for a response. Meanwhile, as part of its engagement with the pharmaceutical industry within the scope of the discussions on TRIPS and public health, Lesotho (as well as other SACU members) has recently secured a commitment from Boehringer Ingelheim to provide free anti-retroviral treatment for the prevention of mother-to-child transmission for five years. In addition, consultations are under-way with other companies to address Lesotho's access problems.

6. Lesotho is currently undergoing a unique experience of analyse of its trade, investment, and development policies with its international partners. The present WTO review of its trade policy coincides with a review of investment policy undertaken in UNCTAD and with a Diagnostic Trade Integration Study undertaken by the World Bank as lead agency in the Integrated Framework for Trade-Related Technical Assistance. The UK Department for International Development (DFID) is also preparing a Trade and Poverty Programme for implementation within the IF framework. This coincidence of events is no accident. It is hoped that this combined exercise of review and evaluation will assist the Government of Lesotho in formulating a guiding strategy for well coordinated future policies in trade, investment, economic development, and poverty alleviation.

(2) RECENT ECONOMIC DEVELOPMENTS

(a) Macroeconomic developments

7. Since the last review of SACU, Lesotho's aggregate GDP growth performance has improved. In fiscal year 1998/99, GDP fell by 3% in real terms (Table I.1), due to serious instability following elections in 1998. Growth recovered in the two following years to around 3.3% in 2000/01.

8. The World Bank's Diagnostic Trade Integration Study, prepared in the context of the Integrated Framework, notes that GDP growth may not be the best indicator of macroeconomic progress in a small country like Lesotho with a large external sector. Comparisons of GDP with gross national income (GNI)⁹ show that since 1997, although GDP has continued to grow, GNI, and GNI per capita, have declined quite sharply, pointing to the increase in poverty levels that has occurred in Lesotho over the past decade. The study notes that there have been four dynamic shifts in income sources in the last decade. On the negative side, remittance income from Basotho miners employed in South Africa, whose number fell by nearly half between 1990 and 2000, affecting families' incomes substantially, has fallen dramatically, and severe weather conditions have adversely affected rural subsistence farmers. On the positive side, the Lesotho Highlands Water Project (LHWP) has generated both revenues and temporary employment benefits, and the rapidly growing garment industry has provided jobs to the growing urban poor, although the structure of employment – including the gender balance – and the level of incomes provided is very different from the earlier

⁷ Haacker (2002).

⁸ *Mopheme News*, 5 December 2002.

⁹ Gross national income equals gross domestic product, less depreciation, plus net factor incomes from abroad.

mining-dependent structure; the DTIS report notes that miners typically earned about M 25,000 a year while in 1998 garment sector workers earned about M 5,740 a year.¹⁰

Table I.1.
Main economic indicators, 1996-02

	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02 ^a
Miscellaneous						
			(% change)			
Real GDP growth (at producer prices)	9.5	4.8	-3.0	2.4	3.5	4.0
Consumer price inflation ^b	8.8	7.3	8.9	6.3	7.0	13.0
Government finance						
			(% of GDP)			
Central government balance ^b (before grants)	-0.4	-2.0	-5.2	-18.5	-4.2	-3.3
Balance-of-payments						
			(US\$ million)			
Current account balance ^c	-284.6	-312.8	-218.9	-209.9	-150.5	-72.3
of which:						
- Trade balance	-798.3	-822	-589.9	-608	-493	-353.8
- Non-factor services	13.2	-19.2	-11.1	-3.5	+2.8	-2.2
- Labour income	314.6	326.7	242.6	245.7	211.4	162.4
- Unrequited transfers (principally SACU)	185.9	201.7	139.5	155.9	128.3	121.4
Memorandum						
Gross official reserves (months of imports excl. LHWP)	6.8	11.1	8.9	7.4	6.7	6.1
Debt service ratio (% of exports of goods, services and factor income)	4.5	4.0	6.6	17.1	24.6	12.5

a Estimates.

b End of period.

b Includes official transfers.

Source: IMF Staff Report, July 2002 and national authorities. See also IMF Country Report No. 02/218, October 2002, "Lesotho, Third Review under the Poverty Reduction and Growth Facility Arrangement".

9. Projections of macroeconomic prospects vary. At the time of presentation of the 2002 Budget, the effects of the global downturn and slower growth in South Africa were officially expected to reduce the GDP growth rate to some 2.8% in fiscal 2002. However, a speech by the Governor of the Central Bank in mid 2002 suggested that economic growth in Lesotho was in the order of 3.5% in 2001 and could be between 4% in 2002 and 5% in 2003; while improving, this is still insufficient for poverty alleviation.¹¹

10. Lesotho's fiscal balance is healthy. A surplus equivalent to 2.2% of GDP in 2001/02, was thanks partly to successful collection of income tax arrears equivalent to 4% of government revenue in 2001. Tax reforms are going ahead, albeit less rapidly than originally planned, partly because of shortages of senior and executive staff; the creation of an independent Lesotho Revenue Authority is now planned for end 2002 and introduction of VAT envisaged six months thereafter.¹² Nevertheless, shortage of economic and financial resources has led to the exclusion of many priority areas from the current Budget, and Lesotho, like other BLNS members of SACU, has to plan for the real threat of a decline in SACU import duty revenue, which currently accounts for some 50% of budget revenue.

¹⁰ World Bank (2003), section 1.4.1.

¹¹ Mopheme News, 5 December 2002.

¹² The principal taxes on goods and services in Lesotho are the general sales tax (a single-stage sales tax) levied on retail sales, at a general rate of 10% with 15% charged on liquor and a reduced rate of 5% on electricity and telecommunications; excise taxes (charged at various rates) on beer, spirits, wine, matches, tobacco, cigars, cigarettes, petroleum oils, motor vehicles, tractors, and electronic products; a fuel levy/equalization fund levy of 46 lisente/litre on petrol sold for private cars and 40 lisente/litre on diesel used in agriculture, industry, and public buses; import duties levied under the SACU common external tariff; livestock importation levies, linked with import permits, levied at M 30 and M 15 per head of large and small stock, respectively, for private persons, and M 7.50 and M 3.75 for licensed butchers.

11. Lesotho's current account deficit has been declining over time; gross external reserves stood at just over nine months of imports of goods and services in mid 2002. In the short term, foreign direct investment, mainly in textiles and clothing, is likely to continue as the main capital component offsetting the current account deficit. However, the long-term prospects for such investment will depend on the future of market access to main markets as conditions under the United States' African Growth and Opportunity Act (AGOA) and the EU/ACP Cotonou Agreement evolve, and the expiry of the Agreement on Textiles and Clothing. Lesotho's competitive position vis-à-vis countries outside the Common Monetary Area is believed to have improved with the sharp depreciation of the rand in the second half of 2001 and, as far as inflation is kept in check and import cost increases do not offset the depreciation, this should improve export prospects. In mid 2002, consumer price inflation in Lesotho was in the order of 13-14 %, compared with some 9% in South Africa.¹³

12. Levels of investment in Lesotho, as reported by the IMF, declined from 43% of GDP in 1999 to an estimated 20% in 2002. Lower investment in the Lesotho Highlands Water Project has been partly compensated by private investment in manufacturing, particularly in the clothing industry (Chapter IV(3)).

13. UNCTAD's investment policy study notes that the amount and growth of FDI in Lesotho are not easy to assess, for various reasons. First, the Bank of Lesotho estimates FDI from information received from the Lesotho National Development Corporation. These figures may be overstated as they include planned, not achieved, investment expenditures; on the other hand, they may be understated as they do not include FDI in services, such as banks, hotels, communications etc., or FDI flows resulting from privatization (a significant element in Lesotho in recent years). Second, investments in the Lesotho Highlands Water Project (LHWP) are included in the flows of FDI and this has significantly inflated the total. However, UNCTAD calculations, excluding LHWP flows, confirm that since 1991, FDI inflows into Lesotho, in U.S. dollar terms, have been rising rapidly, although with significant year-to-year fluctuations; recent investment has been mostly in export-oriented manufacturing.¹⁴

14. The Government's medium-term aims are to increase real per capita income by at least 1% per year; and to achieve meaningful poverty reduction through creation of employment, improvement of infrastructure, human development and education, sound management of natural resources, and consequent encouragement of confidence in the economy and of foreign and domestic investment. Lesotho is in the process of formulating a Poverty Reduction Strategy Paper (PRSP) with the World Bank (due to be completed by end March 2003) under the Integrated Framework for Trade-Related Technical Assistance.

(b) Sectoral trends

15. The sectoral structure of Lesotho's economy over the second half of the 1990s shows relatively stable shares of the different economic sectors in GDP (Table I.2). This reflects the importance given by the authorities to the development of labour-intensive manufacturing and creation of improved infrastructure.

¹³ Mopheme News, 5 December 2002.

¹⁴ UNCTAD (2002), Chapter I.

Table I.2
Sectoral breakdown of Lesotho's GDP at constant 1995 prices, 1996-01

	1996/97	1997/98	1998/99	1999/2000	2000/01
Primary	18.7	18.0	19.0	18.8	17.8
Secondary	39.8	40.8	38.5	40.2	42.8
of which:					
- manufacturing	16.4	16.0	15.9	15.4	15.3
- utilities ^a	23.3	24.8	22.6	24.8	27.4
Tertiary	41.4	41.2	42.5	41.0	39.4
of which:					
- education	8.7	8.6	9.1	9.0	8.6
- commerce	9.2	9.2	9.0	8.2	7.7
- public administration	7.5	7.5	8.3	7.8	7.4
- finance	3.4	3.0	3.1	3.8	5.1

a Electricity, water, and construction, including the Lesotho Highlands Water Project

Source: IMF (2002), Staff Report, Article IV Consultation, March.

16. As reported in the 2002 Budget speech, agricultural output prospects appeared "bleak", following a serious production shortfall in 2001, when the rains were both late and excessive. As noted above, Lesotho faces severe grain shortages and is in need of emergency food aid.

17. Manufacturing expansion has been based largely on the clothing industry, in which output has increased notably since the introduction by the United States of the African Growth and Opportunity Act (AGOA) in April 2000; employment in manufacturing has stabilized, following resumption of confidence in economic management since 1998, and rose sharply during 2002.

18. Work is ongoing to improve industrial infrastructure, particularly in respect of electricity, water, and roads (Chapter IV(2) and (4)); and reform policies, including privatization and encouragement of competition, are in place in the secondary and tertiary sectors (Chapter III (4) (ii) and (iii)). The Government attaches great importance to the development of education, both at the primary level through the expansion of free primary education, and at university level.

(c) Trade patterns

19. Trade statistics in Lesotho are recognized (and admitted by the authorities) to be unreliable, partly because of the difficulties of collecting import and export data within SACU. There are many inconsistencies between Central Bank data and those collected by the Lesotho Bureau of Statistics. Without reliable data, it is extremely difficult to discuss trade trends and derive policy recommendations.

20. According to IMF data, based on payments flows, Lesotho's exports increased by 89% in maloti terms and 16% in U.S. dollar value between fiscal years 1996/97 and 2000/01, while imports (f.o.b) grew in maloti value by 16% and fell in U.S. dollar terms by 29%. National data for a similar period show an increase in exports in maloti value of 286% between calendar years 1996 and 2000, with growth of 122% in 2000 alone (Table I.3).¹⁵ Central Bank estimates show imports growing by only 11% in maloti value between 1996 and 2000.

¹⁵ Lesotho Bureau of Statistics (2002). The DTIS points to severe problems with all areas of economic statistics in Lesotho.

Table I.3
Export and import data, 1996-00

IMF	1996/97	1997/98	1998/99	1999/2000	2000/01
Exports:					
- (M million)	856.8	931.0	1,112.8	1,161.1	1622.4
- (US\$ million)	191.1	197.3	191.5	188.4	221.6
Imports f.o.b.:					
- (M million)	4,436.5	4,808.8	4,541.3	4,908.8	5,162.8
- (US\$ million)	989.4	1,019.3	781.4	796.4	705.2
Balance:					
- (M million)	-3,579.7	-3,877.8	-3,428.5	3,747.7	3,540.4
- (US\$ million)	-798.3	-822.0	-589.9	-608.0	-483.6
National sources	1996	1997	1998	1999	2000
Exports (M million)					
- LBOS	601.8	881.6	906.1	1,046.9	2,327.5
- Central Bank	812.1	904.0	1,071.1	1,054.1	1,468.3
Imports (M million)					
- LBOS
- Central Bank	4,815.0	5,253.4	5,199.8	5,287.8	5,373.3
Balance (M million)					
- Central Bank	-4,002.9	-4,349.4	-4,128.7	4,233.7	3,905.0

.. Not available.

Source: IMF; and information provided by the Lesotho authorities.

21. The direction of Lesotho's trade is highly concentrated: in 2000, 99.6% of exports were destined to the United States and to the SACU area, principally South Africa (Table I.4). The high share of the U.S. accounted for is entirely by textile and clothing trade, which has been further encouraged under AGOA. Imports are said to originate largely from SACU (88% in 2000), although it may be difficult to distinguish how much originate in South Africa as opposed to being routed through the Republic; and, in respect of supplies for the clothing trade, from Asia, which can benefit up to 2004 from preferential AGOA terms as a supplier of inputs.

