

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Overview

1. Since its last Trade Policy Review, in June 1993, South Africa has continued with the reorientation of its trade policies, away from import substitution to outward orientation, albeit with a focus now on export promotion. Several White Papers and reform programmes have been drafted; legislation has been redrafted or amended in many areas, including anti-dumping, countervailing, safeguard and intellectual property rights with a view to bringing them into line with the WTO Agreements. South Africa is reforming its government procurement system with a view to increasing local-content of the purchases, promoting "previously disadvantaged individuals" and female participation.

2. Tariffs and "supply-side measures" are the main trade policy instruments in South Africa. The import surcharge introduced in 1985 for balance-of-payments purposes was eliminated on 1 October 1995. The number of tariff lines has been reduced and some rates lowered. However, the wide variety of duties still leaves questions about the transparency of the tariff. The tariff comprises *ad valorem*, specific, compound, mixed and "formula" duties, as well as their combinations. Formula duties based on minimum import prices were designed to combat "disruptive competition"; the duties are maintained although South Africa also uses anti-dumping actions. While a large number of products that are not manufactured in, and do not have substitutes in, South Africa may be imported duty free, the maximum rates that apply to imports cannot be defined, mainly because of the formula duties. A Tariff Rationalisation Process was formulated in 1996; it is expected to simplify the tariff structure substantially.

3. South Africa has tariffied all quantitative restrictions (except on black tea) and it bound about 98% of all tariff lines at the HS eight-digit level at the end of the Uruguay Round; the simple average bound rate is 19.8% (final bindings), with maximum ceiling bindings of 399.9% on certain agricultural products. However, import controls are maintained on several products, including agricultural goods. Unbound tariff lines are mostly on fishery products and preparations thereof, and oils. In addition to tariffs, certain goods imported to South Africa are also subject, as are domestic goods, to *ad valorem* excise duties ranging up to 20%, and to specific excise duties; a value-added tax of 14% applies equally to imports and domestic goods and services. Fuel levies are also collected on imported oils, and other specific levies are charged on agricultural products.

4. South Africa's trade policy strongly emphasizes export promotion; a wide variety of incentives, including tariff concessions, are available to local producers. Some of the incentives are subject to local-content requirements. Tariff protection may also be afforded to local producers on a selective basis. However, export subsidies provided under the General Export Incentive Scheme (GEIS) were scaled down and finally terminated in July 1997. South Africa has maintained export controls on agricultural products administered by agricultural boards, and on certain mineral and industrial products.

(2) Measures Directly Affecting Imports

(i) Registration and documentation

5. Trading activities in South Africa are open to both South Africans and foreigners. All operators in international trade (importers and exporters, in particular) must be registered with the Commissioner for Customs and Excise in order to be allocated a customs code number, which must be reflected on all documents presented by the operators. Importers of goods subject to a licence or permit must also be registered with the Directorate of Import and Export Control in the Department of Trade and Industry.

6. A licence issued by the relevant local authority is required for all business activities (including international trade) for the purpose of payment of turnover and payroll levies. The licence is indefinitely valid, except for businesses handling foodstuffs and those where people congregate (e.g. entertainment and amusement places), for which annual renewal of the licence is required. Licensing fees, which vary among local authorities, are payable by both South Africans and foreigners. In addition, a business must be registered with: the Workmen's Compensation Commissioner, for the workmen's compensation insurance scheme; the Industrial Council and Trade Union governing the type of business; the Department of Manpower, for the unemployment benefit scheme; and the Receiver of Revenue, for all tax matters.¹

ii) Customs procedures

(a) Customs clearance

7. In general, within seven days from the date goods are deemed to have been imported into South Africa, importers must declare their entry to customs on a prescribed form (the bill of entry) and present the usual commercial documents.² The description of the goods, including their nature, tariff heading and item numbers (among others) must be specified on the bill of entry by the importer, who must also indicate on the bill whether he or she is related to the supplier of the goods. Given that all documents are in order, customs clearance is normally completed within two days and the Customs Office delivers the release order.

8. Within seven days from the granting of a release order, importers must present the order for the delivery of the goods. Imported goods are generally removed from customs and excise warehouses after payment of all duties. Goods not cleared within 38 days after the date they are deemed to have been imported into South Africa are removed to the state warehouse; if the goods are not cleared within 90 days after removal to the state warehouse they may be sold and the proceeds applied in discharge of duties and charges incurred by, *inter alia*, the Customs Office, harbour authorities and container operators.

9. Subject to the permission of the Controller of Customs and Excise, containers temporarily imported, human remains, goods deemed not to have commercial value, goods imported under an international carnet, and goods of a dutiable value not over R 500 need not be cleared through customs.³

(b) Customs valuation

10. South Africa was a signatory to the Tokyo Round Agreement on Implementation of Article VII of GATT (Customs Valuation Code); it has not requested delayed application of the WTO Agreement on Implementation of Article VII of GATT 1994.

¹Coopers and Lybrand (1996).

²Imports of goods are randomly checked at customs. South Africa has plans to computerize the checking system in order to increase the level of compliance with applicable tariffs and regulations. Goods are deemed to have been imported when, in general, they are landed in, or under the control of, South Africa.

³Section 38 (1)(a) of the Customs and Excise Act.

11. Under the 1964 Customs and Excise Act, as amended, the value for customs duty purposes of merchandise imported into South Africa is generally based on the actual f.o.b. transaction price of the goods. The use of c.i.f rather than f.o.b. prices is still under consideration. In the case of suspected under- or over-valuation, the goods concerned are detained by customs officers for examination and investigation. The importer is made aware of the suspicion and is required to submit acceptable evidence in respect of the actual price.⁴ The documents provided by the importer are compared with those relating to previous imports of similar items.

12. If the transaction value cannot be ascertained in terms of the Act, the Commissioner can determine a value, subject to appeal by the importer to the Courts. Appeals against a valuation decision must be made within one year from the date of the determination. According to the authorities, no appeals have gone as far as the Supreme Court; all queries have been handled by the Valuation Section of the Customs Administration.

(iii) Tariffs, other levies and charges

(a) General features

13. South Africa's tariff classification is based on the Harmonized System; the tariff, as modified up to end-June 1997, has 7,814 lines at the eight-digit HS level.⁵ The National Tariff of South Africa (the tariff book) consists of eight Schedules, a list of Codes for the representation of names of countries (trading partners) and texts of bilateral trade agreements. The tariff is applicable by all members of the Southern African Customs Union (SACU).

14. The first Schedule (Schedule 1) comprises eight parts. The first part (Schedule 1, Part 1) deals with Ordinary Customs Duty, applying to all HS tariff lines. The second part is subdivided into two sections: the first section, (Schedule 1, Part 2, Section A) provides for specific excise duties that apply to certain imported or locally produced goods specified at the HS four-digit level; and the second section (section B) provides for *ad valorem* excise duties on certain imported or locally produced goods.⁶ The third and fourth parts of Schedule 1, dealing with sales duty and surcharges respectively, no longer apply. The fifth part contains the "fuel levy". Parts 6 and 7 are reserved for possible future use. The last part of the first schedule (Schedule 1, Part 8) provides for an "ordinary levy" payable by Central Government Departments and Provincial Administrations. The ordinary levy is equivalent to all duties of Schedule 1, Parts 1 and 2 and applies to all products imported by the Central Government and the Provincial Administrations, except motor vehicles (HS heading 87.03) imported by Government officers or employees on return to South Africa (i.e. on transfer) after having served outside the country; such motor vehicles are currently subject to the duty under Schedule 1, Part 1.⁷

15. The first part of Schedule 2 deals with anti-dumping duties and the second part, with countervailing duties. Schedules 3 to 6 cover different types of rebate, refund and/or drawback

⁴South Africa does not make use of preshipment inspection.

⁵South Africa has been implementing the Harmonized System since 1 January 1988.

⁶In South Africa's tariff book, duties collected under Schedule 1, Part 2 are called customs duties (specific/*ad valorem*) when they apply to imports of "goods of the same class or kind". All duties collected under Schedule 1, Part 2 are called excise duties in the text, to avoid confusion with ordinary customs duties which also are, *inter alia*, *ad valorem* and specific.

⁷Subject to the accord of the appropriate authorities in the other SACU members, the ordinary levy may also apply to goods imported for the use by equivalent institutions or organs in these countries.

schemes, including industrial rebates of customs duties, general rebates of customs duties and fuel levy, and specific drawbacks and refunds of excise duties and fuel levy. Schedule 7, which formerly dealt with rebates and refunds of sales duty, no longer applies. Schedule 8 provides for licence fees for, *inter alia*, customs and excise storage warehouse, customs and excise manufacturing warehouse, special customs and excise warehouse for special purposes, distillation of spirits by agricultural distillers, container depots, and clearing agents.

16. Goods imported to South Africa may thus be subject to four types of charges: ordinary customs duties, excise duties, fuel levy and the value-added tax. Excise duties levied under Schedules 1, Parts 2A and B, and the fuel levy collected under Schedule 1, Part 5 are payable on the value of the goods after including customs duties levied under Schedule 1, Part 1. The import surcharge introduced in September 1985 was eliminated on 1 October 1995: the 5% surcharge on intermediate and capital goods was removed in June 1994; the 15% surcharge on motor vehicles was eliminated in September 1994; and the 40% surcharge on home electronics and luxury products was abolished in October 1995 (section (xiii)).

17. South Africa uses tariff protection selectively to encourage its industrial development. Manufacturers not subject to an import tariff can apply to the Board on Tariffs and Trade for the imposition of a protective duty or a tariff increase. In principle, protection is readily granted to new industries for a period of time to enable them to become established. Each application for tariff protection is considered on the basis of, *inter alia*, the industry's contribution to the economy, export potential, local-content, value added in the production process, and the industry's growth and export potential. This combined with the use of specific duties and other types of duty comprising reference prices expressed in rand, explains the frequent changes in South Africa's tariff.⁸

(b) Tariff structure

18. South Africa's tariff has various types of customs duties ranging from *ad valorem*, specific, mixed, compound and formula duties, to their combinations (Table III.1). Nearly three-fourths of all tariff lines at the eight-digit HS level bear *ad valorem* duties, of which more than half are duty free; *ad valorem* rates are in 45 bands, with rates ranging from 0 to 57.5%. However, the *ad valorem* components of certain non-*ad valorem* duties range up to 72% on articles of apparel and clothing accessories (HS Chapters 61 and 62), and the *ad valorem* equivalents of certain types of duties, such as formula duties, may be even higher (Box III.1). Thus, the conversion of the non-*ad valorem* duties into *ad valorem* tariff rates would substantially increase the number of tiers and the maximum value.

19. Mixed duties apply to 72 eight-digit HS tariff lines, on goods such as fishery products, prepared foodstuffs, footwear and certain preparations of agricultural products. Specific duties, carried by 227 tariff lines, apply to agricultural products (e.g. products of the milling industry, fishing products, beverages, spirits and vinegar, sugar and sugar confectionery), and petroleum products; specific duties range up to 660¢/kg. on Gouda and Cheddar cheese. Formula duties are levied on 28 tariff lines; the duties are collected on items in HS Chapters such as 20, 24, 39, 85 and 90 (Table III.2). Compound duties apply to products such as arms and ammunition, and water in sealed containers. Unfortunately, it has not been possible to calculate representative *ad valorem* equivalents for mixed, compound or formula duties.

⁸See Degbello (1994) for details on the implications of the use of specific duties by developing countries.

Box III.1: Selected aspects of South Africa's tariff structure

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

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

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

The ad valorem equivalent rate θ_c that yields D_c is:

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

This expression means that, for a given reference price P_m and an ad valorem rate θ , the ad valorem equivalent, θ_c , increases as f.o.b. prices decline. Since (P_m/P_z) is higher than 1, then $\{(P_m/P_z) - 1\}$ is positive and θ is lower than θ_c , which may take any value between θ , its lowest level, and infinity. In certain cases, a maximum ad valorem rate is provided for the formula duty, i.e.: $\theta_c = (P_m/P_z) + \theta - 1 \leq \gamma$, where γ stands for the maximum ad valorem rate of the formula duty. In such cases, imports at f.o.b. prices lower or equal to $\{P_m/(\gamma + 1 - \theta)\}$ are subject to the maximum rate γ .

For example, on drained or glacé cherries, the formula duty applies 20% if the import price is at least 215¢/kg., otherwise if the f.o.b. import price is lower than 215¢/kg., the amount of duty payable will be 215¢/kg. less 80% of the import price. If the import price is 100¢/kg. for example, the duty payable will amount to: $D_c = 215¢ - (1 - 0.2)100¢ = 135¢/\text{kg.}$; therefore, the ad valorem equivalent rate θ_c will be 135%. On products such as polypropylene where a maximum ad valorem rate of 36% is set, the import price corresponding to this maximum is: $230¢/(0.36 + 1 - 0.10) = 182.54¢/\text{kg.}$ On products such as tomatoes prepared or preserved otherwise than by vinegar or acetic acid, no minimum or maximum ad valorem rate is explicitly specified. On products, such as disposable hypodermic syringes of plastics, the ad valorem equivalent ceteris paribus is higher than it should otherwise be, i.e. if the above-mentioned formula were used. In fact, on syringes of a capacity of 20ml or more but less than 30ml, the formula duty applies 24% or 35¢ per unit less 70% of the import price, with a maximum of 32%. Since 70% is lower than 76% (i.e. 100%-24%), then the ad valorem equivalent rate θ_c on these goods is higher than it should otherwise be; this conclusion is straight-forward from the θ_c expression established above.

The maximum rate of tariff can only be specified for ad valorem and formula duties for which a maximum ad valorem rate is set. In the case of specific duties, the ad valorem equivalent depends on the import price and the exchange rate. The duty collection ratio as an estimate of the ad valorem equivalent (AVE) of a specific duty is downward biased. The bias lies in tariff concessions and evasion, a well-known phenomenon in South Africa. Moreover, the wide variety of goods embodied in each tariff line raises concerns about the appropriate price to use. Fluctuations in exchange rates reduce the AVE in the case of a depreciation and increase it in the case of an appreciation. Lower import prices and/or appreciation of the rand with respect to the currencies of South Africa's major exporting countries will imply higher AVE and vice versa. Since, for a given product, import price may vary from an importer to another, so (inversely) does the AVE.

Table III.1

MFN tariff distribution, by type of duty, June 1997

Type of duty	Number of lines (8-digit HS)	Examples (HS chapters)
<i>Ad valorem</i>	5,815	Almost all HS chapters
Specific	218	03, 04, 11, 16, 22
Specific but varies with specified factors	9	22
Mixed	72	03, 20, 64
Compound	6	22, 93
Formula	6	18, 19, 20, 24
Formula with a maximum <i>ad valorem</i>	22	39, 85, 90
Others ^a	1,666	27, 51, 52, 54, 55, 58, 60, 61, 62, 63
Total lines	7,814	

a Other types of duty include *ad valorem* rates (alternate or not) with maximum or alternate minimum and maximum specific duties.

Source: South African authorities; and WTO Secretariat.

20. South Africa reduced the total number of its tariff lines from 12,600 (at the nine-digit level) in 1993 to 7,814 (at the eight-digit level) in 1997. The number of lines carrying formula duties has also been reduced from more than 1,900 in 1993 to 28 eight-digit HS tariff lines in 1997 and the number of lines bearing specific tariffs, from some 500 to 227 lines. The percentage of lines carrying zero rates has been increased from some 20% in 1993 to nearly 44% in 1997. In consequence, the share of lines bearing *ad valorem* tariffs has substantially increased. A new reform, the Tariff Rationalisation Process (TRP) was formulated in 1996 and will end in 1999.

21. Under the TRP, South Africa's tariff is to be further simplified: the number of lines and tiers, and tariff peaks are to be reduced. In general, imports of products that are not manufactured in, and do not have a "suitable substitute" in, the SACU area are to be duty free. Formula and specific duties are to be converted into *ad valorem* rates and increases in ordinary customs duties will not be used where anti-dumping and countervailing actions are justified. Insignificant specific duties and *ad valorem* rates of up to 3% are generally to be reduced to zero. In general, *ad valorem* rates of customs duty of 30% on final products, 20% on intermediate goods and 10% on primary products are regarded as levels that are not to be exceeded.⁹ In addition, the agriculture sector, which has been afforded protection through import control, is to be protected "primarily" by means of customs duties. Rebate provisions are to be restricted and reductions of customs duties are to be recommended in cases where tariff relief will not erode the protection.

22. In fiscal year 1996/97, customs and excise revenue represented around 17% of total tax revenue. In practice, inefficiencies in the collection of border charges, tariff evasion, rebates of duties and the complexity of the tariff structure have contributed to a low ratio of duty collection. A separate government department, the South African Revenue Services (SARS), was established in April 1996 to improve revenue collection and administration. SARS incorporates the former branches of Inland Revenue, and Customs and Excise of the Department of Finance, which were responsible for the collection of public revenue at the national level. Legislation to give effect to the framework for administrative autonomy for SARS was tabled in Parliament on 19 June 1997.

⁹Government of South Africa (1996c), Tariff Rationalisation Process (TRP).

