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CHAPTER 5
CONDITIONS IN CONDUCTING BUSINESS ACTIVITIES IN LESOTHO

Executive Summary

The FIAS Study undertaken in 1997 revealed a lot of problems with the processes involved in setting up a business in Lesotho. The requirements that foreign investors had to fulfill as well as the procedures and processes they had to go through in applying for registrations and licenses were found to be protracted and cumbersome. The study evaluated all the processes involved as well as the institutions involved and made specific recommendations regarding each. The purpose/aim of this current study is to assess the extent to which the recommendations made in the previous study were addressed by the Government of Lesotho (GOL) and by extension by the sectors involved/assessed.

Evidence would seem to suggest that a significant proportion of the recommendations were indeed considered and taken aboard. The GOL acknowledged the potential threat that some of the obstacles posed to investment in Lesotho. Given that the Government recognises the importance of Foreign Direct Investment (FDI) inflows to the growth of Lesotho’s industrial and economic sectors, it has committed itself to adopting an effective and innovative strategy of continuous improvement of the investment environment in Lesotho. This is to be achieved through two main strategies, namely, Creating Economic Competitiveness, and Improving the Investment Environment.

It should not be implied form the above that entry into the business sector in Lesotho is now not problematic. There are still numerous administrative issues that need to be addressed if the environment is to be made attractive for investors. Some steps in the process of registration and licensing are still problematic. For the example, getting a lease or a sub-lease is still a major cause of concern for investors. The delays identified in the 1997 are still present (the Minister still has to sign the approvals for the leases). There is still a requirement that Work Permits and Resident Permits be applied for separately.

Some constraints are of a crosscutting nature in that they apply to all ministries. None of the information management systems in the relevant ministries have as yet been computerised; all ministries are still functioning in a highly centralised manner; and all have significant human resource constraints.
Some progress has been made in some of the sectors. The streamlining of function proposed for the office of the Registrar General has been initiated. The registration of births and deaths has been transferred to the Ministry of Home Affairs, and that for vehicles has been transferred to the Ministry of Transport. The process of transferring the registration of marriages and newspapers to the Ministry of Home Affairs and the General Post Office respectively has been initiated and is to be completed soon. Funds have been identified for the computerisation of the information management system in the office of the Registrar General and all that is being awaited is the approval of the Government department.

Other improvements in the system are to be found in the Ministry of Home Affairs (Immigration and Passports) and in the Ministry of Trade, Industry and Marketing. In the former the department of Immigration and Passports has set up an in-house one-stop-shop that is designed to expedite the process of the evaluation and approval of applications for Resident Permits. In the latter, a lot of the bureaucracy involved in the licensing of companies, especially in the trade sector has been reduced and in some cases even eliminated.

The one outstanding point of concern remains the marginalisation of the local investors by the system itself. Local investors have very limited access to credit facilities. In the cases wherein they do have access to capital, their businesses tend to rely on the Government as the major buyer of their products and services. It is well known that government procedures for payments are cumbersome and this tends to negatively affect the cash flows of the investor.

5.1 Introduction

Despite being wholly surrounded by the richest country in Africa, Lesotho’s business environment suffers from the typical deficiencies in governance and institutions observed in many developing countries. The business environment, dominated by the public sector, is highly uncertain and the supporting legal and regulatory infrastructure is weak. Furthermore, markets as well as financial and human capital are very not well developed.

The quality of physical infrastructure required for supporting business activity is currently very weak. Nationwide electricity and telephone coverage are on the order of 3% and 0.7% respectively. These are nowhere near what is required if the country is to have a vibrant business sector.

The Government of Lesotho has recognised the above as constituting significant barriers to investment in Lesotho. The government further recognises the importance of
Foreign Direct Investment (FDI) inflows for Lesotho’s industrial and economic growth. Given that the markets for FDI attraction are so highly competitive, the government has purported to having committed itself to adopting an effective and innovative strategy of continuous improvement of the investment environment in Lesotho. To that end, the Government is focusing on two major strategies that are as follows:

**Creating Economic Competitiveness**: This is through the provision of infrastructure in all its forms. This includes establishment of an efficient internal road network system, competitively priced utilities services, factory premises and easy access to industrial land and; marketing and developing the country’s major resource, its people.