Table I.4
Direction of Lesotho's trade, 1996-00

	1996	1997	1998	1999	2000
Exports (M million)					
- SACU	394.0	436.2	666.3	553.4	574.4
- North America	331.1	336.5	345.9	495.8	888.6
- EU	74.1	82.0	7.2	2.0	1.8
- Other	15.6	49.3	51.7	2.9	27.5
- Total	812.1	904.0	1,071.1	1,054.1	1,486.3
Imports (M million)					
- SACU	4,439.9	4,687.0	4,612.2	4,734.0	4,741.0
- Asia	331.1	336.5	345.9	495.8	888.6
- Other	44.0	229.9	241.7	58.0	256.3
- Total	4,815.0	5,253.4	5,199.8	5,287.8	5,373.3

Source: Central Bank of Lesotho, quoted in EIU (2002), Economist Intelligence Unit, London.

(3) OUTLOOK

22. In macroeconomic terms, Lesotho has recovered well from the short-term crisis of 1998-99, and overall economic growth is continuing, although still at a pace insufficient to alleviate poverty. The economy remains still very unbalanced in structure, and Lesotho is becoming increasingly dependent on one group of products (clothing) and one market (the United States) for external income. The Government recognizes this and is expecting that the IF process under way will assist it in formulating policies for more balanced development of the economy. In the longer term, the interaction of the serious food crisis caused by severe weather conditions and the HIV/AIDS pandemic, which is decimating the active population and severely hollowing out the overall population structure, represents the most serious economic and social constraint that Lesotho, like other small southern African countries, has to face.

II. TRADE AND INVESTMENT REGIMES

(1) INTRODUCTION

1. Lesotho is a constitutional monarchy, one of three monarchies in Africa.¹⁶ The bi-cameral multi-party Parliament consists of a National Assembly, whose 120 Members are elected by universal suffrage, and a Senate comprising 22 principal chiefs and 11 other persons nominated by the King. As from the most recent general election, in May 2002, Members of the National Assembly are elected under a proportional system combining 80 members elected to individual constituencies on a first-past-the post system and 40 members elected according to the share of the national vote gained by each party. The Lesotho Congress for Democracy (LCD) was re-elected with a large majority; however, under the new system, participation in Parliament is much more diverse than before, with ten political parties represented.

2. At the national level (i.e. on issues not covered by the SACU agreement), Lesotho's trade and trade-related policies are mainly the responsibility of the Ministry of Trade, Industry and Marketing (MTIM). However, other Ministries and agencies are also heavily involved in trade-related policy making, including the Ministries of Development Planning, Foreign Affairs, Finance, and Agriculture, and the Central Bank. The 2002 SACU agreement also provides for a National Body to be established in each member country. The Body will be in charge of SACU issues (including tariff changes) at the national level and will make recommendations to the Customs Union Commission (Main Report, Chapter II(2)(ii)(a)).

3. The Ministry of Trade, Industry and Marketing has overall responsibility for all trade-policy related matters in Lesotho. This is undertaken in coordination with all government ministries and departments. To facilitate regular consultations, the Ministry has set up a number of forums where all government ministries are represented, including the National WTO Network Forum, which brings together all ministries and departments, as well as the private sector and academic circles, to consider and outline policy on WTO-related matters.

4. The wider economic community has recently become more widely involved in trade policy making in Lesotho. As part of the Government's poverty reduction strategy, and under the Integrated Framework for Trade-Related Technical Assistance (IF), a National Steering Committee (NSC) was established in February 2002, comprising the Principal Secretaries of the Ministry of Trade, Industry and Marketing, Development Planning, Finance, and Foreign Affairs, and senior representatives of the Lesotho Chamber of Commerce and Industry, the Lesotho Council of NGOs, the Lesotho Manufacturers' Association, Lesotho Association of Exporters, Association of Lesotho Employers, National University of Lesotho, and the United Nations Development Programme. The NSC, chaired by the MTIM, has held three meetings to date. Under the NSC, an IF Task Force has been established, also led by MTIM with the participation of Foreign Affairs, Finance, Planning, National University of Lesotho, the Lesotho National Development Corporation (LNDC), Central Bank, and Chamber of Commerce, as well as the UNDP. Under the Task Force, a Trade Sector Working Group for Lesotho's Poverty Reduction Strategy Paper (PRSP) has been established to address pro-poor trade policies and strategies for the PRSP process. With specific reference to intellectual property issues (see Chapter III(4)(iv)), an interministerial committee on TRIPS-related issues has been established under the National WTO Network Forum.

5. Lesotho's main trade-related laws are presented in Table II.1.

¹⁶ The others are Morocco and Swaziland.

Table II.1
Lesotho's trade-related legislation, December 2002

Area	Legislation
Customs matters, including anti-dumping and countervailing measures	Customs and Excise Act, 1982 (Act No.10 of 1982); Customs and Excise Regulations, 1984; Customs and Excise (Amendment) Act, 1984
Sales tax/VAT	Sales Tax Act, 1995 (Act No.14 of 1995); Value Added Tax Act, 2001 (Act No.9 of 2001)
Health and sanitary regulations	Proclamation 57,1952 (Importation of livestock and livestock products); Stock Diseases Proclamation (Amendment), 1954; Stock Diseases Regulations, 1973; Stock Diseases (Amendment) Act, 1984; Notes of the Chief Veterinary Officer, May 2000, relating to the Stock Diseases Proclamation of 1896, as amended; Agricultural Marketing (Distribution of Dairy Products) Regulations, 1992; Proclamation 45, 1951 - Fishing Regulations; Act to Provide Protection to Agricultural Plants from Damage by Pests and Diseases, 1985
Trade development	Lesotho National Development Corporation Act, 1967; Lesotho National Development Corporation Order, 1990 (effective 1993)
Import and export controls	Agricultural Marketing Act, 1967; Export and Import Control Act, 1984 (amended 1996); Export Control Regulations, 1972 (cereals and legumes); Export Control Regulations, 1975 (preparation of sunflower); Export Control Regulations, 2001 (AGOA textiles and apparel);
Export finance	New Export Finance and Insurance Scheme, 2001
Privatization	Privatization Act, 1995 (Act No.9 of 1995); Privatization Regulations, 1997
Government procurement	Act 4 of 1965; financial regulations for the Central Tender Board
Mining and mineral operations, including sales of diamonds	Mining Rights Act, 1967; Precious Stones Order, 1970
Intellectual property :	
Patents, trade marks, utility models, industrial designs, control of anti-competitive practices	Industrial Property Order, 1989, amended 1997 (Order No. 5 of 1989 and Act No. 4 of 1997)
Copyright	Copyright Order, 1989 (Order No. 13 of 1989)
Financial services	Central Bank of Lesotho Act 2000 (Act No.2 of 2000); Financial Institutions Act, 1999 and related legal notices (Act No.6 and Legal Notices Nos.110-113 of 1999); Money Lenders Order, 1989; Building Finance Institutions Act, 1976; Insurance Act, 1976
Telecommunications services	Lesotho Telecommunications Authority Act, 2000
Air transport services	Aviation Act, 1975
Road transport services	Road Transport Act and Regulations, 1981; Road Transport (Amendment) Act, 2001
Tourism services	Tourism Act, 2002 (Act 4 of 2002)

Source: Information provided by the Lesotho authorities.

(2) TRADE AGREEMENTS

6. Lesotho joined the WTO on 31 May 1995. Through its small, but highly active, Mission in Geneva it participates fully in the Doha Development Agenda and other aspects of the WTO negotiations. In 1999, the Lesotho Minister of Industry, Trade and Marketing was a Vice-Chairman of the Seattle Ministerial Conference, and in 2002, the representative of Lesotho was Chair of the WTO Committee on Market Access. Lesotho is recognized as a least-developed country in the WTO and is a member of the Informal Group of Least-developed Countries, and of the African and Commonwealth groups in WTO.

7. Since the last review of SACU, Lesotho has made two notifications to the WTO: regarding the establishment of its national enquiry point pursuant to the TBT agreement, and to the Safeguards Committee confirming that it maintains no safeguard measures.¹⁷

8. Lesotho's trading relations are complex and have the potential to add strain to the administrative capacity of the MTIM. In addition to the WTO, the country is a member of the SACU, SADC, and the African Union, as well as a signatory to the Cotonou Agreement governing

¹⁷ WTO documents G/TBT/ENQ/21 and G/SG/N/1/LSO/1.

relationships between the ACP (African, Caribbean and Pacific) group and the European Union (Common Report, Chapter II).¹⁸ Within SACU, Lesotho, Namibia, South Africa, and Swaziland (but not Botswana) form the Common Monetary Area (CMA) under which the loti is maintained at par with the South African rand, which circulates freely in Lesotho. Lesotho's membership of SACU means that it is also directly affected by the free-trade agreement between South Africa and the EU. Lesotho also benefits from preferential access to the markets of most developed countries under the Generalized System of Preferences (GSP).

9. Under the 1969 SACU Agreement, South Africa set main trade policy instruments for the whole SACU area, including Botswana, Lesotho, Namibia, and Swaziland (BLNS) (Main Report, Chapter II(2)(i)). As a consequence, the common trade policy measures (tariffs, anti-dumping, etc.) have not necessarily always been the most appropriate for the BLNS economies. Furthermore, because of the revision of SACU revenue-sharing formula and the effects of the South Africa/European Union free-trade agreement, the revenue available for Lesotho and other smaller SACU members is expected to fall.¹⁹ The SACU recognizes the differences among members economically and as a result the BLNS countries have certain flexibility such as protection of infant industries. Lesotho retains policy independence in areas like investment strategy formulation, standard-setting, etc.

10. Lesotho is an active member of SADC and continues to be committed to the ongoing regional integration processes, such as the SADC Trade Protocol. Lesotho also views SADC as critical to the development of its economy. Lesotho is not a member of COMESA.

11. In addition to its preferential access to the EU market under the Cotonou Agreement, Lesotho, as a least developed country, also benefits from unilateral duty-free access to the EU market for "everything but arms" (EBA) under special commitments made by the EU in the WTO.²⁰ Like other BLNS countries, and particularly in light of its LDC status, Lesotho is weighing the balance of its interests in the future Cotonou negotiations between allying itself to the South Africa-EU free-trade agreement, simply relying on EBA conditions for the future, or concluding some other arrangement, possibly within SADC. In this connection, the authorities state that Lesotho, as a signatory to the Cotonou framework agreement is committed to strengthening its relations with the EU. The EBA scheme of the EU has the potential to enhance Lesotho's access to the EU market; however, as yet, significant results have not been realized. Like all unilateral preferential arrangements, as against reciprocal trade arrangements, the EBA has the main shortcoming of being unpredictable; furthermore, any preferences it offers are not bound as a result of mutual negotiations but are unilateral offers made by the EU, which may be changed at any time. The objective of any post-Cotonou framework should be the enhancement and diversification of Lesotho's economy. Lesotho has not yet finalized consideration of its negotiating position, and all options are actively being considered.

12. Lesotho was the first of the BLNS countries, the second SACU country (after South Africa) and the fifth of the 35 originally qualifying sub-Saharan African countries to qualify for AGOA benefits, as from 23 April 2001.²¹ The major advantages for Lesotho from the AGOA are in access to

¹⁸ All the SACU members participate in these trade arrangements.

¹⁹ Goods imported into South Africa, and hence the SACU area, from the European Union will, by the end of a transition period, be free of import duty, improving their competitive position vis-à-vis SACU-produced goods and reducing the value of import duties charged and earned by the SACU countries.

²⁰ WTO document WT/COMTD/N/4/Add.2, and WTO (2002).

²¹ See Lesotho National Development Corporation online information. Available at: www.lndc.org.ls/AGOAbenefits/agoabenefits.htm; Hon Minister's Speech delivered during the AGOA Launch. A letter from the USTR, published in the *Financial Times* on 10 June 2002, stated that "In Lesotho,

the U.S. market for textiles and clothing. Countries with per capita GDP below US\$1,500 in 1998 (defined as lesser-developed beneficiary countries) enjoy, until 30 September 2004, duty-free access for clothing made from fabric originating anywhere in the world; in contrast, the general AGOA rule provides unlimited access for clothing made from U.S. fabric, yarn, and thread, and permits up to 3.5% of overall U.S. imports of clothing originating in AGOA beneficiaries (in quantity terms, measured in square metre equivalents) to be made from African fabric and yarn until 2009.

13. The results of AGOA in the area of textiles and clothing are discussed in Chapter IV(3) below. The increase in imports from Lesotho between 1999 and 2002 has been remarkable: trade has expanded almost threefold in U.S. dollar value, almost entirely because of clothing. So far, however, AGOA has not generated trade from Lesotho in other areas. This has led one observer to suggest that: "Benefits to Lesotho might ... be fairly limited if the only effect of AGOA trade preferences is that Lesotho now exports larger quantities of the same products it has always been shipping to the U.S., without any expansion of exports into new product lines...Lesotho presently benefits from a temporary waiver of restrictions on clothing imports, by virtue of its status as a least developed country. This special rule for LDCs expires in 2004, after which Lesotho's clothing exports will be subject to a tariff rate quota and must be made from regional or American inputs... The latter may create problems for exporters if they do not develop regional suppliers of fabrics and yarns."²²

(3) INVESTMENT FRAMEWORK²³

14. Lesotho has no foreign investment law but maintains a liberal and non-discriminatory policy regime for foreign investors. The only restrictions on the activities open to investors relate to small-scale industries, with less than ten employees, which require a reserved trading licence and are reserved for citizens.²⁴ There are no limitations on ownership shares and no history of expropriation. Screening of investors is done in a routine, non-discriminatory manner. Expatriate staff are allowed up to 5% of enterprise employment, and in theory permission is granted quickly and easily.