Table III.2

Formula and compound duties, 1997

HS Heading	Product description	Duty
20021090	Other tomatoes prepared or preserved otherwise than by vinegar or acetic acid	110¢/kg. less 80%
18069040	Cornflour, of flour, meal, starch or malt extract, containing less than 40% by mass of cocoa calculated on a totally defatted basis	10% or 55¢/kg. less 90%
19019010	Cornflour	10% or 55¢/kg. less 90%
20060030	Cherries, drained or glace	20% or 215¢/kg. less 80%
24011000	Tobacco, not stemmed or stripped	15% or 860¢/kg. less 85%
24012000	Tobacco, partly or wholly stemmed or stripped	15% or 860¢/kg. less 85%
<u>Formula duties with maximum ad valorem</u>		
39011000	Polyethylene having a specific gravity of less than 0,94	10% or 255¢/kg. less 90% with a maximum of 36%
39012090	Other polyethylene having a specific gravity of 0,94 or more	10% or 255¢/kg. less 90% with a maximum of 36%
39013010	Ethylene-vinyl acetate copolymers: of a value for duty purposes not exceeding 220c/kg.	10% or 170¢/kg. less 90% with a maximum of 36%
39019090	Other polymers of ethylene, in primary forms	10% or 255¢/kg. less 90% with a maximum of 36%
39021000	Polypropylene	10% or 230¢/kg. less 90% with a maximum of 36%
39023000	Propylene copolymers	10% or 230¢/kg. less 90% with a maximum of 36%
39041000	Polyvinyl chloride, not mixed with any other substances:	10% or 230¢/kg. less 90% with a maximum of 16%
39042110	Other non-plasticised polyvinyl chloride: liquids and pastes	10% or 200¢/kg. less 90% with a maximum of 16%
39042190	Other non-plasticised polyvinyl chloride	10% or 225¢/kg. less 90% with a maximum of 16%
39042210	Other plasticised polyvinyl chloride: liquids or pastes	10% or 200¢/kg. less 90% with a maximum of 16%
39042290	Other plasticised polyvinyl chloride	10% or 225¢/kg. less 90% with a maximum of 16%
39043000	Vinyl chloride-vinyl acetate copolymers	10% or 230¢/kg. less 90% with a maximum of 16%
39044010	Vinyl chloride-vinyl acetate copolymers: liquids and pastes	10% or 230¢/kg. less 90% with a maximum of 16%
39044020	Vinyl chloride-vinyl acetate copolymers: powders, not mixed with any other substances	10% or 230¢/kg. less 90% with a maximum of 16%
39044090	Other vinyl chloride copolymers	10% or 225¢/kg. less 90% with a maximum of 16%
85392145	Other filament lamps of a power of 15 W or more but not exc. 1000 W & for a voltage exc. 100 V but not exc. 260 V	20% or 85¢/No. less 80% with a maximum of 32%
85392245	Other filament lamps, of a power of 15 W or more and for a voltage not exceeding 100 V	20% or 85¢/No. less 80% with a maximum of 32%
85392957	Other filament lamps of a power exc. 200 W but not exc. 1000 W & for a voltage exc. 100 V but not exc. 260 V	20% or 85¢/No. less 80% with a maximum of 32%
90183115	Disposable hypodermic syringes of plastics, of a capacity of 2 ml or more but less than 5 ml	24% or 13¢/No. less 70% with a maximum of 32%

Table III.2 (cont'd)

HS Heading	Product description	Duty
90183120	Disposable hypodermic syringes of plastics, of a capacity of 5 ml or more but less than 10 ml	24% or 18¢/No. less 70% with a maximum of 32%
90183125	Disposable hypodermic syringes of plastics, of a capacity of 10 ml or more but less than 20 ml	24% or 25¢/No. less 70% with a maximum of 32%
90183130	Disposable hypodermic syringes of plastics, of a capacity of 20 ml or more but less than 30 ml	24% or 35¢/No. less 70% with a maximum of 32%
<u>Compound duties</u>		
93010010	Rifles, carbines and muskets	15% plus 200¢/ No.
93020000	Revolvers and pistols (excluding those of heading No. 93.03 or 93.04)	15% plus 50¢/ No.
93032025	Other sporting, hunting or target-shooting shotguns, including combination shotgun-rifles	15% plus 200¢/ No.
93033025	Other sporting, hunting or target-shooting rifles, of a calibre exceeding 5,6 mm.	15% plus 200¢/ No.
93051010	Barrels for revolvers or pistols of heading No. 93.02	15% plus 50¢/ No.
22029020	Mineral waters and aerated waters: in sealed containers holding 2,5l or less (excluding those in collapsible plastic tubes and those with a basis of milk)	25% plus 1.04¢/ Li.

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

23. South Africa accords at least MFN treatment to all WTO Members. In the Uruguay Round, South Africa bound about 98% of all tariff lines at the HS eight-digit level (except petroleum products, HS 2709-2710) as against nearly 18% before the round (Table III.3). All bindings (including those of lines to which specific, mixed or formula rates are applied) are at *ad valorem* rates. The simple average bound rate (final bindings) on all the products is 19.8%, with maximum ceiling rates of up to 399.9% on agricultural food and beverage products (mainly in HS Chapter 22). Unbound tariff lines are mostly on: fishery products and preparations thereof (HS Chapters 03, 15, and 16); mineral fuels, oils and products of their distillation, bituminous substances, and mineral waxes; and arms and ammunition.

Table III.3

Tariff bindings in South Africa, pre- and post-Uruguay Round

Description	Pre-Uruguay Round		Post-Uruguay Round	
	Number of tariff lines ^a	Per cent	Number of tariff lines ^a	Per cent
All products ^b				
Total	12,691	100.0	12,691	100.0
Bound	2,266	17.9	12,463	98.2
Fully bound	2,222	17.5	12,448	98.1
Partially bound	44	0.3	15	0.1
Unbound	10,425	82.1	228	1.8
All agricultural products (HS 01-24) ^c				
Total	1,051	100.0	1,051	100.0
Bound	285	27.1	916	87.2
Fully bound	260	24.7	915	87.1
Partially bound	25	2.4	1	0.1
Unbound	766	72.9	135	12.8
Industrial products (HS 25-97) ^{a,b}				
Total	11,640	100.0	11,640	100.0
Bound	1,981	17.0	11,547	99.2
Fully bound	1,962	16.9	11,533	99.1
Partially bound	19	0.2	14	0.1
Unbound	9,659	83.0	93	0.8

a At the HS eight-digit level.

b Excluding petroleum products (HS 2709 to 2710).

c Definition of "agricultural products" in the WTO Agreement on Agriculture is different.

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

24. South Africa has tariffed quantitative restrictions on agricultural products, excluding black tea; however, certain products are still subject to import control (section (iv)). Ceiling bindings on agricultural products leave considerable margins for discretionary increases in applied tariff rates; the simple average bound rates on HS Chapters carrying agricultural products are generally high (Table AIII.1). Furthermore, in accordance with Article 5 of the WTO Agreement on Agriculture, South Africa has reserved the right to invoke the "special safeguard" clause for 429 eight-digit HS lines in the agriculture sector and on cottonne and cottonne products (HS Chapter 52). South Africa also bound "other duties and charges" mainly on agricultural products (Table III.4).

25. For the purpose of the following tariff analysis, specific and compound duties in South Africa's tariff have been ignored; *ad valorem* duties, even when referred to as minima or maxima in the tariff book, are used for the calculations.¹⁰ For these reasons, the analysis may, to a certain extent, be misleading. An *ad valorem* rate considered as a maximum may be the rate actually applied, particularly in cases where formula duties are concerned, while another considered as a minimum may not be applied, a higher, formula duty being applied instead. The *ad valorem* equivalents of formula

¹⁰ Thus the analysis is based on 7,580 tariff lines, compared to a total number of 7,814 lines.

duties for which no maxima *ad valorem* or specific are specified may range from the minimum *ad valorem* rate set with reference to a minimum import price, to extremely high rates. In consequence, a downward bias in the estimates is likely.

Table III.4
Binding of "other duties and charges", post-Uruguay Round

HS heading	Product description	Other duties and charges	
		Normal levy	Special levy
07133200	Small red (adzuki) beans (<i>phaseolus</i> or <i>vigna angularis</i>)	R 9.60/t	R 2.40/t
10019000	Wheat and meslin other than durum wheat	585¢/t	...
10030000	Barley - (M and U)	657¢/t	7,202¢/t
	Barley - purchased for malting purposes	657¢/t	7,202¢/t
	Barley - purchased for feed purposes	657¢/t	3,353¢/t
10040000	Oats	657¢/t	3,330¢/t
10050000	Maize (corn)	R 3.93/t	R 70.06 - R 141.80/t
10070000	Grain sorghum	R 5/t	R 19.95/t
11071020	Malt not roasted - of barley	821¢/t	450¢/t
11072020	Malt roasted - of barley	821¢/t	450¢/t
12010000	Soya beans, whether or not broken	R 3.90/t	...
ex12020000	Shelled edible groundnuts	R 11.35/t	R 10.00/t
	Unshelled edible groundnuts	R 8.23/t	R 7.25/t
	Shelled crushing groundnuts	R 11.35/t	R 1.00/t
	Unshelled crushing groundnuts	R 8.23/t	R 0.73/t
12060000	Sunflower seeds, whether or not broken	R 4.40/t	...
12092100	Lucerne (alfalfa) seed	R 18.48/70 kg.	...
12129910	Chicory roots	R 89.10/t	R 44/t
ex24010000	Flue-cured tobacco	3.3¢/kg.	75.9¢/kg.
	Burley tobacco	3.3¢/kg.	42.9¢/kg.
	Air-cured tobacco	3.3¢/kg.	16.5¢/kg.
	Oriental tobacco	3.3¢/kg.	16.5¢/kg.
51010000	Wool, not carded or combed	7.5% of gross selling price	5% of gross selling price
51020000	Fine or coarse animal hair, not carded or combed	11.5¢/kg.	V ^a
52010000	Cotton, not carded or combed	4.4¢/kg. cotton fibre	3.3¢/kg. cotton fibre

... Not available.

a $V = 10.5 + 0.05A$, where V is the amount of special levy (in cents) to be paid for 1 kg. and A represents the average gross yield per kg. of mohair sold through the Mohair Board; V is a compound levy.

Source: WTO document, Schedule XVII - South Africa.

26. Subject to the above-mentioned observations, South Africa's simple average MFN import tariff at end-June 1997 was estimated at 15.1%, with a standard deviation of 17.8% (Table III.5). The coefficient of variation is 1.18, indicating substantial relative dispersion of the tariff rates. The modal rate (the rate occurring most frequently) is 0% and applies to 43.6% of all the tariff lines. Nearly 92% of the lines bearing a zero rate are in the manufacturing sector and represent some 40% of lines in the sector. In general, products imported duty free to South Africa are inputs or capital goods and include: agricultural products such as live animals and certain animal products, cocoa, bulbs, tubers,

seeds, fruit and spores of a kind used for sowing; sulphur, natural graphite and sand, quartz, clay, chalk, granite, mica, cement clinker, feldspar and fluorspar; and products that are not manufactured in, and do not have substitutes in South Africa. The average tariff is highest in manufacturing, at 15.6%; averages in agriculture, and mining and quarrying are 5.6% and 1.4%, respectively. Relative tariff dispersion is highest in mining and quarrying, followed by agriculture.

Table III.5

Main features of South Africa's tariff, June 1997

	Simple average MFN tariff (%)	Tariff dispersion		
		Range (%)	Standard deviation ^a (%)	Coefficient of variation ^a
All tariff lines	15.1	0-72	17.8	1.18
By sector ^b :				
Agriculture and fisheries	5.6	0-35	8.9	1.59
Mining	1.4	0-18	3.4	2.47
Industry	15.6	0-72	18.0	1.15
By degree of processing				
Primary products	4.9	0-60	8.9	1.80
Semi-processed products	18.6	0-50	15.9	0.85
Finished goods	13.8	0-72	19.6	1.42

a The coefficient of variation is a measure of relative dispersion, defined as the standard deviation divided by the average.

b Based on ISIC classification.

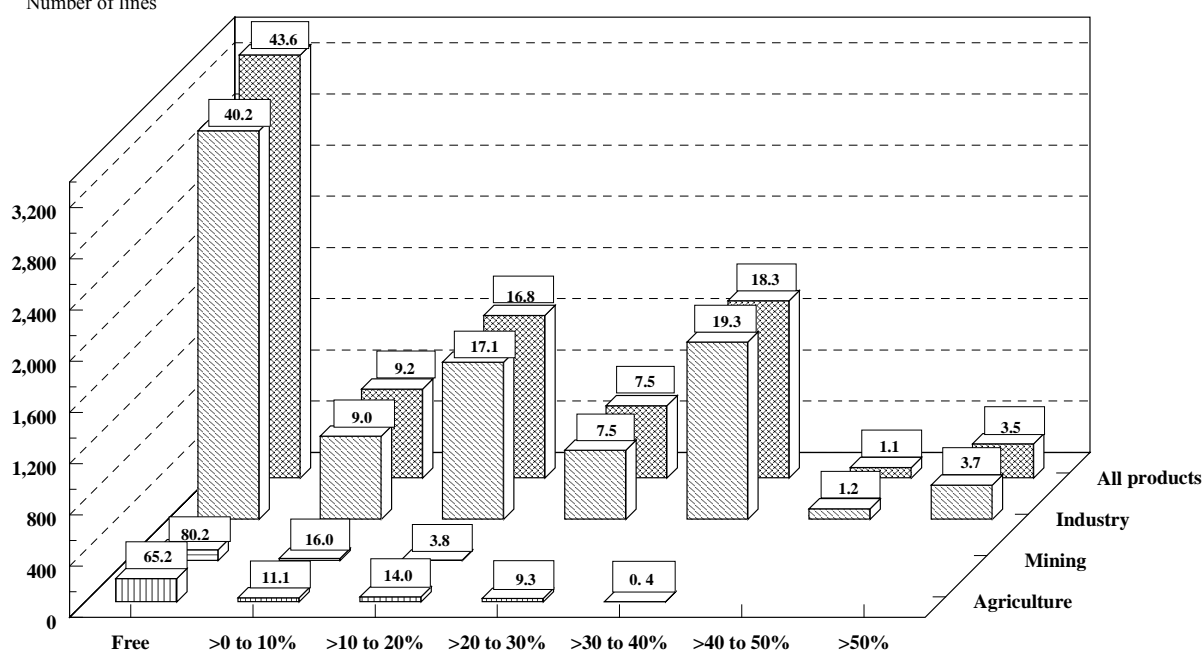
Source: Data provided by the South African authorities; and calculations by the WTO Secretariat.

27. Nearly 43% of all tariff lines carry rates higher than 10% but lower than or equal to 40%; some 23% bear rates higher than 30% (Chart III.1). Rates higher than 35% only apply to industrial products; the maximum rate is 35% on agricultural imports and 18% in the mining and quarrying sector. Except for the modal rate (0%), the rate of 36% applies to the highest number of lines, some 17%, and in the industrial sector.

Chart III.1

MFN tariff distribution by sector (ISIC1 definitions), 1997

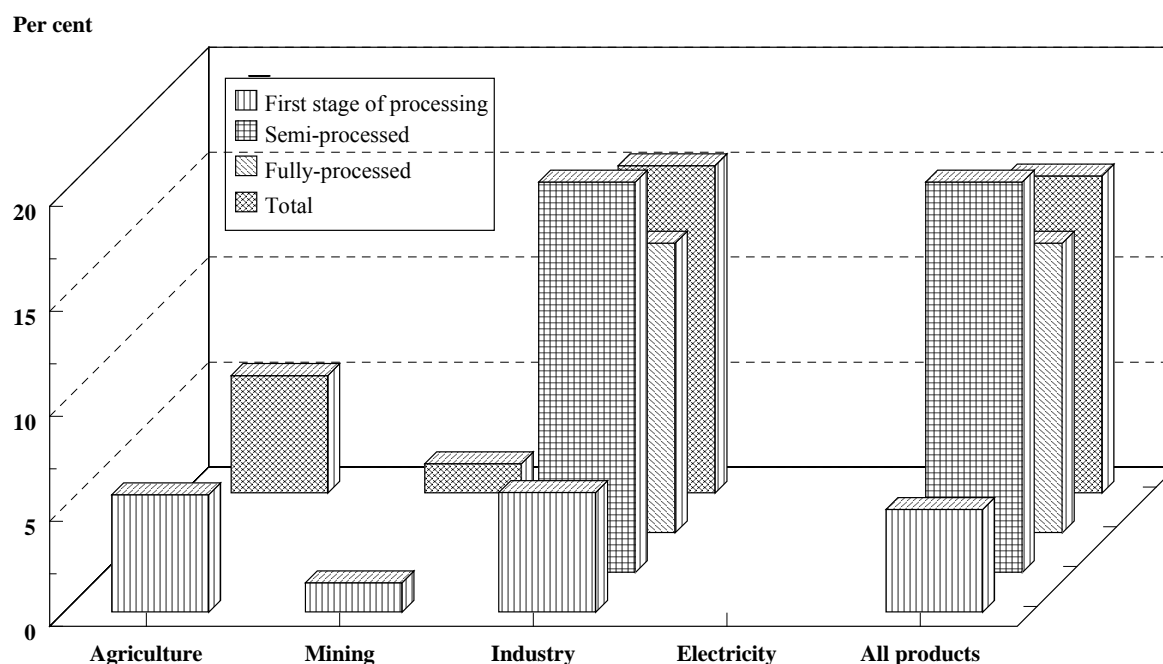
Number of lines



Source: Information provided by the South African authorities; and WTO Secretariat calculations.

28. In aggregate, South Africa's tariff appears to display negative escalation from semi- to fully-processed products, with average rates in the categories declining from 18.6% to 13.8% (Chart III.2). Negative tariff escalation is present on goods such as: foods, from the first-stage of processing to semi-processed products; and non ferrous metals, petroleum refineries, and non-electrical machinery, from semi- to fully-processed products. This result may be misleading in the sense that it mostly depicts industrial products that are not produced in, and do not have substitutes in, South Africa, and which have zero or low duties. Escalation is moderate on, *inter alia*, industrial chemicals, where an average rate of 4.1% applies to first-stage processed products and 6.3% to fully-processed goods; non-metallic mineral products where the average rate applying to first-stage processed goods is 0% whereas a mean of 5.4% applies to fully-processed products; and other manufactured products on which the average tariff rates increase from 3.5% to 8% (Table AIII.2). Escalation is most pronounced on: textiles, with mean rates rising from 5.8% on raw materials to 41.7% on final items; leather products, with mean rates rising from zero to 26.3%; wood products, with mean rates ranging from zero to 15.3%; petroleum and coal products on which the mean tariff rates rise from 3.6% to 17%; and rubber products, with average rates rising from zero to 17.2%.

Chart III.2
Average tariff by degree of processing (ISIC1 definitions), 1997



Source: Information provided by the South African authorities; and WTO Secretariat estimates.