**Improvement of the Investment Environment**: This is through the maintenance of sound macro economic principle such as stable exchange rates, inflation and interest rates; investment policies and legislation and their implementation to encourage new investment and maintain existing ones whilst at the same time encouraging their expansion.

### 5.2 TERMS OF REFERENCE OF THE STUDY

The study being described herein has two main objectives, namely to assess the barriers to entry into the business sector, and also to assess the factors affecting the conduct of business activity in Lesotho. The findings illustrate the extent to which the GOL strategies described in the previous section are in fact being achieved (or not). There are six main tasks that were to be undertaken as part of the study. These are as follows:

- Collation of statistical information on the number of firms registered during the period 1995-2001 with a sector breakdown.
- An assessment of the conditions of entry into the business sector in Lesotho
- An assessment, in general terms, of the cost of conducting business in Lesotho
- An assessment of the costs involved in conducting a business focusing on export operations
- An assessment of the costs involved in conducting business focusing on import operations
- An overall assessment and recommendations
5.3 Statistics on Firms Registered in Lesotho, 1995 - 2001

Table 5.1 Number of Companies per Sector

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No. Firms</th>
<th>Clothing and Textiles</th>
<th>Agro-industry</th>
<th>Distribution and Commercials</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000/2001</td>
<td>49</td>
<td>33</td>
<td>4</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>1999/2000</td>
<td>39</td>
<td>24</td>
<td>4</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>1998/1999</td>
<td>36</td>
<td>22</td>
<td>4</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>1997/1998</td>
<td>42</td>
<td>23</td>
<td>5</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>1996/1997</td>
<td>41</td>
<td>22</td>
<td>5</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>1995/1996</td>
<td>36</td>
<td>19</td>
<td>5</td>
<td>6</td>
<td>6</td>
</tr>
</tbody>
</table>

Looking at the above table, it is seen that there was an upward trend in terms of numbers of firms entering into the market from 1995 to 1998 after which there was a noticeable decline. This can be attributed in part to the political upheaval of 1998 with the resultant instability/uncertainty within the sector. In some cases there was actual flight of investment on the part of companies already established in the country.

The upward movement seen from 2000 to 2001 can be attributed to the concerted efforts that the Government put into attracting investors back into the country. A number of global initiatives have also helped establish Lesotho as an ideal investment destination. Reference is made here to the AGOA initiative and the EU “Anything but Arms” initiative.

5.4 Conditions of Entry Into the Business Sector

The sequence of events (in terms of departments to be visited) entailed in establishing a business in Lesotho is as follows:

- Law Office (Registrar of Companies) for application to register a company
- Ministry of Industry Trade and Marketing (MITM) for application for a trading or manufacturing license
- Ministry of Tourism, Sports and Culture
• Ministry of Employment and Labour for application for a Work Permit
• Ministry of Home Affairs (Department of Immigration) for application for a Residence Permit
• Each of the above in turn has its own specific requirements and procedures before the approval being sought can be granted. These are all discussed in the section that follows.

5.4.1 Law Office

There are two types of registrations for which applications are made. These are “a company” and a “Partnership”.

Steps involved in the Registration of a Company/Business

Name reservation: this requires the filling in of a form referred-to as “Form A”. The fee required for the name change amounts to M 5.00. This process is said to take just one day.

Once a name reservation has been approved, the applicant has 30 days in which to file a company Memorandum of Association and the Company’s Articles of Incorporation both of which are required for a registration application to be approved. The registration fee is M 100.00 for local companies and M 200.00 for external companies.

In addition to the registration fee, there is also a Stamp Duty that has to be paid. This is calculated on the following basis: M 100.00 is charged for the first 1,000 shares. There is then an additional 1% for each additional 1,000 shares.

For partnerships a name reservation is not required. Application for registration as a partnership is submitted at the office of the Registrar of Deeds. The registration fee for a Partnership is M 100.00.

1 Partnerships are usually entered-into by those entities that are not desirous of registering a company in Lesotho, but would rather prefer to form a Joint Venture (JV) to bid for a specific undertaking after which they would then leave the country.