15. According to the Constitution, foreign investors cannot own land in Lesotho. Only Lesotho citizens and commercial entities under the majority control of Lesotho citizens may hold land. Foreign investors may only lease land for limited periods (generally 30 years), and generally rely on the LNDC to lease on their behalf and to locate in its industrial estates. The LNDC manages a facilitation service for foreign investors, helps to raise finance for investors, and assists with the necessary licences. LNDC provides foreign investors with land sub-leases and factory shells (though investors can build their own shells).

16. A Land Policy Review Commission, which reported in 2000, recommended a complete overhaul of the land tenure system and the abolition of the distinction between Basotho and others in this matter. In particular, it recommended that foreign investors be allowed to hold freehold land in designated industrial areas and for commercial property development. This recommendation is being 'seriously considered' by the Government but still has not been enacted.

19 factories have opened or expanded, resulting in 15,000 jobs" as a result of AGOA access to the U.S. market (letter from Josette Shiner, Associate US Trade Representative).

²² Schuler (2002).

²³ Material in this section is drawn largely from document UNCTAD (2002).

²⁴ Small-scale industries fall primarily in the category of artisan and include agent of a foreign firm, barber, Basotho beer shop, butcher, snack bar, domestic fuel dealer, dairy shop, general café, general dealer, hawker, street photographer, broker, mini-market, hair and beauty salon, petrol dealer, and tentage dealer. See UNCTAD (2002).

17. Remittances in foreign exchange need Central Bank permission but in practice there is no difficulty in sending funds abroad. Lesotho is a member of the International Center for the Settlement of Investment Disputes and the Multilateral Investment Guarantee Agency (MIGA). The Government is willing to accept international arbitration, though no disputes have arisen so far. It does not impose any specific performance requirements on investors.

18. Lesotho has bilateral investment treaties with only two countries, the United Kingdom, since 1981, and Germany, since 1985.

19. Generally, the framework for investment in Lesotho seems open and fair. UNCTAD notes that "Lesotho is not beset by serious 'red tape' on the whole...But...often systems are coping because the absolute numbers of approvals is small and of personal contacts that are helpful in resolving issues in a small community. These informal methods cannot be relied upon when the volume of FDI expands and sources diversify." UNCTAD identifies the most serious need for action as lying in the area of land entitlement, although it also points to "emerging administrative problems" in the field of taxation; "inflexible controls" on foreign exchange; an "unwritten policy" and "disjointed administration" regarding employment of non-citizens; and "outdated" laws in respect of mining and manufacturing licensing.²⁵

(4) TRADE-RELATED TECHNICAL ASSISTANCE²⁶

20. Like many other LDCs, Lesotho has numerous and wide-ranging trade-related technical assistance needs, such as issues related to implementation of WTO agreements, participation in the WTO and trade negotiations, human and institutional capacities, and supply-side constraints. However, Lesotho has advantages that many other LDCs do not have, including membership in a customs union with economically more advanced countries, and access to one of the largest and most developed markets in Africa. Moreover, Lesotho is the only LDC among the SACU members. These points need to be considered in prioritizing the country's trade-related technical assistance needs, which are being discussed within the context of the Integrated Framework (IF).

21. Implementation of the IF for Lesotho was launched in October 2001. As the first step in implementation, a diagnostic trade integration study (DTIS) has been prepared by the World Bank, as lead agency, in cooperation with the other five international agencies involved. This study seeks to identify the constraints that Lesotho faces in integrating into the multilateral trading system and the global economy, and to draft an Action Matrix, a set of priority recommendations for policy actions and technical assistance implications. The revised draft DTIS for Lesotho was submitted to the Government in January 2003. A national workshop was convened for 12 February 2003 to discuss the DTIS with all the agencies involved and the lead donor (the United Kingdom). Once finalized, the Government is committed to feeding the results of the DTIS into its upcoming Poverty Reduction Strategy Paper (PRSP).

22. The DTIS identifies five major challenges for Lesotho: the pervasive level of poverty, especially rural poverty; the HIV/AIDS pandemic which, as noted in Chapter I(1), affects mainly the economically active population; the lack of positive spillovers so far from investment by foreign firms in the garment industry, and their low contribution to tax revenue; the mounting pressures on infrastructure caused by the rapid development of the clothing sector; and the risk that the preferential advantages that Lesotho currently gains under AGOA and the existing quota structure of the Agreement on Textiles and Clothing (ATC) may evaporate.

²⁵ UNCTAD (2002), Chapter II.

²⁶ This section relies heavily on World Bank (2003).

23. The DTIS study identifies a number of parallel, and mutually reinforcing, trade policy strategies for Lesotho. First, it calls for the active pursuit of gains from Lesotho's participation in regional trade agreements: the focus is to be on the reduction of the "costs of trading" with South Africa and other SACU partners through the removal of various remaining barriers to trade and to movement of capital and labour within SACU, and the alignment of tax and regulatory conditions on the South African norms. Second, the DTIS suggests that Lesotho can use its integration in the SACU region as a springboard to greater integration into the world economy, *inter alia* by using the new, democratic SACU structure to encourage greater liberalization of the common external tariff and to limit non-tariff barriers, as well as encouraging regional cooperation on trade-facilitating measures. Lastly, the study urges Lesotho, as a sovereign entity, to take actions aimed at improving its investment climate for foreign and domestic investors, by removing various administrative barriers impeding the conduct of business activities.

(i) Implementation of WTO Agreements and participation in the WTO

24. Given its limited capacity and resources, Lesotho has expressed difficulties in implementing WTO Agreements and participating in the WTO, in addition to fulfilling commitments under other trade agreements. The new SACU structure may offer an opportunity for regional regulatory cooperation, which would allow for economies of scale in policy implementation, including implementation of some WTO Agreements.²⁷ Such benefits will also depend on the possible extension of the scope of the SACU Agreement, still limited to import duties and related measures (Main Report, Chapter III) to other areas of regulatory cooperation. In areas where regional cooperation does not sufficiently cover its national economic interests (such as services), the study proposes that Lesotho should consider formulating and undertaking sovereign actions.²⁸

25. Lesotho's WTO-related technical assistance needs reflect priorities in accordance with identified areas for regional cooperation and sovereign actions. These priorities should also help determine the delivery mode of technical assistance (i.e. national versus regional-based activities, and seminar/workshop versus training) in implementing WTO Agreements. In requesting technical assistance for 2003, Lesotho has identified needs in non-agricultural market access negotiations, trade in services, agriculture, trade and environment, TBT, customs valuation, and TRIPS, as well as a briefing session for its national parliamentarians.

26. Since 1998, the WTO Secretariat has organized for Lesotho a national seminar on trade in services, and Lesotho has participated in a number of regional seminars on various WTO issues.²⁹ Three officials have taken part in the 12-week Trade Policy Courses organized by the WTO Training Institute. In 2003, in addition to regional seminars on various issues, two national seminars are planned, on agriculture and SPS, and on the Doha Development Agenda - Issues at Stake for Parliamentarians.³⁰

²⁷ The DTIS also suggests that, while not related to WTO commitments, a similar argument would apply to harmonization of VAT/sales tax rates, as different tax structures encourage smuggling and distort trade flows.

²⁸ Lesotho's commitments under the GATS are relatively extensive and substantially liberal. The DTIS compares them favourably with those made by South Africa.

²⁹ Apart from activities directly related to the IF or the Trade Policy Review, six WTO technical assistance activities have taken place in Lesotho since 1998. These covered the establishment of a WTO Reference Centre, a national seminar on the WTO, two symposia/forums on the GATS, a regional workshop on the SPS Agreement, and a national seminar on competition policy. In the period, Lesotho officials have also been involved in more than 50 WTO technical assistance activities on a regional basis or elsewhere.

³⁰ WTO document WT/COMTD/W/104/Rev.1, 7 November 2002.

27. Lesotho's effective participation in international trade negotiations at all levels depends on the Government's ability to identify its trade priorities for regional regulatory cooperation and sovereign actions, and to assess and evaluate trade-offs and links between international and domestic economic environments. In this context, Lesotho needs to enhance its capacities in data collection (e.g. setting up a modern statistical system) and policy analysis, and to create an institutional setting that supports the implementation of trade policies.

(ii) Supply-side constraints

28. Lesotho's landlocked location and the quality of physical infrastructure also impede the country's ability to integrate into the global economy. Physical infrastructure is said to be one of the key elements in shaping the business environment, along with macroeconomic stability and openness, political stability, governance and institutions, and human capital. Main infrastructure constraints in Lesotho, identified by the DTIS, include electricity and telecommunications, water supply, and railways (see Chapter IV). Although the supply of electricity is not short in Lesotho, the price of locally produced power is estimated to be 40% higher than in South Africa. The Lesotho mobile phone service is claimed in the DTIS study not to be fully compatible with that of South Africa. Water supply and effluent treatment in industrial estates are identified as needing attention as the garment industry expands. In transport, the infrastructure of the Maseru Railhead is inadequate to handle the current load of 40 containers, as no part of the station is paved (Chapter IV(4)(iv)). Addressing these bottlenecks would require financial commitments by national policy-makers and development partners over the medium to long term. The DTIS suggests "quick wins" in a number of these areas: for example, by reviewing Lesotho Electricity Corporation's billing practices, addressing the issue of property rights in the Maseru Railhead and fully implementing the 2001 Environmental Act. According to the authorities, some of these issues are being addressed: LEC is currently being restructured as part of the privatization process, and a consortium of South African and Lesotho companies have recently submitted a project proposal to the Lesotho Government aimed at injecting capital into this facility and modernizing it to cope with the growing demand for cargo handling facilities.

(iii) Mainstreaming trade into Lesotho's development framework: the Integrated Framework

29. The Integrated Framework for Trade-related Technical Assistance (IF) seeks to assist LDCs in mainstreaming trade priorities into their national development plans or poverty-reduction strategies. The Government of Lesotho requested in early 2001 that the benefit of the IF be extended to its country. In October 2001, the IF Steering Committee endorsed the candidacy of Lesotho as one of the second wave of eleven IF beneficiaries, based on a technical review prepared by the Inter-Agency Working Group.³¹ The IF mainstreaming process for Lesotho focuses on three levels: policy, institutions, and Government-donor partnership.

(a) Mainstreaming at the policy level

30. The IF process in Lesotho is being carried out on the basis of the Government's commitment to incorporate a trade chapter into its PRSP. In December 2000, Lesotho completed its Interim-PRSP (I-PRSP), which was then presented to the Executive Boards of the International Development Association (IDA) and of the IMF in March 2001. Since then, the Government has been preparing a full PRSP, which is expected to be finalized in April-May 2003.³² The PRSP process in Lesotho is led by the PRSP Technical Working Group (TWG), under the oversight of the Minister of Finance

³¹ WTO document WT/IFSC/W/9, 12 October 2001.

³² A progress report was submitted to the IMF and World Bank Executive Boards in January 2002.

and Development Planning, and the Poverty Council made up of Principal Secretaries of various ministries and the Governor of the Central Bank.³³

31. The policy matrix in the I-PRSP outlines resource allocation and strategies that give priority to activities that have a direct bearing on the poor. Trade is one of the policy areas identified in the policy matrix. The objectives set for the trade sector are: enhancement of external competitiveness, promotion of export diversification, improvement of regional competitiveness, private sector development; and upgrading of business extension services. Once the DTIS is finalized, it is expected that the study's findings and its final Action Matrix would feed into Lesotho's upcoming PRSP.

(b) Mainstreaming at the institutional level

32. The Ministry of Trade, Industry and Marketing (MTIM) chairs the national IF Steering Committee, a national coordinating body for IF matters in Lesotho, which include monitoring progress and streamlining donor coordination on trade-related capacity building and technical assistance. Within the PRSP Technical Working Group, the MTIM also chairs the Trade, Industry and Tourism Sectoral Working Group, comprising national stakeholders as well as development partners. The Sectoral Working Group is responsible for mainstreaming trade into the PRSP. To achieve the mainstreaming objective, cross-representation is ensured between the IF Steering Committee and the Sectoral Working Group.

33. In the light of the ongoing trade negotiations, in which Lesotho is involved at the regional and multilateral levels, there is clearly a need for coherent coordinating mechanisms on trade matters, both within the Government, and between the public and private sectors. The structure of differing groups and committees presently in place clearly indicates a will to coordinate, but at the same time seems very complex in a small country with limited administrative resources.

(c) Mainstreaming at the Government-donor level

34. The main bilateral donors to Lesotho in the area of trade are the European Commission, the UK Department for International Development (DFID), Ireland Aid, and Germany's GTZ. On the multilateral agency side, the six agencies involved in the IF are active in providing trade-related technical assistance. The ongoing programmes tend to support specific projects rather than addressing some of the more fundamental capacity-building gaps in terms of policy and strategy formulation. DFID is addressing this issue through its Trade and Poverty Programme for Lesotho.