(c) Tariff preferences

29. Under the SACU agreement, goods grown, produced or manufactured in the common customs area are imported, exported or re-exported duty free within the SACU area (Chapter II(5)(ii)(a)). Under the 1990 trade agreement with Malawi, all goods grown, produced or manufactured in Malawi may be imported duty free to South Africa under specified conditions (Chapter II(5)(iii)). Under the terms of the 1964 trade agreement with Zimbabwe, South Africa accords tariff preferences (concessional tariff rates or tariff quotas) to its imports from Zimbabwe; certain products are imported duty free (Chapter II(5)(iii)). Non-reciprocal tariff preferences (tariff quotas or low tariff rates not exceeding 3%) are also granted by South Africa to a list of imported products from Mozambique; the preferences are subject to the requirement of a minimum of 35% Mozambican content in the goods concerned (Chapter II(5)(iii)).

30. Preferential tariff treatment is to be granted by South Africa under various trade agreements to which it is a signatory (Chapter II(5)), including the Trade Protocol of the Southern African Development Community.

(d) Other duties and charges

31. In addition to customs duties levied under Schedule 1, Part 1A, certain products are also subject to excise duties, levies and value-added tax.

Excise duties

32. South Africa levies both specific and *ad valorem* excise duties, on imported and domestic products. Specific excise duties are levied on prepared foodstuffs; beverages and spirits; tobacco; mineral products; and products of the chemical or allied industries. Duties payable on these products range from R 0.03817 per litre on distillate fuels, such as gas and diesel oils, to R 0.3 per kg on preparations based on sorghum flour, put up for making beverages, to R 5 per kg on products of the chemical or allied industries, such as halogenated derivatives of hydrocarbons and mixtures containing dichlorodifluoromethane and trichlorofluoromethane, and to R 2,550.37 per 100 litres of absolute alcohol on spirits based on grain products. Specific excise duties levied on cigarettes increase with the weight of their tobacco content. The specific excise duties are generally the same on goods of the same class or kind, whether domestically produced or imported. However, specific excise duties on certain imported beverages such as mineral water, lemonade and flavoured mineral water are higher than those collected on similar locally produced goods (13.60¢/l on locally produced non-alcoholic beverages against 14.66¢/l on imports). Specific excise duties are normally reviewed once a year during the national budget process.

33. *Ad valorem* excise duties are levied on certain manufactured products, whether imported or domestically produced. On locally manufactured products, the duty is applied to the full and final price (before deductions of any discounts other than cash discounts) at which the goods are offered for sale or consumption in South Africa. The price excludes the value-added tax and non-rebated excise duty payable under Schedule 1, Part 2B. The value for *ad valorem* excise duty purposes of imports includes an uplift of 15% of the transaction value and any non-rebated customs duties (e.g. those levied under Schedule 1, Part 1). The same rate applies to similar products irrespective of their origin (locally produced or imported). No products are subject to both types of excise duties.

34. The modal rate of *ad valorem* excise duty is 15%. The minimum rate of *ad valorem* excise duty is 6%. The *ad valorem* rates of excise duty on certain categories of tractors, motor vehicles and chassis are calculated on the basis of a formula, with a maximum of 20% (Table III.6).

Value-added tax

35. A 10% value-added tax (VAT) replaced the former 13% general sales tax on 1 October 1991.¹¹ The VAT is destination-based and is collected on both imports and domestically produced goods and services; the standard rate was increased to 14% on 7 April 1993. On imports, the VAT is levied on the duty-paid value (i.e. the customs value plus any non-rebated duties, levies and charges) plus 10% of the customs value, which according to the authorities, corrects for the use of f.o.b. rather than c.i.f. prices for customs duty purposes. The VAT is levied on the open-market value of domestic supply of goods and services.¹²

¹¹GATT (1993).

¹²The open market value of any goods or services is the consideration in money that the goods and services would generally fetch if their supply were freely offered and made, in similar circumstances, between persons who are not connected persons, in the Republic of South Africa (Section 3 of the 1991 Value-Added Tax Act).

Table III.6

Products subject to *ad valorem* excise duties, 1997

Product description	Rate (%)
Essential oils (terpeneless or not)	15
Perfumes and toilet waters	15
Beauty and make-up preparations for the care of skin (other than medicaments)	15
Preparations for use on the hair	15
Shaving preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included	15
Prepared room deodorisers whether or not perfumed or having disinfectant properties	15
Articles of apparel, clothing accessories and other articles of furskin	15
Artificial fur and articles thereof	15
Single loudspeakers, mounted in enclosures, other loudspeakers, audio-frequency electric amplifiers and electric sound amplifier sets	15
Turntables (record-desks), record-players, cassette-players and other sound reproducing apparatus, not incorporating a sound recording device	15
Magnetic tape recorders and other sound recording apparatus whether or not incorporating a sound reproducing device	15
Video recording or reproducing apparatus whether or not incorporating a video tuner	15
Prepared unrecorded media for sound or similar recording of other phenomena, other than photographic or cinematographic goods	15
Records, tapes and other recorded media for sound or other similarly recorded phenomena, excluding photographic or cinematographic goods	15
Reception apparatus for radio-telephony, radio-telegraphy or radio-broadcasting, whether or not combined in the same housing, with sound recording or reproducing apparatus or a clock; lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of, or fittings for, instruments or apparatus, other than such elements of glass not optically worked	15
Sunglasses	15
Refracting telescopes, binocular or monocular, prismatic or not (excluding astronomical instruments)	15
Photographic (excluding cinematographic) cameras, photographic flashlight apparatus and flashbulbs (excluding certain discharge lamps)	15
Cinematographic cameras and projectors, whether or not incorporating sound recording or reproducing apparatus	15
Slide projectors and other image projectors (excluding cinematographic projectors and overhead projectors)	15
Photographic plates and film of any material, excluding paper, paperboard or textile	15
Side-cars, motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars, and with a cylinder capacity exceeding 800cm ³	15
Wrist-watches, pocket-watches and other watches, and clocks, excluding braille watches, tower, astronomical and observatory clocks, instrument panel clocks, and clocks of similar types for vehicles aircrafts and vessels	15
Revolvers and pistols (excluding target shooting pistols of 5.6 mm calibre), muzzle-loading firearms, other sporting, hunting or target-shooting shotguns or rifles, and spring, air or gas guns and pistols, excluding those designed to project missile suitable for the injection of animals.	15
Certain categories of motorcycles, cycles and side-cars, with cylinder capacity exceeding 200 cm ³ but not exceeding 800 cm ³	7.5
Automatic goods-vending machines, television receivers, video games of a kind used with a television receiver, games of skill or chance and related machines and parts thereof, excluding bowling alley equipment	10
Printing machines, automatic typewriters and work-processing machines, calculating machines, automatic data processing machines, facsimile transmission apparatus, certain external modems and parts thereof, and certain photo-copying apparatus	6
Under Schedule 1(2)(B), certain categories of tractors (HS8701.20), and motor vehicles, and chassis (HS 8702.00; 8703.00; 8704.00; and 8706.00)	C ^a , with a maximum of 20%

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

Source: Information provided by the South African authorities.

36. Exports and the supply of certain goods and services, such as agricultural inputs (e.g. animal feed, seed, fertilizers, pesticides and animal remedies), certain basic foodstuffs (e.g. brown bread, maize meal, eggs, milk, fruit and vegetables) and international transport services, are zero-rated for VAT refund purposes (Section 3(vi)).¹³ The VAT is not payable on temporary imports and imports for export-processing. Interest on loans, superannuation fund interests, residential rents, passenger transport by road or rail and educational services are exempt from VAT. Revenue collected from VAT amounted to about R 32.8 billion in 1996.

Levies

37. A specific fuel levy applies to certain petroleum oils and oils obtained from bituminous minerals. The levy is the same whether the goods are domestically produced or imported. It amounts to R 0.766 per litre of leaded petrol; R 0.704 per litre of unleaded petrol; and R 0.661 per litre of distillate fuels (e.g. gas oil and diesel oil), or mixtures of illuminating or heating kerosene with lubricity agents.

38. Other specific levies are charged on certain imported and domestically produced agricultural goods, such as sorghum, oil seeds, lucerne seed, dried fruit, meat, mohair and milk. They are collected to promote research on the goods concerned. These levies comprise two components, which, put together, range from R 0.02 per kg of meat to R 0.342 per kg of mohair (Table III.7).

(e) Duty and tax exemptions and refunds

39. Products exempt from normal customs formalities (such as diplomatic imports), are also exempt from payment of both customs and excise duties (section (ii)(a)). Rebates of full or partial duties are granted under Schedule 3, Part 1 on the importation of raw materials and components used in the manufacturing process, i.e. goods used in the manufacture of other goods. Other schedules of South Africa's tariff also provide for rebates and refunds of import tariffs and the fuel levy on raw materials/components used in the manufacturing, processing, finishing, equipping or packing of goods solely for export (section 3(vi)). Rebates of customs and excise duties and temporary rebates of customs duties on various categories of products are also available under Schedule 4 (Table III.8).

40. Additional rebate facilities may be selectively granted to any industrialist who demonstrates that the import tariff on the raw materials and/or components concerned has a substantial effect on his production cost and that he needs the rebate to compete with like imported products. The Board on Tariffs and Trade considers applications for tariff protection, exemptions, rebates and refunds, and related permits.

¹³Capital goods qualify for input tax deductions.

Table III.7
Levies on agricultural products, 1997

Products	Domestic		Imported	
	Levy	Special levy	Levy	Special levy
Sorghum	R 7.98/tonne	R 3.97/tonne	R 7.98/tonne	R 3.97/tonne
Oilseeds:				
Shelled edible groundnuts	R 5.80/tonne	R 12.50/tonne	R 1.45/tonne	R 3.13/tonne
Unshelled edible groundnuts	R 4.20/tonne	R 9.06/tonne	R 1.05/tonne	R 2.27/tonne
Shelled crushing groundnuts	R 5.80/tonne	R 12.50/tonne	R 1.45/tonne	R 3.13/tonne
Unshelled crushing groundnuts	R 4.20/tonne	R 9.06/tonne	R 1.05/tonne	R 2.27/tonne
Sunflower seed	R 5.80/tonne	R 1.10/tonne	R 1.45/tonne	R 0.28/tonne
Soy beans	R 5.80/tonne	R 9.10/tonne	R 1.45/tonne	R 1.11/tonne
Lucerne seed	R 0.32/tonne	R 0.18/tonne	R 0.32/kg.	No special levy
Dried fruit:				
Currants	2.50 ¢/kg.	1.50 ¢/kg.	1.50 ¢/kg.	1.50 ¢/kg.
Raisins	2.50 ¢/kg.	1.50 ¢/kg.	1.50 ¢/kg.	1.50 ¢/kg.
Seedless raisins	2.50 ¢/kg.	1.50 ¢/kg.	1.50 ¢/kg.	1.50 ¢/kg.
Prunes	3.00 ¢/kg.	2.00 ¢/kg.	2.00 ¢/kg.	2.00 ¢/kg.
All other kinds of dried fruit	3.40 ¢/kg.	5.00 ¢/kg.	5.00 ¢/kg.	5.00 ¢/kg.
Deboned meat cuts of beef	No levy	No levy	1 ¢/kg.	1 ¢/kg.
Meat of animals slaughtered at abattoirs in South Africa				
Beef	209 ¢/carcass	352 ¢/carcass	n.a.	n.a.
Calf	54 ¢/carcass	74 ¢/carcass	n.a.	n.a.
Sheep	38 ¢/carcass	34 ¢/carcass	n.a.	n.a.
Goat	38 ¢/carcass	34 ¢/carcass	n.a.	n.a.
Pork	65 ¢/carcass	334 ¢/carcass	n.a.	n.a.
Meat imported into South Africa or introduced from area in South Africa where the Scheme does not apply				
Beef	n.a.	n.a.	1 ¢/kg	1 ¢/kg
Calf	n.a.	n.a.	1 ¢/kg	1 ¢/kg
Sheep	n.a.	n.a.	2 ¢/kg	1 ¢/kg
Goat	n.a.	n.a.	2 ¢/kg	1 ¢/kg
Pork	n.a.	n.a.	0 ¢/kg	2 ¢/kg
Deboned meat cuts of beef	n.a.	n.a.	1 ¢/kg	1 ¢/kg
Mohair	23.9 ¢/kg.	10.3 ¢/kg.	23.9 ¢/kg.	10.3 ¢/kg.
Milk	0.163 ¢/litre	0.297 ¢/litre	0.163 ¢/litre	0.297 ¢/litre

n.a. Not applicable.

Source: Information provided by the South African authorities.

(e) Duty and tax exemptions and refunds

Table III.8

Products eligible for rebates of customs and excise duties, 1997

Products	Schedule
Building material worked monumental building stone and articles thereof, tools and stores, for use by the War Graves Commission and similar international organizations	4, Part 1
Goods for cultural, educational, charitable, welfare or youth organizations or purposes	4, Part 1
Goods for heads of State, diplomatic and other foreign representatives, provided that the government of the mission or the person who is claiming the rebate facility accords reciprocal treatment to South Africans in similar positions	4, Part 1
Goods imported by immigrants, tourists, returning residents and other passengers, for their personal use and under specified conditions	4, Part 1
Cups, medals and other trophies, awarded abroad to any person, and such articles for presentation; goods formerly exported (re-imported goods), provided that specified conditions are met (for instance, a permit for re-importation issued by the Director-General of Agricultural Economics and Marketing is required for the admission under rebates of re-imported butter, cheese, maize and maize products, sugar, wine, brandy and spirituous beverages)	4, Part 1
Goods, such as wooden cases, empty containers, master models and base oils for lubricating oil, for industrial or commercial purposes	4, Part 1
Goods (excluding corn or grain seed), for purposes of experimenting therewith as the department controlling or supervising such experimenting may allow by specific permits, food containing soya-bean concentrates, specially prepared for infants	4, Part 1
Goods imported for the relief of distress of persons in cases of famine or other national disaster, under technical assistance or multilateral international agreements to which South Africa is a party	4, Part 1
Printed matters imported by airlines for their own use	4, Part 1
Industrial machinery or appliances, portable or mobile, produced or manufactured in the United Kingdom and Northern Ireland and imported therefrom (HS subheadings 8478.10.10; 8478.90.10; 8479.40.10; 8479.81.10; 8479.89.63; and 8479.90.55)	4, Part 1
Parts and materials of plastics of a kind used for the manufacture of design engineering models of factories, installations and the like	4, Part 1
Textiles fabrics woven from six different fibres, for testing dyestuff fastness	4, Part 1
Office furniture and equipment (excluding motor vehicles) for the official use by an organization (excluding a business enterprise) approved by the Commissioner for Customs and Excise, transferring its administrative operations to South Africa.	4, Part 1
Potatoes, dried leguminous vegetables and fruit, cereals and oil seeds (solely for planting or sowing), rape seed, sunflower seed, meat, fish, dairy products, plastics, rubber and rubber products, paper, not carded or combed cotton, worn clothing and other worn items and chemical products.	4, Part 2 ^a
Under specified circumstances, lost, destroyed or damaged goods, in respect of which the fuel levy, together with the customs duty, amounts not less than R 2500	4, Part 4 ^b
Petrol and distillate fuels for use by the State President, diplomatic and other foreign representatives	6, Part 3 ^c
Distillate fuels used for road and rail transport in agriculture or forestry, for the production of agricultural goods, or used in forestry, whalers, trawlers and other ocean-going fishing or non-South African vessels.	6, Part 1 ^c

a Temporary rebates of customs duties.

b Rebates of the fuel levy.

c Refunds of fuel levy.

Source: Information provided by the South African authorities.

(iv) Import prohibitions and licensing

41. South Africa's licensing system provides for the granting of permits to meet the "reasonable requirements" of merchants and manufacturers.¹⁴ Required for the importation of goods subject to

¹⁴WTO document G/LIC/N/3/ZAF/1, 23 May 1997.

control, the permits must be obtained prior to the date of shipment; they are issued without charge by the Deputy Director of Import and Export Control (Department of Trade and Industry).¹⁵ The permits may prescribe conditions for import, or the use of the goods to be imported. Such conditions may include the quantity or value/price and the origin of the goods. Failure to produce the permit may result in a fine of up to R 40,000 and/or imprisonment for a period not exceeding ten years.¹⁶

42. The list of products subject to import control has been reduced since 1993. Import controls are currently maintained in terms of the 1963 Import and Export Control Act, published in Schedule I(A) of the 1988 Import Control Regulations (as amended), on the following products: used goods, waste and scrap; fresh or frozen fish, crustaceans and molluscs; dairy products, oats and maize; wine, vermouth, fermented beverages, ethyl alcohol vinegar and substitutes; mineral fuels, mineral oils and products of their distillation; radioactive chemical elements and radioactive isotopes; new pneumatic tyres; gold; cobalt, cadmium, antimony, manganese, diromium, geranium, vanadium, gallium, hafnium, indium, rhenium and thallium; revolvers and pistols, and other firearms and ammunition and parts; and ozone depleting substances such as CFCs (Table III.9).

Table III.9

Goods subject to import control, May 1997

Tariff heading	Description of goods	Official purpose of control
Various	All used goods, waste and scrap	Health, environmental reasons and in terms of the Basel Convention
03.01 to 03.07	Fish, fresh or frozen, crustaceans and molluscs	Health reasons, no quantitative restrictions
04.01 to 04.06	Dairy products	Automatic licensing
10.04; 10.05	Oats and maize	Automatic licensing
22.04; 22.05; 22.06; Ex22.07; Ex22.08; 22.09	Wine, vermouth, fermented beverages, ethyl alcohol vinegar and substitutes	Automatic licensing
27.07; 27.08; 27.09; 27.10; 27.11; 27.12; 27.13; 27.14; 27.15	Mineral fuels, mineral oils and products of their distillation	"Strategic reasons"
28.44; 28.45	Radioactive chemical elements and radioactive isotopes	Health and environmental reasons
40.07; 40.08	Vulcanized rubber thread and cord, plates and strip	Automatic licensing
40.11	New pneumatic tyres	Monitoring for quality specification
71.08	Gold and coins	Monetary policy
81.05; 81.07; 81.10; 81.11; 81.12	Cobalt, cadmium antimony, manganese diromium, geranium, vanadium, galium, hafniu mindium, rhenium, and thallium	Health and environmental reasons
93.03; 93.04; 93.05; 93.06	Revolvers and pistols, other firearms, parts, ammunition and parts	Security reasons
Ex9504.30	Gambling machines	Quality specifications and public interest
Ex2903.19.10; 2903.30.10; 2903.45.90; Ex 2903.49.10; 2903.41; 2903.42; 2903.43; 2903.44; 2903.45.05; 2903.46; 3824.71.10; 3824.71.90	Ozone depleting substances (CFC)	Montreal Protocol

Source: Information provided by the South African authorities; and WTO document G/LIC/N/3/ZAF/1, 23 May 1997.