2 The reservation of names has acquired greater significance since Lesotho became a signatory to the WTO agreements/resolutions as well as the Trade-Linked Intellectual Property (TRIP’s) rights.

3 1,000 shares is the minimum allowable number of shares by law.
Other Forms/Documentation Required (including attendant fees):

- Form B: Change of name (M 2.00)
- Form C: Register and Return as to Allotments (M 2.00)
- Form D: Power to Pay Certain Commissions and Prohibition of Payments of all Other Commissions, Discounts, etc. (M 2.00)
- Form E: Notice of Increase of Share Capital (M 2.00)
- Form F: Registered Office of Company (M 2.00)
- Form G: Restrictions of Commencement of Business (M 2.00)
- Form H: Statutory Meeting and Statutory Report (M 2.00)
- Form I: Registration and Copies of Special Resolution (M 2.00)
- Form J and K: Restrictions on Appointment or Advertisement of Director (M 2.00)
- Form L: Register of Directors and Secretaries (M 2.00)
- Form M: Requirements as to External Companies (M 2.00)
- Annual Returns (M 2.00)
- Financial Statements (M 2.00)
- Late fees (applied for the late filing of annual returns and financial statements) M 5.00
- The total amount of time taken to register a company when/if all the required documentation is in order is just three (3) days.

Constraints faced by the Law Office

Despite this level of efficiency the Law Office faces certain constraints that do, on occasion, hamper the efficient functioning of the office of the Registrar. These are discussed below:

Manual Records System: The entire records system of the Law Office is still manual. This means that when an application for a name reservation is presented, the officer responsible has to physically go to the records section and manually check through all the names in the records, records that date back to 1967. Because the filing is done on an alphabetical basis, it is estimated that this task takes one day.

Centralized System: The second major problem that is faced by the Law Office relates to the fact that the functions of this office are highly centralized. There isn’t as yet any representation of the office of the Registrar at the district level. This means that all persons wishing to register a company or a partnership, no matter how large or small, have to physically come to the Law Office in Maseru.
**Un-streamlined Services:** Registration services undertaken by this office include those for applications that could be more appropriately handled by other sectors. For example, the Law Office handles all registrations for citizenship, newspapers, marriages, births and deaths. A more appropriate situation would be one where newspapers are registered at the Post office, and the others (i.e., citizenship, marriages, births and deaths) at the ministry of Home Affairs.

**Misconceptions:** This “problem” is of a minor nature. This relates to the misconception, on the part of foreign companies, especially South African companies, as to the Sovereignty of Lesotho. In this instance people assume that the regulations that apply in the South African context with respect to registration of companies also apply in Lesotho. In some instances applicants even use the RSA forms to apply at the law office.

**Developments since 1997**

Many of the constraints noted at the time of the FIAS Study in 1997 have either been addressed or the process to address them has been initiated. The Office of the Registrar General has noted and acknowledged the need to separate the registration services rendered to the general public from business registration services. To that end the registration of births, deaths, and leases is now the responsibility of the Ministry of Home Affairs. The process of instituting a similar transfer of the responsibility for the registration of marriages and citizenships (also to the Ministry of Home Affairs) is also underway.

Newspapers are also still being registered at the Law Office. This responsibility is to be transferred to the General Post Office during the course of this year.

The office of the Registrar General has secured funds to computerize its registration services. A feasibility study has been completed, and procurement of the equipment is in the pipeline.

**Recommendations**

The issues outlined above as being constraints to the expeditious registration of companies/businesses in Lesotho need to be addressed if the market is to be made attractive to investors. To that end it is recommended that the GOL urgently see to the computerisation of the records system of the Law Office particularly since the funds had already been identified (apparently the hold up has been at the IT office of GOL).

It is also recommended that steps be taken to ensure that there is representation of the Registrar’s office at the periphery (i.e., at the district level). This could even be piloted on a regional basis, before it is undertaken nationally.
The process that has been initiated with regard to the streamlining of the functioning of the Office of the Registrar General is to be commended. All effort should be made to see to it that is finalised in a timely manner.

The practice of collecting fees related to other forms used in the registration process (see section 4.1.2) separately should be discontinued, rather, these should be included in the registration fee (the Registration Fee can be revised to take these into account).