35. Generally, there are coordination problems in managing external assistance, on both donor and recipient sides. However, the problem may become less acute in trade, as the concept of a "lead donor/facilitator", introduced under the IF process, has helped to define the distribution of responsibilities amongst donors, as well as between the Government and donors. In Lesotho, the United Kingdom is the lead donor/facilitator assisting the Government, through the national IF Steering Committee, to implement, to coordinate and monitor IF-related activities and projects. Donors need to work together to avoid duplication and ease the burden on the Government's administrative resources.

³³ The TWG comprises representatives from government, private sector, NGOs, the National University of Lesotho, and the donor community residing in Maseru.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) OVERVIEW

1. Few elements of Lesotho's trade policies have changed since the last review of SACU in 1998. Lesotho still applies the SACU Common External Tariff, currently effectively determined by South Africa. In accordance with the revised provisions of the 2002 SACU Agreement, the joint SACU Tariff Board will, in future, determine duty rates, including anti-dumping and countervailing duties. Lesotho does not yet set its own standards and in many cases uses South African standards, while health and sanitary regulations are based mainly on international practices.

2. Lesotho's export policies are largely determined by external conditions, including market access to South Africa, SADC, the United States, and the European Union. To comply with the provisions of the U.S. African Growth and Opportunities Act (AGOA), Lesotho has introduced new licensing and visa mechanisms for textiles and clothing. The trade and cooperation agreement between South Africa and the European Union has also affected, and will continue to affect, Lesotho's import structure, by effectively granting preferences in SACU to goods of EU origin, as well as reducing the tariff revenue available from the SACU revenue pool (Chapter II(2)).

3. Imports and exports are governed by the Export and Import Control Act of 1984, the Customs and Excise Act, 1982, and the Customs and Excise Regulations of 1984. The Export and Import Control Act of 1984 was amended in 1996 to transfer its administration from the Department of Customs of the Ministry of Finance to the Department of Trade of the Ministry of Trade, Industry and Marketing. These legal provisions are currently under review with a view to up-dating them in the light of the 2002 SACU Agreement. The Import and Export Control Act contains provisions, *inter alia*, concerning importation, exportation, and transit of goods; clearance and origin; anti-dumping and countervailing duties; rebates, refunds, and drawbacks of duty; and penal provisions.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Registration, and import duties and related measures

4. All importers are required to register with the Ministry of Trade, Industry and Marketing (MTIM) in order to be able to apply for import permits. Clearing agents are required to register with the Department of Customs and Excise. Customs clearance takes on average two to three days.

5. Under the 1969 SACU Agreement, BLNS countries, including Lesotho, apply import duties and related measures set by South Africa. In practice, applied customs tariffs, excise duties, valuation methods, origin rules, and contingency trade remedies are, to date, the only trade policy measures harmonized throughout SACU. These common policy measures are covered under the Main Report (Chapter III).

6. The anti-dumping and countervailing provisions contained in sections 54-57 of Lesotho's Customs and Excise Act are identical to those of South Africa. Lesotho has never independently applied anti-dumping or countervailing duties. Lesotho does not have any seasonal import tariffs or variable import levies.

7. Goods provided in the context of foreign aid to the Lesotho Government, or as part of technical assistance programmes, are exempted from duties. There are also provisions for duty rebates on goods imported for use by the Government. There are no other duty or tax concessions provided on imports beyond those granted by all SACU member states.

8. Registration for tariff concessions or rebates, and for control of eligible goods, is the responsibility of the Customs Department. Refunds and drawbacks of duties on exported goods and on raw materials and inputs used in exports are provided for under the Customs and Excise Act. Before registration can be effected, the importer must lodge a bond guarantee to cover the duties on rebatable goods. It takes at least one month for refunds of duties, drawbacks, and taxes to be paid to exporters. Most AGOA registrants benefit from rebate item 470.03, which provides for "importation of raw material duty rebated/free and for goods manufactured solely for export to countries outside the Common Customs Area".

9. As noted in the 1998 review, tariff evasion in Lesotho has become an increasing problem. The most common forms of evasion include: misrepresentation of goods and therefore misclassification; undervaluation; diversion of commodities entered under duty rebate to unauthorized purposes, for example, diversion of imported goods for use in manufacturing exports into the local market without payment of the relevant duties; and smuggling goods into the country. The main form of evasion concerns the importation of second-hand motor vehicles, through misclassification and valuation (double invoicing). To reduce smuggling, controls have been tightened and courses have been provided for customs officials under the auspices of WCO/WTO.

10. Sales tax is levied at the retail level on most goods and selected services sold in Lesotho, under the Sales Tax Act.³⁴ Rates are applied on a "national treatment" basis, i.e. rates levied on imports are the same as those applied on domestic production. The general *ad valorem* rate is 10%; 20% is charged on alcoholic beverages; and 5% on electricity and telecommunications. Major exemptions include exports, inputs included in exports, and capital goods. Tax on sales to registered businesses is collected on a period basis rather than at the time of imports. Thus, the share of sales tax currently collected from imports at border posts is relatively small, because most imports are by registered sales-tax payers (Table III.1). In addition, private cross-border shoppers who have paid value-added tax in South Africa are exempted from paying sales tax. Under the VAT system to be introduced, this exemption will continue.

Table III.1
Structure of sales tax revenue, 2001-02

	M million	Per cent of total
Alcoholic beverages ^a	30.3	10.0
Electricity	2.8	0.9
Imports ^b	42.4	14.1
Petroleum products	47.2	15.6
Telecommunications	6.1	2.0
Vehicles	12.0	4.0
Other	161.2	53.4
Total sales tax revenue	149.8	100.0

a Inclusive of revenue from sales of soft drinks to non-registered traders by the brewery company; and exclusive of revenue from imported alcoholic beverages.

b Exclusive of vehicles and petroleum products.

Source: Sales Tax Revenue Register.

11. Most imported goods transit through the Maseru Bridge and Maputsoe Bridge customs offices (Table III.2). In the 1998 Review, it was noted that "significant revenues" are lost every year "due to smuggling and under-declarations at the border". In general, this can be ascribed to the burden of border procedures: when goods exit South Africa and enter Lesotho, the shipper has to apply for a

³⁴ No.14 of 1995.

VAT refund from South African authorities and then pay sales tax to Lesotho; this takes time and effort. In addition, filing paperwork with two different countries and the time required to obtain a refund from the South African authorities unnecessarily increases the costs of conducting international trade.

Table III.2

Sales tax collection on imports by border posts, 2000-01

	M million	Per cent of total
Caledon	2.5	5.9
Makhaleng Bridge	0.1	0.2
Maputsoe Bridge	10.6	25.0
Maseru Bridge	21.1	49.8
Maseru Railway Station	0.8	1.9
Moshoeshoe 1 Airport	0.0	0.1
Peka Bridge	0.3	0.7
Post Offices	0.2	0.4
Qacha's Nek's Gate	1.1	2.6
Sani Top	0.1	0.3
Sephapho's Gate	0.1	0.2
State Warehouse	3.1	7.3
Tele Bridge	0.2	0.4
Van Rayen's Gate	2.2	5.2
Total	42.4	100.0

Source: Sales Tax Revenue Register.

12. Lesotho has for some time been planning a value added tax system to replace the existing sales tax. The Value Added Tax Act was passed in 2001. After some delay, the new, independent Lesotho Revenue Authority was established on 29 January 2002. The Authority will, *inter alia*, administer the VAT, which is due to be introduced in July 2003. Although the VAT rate will be equivalent to the present rate of sales tax (10%), VAT is expected to yield more revenue. The Central Bank of Lesotho noted: "The major advantage of VAT is that it is self-enforcing because VAT operates through a credit system. At each intermediate stage of production, VAT can be re-claimed on inputs used to produce the good. However, credit will only be given to producers providing they can demonstrate that they have applied VAT on their output. The only stage at which there will be no tax credits is consumption, where there are no further transactions. In contrast, sales tax tends to result in the tax on inputs becoming a cost to businesses that may be passed on to consumers through higher prices. Moreover, since there is no credit facility, tax on tax occurs as a product passes from manufacturer to wholesaler to retailer. This is known as cascading and results in inefficient tax collection."

(ii) Import prohibitions and licensing

13. All goods imported into Lesotho from outside the SACU area require import permits. In general, Lesotho's import permit system aims to monitor imports of goods and guarantee a statistical database. Imports and exports from and to all sources, including SACU, of all agricultural produce, except cereals and products thereof³⁵, require permits under the Agricultural Marketing Act of 1967, which provides for regulation of sale of agricultural products, both imported and locally produced,

³⁵ Cereals (except wheat) and products thereof have been deregulated since 1996.

and for monitoring of local supply management. Import permits on other products are issued by the Ministry of Trade, Industry and Marketing. Lesotho maintains no import quotas.

(iii) Government procurement

14. Government procurement of goods, services and contracts in Lesotho involves three levels of activity. Procurement up to M 750 in value is made by local purchase order; between M 751 and M 3,000, by quotation from at least three firms; and above M 3,000, by contract after public tender. The Central Tender Board, an independent statutory body under the responsibility of the Minister of Finance, is responsible for approving procurement awards over M 3,000, and between M 751 and M 3,000 if the lowest of the three tenders is not accepted. The Chairman and members of the Board, who are senior civil servants, are appointed by the Finance Minister, and the Secretary is an official of the Finance Ministry.

15. The powers of the Board are: to advertise and receive tenders for contracts involving expenditure of more than M 3,000, excluding freight charges; in exceptional circumstances, where it can be shown to be in the best interests of Government, to approve the use of selected or single tendering; to accept or reject tenders; to approve quotations where the lowest is not accepted on procurement between M 751 and M 3,000; to approve the standardization of equipment; and to review any approved standardization programmes. On the advice of the Board, the Minister of Finance may approve the letting of contracts without tender procedures, where there is only one source of supply or where essential after-sales service cannot be obtained without purchase from one source; where no offers to tender have been received, or where it is evident that tenders are collusive or unreasonable; where the goods or services required are of a specific or proprietary brand and there is no comparable alternative; where urgency or the exigencies of the public service preclude tendering; or where provided for in the requirements of an aid agency.

16. There are no preferences for local or regional suppliers of goods and services. According to the authorities, the whole government procurement system is undergoing review. Lesotho is neither an observer nor a member of the Plurilateral Agreement on Government Procurement.

(iv) Standards and other technical requirements

17. Up to now, Lesotho has relied on the South African Bureau of Standards for its needs. Lesotho does not have its own Bureau of Standards. However, a draft law on the establishment of a standards bureau has been submitted to the Government law office.

18. The Standards and Quality Assurance Department within the Ministry of Trade, Industry and Marketing was established in 1986 as a SADC initiative. Its main objectives are to promote fair trading practices, contribute to consumer protection, enhance competitiveness of Lesotho's products through quality and productivity improvement, and promote adoption and application of national, regional and international standards. The Department is a full Member of the International Organization for Standardization (ISO), the focal point for SADC efforts on standards and quality assurance management, and the contact point for the WHO/FAO Codex Alimentarius Commission. Through an FAO project, the Department has established a food control system, microbiology laboratory, and Food Control Advisory Committee, developed a training programme for the private sector and established the Lesotho Quality Association. It has also been instrumental in the preparation of standards and food control bills.

19. In respect of sanitary and phytosanitary regulations, the key provisions covering livestock are Proclamation 57 (1952) - Importation of livestock and livestock products; the Stock Diseases Proclamation (Amendment) 1954, and the Stock Diseases Regulations of 1973. Recent regulations

include the notes of the Chief Veterinary Officer of May 2000 relating to the Stock Diseases Proclamation of 1896, as amended. Regulations governing import and export of animals and animal products are derived from Proclamation No. 10 of 1957, as amended in 1984, and Legal Notice No. 27 of 1972. Trade in livestock and products thereof is also controlled by the Department of Livestock Services of the Ministry of Agriculture under Legal Notices Nos. 196 and 141 of 1992; 35 of 1993; and 35 of 1969 for poultry meat, live poultry, and eggs. Proclamation No. 10 of 1957 states that animals or animal products may be imported or exported only under a permit issued by the Department of Livestock Services to a person designated by the Department. The Stock Diseases (Amendment) Act of 1984 is targeted at preventing the introduction of and spread among livestock in Lesotho of any disease that is specified in the regulations. It regulates the importation of livestock from outside the country and controls the movement of livestock within the borders of Lesotho. The Act also provides for the notification of disease outbreaks within the country and gives power to the Minister of Agriculture to appoint inspectors to carry out inspection of livestock. Under this Act, inspectors can detain, isolate, test, inoculate, remove, brand, dip, or remove livestock, and levy charges on livestock owners.

20. The Agricultural Marketing (Distribution of Dairy Products) Regulations 1992 (Legal Notice 241 of 1992) empowers the Lesotho National Dairy Board to issue permits to dairy producers and processors and to charge a levy on all invoiced products. Legal Notice No. 19 of 1993, based on FAO Consulting Document of 1981, provides amendments to the Milk Hygiene Regulations.

(v) Countertrade and related provisions

21. Lesotho has never used countertrade or offset arrangements. It does not maintain any arrangements with foreign government or enterprises designed to influence the quantity or value of goods and services exported to Lesotho, or any surveillance measures on imports. Lesotho has never imposed trade sanctions except under United Nations resolutions.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and taxes

22. Lesotho's general registration procedures are stipulated in the Export and Import Control Act of 1984. The only special export registration or documentation requirements relate to exportation of diamonds, for which the exporter must apply for an export permit and pay export duties. Firms seeking to benefit from the country's export credit scheme must be registered with and approved by the Central Bank of Lesotho.