¹⁵In the case of certain products, applications are also considered by the Departments of Agriculture, Health, and Environment Affairs.

¹⁶A licence is valid for the calendar year during which it is issued, but may be used for customs clearance of goods shipped before 31 December of that year. The validity of the licence cannot be extended.

43. The 1983 Agricultural Pests Act (Act No. 36) provides for importation, by means of a permit or following publication in a Government Gazette, of controlled goods, *inter alia*, plants and plant products, pathogens, insects, exotic animals, growth mediums, infectious things, honey, beeswax or used apiary equipment. The importation of these goods may also be subject to specific phytosanitary conditions as indicated on the permit or as published in the Government Gazette. The 1947 Fertilizers, Farmfeed, Agricultural Remedies and Stock Remedies Act (Act No. 36) provides for a list of agricultural products subject to import control for health, sanitary and phytosanitary reasons (section (ix)(b)). Import controls are also applied in sectors such as medicines, mainly for reasons of compliance with approved standards. South Africa prohibits imports of certain used goods, waste and hazardous materials. Pesticides such as aldrin, dieldrin, mercury compounds and certain mixtures of isomers are banned from import while imports of others (e.g. inorganic arsenic compounds, chlordane, DDT) are severely restricted.

44. With the exception of a limited range of products from Malawi and Zimbabwe, goods grown, produced or manufactured in the other SACU member countries (Botswana, Lesotho, Namibia and Swaziland), and in Malawi and Zimbabwe are not subject to import control. South Africa does not maintain any import quotas. However, tariff quotas apply to a list of imported goods from Mozambique to which South Africa grants preferential tariff treatment (Chapter II(5)(iii)).

(v) Trade sanctions

45. According to the authorities, South Africa applies no trade sanctions, either nationally or internationally, except those endorsed by the United Nations Security Council, the Organization of African Unity (OAU) or the Southern African Development Community (SADC).

(vi) Safeguard, anti-dumping and countervailing measures

46. Chapter 6 of the Customs and Excise Act, and Section 4 of the Board on Tariffs and Trade (BTT) Act provide the legal basis for anti-dumping, countervailing and safeguard measures in South Africa. These provisions were amended in 1992. In 1996, two bills were published to amend the provisions dealing with safeguard measures and to provide for promulgation of regulations relating to anti-dumping, countervailing and safeguard investigations. These interim amendment bills were passed into legislation by Parliament in 1997. In April 1996, South Africa undertook, in the WTO Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures, to amend its legislation on these matters with a view to ensuring its compliance with the requirements of the WTO Agreements. At the request of the Minister of Trade and Industry, the BTT investigated the restructuring of the anti-dumping and countervailing system.¹⁷ The recommendations of the BTT following its investigation were to be published in the second half of 1997, together with the proposed draft legislation.

47. Anti-dumping, countervailing or safeguard actions are initiated by the Board on Tariffs and Trade (BTT) at the request of a domestic industry. After investigation, the BTT makes recommendations to the Minister of Trade and Industry (MTI). The Minister of Finance may, by notice in the Gazette and in accordance with a request of the MTI, impose, withdraw or reduce anti-dumping, countervailing or safeguard duties with or without retrospective effect.

¹⁷Government of South Africa (1996d).

(a) Safeguard measures

48. In South Africa, and by extension in SACU, safeguard actions are taken in the case of "disruptive competition". Under the Board on Tariffs and Trade Act, as amended in 1997, "disruptive competition" is "the export of goods to the Republic or the common customs area of the Southern African Customs Union in such increased quantities, absolute or relative to domestic production in the Republic or the common customs area of the Southern African Customs Union and under such conditions as to cause or threaten to cause serious injury to the domestic industry in the Republic or the common customs area of the Southern African Customs Union which produces like or directly competitive products".¹⁸ The 1997 amendments to the BTT Act were to bring the definition of "disruptive competition" fully into line with the WTO Agreement on Safeguards. The 1997 amendments to the Customs and Excise Act provide a legal mechanism for the institution of provisional safeguard measures.¹⁹

49. As of end-June 1997, South Africa had never imposed a safeguard duty. However, items under HS Chapters 27, 39 and 40 were notified by South Africa under Article 11.1 of the WTO Agreement on Safeguards.²⁰ In accordance with the phasing-out/removal timetable provided by South Africa in this regard, import control on products, such as new tyres, would have been removed since 1996 (Table III.10). However, import control still applies to a large number of these products (Table III.9).

50. South Africa does not maintain any pre-existing GATT Article XIX (safeguard) measures described in Article 10 of the WTO Agreement on Safeguards; actions taken by means of formula duties on items under HS Chapters 15, 29, 64, 70, 73 and 85 have been removed.²¹ South Africa retains the right to use the transitional safeguard mechanism of Article 6 of the WTO Agreement on Textiles and Clothing. The list of products integrated into GATT by South Africa during Phase I included acrylic filament tow, metallized yarn, textile fabrics coated with gum, linoleum, bolting cloth, panty hose and tights, socks, belts, vests for women, girdles and ski suits.²² Phase II integration, notified in October 1997, includes a range of tops and yarns (including wool, viscose and some artificials), certain fabrics, a number of made-up items including travel goods and handbags, and clothing, principally wool or artificial fibres, including coats, jackets, suits, dresses, skirts, hosiery and some underwear.²³ As at the end of May 1997, South Africa had not invoked the special safeguard right it retained with respect to a large range of agricultural products (section (iii)(b)).²⁴

¹⁸Board on Tariffs and Trade Act, 1992 (as amended).

¹⁹The amendments also provide for the application of provisional measures in respect of safeguard duties in a similar manner as is currently provided for in respect of anti-dumping and countervailing duties.

²⁰WTO documents G/SG/N/3/ZAF, 25 April 1995 and G/SG/N/5/ZAF, 18 June 1996.

²¹WTO document G/SG/N/2/ZAF, 27 March 1995; and GATT (1993) provide the list of items that were subject to safeguard measures.

²²WTO documents G/TMB/N/114, 10 August 1995; and G/TMB/N/197/Rev.1, 26 November 1996.

²³WTO document G/TMB/N/307, 24 November 1997.

²⁴South Africa does not have any legislative or administrative provisions for "special safeguards" as set out in Article 5 of the WTO Agreement on Agriculture.

Table III.10

Products subject to a safeguard action (import licence), 18 June 1996

Tariff heading	Product description	Phasing-out/ Removal date
27.07	Oils and other products of the distillation of high temperature coal tar; similar products in which the mass of aromatic constituents exceeds that of non-aromatic constituents	End of 1998 ^b
27.08	Pitch and pitch coke, obtained from coal tar or from other mineral tars	End of 1998 ^b
27.09	Petroleum oils and oils obtained from bituminous mineral crude	End of 1998 ^b
27.10	Petroleum oils and oils obtained from bituminous minerals, other than crude	End of 1998 ^b
27.11	Petroleum gases and other gaseous hydrocarbons	End of 1998 ^b
27.12	Petroleum jelly; paraffin wax; microcrystalline; petroleum wax; slack wax; ozokerite; lignite wax; peat wax; other mineral waxes; and similar products obtained by synthesis or by other processes, whether or not coloured	End of 1998 ^b
27.13	Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals	End of 1998 ^b
27.14	Bitumen and asphalt, natural; bituminous or oil shale and tar sands; asphaltites and asphaltic rocks	End of 1998 ^b
27.15	Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch(for example, bituminous mastics, cutbacks)	End of 1998 ^b
39.20.20	Polymers of propylene	End of 1996 ^b
39.21.90	Other plates, sheets, foil and strip, of plastic: other	End of 1996 ^b
40.11	New pneumatic tyres, of rubber: refer to industrial rebates of customs duties - 317.02 motor vehicles (general)	31.7.96 ^a
40.11.10	- Of a kind used on motor cars (including station wagons and racing cars)	...
40.11.20	- Of a kind used on buses or lorries	...
40.11.30	- Of a kind used on aircraft	31.7.96 ^a
40.11.40	- Of a kind used on motorcycles	31.7.96 ^a
40.11.90	Other	...
40.13	Inner tubes of rubber	31.7.96 ^a
40.13.10	Of a kind used on motor cars (including station wagons and racing cars), buses and lorries	...
40.13.20	Of a kind used on bicycles	31.7.96 ^a
40.13.90	Other	...

... The removal of import control was under consideration as at 18 June 1996.

a To be removed by the date specified.

b To be phased-out or brought into conformity with the WTO Agreement on Safeguards by the date specified.

Source: WTO documents G/SG/N/3/ZAF, 25 April 1995 and G/SG/N/5/ZAF, 18 June 1996.

(b) Anti-dumping and countervailing measures

51. Under the BTT Act, dumping occurs when the price of a good exported to South Africa or the SACU area (the export price) is less than the "normal price", defined as the comparable price actually paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or countries of origin.²⁵ In the absence of the price as so defined, the normal price will be the highest comparable price at which similar goods are actually exported to any third country in the ordinary course of trade, or the constructed cost of production of goods in the country of origin

²⁵The export price is defined as the price actually paid or payable for goods sold for export net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration. In the absence of an export price or where it is unreliable, the export price is constructed by the BTT.

plus a "reasonable" addition for selling costs and profit.²⁶ An export or a proposed export of goods to South Africa or the SACU area is deemed to be subsidized if the authority of the exporting country or any other country provides any form of financial aid or other assistance in respect of those goods, including assistance in respect of production, manufacture, transport or export.²⁷

52. The procedures for anti-dumping and countervailing actions are essentially the same; they comprise a merit assessment, a preliminary-determination stage, which could result in a provisional payment, and a final-determination stage, which could result in a definitive duty. On request of a domestic industry and after a positive finding in the preliminary investigation, the BTT recommends the imposition of a provisional anti-dumping or countervailing duty or any other action it deems necessary.²⁸ The provisional action is valid for six months from the date of its imposition; this period may be extended by a further three months. If no definitive anti-dumping or countervailing duty is imposed before the expiry of this period, the provisional payment is refunded. The difference between a provisional duty paid in excess of any anti-dumping or countervailing duty retrospectively imposed is refunded; the difference is not collected if the provisional duty is lower than the duty retrospectively imposed.

53. Time periods for the merit assessment, the preliminary determination and rendering the definitive decision have not been legislated. However, the target time period for the merit assessment is 30 days and for the preliminary determination 120 days from the formal initiation of the investigation. The target period for rendering the definitive decision is 120 days from the end of the merit assessment.

54. Normally, within twelve months after the imposition of the definitive anti-dumping or countervailing duty, the BTT may review the action taken, on request of any interested party. The BTT may also, on its own initiative, review an anti-dumping or countervailing duty at any time. Decisions relating to actions taken or to be taken at each stage of investigation are published in the Government Gazette and the interested parties, including the governments of the exporting countries are notified. Anti-dumping and countervailing actions are taken for a period of five years after which they lapse unless reviewed and renewed.

55. As at 31 December 1996, South Africa had 35 definitive anti-dumping duties in force (Table III.11).²⁹ Anti-dumping actions have been used mainly on chemical and mineral products, paper, and clothing. No countervailing actions have so far been taken.

²⁶ Allowance is made for differences in conditions, terms of sales and taxation, and for other differences affecting price comparability.

²⁷ Board on Tariffs and Trade Act, 1992 (as amended).

²⁸ WTO documents G/ADP/N/1/ZAF/1 and G/SCM/N/1/ZAF/1, 8 December 1995.

²⁹ About 53 anti-dumping investigations have formally been initiated since 1992.

Table III.11

Anti-dumping duty actions, as at 31 December 1996

Product	Country/customs territory	Initiation ^a date	Result ^b	Basis of determination ^c
Domestic clothes dryers	Australia	18 Oct. 1996 (R)	D	HM
Titanium dioxide		2 July 1993	D	CV
N-1,3 dimethylbutyl-N-paraphelenediamine	Belgium	28 July 1995	D	HM
Suspension PVC	Brazil	15 Mar. 1996	P	HM
Uncoated woodfree paper		12 July 1996	U	
Copper tubing	Bulgaria	6 Sep. 1996	U	n.a.
Calcium propionate acetate	Canada	9 Oct. 1992	D	...
Aluminium hollow-ware	China, P.R.	15 Sep. 1995	D	TM (Zimbabwe)
Indigo blue discharge material		14 June 1996	D	Ghana
PVC pilchers		15 Mar. 1996	D	TM
PTFE thread sealing tape		12 Jan. 1996	D	TM (Italy)
Towels and face cloths		28 Feb. 1992	D	TM
Men's, women's, boys' and girls' underwear		18 Oct. 1996 (R)	D	TM (Mauritius)
T-shirts, singlets, vests of cotton		11 Oct. 1991	D	TM (Mauritius)
Hoes not exceeding 320 mm		25 Oct. 1991	D	TM
Acetaminophenol		31 Oct. 1992	D	TM
Spades, rakes, forks, picks		26 March 1993	D	TM
Aluminium hollow-ware	Egypt	27 Oct. 1995	P	HM
PVC film and sheet	France	9 Sep. 1994	D	HM
Suspension PVC		15 Mar. 1996	P	HM
Circuit breakers		31 May 1996	U	n.a.
N-1,3 dimethylbutyl-N-paraphelenediamine	Germany	28 July 1995	Rej.	HM
Suspension PVC		15 Mar. 1996	Rej.	HM
Carbonless copy paper		5 Mar. 1993	D	HM
Indigo blue discharge material	Hong Kong	14 June 1996	D	TM (Ghana)
Aluminium hollow-ware		15 Sep. 1995	D	TM (Zimbabwe)
PTFE thread sealing tape		12 Jan. 1996	D	TM (Italy)
Acetaminophenol		31 Oct. 1992	D	TM
Spades, rakes, forks, picks		26 Mar. 1993	D	TM
Cast aluminium, seats and tables	Hungary	15 Apr. 1989	D	...
Garden picks	India	14 July 1995	D	HM
Hydrogen peroxide		22 Sep. 1995	P	HM
Agriculture hoe heads		22 Mar. 1996	Rej.	HM
Porcelain line insulators		31 May 1996	Rej.	CV
Amoxycillin and ampicillin		18 Oct. 1996	U	CV
Acetaminophenol		31 Oct 1992	D	...
Uncoated woodfree paper	Indonesia	12 July 1996	U	n.a.
Caustic soda	Iran	15 Mar. 1996	Rej.	n.a.
Circuit breakers	Italy	31 May 1996	P	HM

Table III.11 (cont'd)

Product	Country/customs territory	Initiation ^a date	Result ^b	Basis of determination ^c
Hydrogen peroxide	Japan	24 Mar. 1995	D	HM
Ceramic tiles		25 Oct. 1996	U	n.a.
Circuit breakers		31 May 1996	P	HM/CV
PVC film and sheet	Chinese Taipei	9 Sep. 1994	D	HM
Hydrogen peroxide		24 Mar. 1995	D	HM
PTFE thread sealing tape		8 Mar. 1996	Rej.	HM
Calcium propionate	Netherlands	7 June 1996 (R)	D	HM
Calcium acetate		26 July 1996 (R)	D	...
Uncoated woodfree paper	Poland	12 July 1996	U	n.a.
Acrylic fibre	Portugal	5 July 1996	U	n.a.
Caustic soda	Saudi Arabia	15 Mar. 1996	Rej.	n.a.
Acetaminophenol	Singapore	31 Oct. 1992	D	TM (India) Transshipment
Flat glass		15 Janv. 1993	D	HM
N-1,3 dimethylbutyl-N-paraphelenediamine	Spain	28 July 1995	Rej.	HM
Circuit breakers		31 May 1996	U	n.a.
Circuit breakers	Switzerland	31 May 1996	U	n.a.
Uncoated woodfree paper	Sweden	12 July 1996	U	n.a.
Flat glass	Thailand	15 Jan. 1993	D	HM
Copper tubing	United Kingdom	6 Sep. 1996	U	n.a.
Carbonless copy paper		5 Mar. 1993	D	HM
Suspension PVC	United States	15 Mar. 1996	P	HM
Caustic soda		15 Mar. 1996	Rej.	n.a.
Aldicarb		24 May 1996	P	HM
Roller bearings		21 Aug. 1992	D	HM
Polyethylene battery separator material		8 Nov. 1996	U	n.a.
Calcium propionate, acetate		9 Oct. 1992	D	HM
Copper tubing	Yugoslavia	6 Sep. 1996	U	n.a.
Aluminium hollow-ware	Zimbabwe	15 Sep. 1995	P	HM

... Not available.

n.a. Not applicable.

a The symbol (R) is used if an investigation is opened in the context of an existing anti-dumping measure, or after an allegation of a breach of an undertaking.

b D - final duty; P - provisional duty; U - Preliminary determination stage; Rej. - rejection or no duty or case withdrawn.

c HM Home market price.

TM Third country market price.

CV Constructed value.

G Prices charged in Ghana.

Source: WTO document G/ADP/N/22/ZAF/Rev.1, 16 April 1997.

(vii) Rules of origin

56. In accordance with Section 46 of the Customs and Excise Act, a good is regarded as having been produced or manufactured in any particular territory if at least 25% of its production cost is represented by materials produced and labour performed in that territory, and if the last process in its production or manufacture has taken place in that territory. The Commissioner for Customs and Excise may, from time to time, at the request of the BTT, add other criteria or increase the prescribed percentage in regard to specific imported goods, or goods from a particular territory. The percentage may also be changed under bilateral agreements with foreign countries.