5.4.2 Ministry of Trade, Industry and Marketing (MITM)

There are two sections in this ministry. These are “Trade” and “Industry”. Both of these cater for two categories of business namely small and large. The two sections are dealt with separately in this report in the following manner:

Trade Licence

This licence is provided for in within the Trading Enterprises Order of 1993. This order provides for the licensing of trading enterprises and services. The objectives of the order are to promote the participation of Basotho in trading, and in the investment, management and control of enterprises. There are two different types of Trading Licences operational in Lesotho. One applies to the so-called “reserved business/trades”. Within this category of licence, only Basotho citizens may apply. The businesses/trades categorised as being reserved are as follows:

- Agent of a foreign firm
- Barber
- Basotho Beer Shop (Shebeen)
- Butcher
- Snack Bar
- Domestic Fuel Dealer
- Dairy Shop
- General Café
- General Dealer
- Green Grocer
- Hawker
- Street Photographer
- Broker (insurance)
- Mini Supermarket

4 The wording of the Licensing Act reads as follows: “Licenses to carry on these businesses shall not be issued or transferred to foreign enterprises”
The following are the procedures to be followed when applying for a Trading Licence (there are two categories of procedure, one is for an individual trader, and the other is for a company):

**Individual Traders**

- Demonstrate proof of ownership of the site to be used for the business. This can be in the form of a lease, or a sublease
- Present certificate (or documentation) of inspection by the Public Health Inspector for application lodged at the district level. In the case of the Maseru, the Maseru City Council will do the inspection
- Proof of citizenship in the cases where the application is for the “reserved sectors”. Naturalised Citizens should provide proof in the form of a Certificate of Naturalisation
- All applicants pay an application fee of M 20.00
- Licence Fee (M 75.00 for individual traders, M 150.00 for companies and M 1 000.00 for “specialised dealers”)

**Companies**

In addition to the above (i.e., requirements for an individual trader), and excluding bullet number 3, a company needs the following:

- Memorandum and Articles of Association
- Certificate of Incorporation
- Tax Clearance Certificate (applies to companies renewing their licences)

In instances where other agencies or departments are involved in the granting of a licence, it is necessary that the company applying for a licence consults with the relevant agency/department and that this agency/department makes a recommendation to the licensing board. This applies to the following cases:

- Builder and Contractor – Ministry of Works (MOW)
- Agricultural products (e.g. skins and hides) – Ministry of Agriculture, Cooperatives and Land Reclamation (MOACL)
- Specialised Telecommunications Dealers – Lesotho Telecommunications Authority (LTA)\(^5\)

- Travel Agent – Tourist Board

- Security Services – Commissioner of Police

It is expected that all the agencies/departments listed above once having approved an application will indicate such in the form of a letter and that this letter will be submitted to the Licensing Board together with all other required documentation. Having received the application, the board makes its decisions based on the “Criteria for Licensing” provided for under Section 5 of the Trading Enterprises Order of 1993. If an application is rejected the board is bound to give the reasons for the rejection.

The time frame for processing a trading licence is one month. The Board sits once per month but is said to have the discretion. The board (company licensing) has the following composition:

- PS- Ministry of Industry, Trade and Marketing (Chair)
- PS- Ministry of Home Affairs
- PS- Ministry of Employment and Labour
- PS- Ministry of Agriculture, Cooperatives and Land Reclamation
- Representative of the Lesotho Chamber of Commerce (appointed by the Minister of ITM)
- The Commissioner of Police
- The Commissioner of Trade (Secretary)

The registration of individual licenses is done at the District level. There the “Licensing Board” has the following composition:

- District Secretary (Chair)
- Representative of the Lesotho Chamber of Commerce and Industry
- Department of Labour
- Police
- Public Health Inspector
- Ministry of Trade (Secretary)

\(^5\) Previously the relevant recommendation would have been made by LTC, the Lesotho Telecommunications Corporation. This corporation has since been privatised, and the LTA established to regulate the sector
Manufacturing Licence