23. Prospecting and mining of all minerals and precious stones are governed by the Mining Rights Act, 1967³⁶; trade in precious stones is regulated by the Precious Stones Order, 1970.³⁷ The former covers the allocation of prospecting and mining licences and leases, transfer and revocation of mineral titles, conditions for possession of and dealing in rough or uncut precious stones or unwrought precious minerals, and limitation of output, control, and disposal of precious stones; the latter covers conditions for dealing in diamonds. Only licensed diamond dealers or producers, or their accredited agents, may export diamonds. Sales tax is levied at 15% on every diamond found in and exported from Lesotho.

³⁶ Act No. 43 of 1967.

³⁷ Order No. 24 of 1970.

(ii) Export prohibitions, controls and licensing

24. Until 2001, cereals and legumes, and preparations of sunflower were subject to export controls or licences. Some livestock and livestock products are still subject to export controls.

25. Lesotho has been required to intensify its export control procedures to satisfy the provisions of the U.S. African Growth and Opportunity Act. In 2001, new regulations under the Import and Export Act required all exporters of textiles and clothing products under AGOA to be registered with the Ministry of Trade, Industry and Marketing, for the establishment of a visa and certificate of origin system and for monitoring by Lesotho and U.S. customs officers.³⁸

(iii) Export subsidies and assistance

26. Lesotho has no general export subsidy scheme. However, as mentioned in section (2)(i) above, provisions exist for rebate or refund of import duty paid on raw materials/components required in the manufacturing, processing, finishing, etc. of goods for export. Except for diamonds, exports are not subject to sales tax.

27. During 2001, the Central Bank of Lesotho put forward proposals to revise the Export Finance Scheme through the creation of a New Export Finance and Insurance Scheme. These aimed (i) to bring the scheme directly under the control of the Central Bank, instead of administering it through the Lesotho National Development Corporation; and (ii) to simplify the conditions under which export finance guarantees would be given, so as to make it easier for commercial banks to apply. The reasons stated by the Central Bank were as follows: LNDC had been rejecting what in the view of commercial banks were legitimate claims for a guarantee. The LNDC in turn was arguing that the commercial banks were not following the conditions of the guarantees. In the end, commercial banks withdrew their lending under the scheme and the scheme ceased to operate even though the Guarantee Fund had as much as M16.0 million to honour the guarantees.

28. The New Export Finance and Insurance Scheme covers insurance against commercial and political risks, rather than just export finance. It applies to large, medium-sized and small exporters, but large exporters may be assisted only if they establish linkages with small and medium-sized exporters. Under the new scheme, only 50% of the loan to the exporter is guaranteed, as against 85% previously. Small and medium-sized local exporters are to be guaranteed up to 50% of their export loans, under the Export Development Fund (EDF) to be administered by the Central Bank. Exporters will be required to pledge collateral of 50% of the loan value to ensure that they repay the loan. The total staff of the export business should be between three and 30 employees, and an applicant should have been in the export business for at least two years. By the end of 2001, a final draft of an operations manual for the new scheme had been completed. However, by February 2003, no loans under the scheme had yet been approved.

29. The Trade Promotion Unit (TPU) within the Ministry of Trade, Industry and Marketing is responsible for supporting manufacturers' and exporters' endeavours to market their products outside Lesotho. The Unit facilitates participation of local manufacturers and exporters at regional and international trade fairs and exhibitions. The Government provides marketing assistance, but does not provide direct financial support for costs associated with trade fair participation.

³⁸ Export Control Regulations 2001 (Legal Notice No. 51, 12 April 2001).

(iv) Other measures

30. Lesotho has no legal provisions for export processing zones, although several studies have been undertaken by the Ministry of Trade, Industry and Marketing. In practice, all regions of the country are treated as an export processing zone, since all duties on imports are rebated in full for goods used in export production.³⁹

31. Lesotho does not maintain any voluntary export restraints.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Incentives

32. The only tax concessions and interest rate subsidies are associated with the Comprehensive Export Financing Scheme. Under the interest rate subsidies scheme credits are offered at concessionary interest rates, lower than the prevailing market rates of interest. The Government offers general sales tax exemption on capital machinery and equipment for manufacturing industries, and a permanent maximum tax rate of 15% on profits of manufacturing companies compared with 37% for other enterprises.

33. According to the authorities, Lesotho has a variety of institutions and departments in the public and private sectors, as well as community-based organizations that, through various activities, promote science and technology for sustainable development. The authorities state that the Government's commitment is clear from various initiatives, including the creation of a National Science and Technology Policy, which articulates strategies and instruments to develop a science based, technology-driven and production-oriented society.

34. Lesotho maintains no specific incentives for regional development.

(ii) State-owned enterprises and privatization

35. Lesotho has a considerable number of state-owned enterprises. It has pursued a substantial programme of privatization, under World Bank auspices, since 1995. Although this has not proceeded as rapidly as originally planned, considerable progress has been made.

36. The major parastatal enterprise in Lesotho is the Lesotho National Development Corporation (LNDC), originally established in 1967, and with a mandate modified through the Lesotho National Development Corporation Order, 1990, which became effective in 1993.⁴⁰ The purpose of the corporation is "to initiate, promote and facilitate the development of manufacturing and processing industries, mining and commerce in a manner calculated to raise the level of income and employment in Lesotho." Its mandate to date has been limited to manufacturing and to a lesser extent commercial activities, which implies that there has been a bias towards encouragement of the manufacturing sector as against others; the authorities are aware of this and are taking steps to redefine the LNDC's mandate to include the service sector. The core functions of the LNDC, as redefined in 1999, include finance, investment promotion, monitoring and appraisal, legal services, technical services, and entrepreneurial development. In these respects, it works as a one-stop shop for investors. It administers four fully serviced industrial estates, in Maseru, Thetsane, Maputsoe, and Ha Nyenye, as well as a factory building at Mafeteng. Since 1981 the LNDC has had a programme of advance

³⁹ UNCTAD (2002).

⁴⁰ The LNDC is 90% owned by the Lesotho Government and 10% by the German Finance Company for Investments in Developing Countries (DEG).

factory building. The Corporation's real estate portfolio at end-1999 comprised 124 industrial buildings, nine commercial outlets, two shopping malls, five office blocks and eight residential units. As at September 2000, the corporation held interests in 54 manufacturing enterprises, 36 in the clothing sector and others in areas as diverse as plastics, engineering, shoes, foodstuffs, and building stone.

37. The privatization programme, sponsored by the World Bank, was initiated in the Privatization Act 1995⁴¹, and the Privatization Regulations 1997. Under the Act, the Privatization Unit (PU) was established in the Ministry of Finance with the objective of planning and managing the privatization of parastatal organizations through various methods ranging from management contracts to outright sales of shares and assets (Box III.1).

Box III.1: Privatization activities in Lesotho

The following activities have been undertaken under the Privatization Programme:

Sale of shares: Security Lesotho, Avis Lesotho, Lesotho Flour Mills, Minet Kingsway Insurance, Lesotho Telecommunications Corporation, Vodacom Lesotho

Sale of the business: Plant and Vehicle Pool Services, Lesotho Airways Corporation, Lesotho Bank

Sale of assets: Orange River Lodge, Plant Pool Workshop

Leasing: Marakabei Lodge

Management contracts: Maluti Highlands Abattoir, Loti Brick, Basotho Fruit and Vegetable Cannery, Maseru Private Hospital

Contracting out of services: LTC Cleaning Services, LTC Security Services, LTC Sanitary Services

Liquidation: Lesotho Agricultural Development Bank, Lesotho Airways Corporation, Lesotho Bank, IFTS American Express, IFTS Travel Services

Transformation into another form of parastatal: Lesotho Building Finance Corporation, WASA Pit Latrine and Septic Tank Emptying Services

In addition, 16 agricultural enterprises were listed for privatization in September 2001 after Cabinet approval.

Source: Lesotho Privatization Unit, September 2001.

38. As at 31 March 2001, the gross proceeds raised by the Government from privatization stood at US\$43.1 million. As required by the Privatization Act, proceeds for the privatization programme are deposited in special accounts held at the Central Bank. These funds may only be used for private-sector development.

39. The Privatization Unit monitors individual privatization projects on a regular basis to judge whether various objectives have been realized. In pursuing privatization, the Government is also

⁴¹ Act No. 9 of 1995.

advised by the Private Sector Advisory Committee (PSAC), a body consisting of Government, trade unions, women's associations, and private-sector representatives.⁴²

(iii) Competition policy and price controls

40. Lesotho currently has no competition policy. An UNCTAD led project launched in December 2002, aims to formulate and establish a national competition policy framework including the requisite administrative machinery. As part of this process a strategic implementation partner will be identified.

41. Currently, oil products and electricity are subject to price control to maintain prices at affordable levels. These controls are governed by the Fuel and Services Control Act of 1983 (No. 23 of 1983) under which the Minister responsible for water, energy and mining has broad powers to regulate the supply and price of fuel, including electricity.

(iv) Intellectual property protection

42. As a least developed country, Lesotho is not required to notify its legislation under the TRIPS Agreement until 2006. Lesotho also benefits from the waiver for least-developed countries in respect of the obligation under Article 70.9 of the TRIPS Agreement. This section attempts to give a factual picture of the current state of legislation.

43. Lesotho's intellectual property legislation is relatively modern and covers copyright and related acts (Copyright Order, 1989), patents, trade marks, utility models, industrial designs, and control of anti-competitive practices in contractual licences (Industrial Property Order of 1989, amended 1997, and associated Regulations). The Registrar General's office in the Ministry of Law and Constitutional Affairs is the focal point for all intellectual property issues.

44. Lesotho has been a signatory to: the WIPO Convention since 1986; the Paris Convention on Industrial Property since 1989; the Berne Convention on Literary and Artistic Works since 1989; Article 3 bis of the Madrid Convention on Registration of Marks since 1999; the Rome Convention on Protection of Performers since 1990; and, the Washington Patent Cooperation Treaty since 1995. Lesotho is also a member of the African Regional Industrial Property Organization (ARIPO).

45. The Industrial Property Order (IPO), as amended in 1997, covers patents, utility models, industrial designs, marks, collective marks, and trade names including marks "well known in Lesotho" (1997 Amendment). Patents are granted for 15 years, extendable by five years if worked; industrial design marks for five years, extendable for two successive periods of five years; and trade mark rights for ten years, extendable for consecutive periods of ten years. Utility model certificates are not extendable. With respect to geographical indications, a Bill, based on the WIPO Model Law, has received Government approval and is being placed before Parliament. Conditions for protection of integrated circuits and undisclosed information are under discussion, as is legislation on new plant varieties, on the basis of the UPOV Model Law. Lesotho has as yet no specific legislation concerning genetically modified organisms, although the country has accepted GM foodstuffs as part of food aid.

⁴² For example, in 2002 the operation of the contract between the Government and Imperial Fleet Services, which runs the Government transport pool, was subject to review by consultants commissioned by the Privatization Unit (PU Press Release, 11 April 2002); PU members attended the launching of an employee share ownership scheme by AON Lesotho (the former Minet Kingsway insurance company) (PU Press Release, 19 April 2002). Also in April 2002, the PSAC met to hear details of the privatization of Lesotho Electricity Corporation (PU Press Release, 25 April 2002).

The IPO contains provisions for both civil and criminal remedies for owners of patents and other rights covered by the Order, including fines and imprisonment.

46. Copyright protection covers works of Lesotho-based resident authors and works first published in Lesotho regardless of the nationality or residence of their authors; performers who are nationals of Lesotho, and performances taking place, fixed in a phonogram or broadcast in Lesotho; performers, phonograms, and broadcasts originating in foreign countries prescribed by the Minister of Law and Constitutional Affairs; unpublished works and works first published by foreign authors or in foreign countries if the country in question grants similar protection to Lesotho; and expressions of foreign folklore, foreign authors, performers, phonograms and broadcasts.

47. The IPO defines the substance of copyright as the economic and moral rights of the author of a protected work (original or derivative). Works are protected for the life of the author plus fifty years after his/her death (or death of the last author of a joint work); cinema and audiovisual works for fifty years from the making of the work or its communication to the public. The Order also contains provisions for authorization and contract for the use of works, use of works in the public domain, expressions of folklore, neighbouring rights, authorization by performers, protection of phonograms and other relevant procedures. It creates a Society of Authors and Artists and a register (and registrar) of works, and establishes civil remedies and sanctions, including fines and imprisonment.

48. The Government has established an interministerial committee to review issues of intellectual property and the TRIPS Agreement. It comprises representatives of the ministries of Law and Constitutional Affairs (which chairs it), Trade and Industry, Agriculture, and Science and Technology, as well as of the Lesotho Association of Inventors.

49. In recent discussions on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, the delegation of Lesotho has taken a leading role in highlighting problems faced while trying to issue compulsory licences under the TRIPS Agreement to deal with diseases such as HIV/AIDS, tuberculosis, and malaria, including the provision of a waiver in order to deal with the public health situation referred to in the Declaration. Inter alia, Lesotho has proposed that compulsory licences for medicaments could define a "domestic market" as a group of countries or a specific region, for example, a customs union, as a means of allowing developing countries to pool their resources and make production more attractive for potential manufacturers.