57. Under the SADC Trade Protocol, preferential treatment is to be granted to an imported good, consigned directly from a member State to a consignee in another member State, if the good is:

- (a) wholly produced in a member State; or
- (b) produced in the member States and the c.i.f. value of any non-SADC materials (or materials from undetermined origin) used does not exceed 60% of the total cost of the materials used in the production; or
- (c) produced in the member States from any non-SADC materials (or materials from undetermined origin) in such manner that the value-added resulting from the process of production accounts for at least 35% of the ex-factory cost of the goods; or
- (d) produced in such manner that there is a change in the tariff heading of a product arising from a processing carried out on the non-originating materials.³⁰

58. These rules of origin apply throughout the SACU area. Under the bilateral trade agreement between South Africa and Malawi, goods are regarded as originating in South Africa if at least the last process of their manufacture has been performed in South Africa (Chapter II(5)(iii) notes origin criteria applying to goods produced or manufactured in Malawi). Under the preferential tariff arrangement between South Africa and Mozambique, goods are regarded as of Mozambican origin if at least 35% of their production cost is represented by materials produced and labour performed in Mozambique. Various origin criteria, including specified levels of local-content, apply to goods imported under the bilateral trade agreement between South Africa and Southern Rhodesia (now Zimbabwe).

(viii) Local-content schemes

59. Local-content requirements are an element in several incentive schemes in force in South Africa, mainly in the manufacturing sector.³¹ For example, rebates of import duties granted under the Revised Phase VI Motor Industry Development Programme are linked to local-content (Chapter IV(4)(i)). Exporters of capital goods and services qualify for credit facilities by using a minimum of 70% South African products and services (section 3(vii)). The financial assistance provided by the Government under the General Export Incentive Scheme (GEIS), which was terminated in July 1997, was proportional to the level of local-content; a minimum of 35% South African content was required (section 3(v)).

³⁰The Protocol also provides for the possibility of SADC regional cumulation of origin (SADC), 1996.

³¹WTO document G/TRIMS/N/1/ZAF/1, 8 May 1995.

60. A minimum local-content of 50% is required for obtaining type approval for customer-premises telecommunication equipment, such as private automatic branch exchanges, key telephone systems and standard (basic) telephone instruments; the local-content requirement is based on value added to the product during the manufacturing process.³² Coffee or tea packers, blenders and/or roasters have to purchase set quantities of locally produced coffee or tea at predetermined prices before import permits can be issued for the importation of the balance of domestic demand. Furthermore, price preferences based on local-content are taken into account when comparing tenders (section (xi)).

(ix) Standards and other technical requirements

(a) Standardization, testing and certification

61. Administered by the Department of Trade and Industry (DTI), the Standards Act (Act No. 36 of 1993) replaced the 1982 Act and confirmed the South African Bureau of Standards (SABS), established in 1945, as the national institution for the promotion and maintenance of standardization and quality. The principal activities of SABS include the preparation of specifications, codes of practice and standard methods, the setting up of test and inspection facilities, and the administration of product and system certification schemes, such as the SABS mark, for which it charges fees that vary according to, *inter alia*, the product and tests involved.

62. SABS develops standards at the request of interested groups. In this connection, SABS forms a committee in which parties with an interest in the standard are represented. Once finalized and commented on by the public, standards are published in the Government Gazette as national standards. The use of SABS standards is voluntary, although in some cases where public health and safety are a concern, the Minister of Trade and Industry has declared their use obligatory. The Bureau annually publishes a bulletin listing suppliers whose quality management systems comply with the SABS-ISO 9000 requirement.³³

63. In South Africa, a voluntary standard becomes compulsory once referenced; any Department may reference and make compulsory any standard. Compulsory standards apply equally to products from all origins. Section 23 of the Standards Act gives SABS the authority to ensure that products that are subject to compulsory South African specifications comply with these requirements. By mid-March 1997, South Africa had 3,500 standards, of which 54 were declared compulsory by the Minister of Trade and Industry.³⁴ The public telecommunications company, Telkom, is charged with setting standards and granting the approval for telephone equipment.

³²WTO document G/TRIMS/N/1/ZAF/1, 8 May 1995.

³³ISO 9000 is a standard for quality systems developed by the International Organization for Standardization (ISO).

³⁴The number of standards declared compulsory by the Minister of Trade and Industry (standards dealing with commodities not dealt with under specific Acts) was 43 in 1993. The Department of Health also has compulsory standards relating to medical equipment, GATT (1993).

64. South Africa is an active participant in the development of international standards and the setting of its standards generally follows international norms.³⁵ South Africa has accepted the Code of Good Practice of the WTO Technical Barriers to Trade (TBT) Agreement.³⁶ South Africa is a signatory to the Metre Convention and subscribes to the *Bureau international des poids et mesures*; the National Metrology Laboratory maintains South Africa's primary measuring units. SABS is a founding member of the International Organization for Standardization (ISO) and has adopted ISO 9000 since 1987.³⁷ SABS is a member of the International Electrotechnical Commission (IEC).

65. The South African National Accreditation System (SANAS) was established in August 1996 as the organ of accreditation of certification bodies.³⁸ For the present, SANAS has only one operational division, the calibration and testing division. SANAS has mutual recognition agreements with the European Accreditation of Laboratories Co-operation (EAL) in respect of calibration and testing facilities, and with the Chinese National Laboratory Accreditation (CNLA) in respect of calibration facilities.³⁹ SANAS has been assessed by the National Association Testing Authority of Australia (NATAA) for future mutual recognition agreements with NATAA and the Testing Laboratory Registration Council (TELARC) in respect of calibration and testing facilities. In the absence of a mutual recognition agreement, it is the responsibility of the supplier to prove the compatibility of its products with South African standards. SANAS is a participant in the International Laboratory Accreditation Co-operation (ILAC) and the International Accreditation Forum (IAF). SANAS maintains a list of accredited civil engineering test facilities whose technical competence meets South African standards⁴⁰; it has not so far accredited foreign test facilities.

(b) Health, sanitary and phytosanitary regulations

66. Several Acts regulate trade and/or production or manufacture of agricultural commodities and goods destined for human or animal consumption.⁴¹ According to the authorities, South Africa's

³⁵According to the authorities, about 34% of standards relating to electrical components are internationally compatible.

³⁶WTO document G/TBT/CS/N/4, 22 May 1995.

³⁷As at 31 December 1995, of the 127,389 ISO 9000 certificates granted in the world, South Africa held 1,454, i.e. about 93% of the 1,558 ISO 9000 certificates held by the whole African continent, *Jeune Afrique* No. 1889, 19-25 March 1997. SABS is also developing an infrastructure for ISO 14001 (a voluntary standard for environmental systems auditing and certifying).

³⁸Section 3 of the 1993 Standards Act still provides the authority of SABS in relation to the accreditation of laboratories and quality practitioners.

³⁹The mutual recognition agreement with the EU also applies to electrical and electronic systems and components.

⁴⁰SANAS is to be equipped to accredit environmental auditors.

⁴¹Including the 1990 Agricultural Products Standards Act, the 1993 Standards Act, the 1983 Agricultural Pests Act, the 1984 Animal Diseases Act (currently under review), the 1992 Abattoir Hygiène Act, the 1976 Plant Improvement Act, the 1947 Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, the 1977 Livestock Improvement Act, the 1972 Foodstuffs, Cosmetics and Disinfectants Act, the 1997 Genetically Modified Organisms Act and the 1989 Liquor Products Act.

regulations in these areas follow international guidelines, including the International Office of Epizootics, *Codex Alimentarius* and the International Plant Protection Convention.

67. All imports of live animals (including exotic animals) and animal products, plants, pathogen, insects, growth medium, any infectious thing, honey, beeswax and beeswax used as apiary equipment, and genetically manipulated organisms, are subject to import permits issued by the Directorates of Animal Health, Veterinary Public Health, Plant and Quality Control of the National Department of Agriculture; such imports are under continuous review due to changes in disease status. A list of other agricultural products subject to import control, determined by the Minister of Agriculture, includes seeds for planting purposes; fresh and dried fruit, vegetables, flowers and foliage; bark, cork, rattan, bamboo, timber and fibres for manufacturing; vegetable gum and resins; dried herbs, spices, seed and nuts for human and animal consumption and manufacturing; organisms for research, bio-control agents, infected plant material for laboratory analysis; leaf tobacco, tobacco stalks and dust; and fresh water fish for aquariums and fresh water crayfish for research.

68. The use of natural and artificial sweeteners, colorants and other additives in foodstuffs is regulated; for example, the sale of foodstuffs containing more than prescribed levels of aflatoxin and other fungus-induced toxins, and the sale of cereals in which, *inter alia*, the datura seed content exceeds certain specified limits are prohibited.⁴² The importation of live animals susceptible to "mad cow" disease (e.g. cattle in particular, buffalo, certain game species, camelids, sheep and goats) from all countries infected with Bovine Spongiform Encephalopathy (BSE) has been suspended since 22 March 1996. In this connection, the importation of beef (HS heading 02.02) from the United Kingdom has been banned since 22 March 1996. France, Netherlands, Portugal, Republic of Ireland and Switzerland are classified by South Africa as BSE low-risk countries. However, importation of semen from BSE infected countries is still allowed if it is accompanied by a health certificate issued in accordance with international guidelines. South Africa and other countries have harmonized their import requirements for certain diseases; for example, South Africa has mutual acceptance of pathogen-reduction programmes for diseases, such as *Salmonella enteritidis*, with the other members of SADC.

69. Food products are routinely analysed in specialized laboratories in Durban, Pretoria and Stellenbosch to determine their composition, microbiological contamination and pesticide residue levels. A cost-related fee of R 60 (per import permit) was approved in April 1997 for issuing import permits by the Directorate of Veterinary Public Health. Fees payable for inspections range from R 35 per 30 minutes to R 104 per hour or portion thereof; and fees payable for testing range from R 12 to R 122 per test or sample.

(c) Marking, labelling and packaging

70. The 1990 Agricultural Products Standards Act provides the legal basis for packaging and marking of agricultural products and agriculture-related products (including imported goods) for local sale and for export. The country of origin must be identified on imported products. Marks and labels

⁴²The permissible levels of aflatoxin B¹ are set at: 0.05mg. per kg. of unmixed farm feed (feed as such) and farm feed mixtures for cattle (excluding lactating cows and calves), sheep and goats (excluding lambs under four months); 0.02mg. per kg. of farm feed mixtures for pigs, poultry, dogs, cats, horses and ostriches; 0.01mg. per kg. of farm feed mixtures for unweaned piglets and chicks under laying age; and zero for farm feed mixtures for trout. The permissible level of ergot in unmixed farm feed is set at 1g. per kg. while the level of datura seed in farm feed is set at zero.

are to provide consumers with accurate and relevant information for their personal choice of products: for example, full-fat yoghurt is differentiated from low-fat yoghurt; class A (tender) meat is contrasted with class B or C (less tender); pure orange juice contains a minimum of 90% juice, orange nectar contains a minimum of 50%, orange drink contains a minimum of 6% and orange flavoured drink less than 6%; and real vinegar is differentiated from imitation vinegar (acetic acid). The quality of potatoes in a sealed bag or the contents of a tin are indicated by a mark or label.

71. South Africa has a compulsory standard specification relating to the manufacture, production, processing or treatment of canned meat products (Standards Act of 1993). The importation of meat in non-containerized format (break bulk) is banned for veterinary public health reasons. In terms of the Agricultural Product Standards Act and the Liquor Products Act, quality standards have been set for certain animal products, deciduous fruit, subtropical crops and flowers, cereals and vegetables, and liquor products; certain agricultural products destined for export must be graded, packed and marked in a prescribed manner (Table III.12). Special labelling requirements apply to products, such as drugs, wine, mouthwashes, foodstuffs, cosmetics, and textile goods containing sheep's wool. Packaging made from natural materials and fibres must be accompanied by an official certificate stating that the material has been fumigated.⁴³ The Directorate of Plant and Quality Control, or assignees appointed by him, carries out inspections at the points of sale, manufacture, packing or export to ensure that the standards and requirements are maintained.

Table III.12

Agricultural products for which quality standards apply, 1997

Product description	Quality standards ^a
Animal products	
Dairy products	L & E
Eggs	L & E
Fat spreads	L
Hides and skins	L
Imitation dairy products	L
Meat (carcasses)	L & E
Poultry meat	L & E
Processed products	
Apricot and peach kernels	E
Canned fruit	L & E
Canned mushrooms	L & E
Canned vegetables	L & E
Dehydrated vegetables	L
Dried fruit	L & E
Frozen fruit and vegetables	L & E
Fruit juices	L
Honey	L
Other canned food	L & E
Rooibos tea	L & E
Vinegar	L

Table III.12 (cont'd)

⁴³GATT (1993).

Product description	Quality standards ^a
Deciduous fruit	
Apples	L & E
Apricots	E
Cherries	E
Grapes	L & E
Peaches and nectarines	L & E
Pears	L & E
Plums and prunes	L & E
Subtropical crops and flowers	
Avocados	L & E
Chinkerinchees	E
Citrus fruit	L & E
Flowers (excluding chinkerinchees)	E
Green bananas	L
Kiwifruit	E
Litchis	E
Mangoes	E
Melons and watermelons	E
Pineapples	E
Proteas	E
Strawberries	E
Subtropical fruit	E
Cereals and vegetables	
Buckwheat	E
Dry beans	L & E
Feed products	E
Grain sorghum	E
Grass seeds	E
Groundnuts	E
Leguminous seeds	E
Lesser known types of maize	E
Maize	E
Maize products	L & E
Oilseeds	E
Onions	L & E
Potatoes	L & E
Tobacco	E
Tomatoes	L
Vegetables (other than potatoes and onions)	E
Wheat	E
Wheaten products	L
Liquor products	
All liquor products (excluding beer and sorghum beer)	L & E

Table III.12 (cont'd)

^a L & E indicate local and export quality standards, respectively.

Source: Information provided by the South African authorities.

(x) State trading

72. A system of control for the movement, pricing, quality standards, selling and supply of a major portion of farm production, was introduced under the 1968 Marketing Act (Act No. 59) with a

view to securing price stability and narrowing the gap between producer and consumer prices in South Africa.⁴⁴ The system has been under review since 1994. The number of control boards involved in the marketing of agricultural commodities in South Africa has been reduced from 21 in 1993 to 14 in 1997.

73. The 1968 Marketing Act was revoked on 31 December 1996. The 1996 Marketing of Agricultural Products Act (Act No. 47) which came into operation on 1 January 1997, provides for the abolition of the control boards within two years maximum from 6 January 1997 (Chapter IV(2)(ii)).

74. The Armaments Corporation of South Africa (ARMSCOR) is in charge of the purchase of weapons and associated equipment for South Africa's security forces.⁴⁵

(xi) Government procurement

75. South Africa is not a member of the WTO Plurilateral Agreement on Government Procurement; however, it is taking part in current discussions within the WTO on transparency in government procurement.

76. In South Africa, government procurement is regulated and channelled via the State Tender Board established under the 1968 State Tender Board Act (Act No. 86). The Act also provides for Regional Tender Boards, which were renamed Provincial Tender Boards following the 1994 political changes in South Africa.⁴⁶ The Provincial Boards are independent of the State Board and responsible for provincial government procurement, but they generally follow the same preference systems as the State Tender Board. Parastatals funded by the Government generally follow the government policy on procurement; parastatals such as Eskom and Transnet have no preference system while Telkom grants preferences based on local-content.

77. A review of the procurement procedures, which currently favour better and larger established entrepreneurs is under way; interim strategies were formulated for the State Tender Board in 1996. The general review of the procurement system aims to produce directives and procedures to accommodate the Reconstruction and Development Programme (RDP) objectives.⁴⁷ The requirement for a security (e.g. guarantee by a banking institution, cash, negotiable government stock and security bond) on all contracts was waived, except in special circumstances, such as high risk projects; tender

⁴⁴Article 87 of the Act allows the prohibition of imports and exports of specified agricultural products, except on the authority of a permit issued by the Director General of Agriculture or the control board concerned or by any person authorized by the board.

⁴⁵Coopers and Lybrand (1996).

⁴⁶The Board consists of not less than sixteen and not more than twenty members appointed by the Minister of Finance; at least half of the members are officers or employees of the Ministry of Finance. The Chairman and the Vice-chairman are designated by the Minister from among the members. The Provincial Tender Boards consist of between ten and fourteen members appointed by the relevant provincial minister.

⁴⁷Government of South Africa (1996e).

documentation was simplified, and advertisement of tenders was reformulated, with English as the official language.⁴⁸ Tender Advice Centres have been established throughout the country to provide communication and assistance to tenderers. The 30-day period within which payment to suppliers was to be made has been enforced as the maximum time for payment. An independent ombudsperson is to be appointed in order to provide an interim mechanism for quick and effective intervention on complaints from businesses.

78. In South Africa, the type of tender appropriate for a purchase or supply is considered by the State Tender Board on a case-by-case basis. A large share of public purchases are reportedly made through competitive tendering.⁴⁹ Invitations to tender may be limited to known and potential tenderers found to be suitable for specific supplies or services. Up to an estimated value of R 3,000 per case, procurement of supplies or services is allowed without calling for tenders or price quotations but by making use of suppliers listed on already established data bases. In addition, purchasing on the basis of price quotations from suppliers registered on data bases is allowed for procurement of up to an estimated value of R 20,000 per case; higher amounts of procurement must be advertised in the Government Tender Bulletin.⁵⁰ In urgent and emergency cases, supplies and/or services up to an estimated value of R 50,000 may be procured without inviting competitive tenders. When the estimated value is between R 50,000 and R 150,000, supplies in urgent and emergency situations must be procured to the best advantage. Price quotations are required under such circumstances. Under normal circumstances, for contracts up to an estimated value of R 750,000, government departments may themselves invite tenders for the procurement. All tenders exceeding the estimated value of R 750,000 are invited by the State Tender Board. A non-refundable fee of R 50 is charged, irrespective of the type of tender, the amount of procurement and the origin of the applicant. Contracts are not awarded directly to foreign suppliers; the latter are required to use local representatives to tender for government procurement.