This licence is provided for under the Industrial Licensing Act of 1969. This act sets out the framework for the regulation of the industrial sector and also provides protection to certain “protected” enterprises in Lesotho. It requires/stipulates that any manufacturing enterprise employing more than ten (10) people, or using the aggregate mechanical energy of not less than 25 horse power needs a licence. The “protection” being referred to herein applies in the following circumstances:

- When a similar licence has been granted to others for the same product in the same part of Lesotho
- When there have already been applications for the same product in the same location

In the above two circumstances the law provides for the granting of exclusive protection to the holder of a certain manufacturing licence. In this case the Board ensures that no licence for the manufacturing of this product will be granted to others in Lesotho or certain parts of Lesotho. The exclusivity is given for five (5) years with possible extension of an additional five years.

There are two types of licenses that are provided for within the context of the Industrial/Manufacturing Sector. There is one for Small-scale industries and one for Large-scale industries.

Small Scale Industries

These are reserved for Basotho citizens (inclusive of naturalised citizens) and are defined as “small” on the basis of their having less than ten (10) employees. They fall primarily in the category of artisans and include brick making, carpentry, sewing/tailoring, metal works, soft drink bottling, and leather works.

For an entrepreneur wishing to apply for a licence in this category all that is required is the filling in of an application form. There is no fee attached to this licence. The applicant is provided with a certificate that is then used as a licence. The certificate once issued is renewable annually. It is intended that there be as little red tape as possible within this category of licence. There are therefore no mandated or regular inspections except for those who are involved with the production of foodstuffs. In these cases, the office of the Public Health Inspector undertakes routine as well as spot checks and it is expected that the employees of such companies will be certified as being medically fit to handle food.
The main benefits to the licence holder include discounts at wholesales, exemption from sales tax for some business items and the eligibility to open a bank account.

**Large Scale Industries**

There are no limitations as to who is eligible for these licenses. That is to say, this category of licence is open to all comers. It needs be said here, however, that there is some degree of preference given to those industries that are highly labour-intensive.

The following are the procedures to be followed when applying for a licence for a large-scale concern:

- Company registration with Law Office as described above (Memorandum and Articles of Association, and Certificate of Incorporation)
- Acquisition of a sub-lease agreement
- Health Certificate from either the District Health Inspector or the Maseru City Council
- If the licence is for a partnership, then the Partnership Deed is required
- If it is a Sole Proprietorship, then only the filled application form is required
- An Application Fee of M 50.00 is also required

For all applicants, nine (9) copies of the application form are required. Application forms have to be submitted well in advance so that they can be provided to the board members a week in advance of their sitting. On the day of the Board Meeting, the applicants are invited to come and support their applications and to answer whatever questions the Board Members may have with respect to their application. The Board responsible for the assessment of applications for Manufacturing Licenses is referred to as the Pioneer Industry Board. This board is constituted as follows:

- Deputy Principal Secretary (DPS) MTIM (Chair)
- Commissioner of Industry (Co-chair)
- Representative from the Ministry of Finance
- Licensing Department, MTIM, (Secretary)

---

6 There is in effect no “license”, at least not in the conventional sense, for small businesses (i.e., those employing less than 10 people). What is given out is a “certificate” and this is said, by the Licensing Department, to entitle the holder to the benefits listed (including “discounts from suppliers” where such are offered to “licensed” traders.)
• Representative from the Ministry of Works
• Representative from LNDC
• Representative from the Ministry of Development Planning

The Pioneer Industry Board is scheduled to meet/sit once a month, and as is the case with the application for a company under the Trading Licence, the applicant is notified to come before the Board in order to defend/explain the application. If the licence is then approved the applicant then pays an M 1,000.00 Licence Fee. The whole process of applying for a licence in this category of industry is expected to take no more than one month.

Constraints/Problems

Centralised Systems: Currently all applications for a manufacturing licence have to be filed in Maseru. This is acknowledged to be problem even by the department itself.

Manual Record Systems: The Ministry’s record-keeping system is currently still manual. This is considered to be a key/significant hindrance to the timely retrieval of records when applications for licenses are made.

Lack of Human Resources: There is currently only one officer responsible for dealing with applications for manufacturing licenses. Though three (3) officers have been assigned to this office, two are currently out on long-term training, and there hasn’t been any replacements assigned. This has led to there being a huge backlog in the processing of applications for this category of licence.