IV. TRADE POLICIES AND PRACTICES BY SECTOR

(1) OVERVIEW

1. Lesotho's economy is still highly dependent on subsistence agriculture. Most people live in the rural areas; poverty is widespread. Lesotho has suffered over recent years from the decline in employment of miners in South Africa. Although the growing garment sector has picked up some of the slack, the wage and gender structure of employment is very different, and incomes and remittances have fallen.

2. The garment sector, which has grown rapidly under foreign investment, has been the big success in Lesotho's industrial development in recent years. As various studies note, this is giving rise to capacity constraints domestically; concerns are also expressed about the long-term viability of the sector in terms of linkages to the rest of the economy and its dependence on unilateral preferential access, particularly under the African Growth and Opportunity Act. The authorities are well aware of these potential problems.

3. Lesotho has modernized its legislation on financial services and opened up its telecommunications sector to competition. These moves should assist in creating a favourable atmosphere for foreign investment. Infrastructural problems in the water, power, and transport industries may constrain industrial development; again, the authorities appear well aware of these factors. Attention is being given to the development of tourism; Lesotho's mountainous terrain is seen as a major asset.

(2) PRIMARY SECTOR

(i) Agriculture and related activities

4. The macroeconomic importance of Lesotho's agriculture sector evident as 80% of the population lives in the rural areas. More than 50% derive their livelihood from crops and livestock production and about 60% of the labour force is employed in the sector. Agriculture accounts for 16% of exports and 75% of the country's basic food needs. The share of agriculture in GDP was fairly steady at around 23% to 25% until 1990, when it fell dramatically, probably as a result of poor harvests in that year. Since then, it has remained at around 17%-18%.

5. Lesotho's agriculture is relatively open to external influence, principally from South Africa in the SACU context. Where the Government of Lesotho does not restrict importation, price trends and changes in South Africa directly affect prices in Lesotho. Thus, there is a strong direct link between prices in South Africa and Lesotho and a direct interdependence of trade policies.

(a) Aims and vision of Lesotho's agricultural policy

6. Until the mid 1990s, the Government participated directly in producing, marketing, and processing most agricultural inputs and outputs, thereby limiting private-sector involvement in these activities. Underlying this policy was a perceived need to promote self-sufficiency in the main staple foods: maize, sorghum, wheat, and pulses. This arose out of the potential for conflict with neighbouring South Africa during the apartheid era and the consequent danger of facing closed borders. The regulatory framework used to promote the policy included protection for local farmers from foreign competition through import controls and other regulations on market participants, subsidies on inputs for local farmers, direct participation by the Government in productive activities, and intervention by Government in the marketing of agricultural output.

7. Initially, the focus was on increasing output of staple food crops, principally maize, on the assumption that maize self-sufficiency was vital in case South Africa suddenly closed its borders with Lesotho. Over time, other subsectors, such as poultry, dairy, and fruits and vegetables, were promoted to address household nutritional needs and provide sources of income for rural households. As production increased beyond subsistence levels, quantitative restrictions were requested and granted under Articles 6 and 12 of the SACU treaty, for protection of infant industries, while in other cases such as livestock, import controls were introduced to curb the spread of animal diseases from outside, to prevent influx of animals onto depleted rangelands, to ensure that imported products were fit for human consumption, and to collect import/export statistics.

8. In spite of these interventions by government, Lesotho failed to achieve food self-sufficiency and, in fact, food insecurity increased for the majority of households, particularly in rural areas. In short, these policies were distortive and imposed extra costs on consumers. New opportunities and changes in the global economic environment, in addition to the costs associated with the pursuit of self-sufficiency, suggested the need to find other means of ensuring food security and overall development of the sector. This led to a re-evaluation of agricultural marketing policies.

9. Currently, the general direction is towards a more liberal marketing policy to achieve private-sector-driven and economically efficient agricultural development. The Government is moving agricultural production and marketing policies away from a highly regulated inward-looking strategy towards a liberalized outward-oriented market environment within an integrated regional economy.

10. The authorities' vision for the agriculture sector for output based on sustainable, efficient, and competitive production practices providing long-term, comfortable and secure livelihoods, free from poverty. Markets will be reached through an efficient and integrated marketing system. Production in the sector will be based on goods on which Lesotho enjoys a comparative advantage. The stated objective therefore is to encourage the development of the sector through a policy that promotes the interest of farmers and facilitates the growth of a sustainable, efficient, and competitive sector that reflects comparative advantage.

(b) Deregulation and liberalization of agricultural marketing

11. The process of deregulation started in 1995/96 with maize and maize meal. In 1997, this was followed by liberalization of quantitative restrictions on the import of wheat and flour. While the Government seeks, as a general strategy, to further the process of liberalization in the remaining controlled markets, it also recognizes the need to take account of the impact on domestic growth of protection and subsidies in Lesotho's main developed trading partners. Liberalization of regulations is therefore being studied on a case-by-case basis. The authorities state that, where regulations are ineffective or not achieving their goals, they will be removed.

12. The authorities believe it imperative that, before introducing marketing policy reforms, stakeholders (policy-makers, the farming and trading communities, and consumers) have a clear understanding of the impact of current policies and how the future may unfold if market reforms are introduced. The Government is committed to liberalizing markets; but the rate at which changes should occur remains to be determined, taking into account among others the structural composition of the economy and the external marketing and economic environment. Hence, it is necessary to diagnose needs and opportunities derived from the reform process and to follow-up with the stakeholders. A series of consultations is being undertaken to ensure that the views of all stakeholders affected by this policy reform process are considered, including farming and trading communities. The Department of Marketing, in collaboration with the Policy Section of the Department of Planning

and Policy Analysis (DPPA) of the Ministry of Agriculture, Cooperatives and Land Reclamation has implemented consultative workshops in all districts prior to submitting recommendations on policy changes for government approval, with a view to continuing the reform process.

(c) Privatization

13. The Government accepts that it should not be involved directly in productive activities. However, it recognizes the danger that, in a small economy, privatization of certain types of enterprises may simply replace inefficient public monopolies by private ones. Privatization is therefore also being studied and carried out on a case-by-case basis. Sixteen government-owned agricultural enterprises have been identified for study, and privatization has been initiated where appropriate.

14. The privatization of agricultural enterprises is being implemented in accordance with the overall Privatisation Act of 1995. The objective is to eliminate the fiscal burden on government and to improve efficiency. All state-run agricultural enterprises have been advertised, after Cabinet approval. Experts on privatization issues have been engaged to fast-track the process.

(d) Subsidies

15. The Government does not regard subsidies, in themselves, as inappropriate policies. However, where subsidies are provided, they should be for clearly defined purposes that do not lead to distortions or have counter-productive implications. A study on the impact of subsidies has been completed by the Government in order to help it to clarify its policy in this area. The results are presently under consideration and a policy paper is being prepared.

16. Statistics produced by the Ministry of Trade, Industry and Marketing cover three principal livestock products (milk, beef, and mutton), two animal-based textile products (wool and mohair) and five principal crops (maize, wheat, sorghum, peas, and beans). The most recent statistical report, for the period 1999-01, shows a slight declining trend in production of milk, but increases in output of beef and mutton (Table IV.1); a slight but steady decline in the quantity of wool and mohair produced, ascribed by the authorities to the discouraging effects of increasing stock theft; and falls in the output of the major crops, which the Government thinks may be due to the decline in available arable land through housing expansion and a shift of the labour force from agriculture to manufacturing. Lesotho is therefore likely to become increasingly dependent on imports of food and agriculture, especially if difficult climatic conditions continue. Wool and mohair are the only significant products exported, with virtually all production sold abroad.

17. Currently, the following products are subject to import controls: wheat and wheat flour, bread, fruit and vegetables, pulses, dairy and dairy products, livestock and meat of cattle, sheep, goats, horses, pigs and rabbits, wool and mohair, hides and skins, live poultry, eggs and poultry meat, point-of lay pullets and day-old chicks, and sugar (Chapter III(2)(ii)).

Table IV.1
Production and exports of agricultural products, 1999-01

	1999	2000	2001
Production			
Milk ('000 litres)	1,245	1,222	1,212
Beef (tonnes)	..	563	600
Mutton (tonnes)	..	98	110
Wool (tonnes)	585	576	..
Mohair (tonnes)	175	170	..
Maize ('000 tonnes)	301	278	..
Wheat ('000 tonnes)	32	16	..
Sorghum ('000 tonnes)	37	27	..
Peas ('000 tonnes)	3.4	2.8	..
Beans ('000 tonnes)	16.6	14.3	..
Exports			
Wool (tonnes)	565	566	..
Mohair (tonnes)	174	169	..

.. Not available.

Source: Ministry of Trade, Industry and Marketing (2001), *Agricultural Marketing Statistics Report*, 1999-2001.

(ii) Mining and quarrying

18. Mining and quarrying have historically made a very low contribution to GDP in Lesotho. Diamonds are present but, between 1983 and 1999, little commercial activity took place. In 1999, the principal diamond mine (Letseng-la-Terae) reopened with a 24% government holding, and activity is to recommence once the infrastructure has been rehabilitated.

19. Other than diamonds, Lesotho's mining sector consists of a limited volume of coal, galena (sulphite of lead), quartz, agate, and uranium, which are of little commercial value. Clay is extracted for manufacture of bricks, quality ceramics, and tiles.

(iii) Water and energy

20. Development of exports of water to South Africa through the Lesotho Highlands Water Development Project (LHWDP) has contributed significantly to Lesotho's GDP and foreign earnings, as well as being the major destination of foreign direct investment into Lesotho in recent years. In the period 1998/9-2000/01, electricity and water, construction and LHWDP construction contributed an average of 25% of GDP, while net external sales of water and power accounted for a positive balance of US\$13 million in an overall services deficit of US\$5.3 million.

21. According to the authorities, 71% of Lesotho's energy consumption is estimated to be supplied through biomass, reflecting the poverty of the country and the scale of the subsistence sector. Petroleum accounts for 80% of the remainder, with coal and electricity the other main sources of energy consumption.

22. All petroleum products are imported into Lesotho via South Africa; there are three depots in Maseru with storage capacity of approximately six days of petroleum supply. Lesotho has no known oil or gas deposits.

Box IV.1: The Lesotho Highlands Water Development Project (LHWDP)

The LHWDP, a joint venture between Lesotho and South Africa, began development in 1986. Its aims are to supply water to South Africa, especially to Gauteng province, and to meet domestic power needs in Lesotho.

Phase IA of the project, completed in 1997, comprised the construction of the Katse dam, opened in 1998, a network of pipelines and tunnels to bring water to South Africa, a second, smaller dam and an 80 megawatt hydro-electric plant at Muela, fully operational from January 1999. Phase IB, currently underway, is expected to include two further dams, at Mohale and on the Matsoku river, and 40 km. of interconnecting tunnels. Further phases of the project are still under negotiation between Lesotho and South Africa. The completion of Phase II should raise water supply from the scheme from 18 to 30 cubic metres per second.

As well as the direct financial benefits to Lesotho from water exports and the potential for expanding electricity connections within the country, the infrastructure connected with the LHWDP brings the possibility of opening up the interior for tourism development through trekking and other leisure pursuits.

The Government of Lesotho has recently taken decisive action through the courts to show that corruption in large-scale projects such as the LHWDP is not acceptable. In 2002, the former executive director of the Lesotho Highlands Development Authority was convicted of misuse of funds, while a Canadian construction firm, which had been involved in the scheme, faces substantial fines for bribery and, as a result, blacklisting by the World Bank.

23. The Lesotho Electricity Corporation (currently a candidate for privatization) purchases its supplies from the Muela hydro plant. However, South Africa's Eskom is a competitor for the supply of power to Lesotho and can provide electricity at lower rates.

(3) MANUFACTURING

24. Manufacturing has long been the staple contributor to the growth of Lesotho's formal GDP, and the textiles and clothing subsector the major element in manufacturing growth and trade. The introduction of improved preferential access to the U.S. market under the AGOA has given trade in textiles and clothing a further boost.

25. The Sixth Plan document notes that the manufacturing sector's contribution to GDP rose from 10% in 1991 to 15% in 1994. Since then, its share has remained between 15% and 16% of GDP, but its contribution to foreign investment and trade has grown. The strategy followed by the Government, as set out in the Sixth Plan, has been to counteract Lesotho's limited natural-resource base by establishing labour-intensive and export-oriented manufacturing and assembly operations, building on the success already registered in clothing, footwear, and consumer electronics, and making use of the "young, highly literate, trainable and highly productive labour force".⁴³

26. Tariffs on manufactured imports average 11.8%, with relatively high rates ranging over 60% on certain textile products (Main Report, Chapter III (3)(ii)).

(a) Textiles and clothing

27. The most notable development in Lesotho's manufacturing sector since its last TPR has been the rapid development of the garment industry, and the confirmation of the United States as the principal market for Lesotho's clothing exports because of the enhanced market access granted under AGOA. The textile subsector employed a total of nearly 20,600 local workers in March 2001; this

⁴³ Sixth National Development Plan, Maseru, 1997.

had risen to 32,200 Basotho workers and some 1,000 expatriate staff by November 2001, according to a study published in January 2002.⁴⁴

28. Under AGOA conditions, Lesotho is treated as a "lesser developed beneficiary country". Thus, in addition to the other preferential terms available under AGOA, Lesotho receives duty-free access for clothing wholly assembled in Lesotho, regardless of the country of origin of the fabric used until 30 September 2007, within the general limitation of the "applicable percentage" of the aggregate square metre equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.⁴⁵ This has been a considerable benefit to Lesotho which, because of existing investment from South Africa and Asian sources, is well poised to take advantage of these provisions.