79. Price preferences are taken into account for tender comparison purposes: the preferences are deducted from the tender price after the tenders have been evaluated and brought to a comparative basis; where prices are not firm, "implied contract price adjustments" are made. Price preferences, aimed at promoting local manufacture (import replacement and manufacturing quality), are based on, *inter alia*, the level of local-content, the use of the SABS mark, and the use of locally manufactured electronic systems and components. Regional preferences based on the "industrial development point" at which the tenderer was located were abolished on 30 June 1993.

80. The percentage preference is up to 10% if local-content is more than 80%; up to 10% for the use of locally manufactured electronic systems and components plus a minimum of 5% for local design provided that the two together do not exceed 10%; and 2.5% for the use of products that carry the SABS mark.⁵¹ Additional preferences may be granted where a locally manufactured product is in competition with an imported good, provided that the percentage of the additional preferences together with the percentage of existing customs duties on the imported article does not exceed 20%.

⁴⁸The interim strategies can be used as a guiding framework by the provinces.

⁴⁹USTR (1997).

⁵⁰Following the reforms, tender invitations, including single and selective tenderings (i.e. with selected suppliers), are at least to be advertised in the Government Tender Bulletin.

⁵¹See GATT (1993) for more details on these price preferences; most were in force in 1993 and eligibility criteria for price preferences based on local-content have not changed since then.

Further additional preferences are permissible, at the discretion of the Board or the Government, in respect of goods produced, manufactured or assembled in South Africa.⁵² The country of origin must always be stated in the submissions in the case of foreign purchases, particularly of unknown or new products; such products are subject to inspection and testing. Price preferences are generally cumulative.

81. A system of preference points (special preferences) came into effect in August 1996 for contracts of less than R 2 million. Awarded to further the Government's policy of promoting the participation of "previously disadvantaged individuals" (PDIs) and women in government procurement, the preference points are calculated on the basis of the comparative and not the tendered price, i.e. after all local preferences and other factors that would influence the price, including implied contract price adjustments, have been taken into account (Box III.2).⁵³ The tender selected is to be the one with the highest number of points. In the case of equality, contracts are to be awarded to the tenderer who scores the highest points for PDI equity. In the case of continuing equality, the lowest tender price is to be given priority. In the case of joint-ventures and partnerships, only legally established business entities are to be considered.

Box III.2: South Africa's government procurement system: determination of preferences points

The calculation of the points for the purposes of preferences awarded to further the Government's policy of promoting the participation of PDIs and women in government procurement is based on the following formula:

$$N_p = 88 (1 - (P - P_m)/P_m);$$

where:

N_p = the number of adjudication points awarded for price (the tendered price);

P_m = the price of the lowest acceptable tender on a comparative basis; and

P = the comparative price of the tender in question.

It is obvious that, for $P = P_m$, the number of adjudication points is the maximum (88 points). The higher is P with respect to P_m , the lower is the number of points, i.e. the number of adjudication points N_p , is a declining function of P , the comparative price.

Points awarded for the tendered contract participation goal are proportional to the percentage equity ownership, namely, 10% of the percentage equity ownership of PDI and 2% of the percentage equity ownership of women.

The maximum points for percentage equity ownership are straightforward; they correspond to the maximum 100% equity ownership, i.e. 10 points when the business is wholly owned by PDI and 2 points when it is wholly owned by South African women. The total number of tender adjudication points awarded is the sum of the three components and obviously will not exceed 100.

82. On 1 September 1996, the Cabinet approved the National Industrial Participation Programme (NIPP) in terms of which, all State and parastatal purchases and leases, with import content equivalent

⁵²Government Notice Ný R1237, 1 July 1988; and Government of South Africa (1996f).

⁵³Previously disadvantaged individuals (PDIs) are those who fall into population groups that had no franchise in national elections prior to the introduction of the 1983 and 1993 Constitutions. Female equity means the value of the shareholding held in the tenderer's business entity by a South African woman.

to at least US\$10 million, are subject to the Industrial Participation Obligation, a new clause that all purchasers (government or parastatal) must include in procurement contracts. Under the clause, the seller must invest in South Africa at least 30% of the value of the imported content of the purchase (section (xii)).

83. From 1992 to 1996, government procurement of goods and services was an estimated R 56 billion (R 44 billion of goods and services, and R 12 billion of capital assets), of which: R 22 billion for the Central Government, R 25.5 billion for Provincial Governments, and R 8.5 billion for local Governments. During 1996, the State Tender Board considered 1,968 purchase memoranda amounting together to some R 8 billion. Government procurement amounted to about R 9 billion between 1 January 1996 and 6 March 1997, and represented about 30% of all government expenditure during the financial year 1995/1996.

(xii) Countertrade

84. The National Industrial Participation Programme resembles countertrade, mainly when the tenderer/seller is a non-resident; the similarity is more pronounced and straightforward when the tender contract is on supply of services. The NIPP is, in the cases under consideration, a countertrade contract in the sense that goods and/or services imported under the tender contract are partially offset by exports of services and, to a certain extent, of goods, during the period of fulfilment of the Industrial Participation Obligation. The Programme provides for the inclusion of an Industrial Participation (IP) clause in all contracts of state and parastatal purchases and leases with import content of at least US\$10 million. Under the IP clause, the seller must invest at least 30% of the value of the imported content of the purchase (the IP Obligation) in any new or incremental business project in South Africa. The project submitted by the seller must be of mutual benefit, and economically and operationally sustainable, even after the discharge period of seven years from the entry into force of the contract. Only 50% of a new obligation can be fulfilled by banked credits; trading of banked credits is not allowed, unless within a group.

85. Industrial Participation agreements are between the Government of South Africa and the supplier, and not between the purchaser and the supplier. All IP agreements include a 5% performance guarantee to discourage sellers from not fulfilling their IP Obligations; performance is based on the generation of revenues and the guarantee must be lodged prior to the contract being awarded. The supplier must submit biannual reports on progress, and audited annual reports, to the Secretariat of the National Industrial Participation Programme, in the Department of Trade and Industry. On the basis of these reports, the Secretariat submits its quarterly status reports to the IP Control Committee (the IP decision-making organ) consisting of the DTI, and representatives of the Ministries of Foreign Affairs and Finance.

86. Other forms of countertrade in which the defence industry has been engaged still exist.⁵⁴

(xiii) Other measures

87. In May 1995, South Africa disinvoked the import surcharge introduced in 1985 for balance-of-payments purposes; the decision took effect from 1 October 1995.⁵⁵

88. According to the authorities, South Africa has no agreements with foreign governments or enterprises designed to influence the quantity or value of goods and services exported to South Africa;

⁵⁴GATT (1993).

⁵⁵WTO Document WT/BOP/N/5, 14 November 1995.

furthermore, there are no such agreements between companies operating in South Africa and foreign enterprises. The arrangement between the South African and Swazi sugar industries which had limited the quantity of sugar (unfinished or intermediate sugar) produced in Swaziland and sold in South Africa was terminated in 1995. Import and export cartels are not prohibited in South Africa (section (4)(iii)).

(3) Measures Directly Affecting Exports

(i) Registration and documentation

89. Similar registration and documentation requirements apply to both exporters and importers in South Africa (section (2)(i)). In addition, in order to be eligible for export incentives, firms must be registered with the Department of Trade and Industry.

(ii) Export taxes, charges and levies

90. South Africa imposes a 15% export tax on unpolished diamonds.

(iii) Export prohibitions, controls and licensing

91. South Africa prohibits exports of crude or unprocessed tiger's-eye (a precious stonnee). In accordance with Government Notice N° R2263 of 14 August 1992 on Export Control, certain goods, including coffee, wattle seed, ores, oils, tiger's-eye, copper, lead, manganese, motor cars and vehicles, and chemical products are subject to export control by means of permits issued by the Sub-Directorate of Import and Export Control, Department of Trade and Industry. All applications must be submitted for recommendation to the government departments acting as controlling authorities before being handed to the Sub-Directorate. The permit is non-transferable and valid for a maximum period of six months. Table III.13 provides the list of products and government departments involved in the export control of each product; the list does not include agricultural products controlled by marketing boards.

Table III.13

Products subject to export control, May 1997

Tariff heading	Description of goods	Code Letter ^a
09.01	Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion	H
Ex 12.09	Wattle seed being: - Acacia mearnsii de Willd (formerly known as Acacia mollissima Willd) (commonly known as Black Wattle) - Acacia decurrens (Wendl. Willd) (commonly known as Green Wattle) - Acacia dealbata Link (commonly known as Silver Wattle) - Acacia psycnantha Benth - Acacia syanophylla Lindl	W
2530.90.20	Lithium ore	M
2530.90.90	Sugulite (also known as lavulite or lazulite): unworked or simply sawn or roughly shaped	M
2607.00	Lead ores and concentrates	H
26.11	Tungsten ores and concentrates	H
26.13	Molybdenum ores and concentrates	H
Ex 2625.90	Tantalum ores and concentrates	H
2710.00.12	Petrol	M
2710.00.13	Aviation spirit	M
2710.00.14	Aviation kerosene; power kerosene; illuminating or heating kerosene	M
Ex 2710.00.16	Diesel oil	M
2710.00.17	Residual fuel oils	M
2711.12	Petroleum gas: propane	M
2711.13	Petroleum gas: butane	M
2903.19.10	Trichloroethane (methyl chloroform)	...
2903.30.10	Bromomethane (Methyl Bromide)	...
2903.41	Trichlorofluoromethane (CFC11)	...
2903.42	Dichlorodifluoromethane (CFC12)	...
2903.43	Trichlorotrifluoroethanes (CFC 113)	...
2903.44	Dichlorotetrafluoroethanes (CFC 114) and chloropentafluoroethane (CFC 115)	...
290345.05	Chlorodifluoromethane (CFC 22)	...
2903.45.90	Other derivatives perhalogenated only with fluorine and chlorine: other	...
2903.46	Bromochlorodifluoromethane (Halon 1211), bromotrifluoromethane (Halon 1301) and dibromotetrafluoroethanes (Halon 2402)	...
2903.49.10	Derivatives of methane, ethane or propane, halogenated only with fluorine and chlorine	...
Ex 30.02	Human blood and preparations thereof Medicaments containing other antibiotics being:	N
3003.20.90	Invomec inj-cattle (reg. N° G541, Act 36/1947)	L
	Invomec inj-sheep (reg. N° G782, Act 36/1947)	L
	Invomec liquid-sheep (reg. N° G590, Act 36/1947)	L
	Eqvalan paste for horses (reg. N° G667, Act 36/1947)	L
3824.71.10	Mixtures containing dichlorodifluoromethane or trichlorofluoromethane (CFC 500)	...
3824.71.90	Other (CFC 502)	...
Ex 44.03	Saw logs of yellowwood (Podocarpus Falcatus, Podocarpus Henkelii, Podocarpus Latifolius); stinkwood (Ocotea Bullata) and blackwood (Acacia Melanoxylon)	W
Ex 44.07	Sawn yellowwood (Podocarpus Falcatus, Podocarpus Henkelii, Podocarpus Latifolius); stinkwood (Ocotea Bullata) and blackwood (Acacia Melanoxylon)	
47.07	Waste and scrap of paper or paperboard	H

Table III.13 (cont'd)

Tariff heading	Description of goods	Code Letter ^a
Ex 7103.10.10 Ex 7103.10.20	Tiger's-eye including its related varieties and also any articles consisting wholly or partly of tiger's-eye or its related varieties but excluding properly finished and finally and completely polished cabochons, beads, eggs, spheres, tumbled stones and carvings cut therefrom or otherwise processed or tumbled Definitions (1) "Cabochon" shall mean a stone of which the top forms: - a symmetrically curved convex or concave surface; or - a flat surface, provided the stone is either round or oval or crescent, heart, cross or tear shaped; the base may be convex, concave or flat. (2) "Bead" shall mean a stone of any shape of a mass not exceeding 50 grammes which has been drilled in such a way that it can be strung in a necklace. (3) "Egg" shall mean a symmetrically egg-shaped stone. (4) "Sphere" shall mean a symmetrically sphere-shaped stone. (5) "Tumbled stone" shall mean an uncut, unsawn stone or irregular shape of a mass not exceeding 50 grammes which has been properly tumbled to such an extent that it has a pebble-like appearance. (6) "Carving" shall mean a cabochon, bead, egg, sphere or tumbled stone as defined in these regulations which has been artistically carved or sculptured. (7) "Polish" shall mean the process commonly accepted in the lapidary trade whereby fine abrasives and polishing powders are used to smooth a stone to a perfect mirror-like appearance without applying any lacquer or varnish.	M
Ex 7103.10.10 Ex 7103.10.20	Sugulite (also known as lavulite or lazulite): unworked or simply sawn or roughly shaped	M
72.04	Ferrous waste and scrap; remelting scrap ingots or iron or steel	H
7403.12	Refined copper: wirebars	H
7403.13	Refined copper: billets	H
7403.21	Copper-zinc base alloys (brass)	H
7403.22.90	Copper-tin base alloys (bronze) other	H
7403.23	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver)	H
7404.00	Copper waste and scrap	H
7503.00	Nickel waste and scrap	H
7602.00	Aluminium waste and scrap	H
7801.10.10	Lead ingots	H
7802.00	Lead waste and scrap	H
7803.00	Lead bars, rods, profiles and wire	H
78.04	Lead plates, sheets, strip and foil; lead powders and flakes	H
7805.00	Lead tubes, pipes and tube or pipe fittings (for example, couplings, elbows, sleeves)	H
7806.00	Other articles of lead	H
7902.00	Zinc waste and scrap	H
8002.00	Tin waste and scrap	H
81.01	Tungsten (Wolfram) and articles thereof, including waste and scrap	H
81.02	Molybdenum and articles thereof, including waste and scrap	H
81.03	Tantalum and articles thereof, including waste and scrap	H
8104.20	Magnesium waste and scrap	H
81.07	Cadmium and articles thereof, including waste and scrap	O
8110.00	Antimony and articles thereof, including waste and scrap	O
8111.00	Manganese and articles thereof, including waste and scrap	O
Ex 81.12	Beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium) and articles of these metals, including waste and scrap	O
Ex 8479.89.90 Ex 8479.90.90	Automatic pool cleaners and parts thereof	H

Table III.13 (cont'd)

Tariff heading	Description of goods	Code Letter ^a
85242190	Other	H
Ex 87.02	Motor cars and other motor vehicles principally designed for the transport of persons and goods but excluding vehicles exported by diplomatic and foreign representatives and new vehicles exported by local manufacturers or their appointed agents	H
Ex 87.03		
Ex 87.04		

... Not available.

a The code letters indicate the Government Departments that control the exportation of the production in question:

- H Department of Trade and Industry.
- L Department of Agriculture.
- M Department of Mineral and Energy Affairs.
- N Department of National Health and Population Development.
- O Department of Environment Affairs.
- W Department of Water Affairs and Forestry.

Source: Information provided by the South African authorities.

92. Exports of explosives are controlled under the 1956 Explosives Act and Regulations (Act No. 26, as amended). Only the South African Reserve Bank (SARB) and Rand Refined Limited are authorized to export gold; all other exports of gold must be approved in advance by the Exchange Control Department of the SARB. South African residents are permitted to export currency coins and numismatic items within an overall limit of R 300 per applicant per calendar year but the export of currency coins in excess of this amount must be approved by the SARB. Emigrants from South Africa may export motor vehicles within the overall insured value of R 100,000 as well as household and personal effects to the value of R 100,000.

93. Agricultural products such as wheat, dried fruit, citrus and deciduous fruit, administered by control boards, are subject to export control; the boards are the sole exporters of the products or administer single export marketing channels (Chapter IV(2)(ii)). Exports of oil seeds and oil/cake have been subject to export permits since 8 August 1996; single channel export systems were introduced in April 1994 for groundnuts, and in January 1996 for sunflower seed and soya beans. The Sugar Association of South Africa is the sole exporter of sugar. Exports of wine are subject to an export certificate under the Liquor Products Act. Exports of fertile ostriches and hatching eggs are prohibited.⁵⁶

94. Under the August 1992 Notice, the following goods are exempt from export permit: goods landed for transit; goods (excluding motor vehicles) exported as household or personal effects for personal use by a natural person leaving South Africa permanently; goods exported as *bona fide* gifts at own cost by a natural person in South Africa to a designated natural person living outside the SACU area; samples of no commercial value; and goods imported to South Africa for repair or maintenance and exported to the original consignor.

(iv) Export quotas and voluntary restraints

95. South Africa was not a signatory to the Multifibre Arrangement (MFA). Former restraints on South Africa's exports of iron and steel to the European Union (EU) and the United States, of apples to the EU, of cottonne textiles and clothing to the United Kingdom, of clothing to France, and of fabrics and apparel to Canada have been terminated. South Africa's exports of sugar to the United States are subject to a preferential tariff-quota system: exports falling within South Africa's quota allocation are free of import duty under the General System of Preferences (GSP).

⁵⁶A 1997 Livestock Improvement Bill contains provisions for the declaration of "landraces" (locally developed and indigenous breeds); once declared, a landrace breed may only be exported with a "Livestock Improvement permit".

(v) Export subsidies

96. The General Export Incentive Scheme (GEIS) was introduced on 1 April 1990. Under GEIS, the Government provided financial assistance to any legal or natural person, duly registered with the Department of Trade and Industry as being actively engaged in the export of certain categories of goods.⁵⁷ The amount of financial assistance to an exporter was calculated on the basis of a formula and increased with the f.o.b. value of the export, the degree of processing and the level of local-content (Box III.3). In consequence, the GEIS aimed to increase the share of higher value-added manufactures in South Africa's exports. GEIS claims took about three months to be processed and paid.⁵⁸

97. Aware that GEIS was inconsistent with GATT and WTO rules, the authorities decided in 1994 to phase it out. Payments under GEIS became taxable on 1 April 1995 and were scaled down. On 1 April 1995, GEIS was revised and products were reclassified: "relatively" primary products, previously classified in the category of material intensive products, were reclassified to category 2, which category of products became non-eligible. The second revision of GEIS in 1996 limited the benefits of GEIS to fully manufactured products (category 4 goods).⁵⁹ However, the minimum level of local-content that provided, *ceteris paribus*, the maximum subsidy, was reduced from 75% to 60% in 1995; the minimum local-content requirement of 35% was maintained. The GEIS was originally scheduled to be terminated on 31 December 1997, but in April 1997, the Government announced the early termination of the scheme as from 11 July 1997.