Lack of Policies: There are currently no policies governing the award of licenses. Definitions of what constitutes a “small” or a “large” business seem to be arbitrarily decided. The department admits that on occasion decisions are made on a subjective basis, that may even include the physical appearance of the applicant at the time the application is filed (this applies particularly in the assessment of applications for small-scale industries).

Lack of Standards and Guidelines: This relates directly to the issue of there not being policies governing the sector.

Lack of Technical Expertise: This refers to the ability of the department to undertake a technical assessment of an application for a licence. There isn’t any industry specific expertise within the Ministry, and therefore it isn’t always possible to undertake an assessment on a technical basis.

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7 See Annex... for the details re: the establishment of the board and the procedures governing its functioning
Outdated Licence Fees: The Ministry acknowledges that the fees being charged currently are too low, especially with respect to large industries. There is therefore need for these to be reviewed and revised.

Complexity of Application Procedures: According to the Licensing department, the second most frequent complaint they have from applicants (after the issue of delays in issuance of licenses) is that of the level of information (and the complexity thereof) required for the application.

There is very limited access to capital, especially by the local small and medium enterprises.

Developments since 1997

Establishment of a One-Stop-Shop

Given its commitment to making Lesotho attractive to both foreign direct investors as well as to domestic investors, the Ministry of Trade Industry and Marketing has proposed the expansion of the range of incentives offered to investors to include amongst others the establishment of a one-stop-shop or an Investment Advisory Services Centre for Lesotho. It is the expectation of government that this center will assist government in reducing bureaucratic delays associated with sourcing the approvals needed for establishing a business in Lesotho. It is expected that this center will operational during the third quarter of this year (i.e., 2002). The membership of this entity will consist of the following: Ministry of Trade Industry and Marketing, the Law Office, Immigration and Passport Services, Ministry of Local Government, the Lesotho National Development Corporation (LNDC), the Ministry of Employment and Labor.

Free Export Processing Zones

Plans for the establishment of these are well advanced. This is in order that the Government of Lesotho (GOL) can take advantage of the potential that such zones present in terms of the following:

1. Promotion of Foreign Direct Investment (FDI). The expectation here is that the FDI will bring with it increases in jobs, transfer of both technology and skills, and diversification of export products and markets.

2. Facilitation of the ease of movement of goods and services that are intended for export.

3. The GOL feels the country is well placed to benefit from the establishment of the EPZ’s in light of the following characteristics of the country:
   - Enabling economic policy framework
   - Supportive political framework
Abundant and well-educated human resources

Strategic and guaranteed access to certain markets by virtue of the country’s geographical location.

Establishment of an Industrialisation Committee

The Industrialisation Committee is a non-statutory body that was set up on the directive of the Hon. Minister of Trade Industry and Marketing. This directive was borne of a (then) perceived need for a more rational and objective process regarding the establishment of Industrial Sites in the country. This committee has been operational for approximately one (1) year and has been concerned primarily with looking at establishing Industrial Sites in-and-around the country. The membership of the committee is constituted as follows:

1. Hon. Minister of TIM (Chair)
2. Hon. Minister of Finance and Development Planning
3. Hon. Minister of Roads
4. Hon. Minister of Works
5. CEO Lesotho Electricity Corporation
6. CEO Tele-Com Lesotho (TCL)
7. Executive Director, National Environmental Secretariat (NES)
8. Executive Director, Water and Sanitation Authority (WASA)
9. Mayor, Maseru City Council (MCC)
10. Director, Lands Survey and Physical Planning (LSPP)
11. CEO, Lesotho National Development Corporation (LNDC)

The committee has a technical committee that meets every Tuesday and is chaired by the PS-MTIM. Recommendations for approval made by this committee are then passed on to the committee comprising Ministers and CEO’s where decisions are made as to the allocation of industrial sites (this senior committee meets every Thursday).