29. AGOA access appears to have had a dramatic and positive initial effect on investment and trade in the clothing industry in Lesotho. Already at the launch of AGOA for Lesotho, the Minister noted that "In terms of investment promotion since the initial announcement of AGOA, the Lesotho National Development Corporation has been inundated with enquiries from potential investors... (13 new projects and 5 expansions) from Chinese Taipei, Singapore, South Africa and Fiji. Building space required by these projects amounts to 69,000 square metres at a cost of M 131 million and an employment potential of 11,800 with an average wage bill of M 6.6 million a month."⁴⁶

30. Statistics available from the United States International Trade Commission show that between 1999 and 2001 imports from Lesotho to the United States increased from US\$111 million to US\$217 million. In 2001 and 2002 (comparing January-November in each year), total imports into the United States from Lesotho increased by 50% in value, from US\$197 million to US\$297 million.⁴⁷ Between 2001 and 2002, the share of U.S. imports from Lesotho that entered under AGOA terms, including the GSP element of AGOA, grew from 55% to 99% of the total. Textiles and clothing accounted for virtually the total value of U.S. imports from Lesotho.

31. The unit value of clothing imported from Lesotho is also reported to have increased slightly in 2001. Most inputs to the subsector originate in East Asia; this takes advantage of the terms accorded to Lesotho, as a country with per capita GDP below US\$1,500, to use inputs and materials from anywhere in the world, as against the general AGOA terms, which limit inputs to those sourced from the United States or African AGOA members.⁴⁸

⁴⁴ Lesotho Garment Industry subsector study (commissioned by the U.K. Department for International Development for the Government of Lesotho, January 2002).

⁴⁵ The "applicable percentage", or cap, was set at 1.5% for 1 October 2000-30 September 2001, increasing in equal stages to 3.5% for 1 October 2007-30 September 2008: thus, for the period 2002-03, the percentage for all sub-Saharan beneficiaries would be 2% of total clothing imports into the United States. In terms of square metre equivalents, the cap increased from 246.5 million m² to 313.3 million m² between October-September 2000-01 and the following twelve-month period (Steele, 2002). Under AGOA II legislation, the cap has been doubled; see AGOA online information. Available at: http://www.agoa.gov/About_AGOA/AGOII_summary.pdf.

⁴⁶ See LNDP online information. Available at: www.lndc.org.ls/AGOABenefits/agoabenefits.htm - Hon Minister's Speech delivered during the AGOA Launch.

⁴⁷ U.S. International Trade Commission online information. Available at: http://reportweb.usitc.gov/africa/total_gsp_agoa_import_suppliers.jsp.

⁴⁸ Schuler (2002). Steele (2002) also discusses the medium-term outlook for imports from sub-Saharan African countries under AGOA, particularly in the light of the expiry of the special import provisions for less-developed beneficiary countries in 2004 and its possible effect on the competitiveness of LDCs.

Box IV.2: The garment industry in Lesotho

The garment industry in Lesotho dates from the early 1980s; it was initially based on South African companies seeking to avoid international sanctions, and assisted by the Lesotho National Development Corporation (LNDC). A second wave of investment, mainly from Chinese Taipei, arrived in the late 1980s, encouraged by Lesotho's four-year derogation (subsequently renewed for a further four years) from the restrictive cumulation provisions of the Lomé Convention rules of origin. Much of this second wave of investment was in the form of relocation of factories from the Bantustans or "homelands" of the then apartheid South Africa.

Following the expiry of the Lomé derogation and with the introduction of AGOA conditions, most of the existing factories re-directed their export production to the United States. As noted in the DFID study, "with the introduction of the African Growth and Opportunities Act of 2000 (AGOA), Lesotho gained significant advantage over its competitor countries in the developing world. It is AGOA that is currently driving the unprecedented growth in the industrial garment subsector in Lesotho."

The industry consists of four company groups making denim jeans; nineteen company groups manufacturing knitted garments; four company groups making a mix of woven and knit garments; and two providers of printing and embroidering services. Of 38 factories in operation at the time of the DFID study, 27 were producing for the U.S. and Canadian markets only. Twenty-five factories were subsidiaries of companies from Chinese Taipei, four from Hong Kong, China, two from South Africa, one each from Israel and Singapore; four were Lesotho-based.

All the factories operating in Lesotho are "cut, make and trim" operations; other aspects, from design to finance, are dealt with in the overseas head offices. Raw materials are shipped to the Maseru container terminal generally via East London and Bloemfontein; similarly, finished products, packaged in cartons, are shipped via Durban or East London. So far, few operations are integrated with effective links within the Lesotho economy or within SACU. Special preferences under AGOA for "lesser developed beneficiaries" (LDBs), have been extended, under AGOA extension legislation signed in August 2002, to Botswana and Namibia as well as Lesotho and Swaziland. These permit sourcing of inputs from non-U.S., non-Sub-Saharan African sources, until 30 September 2007. According to the DFID study, the Government of Lesotho and the LNDC have managed to attract a major investment in the form of the proposed denim mill, which is scheduled to start production in 2003. In addition, one of Lesotho's major jean production companies has acquired a denim mill in KwaZulu Natal, South Africa, which will be eligible under the AGOA preference system. For knitted garments, the scale of investment or the time required set up a knitted-fabric mill is much less than for a woven fabric mill, therefore industrialists can await the outcome of the negotiations to extend the LDB advantages of AGOA before deciding whether to set up these mills. There are therefore both actual moves and considerable scope for the establishment of more integrated textile/garment industries in Lesotho and neighbouring South Africa under AGOA provisions.

Source: UK Department for International Development (2002), *Lesotho Garment Industry Subsector Study*, January; and the authorities of Lesotho.

32. One perpetual challenge in the development of highly export-oriented industries with high import content is to develop backward linkages in the domestic economy, and this is as true for Lesotho as for any other small economy. This was already recognized in the Sixth Development Plan, which noted that "the bulk of the fabrics are currently imported and therefore the situation is ripe for vertical integration by establishing spinning, weaving and dyeing processes in Lesotho. In addition, other ancillary industries to be encouraged include the production of zip fasteners, collar supports, trimmings, elastic braids and buttons." However, the problems for Lesotho in this respect relate both to scale and trade policy flexibility: in a world of globalization and mass production, can such industries be efficiently established to serve such a small market, and within the SACU area can the "infant industry" provisions that exist be used effectively to establish viable production? Alternatively, can the textile subsector be used as an initial point of skills development from which new sources of employment can be encouraged? These issues are important for Lesotho in relation to

the conditions for market access under AGOA. It was reported in October 2002 that both Lesotho and Swaziland had requested the United States to grant an extension to the 2004 limit for the AGOA special provisions on textiles and apparel, to allow time to produce the raw materials needed as input into clothing exported under the Act.⁴⁹

33. A study undertaken for the World Bank, in 2002 on the sustainability of Lesotho's garment exports, and constraints to further expansion, identified five physical constraints to the consolidation and further growth of the industry; lack of backward linkages and, in particular, knitted fabric mills; insufficient or erratic supplies of water to all the major industrial estates; lack of available factory shells; lack of serviced industrial sites; and inadequate conditions and handling facilities at the Maseru railhead.⁵⁰ Problems of document clearance and customs inspection (related to the distance between the points of import and Maseru, where final verification of documents takes place), as well as loss of lesser-developed supplier access under AGOA at end 2004 (now extended to 2007), the expiry of the Agreement on Textiles and Clothing at the same time, and the expiry of AGOA itself in 2008, were identified as domestic and external policy challenges.

(b) Other manufacturing industries

34. Outside the garment sector, other manufacturing industries established in Lesotho include leather, food and beverages, consumer electronics, clay-based brick and ceramic tiles, television assembly, and edible oils.

35. The manufacturing investment framework comprises a maximum tax rate of 15% on company profits, no withholding tax on dividends distributed to local or foreign shareholders, free repatriation of profits (in many cases also free of tax in the receiving country) and double taxation agreements with Germany, South Africa, Mauritius, and the United Kingdom.⁵¹ The Labour code of 1992 lays down minimum wages and legal provisions on dismissal, severance payments, working hours and overtime, weekly rest, paid and public holidays, sick and maternity leave, transport, and a tripartite structure of consultative and advisory bodies.

(4) SERVICES

36. Under its horizontal commitments on market access in the GATS, Lesotho specifies that there will be no limitations on cross-border supply, or on consumption abroad, of the 85 sectors or subsectors included in the schedule. However, Lesotho states that measures affecting one or both of these modes of supply are unbound in 33 sectors or subsectors, and specifies on "architectural services" that the services of a locally registered architect have to be utilized for building plans of 500 square metres or over.

37. Concerning commercial presence, the schedule specifies that wholly foreign-owned enterprises must satisfy a minimum equity capital requirement of US\$200,000, joint-venture companies must have a minimum foreign equity capital outlay of US\$50,000 in cash or in kind, and that agency establishments must have authority to negotiate and conclude contracts on behalf of their foreign parent companies. In addition, in reinsurance and retrocession, insurers, whether foreign or domestically controlled, must be incorporated as a public company in terms of the Companies Act and, for competitive reasons, the acquisition by a resident or non-resident of shares or any other interest in a registered insurer resulting in the holding of 25% or more of the value of shares or other

⁴⁹ *Tralac Bulletin*, 8 October 2002, citing United Nations IRIN.

⁵⁰ Salm (2002).

⁵¹ Lesotho National Development Corporation.

interest in the business, requires the approval of the Registrar of Companies. Some restrictions are also placed on the issuance of shares by banks.

38. In respect of presence of natural persons, the schedule binds the automatic grant of entry and work permits for up to four expatriate senior executives and specialized skill personnel "in accordance with relevant provisions in the laws of Lesotho", and states that enterprises must also provide for training in higher skills for locals to enable them to assume specialized roles.

39. Lesotho maintains no limitations on national treatment; however, as with market access, measures affecting the supply of certain services remain wholly or partly unbound.⁵²

(i) Financial services

40. The basic framework for financial services in Lesotho is contained in the Central Bank of Lesotho Act, 2000⁵³, the Financial Institutions Act, 1999 and related legal notices⁵⁴, the Money Lenders Order 1989, the Building Finance Institutions Act, 1976, and the Insurance Act, 1976.

41. The Central Bank of Lesotho Act, 2000 updates and replaces the previous Act establishing the Central Bank, passed in 1978. It states clearly that the objective of the Bank "is to achieve and maintain price stability". Within this overriding objective, the Bank's functions are to foster the liquidity, solvency, and proper functioning of a stable market-based financial system; to issue, manage, and redeem the currency; to formulate, adopt, and execute foreign exchange policy; to license or register and supervise institutions under the above mentioned Acts; to own, hold, and manage its official international reserves; to act as banker and adviser to, and fiscal agent of, the Government; to promote the efficient operation of the payments system; to promote the safe and sound development of the financial system; and to monitor and regulate the capital market.

42. The Central Bank is not independent of the Government: its capital is owned and held exclusively by the Government and, it is both the banker and adviser of the Government in relation to monetary and financial questions; the Governor is appointed by the Minister of Finance, and the Bank's ability to issue securities, undertake exchange clearing operations with foreign financial institutions, and participate in any currency union (i.e. the CMA) is subject to Government approval.

43. The Government must consult with the Central Bank in determining Lesotho's foreign exchange regime. The Bank may issue guidelines for regulating the purchase, sale, holding or transfer of foreign exchange and, in a crisis, impose foreign exchange restrictions. If Lesotho's international reserves decline or are in danger of declining "to such an extent as to jeopardise the execution of the monetary or exchange rate policies or the prompt settlement of the country's international transactions", the Bank must submit a report to the Minister of Finance on the situation, its causes, and recommendations to remedy it; the Minister puts the report before Parliament.

44. In controlling money supply, the Bank may impose a ceiling on the level of bank credit, expand or contract credit facilities to financial institutions, determine maximum lending periods by financial institutions, alter minimum reserve requirements and capital adequacy ratios, and take other monetary measures as necessary. It also determines the central interest and discount rates, which are the basis for lending in Lesotho. In practice, since 1998, the Central Bank has not dictated interest rates to commercial banks.

⁵² Lesotho's Schedule of Specific Services Commitments under GATS is contained in document GATS/SC/114.

⁵³ Act No. 2 of 2000.

⁵⁴ Act No. 6 and Legal Notices Nos. 110-113 of 1999.

45. The Central Bank acts as Commissioner of Financial Institutions under the Financial Institutions Act, 1999 and the Money Lenders Order 1989, as Commissioner of Building Finance Institutions under the Building Finance Institutions Act 1976, and as Commissioner of Insurance under the Insurance Act 1976. As such, it can prescribe reserve ratios to be held by financial institutions against different classes of deposits and impose penalties on financial institutions that fail to respect these ratios. It may also prescribe temporary conditions and restrictions with respect to the total amount of credit, if this objective cannot be attained by other means.