98. Government expenditure under GEIS amounted to about R 5.88 billion over the period 1993/1994 to 1996/1997, with R 1.33 billion in 1993/1994; R 1.47 billion in 1994/1995; R 1.88 billion in 1995/1996; and R 1.20 billion during the first eleven months of the financial year 1996/1997. The GEIS expenditure budgeted for 1996/1997 was R 1.58 billion.

⁵⁷The assistance was financed through the central budget of the Government.

⁵⁸See GATT (1993).

⁵⁹See GATT (1993) for the main provisions of GEIS up to 1993.

Box III.3: The General Export Incentive Scheme (GEIS)

The amount of financial assistance provided to an exporter under GEIS was determined on the basis of the following formula:

$$Z = U(M \pm E)P, \text{ where:}$$

Z = cash subsidy provided to the exporter;
 U = f.o.b. value of the export in rand;
 M = manufacturing level factor;
 E = exchange rate factor through which M was adjusted for inflation and exchange rate fluctuations; and
 P = local-content factor of the export product.

With the purpose of determining M , export products were grouped in four categories according to their degree of transformation. Following the 1995 and 1996 revisions, the range of products eligible for the subsidy was reduced; only fully manufactured products qualified for the GEIS. The 1993 and 1997 categories of products and corresponding M -factors were as follows:

Category	Manufacturing Level	M-factor (%)	
		1993	1997
1	Primary products	n.a.	n.a.
2	Beneficiated primary products	7.5	n.a.
3	Material intensive products	12.5	n.a.
4	Manufactured products	25.0	25.0

n.a. Not applicable.

$(M \pm E)$ represented the adjusted manufacturing level factor and E the change (in absolute value) in the real effective exchange rate of the rand measured against a basket of currencies of eight major trading partners of South Africa, using 1979 as the base. E was determined in advance by the South African Reserve Bank for six-monthly periods. The adjusted manufacturing level factor declined in the case of depreciation ($(M-E)$ applied) and increased in the case of appreciation ($(M+E)$ applied) of the real effective exchange rate with respect to its 1979 reference level. Therefore, the exchange rate factor (E) was used to compensate exporters for the adverse effects of inflation and/or appreciation of the rand; in the case of depreciation, the E -factor contributed to relieve pressure on the Government's budget by limiting its assistance under GEIS. In March 1997, the E -factor was 13% and corresponded to a depreciation of the real effective exchange rate of the rand with respect to its reference level.

Following the revisions of the GEIS, the upper boundary of the adjusted manufacturing level factor ($M \pm E$) was set at 6% for category 4 products, the incentive having been abolished for the other categories of products. Therefore, if the adjusted manufacturing factor were higher than 6%, then the latter would have applied. With $M = 25\%$ and $E = 13\%$, the calculated level of $(M \pm E)$ was equal to 12% which was higher than the upper boundary of 6%. In consequence, the adjusted manufacturing level factor applied was 6% in March 1997.

The P -factor was determined with reference to a standard definition of local-content $\{L = (U-I)/U\}$, where L was the level of local-content; U was the f.o.b. value of the export in rand; and I was the value of imported inputs used in the production of the exported good. P was set as follows:

$$\begin{aligned}
 P &= 0 \text{ if } L < 0.35; \\
 P &= (U-I)/U \text{ for } 0.35 \leq L < 0.60; \text{ and} \\
 P &= 1 \text{ for } L \geq 0.60.
 \end{aligned}$$

Therefore, for the eligible products i.e. "fully manufactured" goods, the GEIS can be summarized as follows:

$$\begin{aligned}
 Z &= 0 \text{ for } L < 0.35, P = 0; \\
 Z &= (U-I)(M \pm E) \text{ for } 0.35 \leq P = L < 0.60; \text{ and} \\
 Z &= U(M \pm E) \text{ for } L \geq 0.60, P = 1.
 \end{aligned}$$

The level of assistance increased with the value of exports (the manufacturing level factor was constant, i.e. 25%) and declined with the value of imported inputs (in other words, Z increased with the level of local-content of the export).

(vi) Duty and tax concessions

99. Rebates, refunds and drawbacks of import duties (full customs duties in general) are available to all manufacturing industries producing for export. The concessions are granted on imported inputs, including raw materials and components used in production of goods solely destined for export. Full rebates or refunds of customs duties are also granted on goods temporarily admitted for processing, repair, cleaning and reconditioning or for specific purposes (e.g. containers used as packing, goods for display or used at exhibitions and fairs), and on goods imported and then re-exported in the same condition or state. Goods for use in the manufacture, processing, finishing, equipping or packing of products exclusively for export, may be recommended by the Board on Tariffs and Trade for temporary admission with a rebate of customs duty under Schedule 4, Part 3. Goods admitted under rebate or refund must be cleared in terms of a permit issued by the Director-General of Trade and Industry. The permit is readily granted, in an endeavour to boost South Africa's export performance.⁶⁰ In 1996, exported goods that received rebates or duty drawbacks in their production, represented more than 20% of the total value of South Africa's exports; more than 45% of the accepted applications for rebates and drawbacks directly concerned goods imported for export purposes (Table III.14).⁶¹ Liability for the duty on any goods granted concessions ceases upon presentation of documentary evidence to the Customs and Excise administration in the Department of Finance that the goods were exported.

100. The number of applications for drawbacks is relatively low because of delays related to refunds. Exports are zero-rated; therefore, exporters qualify for VAT refunds for all goods and services incorporated in their exports.

Table III.14

Applications for permits for rebate or drawback of duty, 1996

Type of application	Number	Supported	Rejected	Outstanding as at 31.12.96
Motor vehicle assembly (industry)	4	4	0	0
Compensating products obtained abroad from goods temporarily exported for outward processing	5	4	1	0
Specified motor vehicles (industry)	47	35	12	0
Rebate of the duty on chemical raw materials for the manufacture of other chemical products	30	29	1	0
Rebate of the duty on meat for preparation	20	19	1	0
Rebate of the duty on polymers and copolymers	1	1	0	0
Rebate of duty on goods used for export purposes	504	480	5	19
Drawback on duty on goods used for export purposes	65	63	0	2
Exemption of the duty and payment of surcharge on goods for specified welfare organizations	91	83	8	0
Rebate of the duty on medical insignia	2	2	0	0
Heavy vehicles (industry)	13	13	0	0
Motor vehicle parts and accessories (industry)	27	26	1	0
Motor vehicles industry (miscellaneous)	21	21	0	0
Worn clothing and overcoats	202	201	1	0
Woven fabrics of synthetic filament yarn	216	216	0	0
Total	1,248	1,197	30	21

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

⁶⁰Government of South Africa (1996g).

⁶¹Schedule 5, Parts 3 and 4 provide for miscellaneous refunds of customs duties and fuel levy respectively.

(vii) Export finance, promotion and assistance

101. Various types of incentive schemes are available to South African exporters for the development and promotion of exports, and the development of export markets. The Export Marketing and Investment Assistance Schemes (EMIAs) are available to all exporters, but with special terms for small, medium and micro-enterprises (SMMEs). Administered by the Department of Trade and Industry, the schemes consist of four parts: the Primary Export Market Research Scheme partially compensates exporters (small and medium-sized export undertaking) for costs incurred in developing new export markets through personal contacts with potential foreign clients; under the Outward Selling Trade Mission Scheme, assistance is provided to South African exporters to make contact with foreign buyers; the Inward Buying Trade Mission Scheme provides financial assistance to organizers of inward buying trade missions with a view to establishing contacts between prospective buyers and South African exporters; and the Exhibition Assistance Scheme includes the Official Group Participation and Individual Participation Schemes that encourage and assist South African exporters to participate in exhibitions abroad. Inward and outward investment missions will be covered by the schemes.

102. The state-owned Industrial Development Corporation (IDC), working with local banks, provides credit facilities on extended repayment terms up to ten years with attractive interest rates, for the promotion of exports of capital goods and services.⁶² Aimed at enabling exporters to offer competitive terms to foreign purchasers, the facilities are subject to a South African local-content requirement of at least 70% and the availability of export credit insurance cover from the Credit Guarantee Insurance Corporation (CGIC).⁶³ Under the Life Scheme, the IDC provides low-interest-rate finance for the promotion of exports. The scheme is available to industrialists or groups with assets of more than R 1 million and with projects of which at least 30% of production is directed towards exports. The proportion of the loan to which the low interest rate applies depends on the share of exports in the expected sales. The low interest applies to 100% of the loan if the share is at least 60%, and to half the loan if the share is at least 30% but less than 60%.⁶⁴ The Low Interest Rate Scheme for the Promotion of Exports, is also available to independent industrialists or groups with total assets of approximately R 1 million to R 120 million, for the acquisition of fixed assets (machinery and equipment) to promote new investment directed at exports. Large companies with total assets exceeding R 120 million are partially eligible for the scheme. This scheme is also administered by the IDC.

103. Under the Duty Credit Certificate Scheme, the Department of Trade and Industry offers duty credit certificates to exporters of certain prescribed textile and clothing products with a view to enhancing their international competitiveness (Chapter IV(4)(ii)). The South African Primary Steel Industry promotes exports of secondary steel products by means of financial assistance through the Fund of the Committee for Secondary Manufacture, and price rebate schemes. The incentives are based on the value of the exports. To be eligible for the Fund, a manufacturer must add at least 25% value to South African produced primary steel. The extent of price rebates is negotiated between steel

⁶² Attractive or low interest rates mean the minimum interest rate stipulated by the Organization for Economic Cooperation and Development (OECD) for export credits that receive official financing support. The difference between prevailing South African interest rates (calculated on the basis of a formula taking into account the average of the six month interest rates of negotiable certificates of deposits plus statutory taxes and levies of 0.78% plus a fixed margin of 1.25% for administration fees) and the "attractive" interest rate is subsidized by the Government.

⁶³ Government of South Africa (1996g).

⁶⁴ Government of South Africa (1996g).

primary producers and exporters of secondary products on an individual basis.⁶⁵ Other incentives are available for the promotion of exports of a capital nature, to motor vehicle assemblers, and component manufacturers and exporters (Chapter IV(4)).

(viii) Export credit guarantees and insurance

104. A guarantee facility, the Short-Term Export Finance Guarantee Facility, is available to small, medium and micro-enterprises (SMMEs), exporters in all sectors. The facility is aimed at accelerating the development of SMME exporters by reducing the level of export risk. Under the Scheme, pre- and post-shipment export finance guarantees are provided to SMME exporters who are unable to secure finance from banks. The guarantees are issued by the Credit Guarantee Insurance Corporation (CGIC) and reinsured with the Department of Trade and Industry. To be eligible, SMME exporters must be privately and independently or cooperatively owned and managed; they can have more than one branch, but they must not be part of a larger enterprise.

105. Foreign exchange cover is provided by the South African Reserve Bank through CGIC to exporters of capital goods. According to the authorities, the cover is made available at rates higher than market rates. Export Credit Reinsurance Schemes are available to South African exporters. The schemes consist of reinsurance with the Government for insurance contracts in connection with export transactions, and loans or similar facilities for such transactions; they are available at market rates.

(ix) Other provisions

106. South Africa does not have any export-processing or industrial zones, although goods may be temporarily admitted, for up to six months, for processing.

107. Export collusion is not prohibited under the Maintenance and Promotion of Competition Act (Act No. 96 of 1979, as amended). Boards that market agricultural products exported from South Africa and the Central Selling Organization, a subsidiary of de Beers, which markets diamonds, can be viewed as export cartels.

(4) Measures Affecting Production and Trade

(i) Subsidies and other concessions

108. To encourage investment in South African industry, several concessions are provided to manufacturers by way of deductions and allowances in the determination of taxable income. Table AIII.3 presents a summary of selected incentives available to South African producers. The Industrial Development Corporation provides financing facilities (medium to long term low interest rate loans in general) for the establishment and expansion of economically viable manufacturing activities undertaken by small, medium and large scale industries in South Africa (section 3(vii)). It may also take equity in industrial enterprises and provides buildings for general factory purposes to industrialists on a lease basis.

109. The World Player Scheme, within the context of the IDC, is available to manufacturers whose total nominal *ad valorem* import tariff protection will decrease by at least 10 percentage points over the period 1995 to 1999, and to manufacturers whose turnover will materially be affected by a reduction of at least 10 percentage points of import tariffs on competing productions, even if the tariffs on the goods they are producing are not to fall by the required percentage points. Applicants in

⁶⁵Government of South Africa (1996g); and SADC (1997).

textile, clothing, footwear and motor vehicle component branches, who meet all the criteria, except the required decrease in import tariffs on the goods they are producing, do qualify; however, manufacturers of motor vehicle components aimed at the export market do not. The Scheme is aimed at improving the international competitiveness of eligible firms and consists of loans at a low interest rate to the manufacturers concerned.

110. The Job Scheme aims to create new or additional production capacity, which in turn must result in the creation of additional employment opportunities. The scheme finances, at a low interest rate for the full loan period (with a maximum of six years), enterprises for which the cost of creating one new job opportunity will not exceed R 100,000 and which will create at least ten additional employment opportunities.

111. Tax holidays (up to a maximum of six years) are awarded to companies incorporated on or after 1 October 1996 with manufacturing projects as their sole business. The investment in plant and machinery of the applicant must exceed R 3 million. The scheme has three components: a spatial component based on location, an industry component, and a human resource component based on the ratio of human resource remuneration to value added. For each component, the company concerned is entitled to the tax holiday status for two consecutive years. The incentive (tax holiday) also includes a foreign investment location grant of up to US\$250,000 for foreign investors (from all foreign sources) bringing in new industrial equipment. The tax holiday commences in the first year in which the company has taxable income and lapses ten years after the project was approved.

112. Dividends declared by companies out of profits derived while they are enjoying tax holiday status are exempted from the 12.5% Secondary Tax on Companies (STC).⁶⁶ This exemption falls away six months after the end of the tax holiday period. Dividends received by the shareholders of such companies are exempt from income tax in terms of the general exemption provisions of the 1962 Income Tax Act. Cost of capital expenditure incurred for the purpose of scientific research, lease premiums paid for the right of use of, and an allowance in respect of, plant and machinery, buildings and improvements are in some instances deductible in the determination of taxable incomes. Furthermore, deductions are allowed in respect of lease premiums paid for the right of use of land, motion picture films, patents, designs, trade marks or copyrights used for the production of income in the carrying on of trade in South Africa. A deduction is also allowable, at the discretion of the Commissioner for Inland Revenue, of an amount by which the value of any machinery, plant, implements, utensils and articles (other than items used in a process of manufacture) used by the taxpayer for the purposes of his trade, has been diminished by reason of wear and tear or depreciation during the year of assessment.

113. The Small/Medium Manufacturing Development Programme (SMMDP) was launched on 1 October 1996 with a view to encouraging investment in manufacturing by small and medium-sized enterprises and facilitating a higher degree of labour absorption. The SMMDP is available to local and foreign firms as well as to sole proprietors and partnerships (excluding trusts), investing not more than R 3 million in land, buildings, plant and equipment. The programme consists of an establishment grant and a profit/output incentive. The SMMDP provides for a foreign investment grant of value up to US\$50,000.

114. The Government also offers financial assistance to the private sector with a view to supporting and encouraging training. Other incentives available to producers include the Standard Credit Guarantee Scheme, the Work Place Challenge, and the Emerging Entrepreneur Scheme (Table AIII.3).

⁶⁶The STC is levied at a single rate of 12.5% on dividends declared by Companies.

(ii) Assistance to adjustment, research and development

115. In South Africa, a number of specialized institutions provide finance for adjustment and development, and promote research (Table AIII.3). The Council for Scientific and Industrial Research (CSIR) is a multi-disciplinary research, development and implementation organization, which receives financial assistance from the Government. Its main goals are to develop, transfer and apply scientific and technological expertise to strengthen local industry, commerce and the supportive infrastructure, as well as to protect the environment. CSIR identifies scientific and technological market needs of its clients in the private and public sector, determines future opportunities, and makes research results available to industry at market prices. Technifin (Pty) Ltd, a joint-venture between the Industrial Development Corporation (IDC) and the South African Inventions Development Corporation (SAIDCOR), a subsidiary of CSIR, finances and supports the commercialization of new technology and products, and provides managerial inputs for innovation projects with economic merits.

116. The IDC also administers the Support Programme for Industrial Innovation (SPII) under which financial support is provided towards the development of new products in all branches of industry.⁶⁷ The assistance is provided on a "rand-for-rand" basis of qualifying costs to a maximum of R 1 million per project. From April 1993 to March 1997, financial support of R 68.36 million was approved for 147 SPII projects. Under the Technology and Human Resources for Industry Programme (THRIP), the Government and the private sector finance research efforts aimed at enhancing the competitiveness of South African industry. In 1995, 78 projects were supported under THRIP; total funding amounted to R 17 million of which R 11 million was provided by industrial companies, including parastatals, and R 6 million by the Government. About one third of the projects supported under THRIP were in the mining and quarrying sector.

117. On 1 May 1991, a new incentive scheme for regional industrial development (industrial decentralization), with an annual budget of R 100 million for new manufacturing industries, replaced the 1982 Regional Industrial Development Programme (RIDP).⁶⁸ The general aim of the 1991 programme was to create prosperity and employment opportunities by means of successful propulsive industries established outside the Gauteng - including the Pretoria-Witwatersrand-Vereeniging (PWV) complex - and the Durban core areas. The programme consisted of an annual establishment grant, a profit/output-based incentive, and relocation grants; it was abolished in October 1996. Regional development objectives have been incorporated in new programmes, such as the Tax Holiday and the SMMDP introduced on 1 October 1996.

118. General incentives, including rail, ocean and air freight concessions and electricity tariff concessions are also granted to local producers and/or exporters. The Maputo Development Corridor, an initiative of the Governments of Mozambique and South Africa with participation and funding from the private sector, is aimed at exploiting the natural resources and development opportunities along a corridor delimited between Johannesburg in South Africa and Maputo in Mozambique.⁶⁹

⁶⁷The SPII replaced the Innovation Support for Electronics (ISE) scheme on 1 April 1993.