Recommendations

The lack of policies governing the licensing of businesses and industries in Lesotho is not only a problem in-and-of-itself but also means that there is no basis upon which decisions on industrial sector growth and expansion can be made. This leaves the system open, potentially, to abuse. GOL should therefore make all efforts to develop policies (and attendant guidelines and standards) in this regard.
It is important that technical assessments of proposed businesses/industries be undertaken as part of the processing of an application for a trading licence. This will ensure that a licence is granted appropriately/correctly. It is recommended therefore that candidates be identified and sent for training.

The MTIM should recruit and place two (2) additional officers in the Industrial Licensing Unit (currently there is only one officer who facilitates the processing of licenses). These two additional officers should be sufficient to support this unit whilst the actual holders of office are on study leave. Without this measure the proposed one-stop-shop will be undermined.

There is an urgent need to review the forms used in applying for licences. This applies primarily to the forms used in applying for a manufacturing licence, which have been described as being long and complicated. This form constitutes one of the major complaints that investors raise as being responsible for a major part of their frustration with the system in Lesotho.

Given the significantly large number of applications that are submitted to the MTIM, it is critical that a mechanism be put in place to speed up the retrieval of records. It is therefore of the utmost importance that the record-keeping of the ministry be computerized.

There is a need to review the licence fees, especially for the large scale industries established by foreign investors. The current fee of M 150.00 has been described as being laughable, even by the investors themselves.

5.4.3 Ministry of Tourism, Sports and Culture

The Ministry of Tourism, Sport and Culture has the mandate to licence hotels, off-sales, restaurants & liquor places, bed & breakfast, guesthouses, shebeens, social clubs and related facilities. It also issues permits for sale of alcoholic beverages for special events.

Requirements for Licensing

- The applicant should present a Lease/ sub-lease or Form C 2 as proof ownership of a business site. All businesses selling alcoholic beverages must be 500 meters away from public facilities like a church, a school, a hospital and a court.

- Three site reports from the Police, the department of Public health at district level or the Maseru City Council, and tourism should be submitted to the licensing department

- The board sits approves or disapproves the site
• Applicant submits building plans designed according to type of business applied for and specifications as stipulated in the laws and regulations on accommodation, catering and tourism enterprises.

• An application fee of M60 is paid

• The board sits to approve or disapprove the plans

• Applicant informs the licensing office of progress made and completion of works.

• Licensing officer inspects progress and publishes the business 21 days before the board sits.

• The board sits, approves (or disapproves) and a licence is issued.

It is noteworthy that licence prices have been significantly reduced with effect from 1998. For example the Special Event Permit used to be M 900.00. It has now been reduced to M 400.00

Constraints

• The board sits quarterly. Business operation can be delayed by three months waiting for the board’s approval.

• The process is quite long and cumbersome. It can take up to a year or more waiting for a licence. The procedures should be simplified and shortened for hotels, motels, guesthouses & BB that seem to be in short supply in the country.

• The current legislative framework has significant loopholes that violate the rights of the child, undermines Public Health laws and goes against the principles of fair trade (shebeens are allowed to buy directly from the Brewery). The laws conflict with the general classification of businesses in terms of size. Businesses in this sector are all open to both local and foreign investors. The laws do not provide for call catering yet experience has shown the need for such licences.

• Income tax returns are not a requirement for renewal of licences.

Recommendations

The Ministry should undertake a legislative reform to revisit issues raised above and to subscribe to the reform and improvement initiatives introduced by other agencies in the sector. For example the Government of Lesotho, the Commercial banks and the central banks are currently looking at creating an enabling environment and accessing credit to the SMME’s in an effort to facilitate growth of indigenous enterprises. With none classification of the enterprises in the accommodation, catering & tourism businesses it will be difficult to achieve the desired results.

Lesotho is not only a signatory to the convention of the rights of the child but it has ratified the convention and other related international instruments. Laws that govern
Shebeens should be reviewed as a matter of urgency. These should be re-designed to protect the rights of the child and other family members. It is also noteworthy that the laws only apply to shebeens that sell other alcoholic beverages and not the local home brews. It is important to review the laws in light of the fact that alcoholism is a major problem in the country and alcohol abuse by the youth is taking its toll. It is surprising that the current laws forbids the under 18 year olds to buy or take liquor while ironically the booze can be sold in their dwelling houses.