46. The Financial Institutions Act of 1999 establishes the conditions for licensing and supervision of all banking and credit institutions, local or foreign except for those providing exclusively insurance business in Lesotho and any others that the Minister of Finance may exempt. It repeals the Financial Institutions Act of 1973. Existing banks are automatically deemed to be licensed under the Act; any new bank or credit institution must be licensed by the Central Bank, acting as Commissioner of Financial Institutions. There is no limitation on foreign banks establishing branches or agents in Lesotho, as long as they fill the conditions of the Act. Liberal conditions also apply to the establishment of firms providing ancillary financial services, such as forex dealing and EFT services. Financial institutions established in Lesotho are required to maintain a minimum capital of M 10 million, or as otherwise prescribed by the Central Bank.

47. Detailed licensing requirements, risk-based capital requirements, and provisions regarding loan-portfolio classifications and lending limits are set out in additional regulations published in 1999. The risk-based capital requirements seek to protect depositors and creditors through prescribing a capital-adequacy ratio computed according to the Basle Committee on Banking Supervision, adapted to suit local conditions; thus, for example, banks must maintain a capital base of no less than 8% of their weighted risk assets. In weighting risks in relation to different classes of assets, SADC countries (approved regional countries) and OECD countries are given equal status in Lesotho's legislation.

48. At present four main commercial banks are operational in Lesotho. The formerly state-owned Lesotho Bank was recapitalized and privatized under the Government's privatization programme in 1999 (see Chapter III(4)(ii)); currently 70% of the bank's assets are held by Standard Bank of South Africa and the remainder is in Government hands. Other established banks are Nedbank, Standard Bank, and Barclays Bank. Concern has been expressed about the low level of financial intermediation in Lesotho; the ratio of commercial bank loans to deposits averaged less than 15% in 2000, although it is reported that commercial banks are beginning to introduce some products targeted at small borrowers.⁵⁵

(ii) Telecommunications

49. Since its last Trade Policy Review, Lesotho has made considerable progress in developing telecommunications. This has been assisted, in particular, by the privatization of the former Lesotho Telecommunications Corporation (LTC) and the opening of the telecoms market to competition.⁵⁶

50. Since June 2000, the legal basis for telecoms operation in Lesotho has been the Lesotho Telecommunications Authority (LTA) Act, 2000. This Act establishes the Authority as an autonomous and independent regulatory body with supervisory authority over all aspects of telecommunications development in Lesotho. Its duties as spelled out in the Act include:

- taking all reasonable steps to promote network development, universal service and access to telecommunications services;

⁵⁵ See IMF (2002).

⁵⁶ See Chapter III(4)(ii) for general information about Lesotho's privatization programme.

- taking all reasonable steps to ensure the efficient and effective use of the radio frequency spectrum;
- promoting private ownership of telecommunication operations, and sustainable and fair competition between telecommunications service providers; and
- taking reasonable steps to promote telecommunications services that will satisfy reasonable demands of least advantaged members of the communities for the provision of services such as emergency services, call-box services, and directory information services.⁵⁷

51. LTC was privatized in November 2000. A 70% share in the new company, renamed Tele-Com Lesotho (TCL), was bought by Mountain Communications, a consortium of Zimbabwean, South African, and Mauritian companies; the Government retains a 30% share. As a first step, TCL has been granted a five-year exclusivity period for the provision of fixed-line telecoms services, with specific targets against which performance will be monitored by the LTA: to provide capacity for at least 40,000 new connections in the first year; to connect at least 50,000 new lines in the first five years⁵⁸; to ensure provision of at least 1,250 pay phones in the first five years; to establish Internet access capacity in the main commercial centres in the first year; and to achieve quality of service to defined minimum standards, which will increase steadily over the first five years.⁵⁹

52. According to the LTA, the achievement of the targets for rollout will increase Lesotho's teledensity (lines per hundred of population) on fixed lines from one to approximately 8.5 by 2006.⁶⁰

53. In a small, mountainous country like Lesotho, mobile phone services provide an essential part of telecommunications development. Until recently, VodaCom Lesotho (VCL) was the monopoly cellular supplier; it had 23,000 subscribers at end March 2001, equal to the then spread of fixed lines. The Government's 12% shareholding in VCL was sold to a consortium of Lesotho investors in November 2000.⁶¹ In June 2001, a second cellular licence was issued to TCL. A recent comment by the Governor of the Central Bank of Lesotho stated that "the privatization of LTC has created a healthy and vibrant competition in that sector and the expansion of telecommunications services in Lesotho".⁶² Despite this opening of the market, the World Bank's DTIS asserts that mobile phone services in Lesotho are not fully compatible with those in other countries, particularly South Africa.

(iii) Tourism

54. Tourism is as yet relatively undeveloped in Lesotho; nevertheless, the Government is actively engaged in developing policy for the expansion of the subsector, based on studies undertaken by the World Tourism Organization and the UNDP.

⁵⁷ Lesotho Telecommunications Authority Act 2000, Part III, paragraph 15.(2).

⁵⁸ The LTA's 2000/01 Annual Report states that "the TCL licence... includes significant rollout obligations over the next five years. For example, the company is expected to roll out 25,000 fixed lines in the second year, 30,000 in the third, 40,000 and 50,000 in the fourth and fifth years respectively."

⁵⁹ Lesotho Privatization and Private Sector Development Project (2002).

⁶⁰ Lesotho Telecommunications Authority (2001).

⁶¹ According to the Privatization Development Project: "The preferred investors were selected on the basis of a competitive tender process. Bids were assessed on the basis of offer price, bidder's access to financial capital and the level of Basotho participation in the bidding party."

⁶² Mopheme News, 31 July-6 August 2002. Available online at: <http://www.lesoff.co.za/>.

55. A study approved in 2001 identified the main constraints on tourism development in Lesotho as: low accommodation capacity, poor standards of accommodation and restaurants, poor standards of service because of lack of training for staff, poor management skills, absence of a soft-loan facility for tourism via the Lesotho National Development Corporation, little coordination between the multiple agencies responsible for tourism development, limited funds for marketing and promotion, and, above all, lack of infrastructure and the destruction of heritage sites.⁶³ A subsequent policy paper, also developed with the World Tourism Organization as background to the development of a national tourism policy, identified the considerable potential for tourism (scenery, temperate climate, cultural identity, natural history, opportunities for trekking, camping, winter sports and other active sports) and emphasized the need for Lesotho to develop "a sustainable and responsible type of tourism". The study emphasized a number of key constraints: tourism is not yet developed as a national priority; local communities have limited capacity to drive tourism development; there is inadequate training, education and awareness; environment protection is poor; and infrastructure is lacking, particularly in rural areas. It also highlighted the tedious and cumbersome nature of border controls – "it is almost as if we are telling potential visitors to "go away" – as an immediate problem that needs to be addressed.⁶⁴

56. The policy paper identified a number of strategies in the area of tourism to be developed with public, private and NGO stakeholders. These included review of border controls and the role of border posts; education, training, and human development; means of financing tourism development; investment incentives; environmental conservation; development of the "product" of tourism, emphasizing the diversity of Lesotho and sustainable tourism development; progressive liberalization of air transport, and improvement of ground transportation services; improvement of roads and other infrastructure; promotion of tourism to Basotho, visitors, and the conference and incentive travel market; development of high standards of service and facilities; and regional cooperation through SADC and the Regional Tourism Organization of Southern Africa (RETOSA), which promotes tourism throughout the Southern African region.⁶⁵ Specific actions taken under RETOSA include the careful implementation of the Maloti/Drakensberg Trans-frontier Conservation Area. Lesotho's presence in international organizations such as the World Tourism Organization is also being strengthened.

57. In 2002, the Lesotho Government enacted the Tourism Act, 2002⁶⁶, which establishes the Lesotho Tourism Development Corporation (LTDC), a 51% government-owned corporation with wide powers, including the designation of tourism development areas and provision of financial assistance in the shape of grants, loans or tax exemptions for tourist development. The LTDC is chaired by the Director of Tourism and has a Board comprising representatives of Government, local associations, and the private sector.

(iv) Transport

58. As a landlocked country, Lesotho is completely dependent on links through South Africa for road, rail, and air transport.

59. There is no national airline; Air Lesotho, the privatized company established following the sale of Lesotho Airways Corporation in 1997, ceased operations in February 1999. All commercial

⁶³ UNDP/World Tourism Organization (1998).

⁶⁴ UNDP/World Tourism Organization, Madrid (2000).

⁶⁵ RETOSA online information. Available at: <http://www.retosa.co.za/>. RETOSA covers Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

⁶⁶ Act No. 4 of 2002.

passenger air links with Lesotho are currently operated by South African Airlink, a subsidiary of South African Airways.⁶⁷

60. Air traffic in Lesotho is governed by the provisions of the Aviation Act, 1975⁶⁸, under which all commercial flights must be licensed or permitted by the Minister responsible for transport or take place under the provisions of the Transit Agreement or Article 5 of the Chicago Convention, or by virtue of a bilateral agreement between Lesotho and a foreign country.

61. Road transport in Lesotho is governed by the Road Transport Act and Regulations, 1981, as amended over time, and by the Road Transport (Amendment) Act, 2001.⁶⁹ The Acts prescribe, *inter alia*, the conditions under which permits for lorries, buses, and taxis for hire (A, C and D permits) may be issued. Broadly, such permits may be issued only on the acceptance of a registration certificate, certificate of roadworthiness, and certificate of fitness of the owner of the vehicle, together with an income tax clearance certificate and a recommendation from a recognized Route Committee or Transport Association of which the applicant is a registered member. Effectively, this restricts bus, taxi, and truck permits to vehicles, owners, and drivers registered in Lesotho, preventing other vehicles (such as South African) from operating inside Lesotho. However, under the 2001 Amendment act, border agents are delegated the right to issue short-term permits to "foreign-registered vehicles operated on own account", for periods not exceeding three months. Such permits can be used for seasonal business, for the purposes of a particular piece of work, or "for any purpose of a limited duration".

62. Most of Lesotho's international trade passes through the port of Durban by rail or road.⁷⁰ Lesotho has no rail network; Maseru is linked by road with the South African rail network at Ficksburg for freight. Problems relating to the "Maseru railhead" at Ficksburg are noted in section (3) above. According to the authorities, a consortium of South African and Lesotho companies has recently submitted a project proposal to the government aimed at injecting capital into this facility and modernizing it to cope with the growing demand for cargo handling facilities.

63. The Road Transport Act, 1981, states that a truck permit (A-permit) "is not valid for cartage contracts with the railways unless such permit is extended by the Road Transport Board to carry out such operations."

⁶⁷ Lesotho National Development Corporation (undated).

⁶⁸ Act No. 32 of 1975.

⁶⁹ Acts No. 6 of 1981 and 10 of 2001.

⁷⁰ Lesotho National Development Corporation (undated).

REFERENCES

Clay, Edward, Louise Bohn, Enrique Blanco de Armas, Singand Kakambe and Hardwick Tchale, "Climatic variability, economic performance and the uses of climatic forecasting in Malawi and Southern Africa", Disaster Risk Management Working Paper Series No. 7, World Bank (forthcoming).

Haacker, Marcus (2002), "The Economic Consequences of HIV/AIDS in Southern Africa", IMF Working Paper WP/02/38, Washington D.C., February.

IMF (2002), *Lesotho – Memorandum of Economic and Financial Policies* [online]. Available at: <http://www.imf.org/External/NP/LOI/2002/lso/01/>.

Lesotho Bureau of Statistics, *Lesotho: Exports 2000*, Maseru.

Lesotho National Development Corporation (undated), *Investors' Guide*. [Online]. Available at: <http://www.lndc.org.ls/investors-guide/invest-infrastr.htm>.

Lesotho Privatization and Private Sector Development Project (2002), *Privatization Progress (1995-2000)*, Privatization Unit, Maseru, January.

Lesotho Telecommunications Authority (2001), *Annual Report 2000/2001*, Maseru.

Order No. 24 of 1970.

Salm, Andrew (2002), *Lesotho's Industrial Garment Subsector: the sustainability of garment exports and some of the constraints to further expansion*.

Schuler, Philip (2002), *The Initial Impact of AGOA on U.S. Imports from Lesotho*, conference paper delivered at the National Conference on the Integrated Framework, March.

Steele, Peter (2002), "AGOA: New opportunities for the textile and clothing industries in Sub-Saharan Africa", *Textile Outlook International*, March-April 2002.

South African Broadcasting Corporation News (2002), "Lesotho Feeling the Impact of HIV/AIDS", 24 October.

UNCTAD (2002), "Investment Policy Review of Lesotho", document UNCTAD/ITE/IPC/Misc.25.

UNDP/World Tourism Organization (1998), "Mission Report and Recommendations on Tourism Development Legislation and Incentives for the Kingdom of Lesotho" (Project LES/95/003, conducted 4 January to 28 March 1998), Madrid.

UNDP/World Tourism Organization (2000), *Kingdom of Lesotho: Background to the National Tourism Policy, Final Report*, Madrid.

United Nations (2002), IRIN News, 22 August, *Lesotho: Impact of HIV/AIDS on land issues*.

World Bank (2003), "Integration into the World Trading Environment: Lesotho" *Integrated Framework Diagnostic Trade Integration Study*, 13 January, draft for consultation and discussion, Washington D.C.

WFP (2002), *Projected 2002 Needs for WFP Projects and Operations*, World Food Programme.

WTO (2002), *Trade Policy Review – Uganda*, Geneva.