⁶⁸See GATT (1993); and Rwigema (1995) pp. 579-531.

⁶⁹SADC (1997).

(iii) Competition policy

(a) Legislation

119. Anti-competitive practices in South Africa's economy are regulated by the 1979 Maintenance and Promotion of Competition Act (Act No. 96). Amended several times, most recently in 1990, the Act provides for the maintenance and promotion of competition, the prevention or control of restrictive practices, the monitoring of the acquisition of controlling interests in businesses or undertakings, and monopoly situations, and related matters. Under the Act, an administering agency, the Competition Board, was established in January 1980, to advise the Government in connection with competition policy. The Board consists of:

- the chairman of the Board on Tariffs and Trade (BTT);
- the registrar of financial institutions, mentioned in the Limitation and Disclosure of Finance Charges Act of 1968;
- the governor of the South African Reserve Bank, or any person designated by him;
- the chairman of the National Marketing Council;
- a member nominated by the Minister of Finance;
- a member nominated by the Minister of Agriculture; and
- between two and seven members appointed by the State President, for five years maximum.

120. The Chairman and the Vice-chairman of the Board are appointed by the Minister of Trade and Industry from among the members. On its own initiative or at the request of the Minister, the Board conducts general and specific investigations, and makes recommendations to the Minister on the basis of an assessment of the competitive situation in the relevant market.⁷⁰ The final decisions relating to the investigations are made by the Minister and published in the Government Gazette.⁷¹ Infringers are liable to a fine of up to R 100,000 or imprisonment for a term not exceeding five years, or both. Any person affected by the Minister's decisions has a right to appeal to a special court to be constituted by the State President. The decisions of the special court are not subject to appeal or review by any court of law.

121. The Act does not contain any express prohibitions. However, the Minister of Trade and Industry may, acting on the advice of the Board, prohibit restrictive practices, acquisitions, mergers and monopoly situations (i.e. essentially dominant positions) identified by the Board. In this connection, practices, such as resale price maintenance, horizontal price collusion, horizontal collusion on conditions of supply and market sharing, and collusive tendering have been declared unlawful.⁷² Such prohibitions apply to goods and services, including those supplied by the State. Exempt from the prohibitions are goods or services sold outside the SACU area and thereby export cartels, collusion between wholly owned subsidiaries of holding companies, specified types of close corporations, collusive tendering provided that the collusion is disclosed at the time the tender is submitted, and non-enforceable recommended prices and conditions of supply by associations of professionals or by individual suppliers.

⁷⁰Formal investigations are, in principle, limited to three months, but the Minister may extend the period.

⁷¹The Board annually reports its activities to the Minister. The board dealt with 131 cases in 1996 against 160 cases in 1995; restrictive practices represented about 50% of the total.

⁷²Government Notice No. 801, 2 May 1986.

122. The Minister of Trade and Industry may, on the recommendation of the Board, grant exemptions; e.g. certain small and medium-sized enterprises have been granted exemptions in order to compete against larger companies. Exemptions have also been granted in respect of, *inter alia*, the currently regulated liquid fuels industry, the road emulsion industry, certain banking activities relating to the financing of low cost housing, and certain international transportation and stevedoring agreements.

(b) Price regulation and controls

123. The Price Control Act (Act No. 25 of 1964) provides for a Price Controller who, *inter alia*, may determine, control or regulate the maximum prices of goods or services at both the manufacturing and retail level. In terms of specific Acts of Parliament, the retail price of petroleum products, such as coal, paraffin, petroleum and diesel are still controlled by the Department of Mineral and Energy Affairs. The producer price of sugar is controlled by the Sugar Association under the Sugar Act (Act No. 9 of 1978) administered by the Department of Trade and Industry. The producer prices of several agricultural products, such as meat, oil seeds, wheat, canned fruit, mohair and sorghum are under the control of marketing boards.⁷³ The Cooperative Wine Growers Association (KWV) sets the minimum producer price of wines.

124. The pricing of services supplied by parastatals operating in various areas, such as telecommunications and transportation, is subject to Cabinet approval. Telecommunications fees are set by Telkom, a parastatal, and approved by the Minister for Posts, Telecommunications and Broadcasting. Electricity prices are controlled at the wholesale level by a regulatory body. The price of airport services is also regulated, and maximum interest rates, and fees charged by dental technicians are laid down by law. According to the authorities, price controls no longer discriminate against either imports or targeted groups.⁷⁴

(c) Restructuring of state assets

125. The role and importance of the public sector in South Africa's economy was reduced between the second half of the 1980s and the early 1990s; certain major public enterprises were commercialized or privatized.⁷⁵ The restructuring of state assets has since slowed; between 1993 and March 1997, one state-owned enterprise, the Aluminium Corporation of South Africa (ALUSAF), was privatized, another, Transkei Airways, was liquidated, and six marketing boards for agricultural products were abolished although 14 still operate; Chapter IV(2)(ii) provides details on control boards in the agricultural sector.⁷⁶ In March 1997, 30% of Telkom (the state-owned telecommunications company) and 100% of six radio stations were sold. In the second half of 1997, two public enterprises were earmarked for privatization i.e. 100% of the shares of Sun Air (a transport company) and 100% of the shares of Aventura (hotel and food industry) were scheduled for privatization by the end of 1997; 49% of the Airports Company is due to be privatized in the first quarter of 1998. Several state-owned enterprises still hold monopolies or exercise rights in various areas of South Africa's economy, including port, airport, post, telecommunications, electricity, water, transport, and commercial and financial services, manufacturing, and mining and quarrying.

⁷³Deposits on returnable soft drink bottles are also controlled under the 1964 Price Control Act.

⁷⁴In the past, import controls were used to regulate imports.

⁷⁵GATT (1993).

⁷⁶ALUSAF was privatized in 1995, Coopers and Lybrand (1996).

126. In 1996, the status of a National Framework Agreement (NFA) was defined by the National Economic Development and Labour Council (NEDLAC) to address matters that specifically concern the Government and labour in the process of restructuring state assets and public enterprises. As part of the process of implementing the Reconstruction and Development Programme (RDP), the restructuring of state assets and public enterprises is to enhance the efficiency and improve the competitiveness of parastatals, promote human resource development, widen share ownership and stimulate entrepreneurship among previously disadvantaged individuals (PDIIs). Under the agreement, all state-owned enterprises, assets and properties are to be audited. New and contested initiatives of restructuring will be implemented in terms of the NFA. Advisers to assist the Government in the restructuring process were appointed in September 1996.

127. The implementation of restructuring involves four processes, which may be conducted on a parallel basis. During the first process, various state-owned enterprises will be grouped in three categories (Table III.15). The first category comprises state-owned enterprises (SOEs) with an explicit role in the provision of basic needs. SOEs, with a public policy or public interest dimension, which do not provide essential infrastructure services are grouped in the second category. The third category comprises SOEs with no public interest and no visible role in the RDP; loss making enterprises in this category could be sold or liquidated. During the second process, specified guidelines will be applied to the three categories of SOEs: the restructuring of SOEs in category 1 will only occur once sectoral policy has been substantially developed; the restructuring of categories 2 and 3 may commence simultaneously with sectoral policy development. During the third process, the compliance of SOEs with their mission and the structure of the workforce will be reviewed. In the fourth process, a case-by-case review of SOEs will be realized with a view to making decision in respect of, *inter alia*, ownership and accountability.

128. The restructuring is not to occur to the detriment of workers in public enterprises: a scheme for an employee share-ownership programme was established in 1996 to enable employees to own shares within the restructured parastatals.⁷⁷ The extent of foreign involvement in restructuring will be negotiated within the affected enterprises. Any proceeds from the restructuring process will be reinvested in assets or used to support the RDP; the proceeds will not be used to finance consumption. In consequence, following the implementation of the restructuring programme, the State will still play a role in productive sectors of South Africa's economy. The National Framework Agreement will terminate on 27 April 1999 at the earliest.

⁷⁷Government of South Africa (1996h).

Table III.15

State-owned companies (SOCs) to be restructured, June 1997

Company	Activity	Publicly-owned share (per cent)	Likely restructuring scenario
Category 1^a			
Eskom	Electricity supply	Statutory	Undetermined
Telkom	Telecommunications	70	A further 10% soon
Spoornet	Rail transport	100	Strategic equity partner sought
S.A. post office	Postal services	100	To be privatised
SABC ^b	Broadcasting	100	Undetermined
Portnet	Ports	100	Undetermined
Sarcc	Rail commuting	100	Undetermined
Airports company	Air transport services	100	49% privatised by 1998
Air traffic and navigational services	Air transport control	100	Undetermined
Agricultural boards	Agricultural assistance	100	Undetermined
IDC	Industrial development	100	Undetermined
Category 2^c			
Denel	Manufacturing	100	Undetermined
Petronet	Oil/petrol pipeline	100	Undetermined
Atomic energy board	Atomic research	100	Undetermined
Armcor	Armament	100	Undetermined
Moss gas	Oil exploration	100	Undetermined
SAA	Air transport	100	Strategic equity partner sought
Strategic fuel fund	Fuel funding	100	Undetermined
Soeker (pty) Ltd	Oil exploration	100	Undetermined
Foskor	Mining	100	Undetermined
Category 3^d			
Sun Air ^e	Air transport	100	Privatised before end of 1997
Autonet ^e	Road transport	100	To be privatised
Safcol ^e	Forestry	100	Presently restructured
Alexkor ^e	Alluvial diamond mining	100	Undetermined
Transkei airways ^f	Air transport	100	Liquidated in December 1996
Px ^f	Parcel express	100	Candidate for privatisation
Abakor ^f	Abattoirs	100	To be put up for sale
Aventura ^f	Holiday resorts	100	Privatised before end of 1997

a Company with clear public policy.

b Six radio stations of the SABC to the value of R516 million have already been privatized.

c Company with public policy dimensions/strategy.

d Company with no public policy.

e Profitable company.

f Unprofitable company.

Source: Information provided by the South African authorities.

(iv) Protection of intellectual property rights

129. The Directorate of Patents, Trade Marks, Designs and Copyright (Department of Trade and Industry) is the administering organ for intellectual property laws in South Africa. The Directorate is assisted by an Advisory Committee comprising academics, practitioners and legal advisers in the private sector. The Committee, in cooperation with other relevant government departments, drafts intellectual property legislation.⁷⁸

130. The intellectual property legislation of South Africa consists of four main acts: the 1978 Patents Act (Act No. 57, as amended in 1989), the 1993 Trade Marks Act (Act No. 194), the 1993 Designs Act (Act No. 195) and the 1978 Copyright Act (Act No. 98). Other South African intellectual property laws include the 1941 Merchandise Marks Act (Act No. 17), the 1977 Cinematographic Films Act (Act No. 62), the 1967 Performers' Protection Act (Act No. 11) and the 1976 Plant Breeders' Rights Act (Act No. 15). Although geographical indications may be protected under the 1993 Trade Marks Act, there is no specific legislation in South Africa dealing with such protection.⁷⁹

131. The 1978 Patents Act covers all fields of technology; it provides for a patent term of 20 years from the date of filing the patent application, without extension. An application for patent is accepted within 18 months.⁸⁰ Once accepted, patents are published in the South African Patent Journal and in general, are immediately open to public inspection. The patent document is issued without any guarantee of validity; any person may apply to have the patent revoked if invalidity can be proven.⁸¹ Annual renewal fees are payable as from the end of the third year from the date of filing, i.e. 17 annual fees in total. Patentees can, in certain circumstances, apply for restoration if their patents lapse because of non-payment of a renewal fee.

132. The 1993 Trade Marks Act, which came into operation on 1 May 1995, provides for a registration system, an opposition procedure - the opposition period is three months - and a term of protection of ten years, indefinitely renewable for periods of ten years.⁸² For trade mark registration purposes, goods are classified in 34 groups, and services in eight classes; separate applications must be filed in each class in which protection is desired.⁸³ Collective mark protection (i.e. registration of collective marks) is allowed. Protection is afforded to marks that are well known in South Africa as being the mark of a person who is a national of a "convention country", whether or not the trade mark

⁷⁸A fee is collected for the registration of any right in South Africa. It is to cover administrative costs and does not discriminate against foreigners.

⁷⁹WTO document IP/Q2/ZAF/1, 12 May 1997. According to Job (1993), the common law of unlawful competition, the Merchandise Marks Act (Sections 1, 6 and 7) and the 1976 Trade Practices Act (Section 9) cover the provisions of Article 22 (on Protection of Geographical Indications) of the WTO Agreement on Trade - Related Aspects of Intellectual Property rights (TRIPS).

⁸⁰The Registrar of Patents limits the examination of applications to formalities; he does not examine as to novelty or merit.

⁸¹Amendments to a specification are allowed under specified conditions.

⁸²The 1993 Act repealed the 1963 Trade Marks Act. Renewal fees are to be paid.

⁸³The marking of goods sold in South Africa by means of both trade marks and other types of designation and description is protected under the 1941 Merchandise Marks Act.

is registered in South Africa.⁸⁴ Trade marks are advertised in the Patent Journal for opposition to registration. A mark may be removed on the ground of non-use for five years; however, Section 27(1)(a) of the Act provides for removal of registration at any time in the case of absence of an intention to use the mark. Applications for registration of trade-marks increased by more than 60% between 1992 and 1996 (Table III.16).

Table III.16

Applications for intellectual property rights, 1992-1996

	Trade marks	Copyright in cinematographic films	Patents	Designs
1992	11,422	221	10,127	1,196
1993	12,534	240	9,807	720
1994	14,510	206	10,414	703
1995	17,180	234	11,050	1,305
1996	18,420	194	10,956	1,319

Source: WTO Secretariat; and information provided by the South African authorities.

133. The 1993 Designs Act, which came into operation on 1 May 1995, affords protection in regard to both aesthetic and functional designs, and provides for a 15-year term in the case of an aesthetic design and ten-year term in the case of a functional design.⁸⁵ The registration system and procedures are similar to those of patents. The registration of a design confers on the proprietor the exclusive right to make, import, use or dispose of any article included in the class in which the design is registered and embodying the registered design or a design not substantially different from the registered one.

134. Creative works and expressions are protected in terms of the 1978 Copyright Act, the 1977 Cinematographic Films Act and the 1967 Performers' Protection Act.⁸⁶ Computer programmes are protected as a *sui generis* category of works and data bases are protected as literary works. A copyright is conferred on a work if the author is a South African (citizen, domiciled or resident in South Africa), or a body incorporated under the laws of the Republic of South Africa.⁸⁷ The term of copyright protection in South Africa is generally the lifetime of the author plus 50 years; it may vary from one category of work to another. The term of protection available to performers is 20 years, non-renewable.

135. In the event of infringement of intellectual property rights, proceedings are conducted in the

⁸⁴As at mid-May 1997, South Africa has not updated the list of "convention countries" to include WTO Members not parties to the Paris Convention; WTO document IP/Q2/ZAF/1, 12 May 1997.

⁸⁵Functional designs cover, *inter alia*, integrated circuit topographies, mask works and series of mask works. Spare parts for machines, vehicles or equipment are excluded from functional design protection. The term of design protection runs from the date of registration or issue, whichever is earlier. Renewal fees are to be paid after three years and annually thereafter.

⁸⁶Copyrights in respect of cinematographic films may be registered; registration is not compulsory, neither is it a prerequisite for the subsistence of copyright. The Performers' Protection Act provides for protection of the nature of copyright to be conferred to actors, singers and other persons who perform various types of work in public, or for recording or broadcasting purposes.

⁸⁷The protection is extended to the nationals of other Berne Convention countries (Convention to which South Africa is a signatory).

High Court, or the Court of the Commissioner of Patents in the case of patents. Failure by a defendant to comply with an order of the High Court or the Court of the Commissioner of Patents amounts to contempt of court, a criminal offence in South Africa. Appeals may be made to the Supreme Court of Appeal.

136. Remedies available under South Africa's intellectual property legislation to the owner of a right include interdiction, delivery of the infringing articles or goods, removal of the offending trade mark from the infringing goods, damages to make good the loss actually suffered and/or a "reasonable" royalty that would have been payable by a licensee for the use of the intellectual property right in question. Infringing goods seized and detained have included: videos and films; clothing, footwear and fashion accessories; textiles and fabrics; towels; watches; books and publications; bags; engineering drawings; and sunglasses. The importation of infringing goods is not expressly prohibited by the Patents Acts; neither are parallel imports. However, Sections 20 of the Designs Act and 23(2)(a) of the Copyright Act do prohibit the importation of infringing goods. Customs and Excise officers can only take action upon complaints by holders of the property rights. According to the authorities, powers given, under the Copyright and Trade Marks Acts, to the Commissioner for Customs and Excise to prevent the importation of goods suspected of infringing intellectual property rights present practical difficulties.⁸⁸

137. Aware of the enforcement weakness of its intellectual property legislation, South Africa drafted a Counterfeit Goods Bill in 1996. The Counterfeit Goods Act is to improve the criminal provisions and procedures available in cases of counterfeit trade mark goods and pirated copyright works; wider powers are to be granted to customs officers and the police services, especially in relation to seizure.⁸⁹ South Africa has also drafted an amendment bill, the 1996 Intellectual Property Laws Amendment Bill, to address its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The legislations will amend the 1978 Patents Act, the 1993 Trade Marks Act, the 1978 Copyright Act, the 1993 Designs Act, the 1941 Merchandise Marks Act and the 1967 Performers' Protection Act.

138. South Africa is a member of the World Intellectual Property Rights Organization (WIPO), and a signatory to the Paris Convention for the protection of industrial property, to the Berne Convention on Copyright, and to the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms.

⁸⁸The difficulties arise from the fact that the Commissioner must be shown that the party requesting action is in fact the holder of the right. Furthermore, the Commissioner requires security to be furnished not only to cover the expected expense incurred by the action and the detention of the infringing goods, but also to cover any potential liability which he may incur. In practice, substantial security is usually called for. In the past, a shortage of staff has also caused delays.

⁸⁹See USTR (1996 and 1997); and Job (1996).