Licensing should be computerised and linked to the Revenue Authority financial systems. This will facilitate improved collection of sales & income tax from licensed businesses.

Shebeens should buy their stock from the nearest off-sales, and not directly from the Brewery.

5.4.4 Ministry of Employment and Labor

Labour issues are the responsibility of the Ministry of Employment and Labor. The statutes governing these are embodied in the Labor Code Order, 1992 together with its Regulations and Amendments. The Labor Code covers the following areas/ subjects:

The Wage-fixing Machinery, Protection of Wages, Minimum Wages, Hours of Work, Holidays and Leaves, Wages and Conditions of Employment may be fixed by the terms of a contract of employment, a collective agreement, an arbitration award, an industry-wide order or by a wages order issued by the Minister. A Wages Advisory Board recommends minimum wages to the Minister. The last schedule of minimum wages was published on November 1, 1996. The normal hours of work are 45 per week. The minimum paid holidays is 12 days per year. Sick leave is 24 days per year.

Employment of Women and Children, Contracts of Employment, Termination, Dismissal and Severance Pay. No commercial or industrial undertaking is allowed to employ a child under the age of 15. Maternity leave is recognised by law and in addition nursing women are allowed to do so at the workplace.

With regard to the employment of non-nationals, no employer is allowed to employ in Lesotho any person who is not a citizen of Lesotho, unless that person has a valid Certificate of Employment (work permit) that entitles him/her to work in Lesotho. It is required that that before a work permit is issued, the National Employment Service should certify that no citizen is qualified and available for the employment in question.

Trade Unions and Settlement of Disputes. Workers and employers have the right to establish and join organisations of their own choosing without the previous authorisation of the Government. The trade unions and the employers’ organisations
are required by law to register with the Registrar of Trade Unions and Employers’ Organisations. The Labour Commissioner is responsible to act to promote the settlement of labour disputes. Settlement of a dispute may be arranged by agreement, conciliation and arbitration. The Minister may appoint the conciliator arbitrator

**Applying for a Work Permit**

An application for a work permit can be made even before the applicant is physically in Lesotho. A permit for a Managing Director position does **not** need any back-up documentation. A Financial Manager’s Position, on the other hand, does require a history of employment. The requirements for the issuing of Certificate of Employment are as follows:

- Documentation confirming registration of the company
- Valid manufacturing/ trading licence

The Work Permits Board vets applications for Work Permits. This Board meets every week (or is supposed to). Upon an application being approved, the Permanent Secretary of the Ministry of Employment and Labour prepares a Certificate of Employment for the signature of the Minister. This entire process involved in the approval of a work permit once an application has been received is two weeks. The convention is that a 2-year permit is given to the Managing Director and to the Financial Manager. In the event that local skills may be available, six-month permits are given.

**Constraints**

**Procedures for Approval:** The fact that both the Minister and the Permanent Secretary have to sign means that there is potential for delays. This is particularly so given the myriad of commitments that each of them has, and the difficulty there is with accessing them (PS’ and Ministers in Lesotho are always in or outside the country)

**Developments since 1997**

One new development since 1997 is that the Labour Commissioner’s office has begun to computerise their records. Completed to-date is the computerisation of records up to 2000. The 2001 (and beyond) records are in the process of being computerised at present.

**Recommendations**

The Labour Commissioner’s office would like to see a tightening up of the enforcement of regulations related to the awarding of both trading licenses as well as resident permits. The concern she has is that a number of individuals have, in the past, been found to have be in the country without valid visas and without valid businesses, and yet because of the regulations, her office is bound to approve a work permit in the event
that a residence permit and a trading license have been issued. Her hope is that the “One-stop-shop” will go some way towards curbing these transgressions.

5.4.5 Ministry of Home Affairs (Immigration and Passport Services)

The entry of aliens and the residence thereof in Lesotho is under the control and regulation of the Aliens Control Act No. 16 of 1996. Aliens cannot enter Lesotho, or remain there unless the possess two of the following three documents: an indefinite sojourn permit (residence permit), or a temporary sojourn permit (valid for up to 90 days), and a valid passport. Most foreign nationals require a visa to enter into the country and these must be obtained either in the country of origin or in South Africa (Pretoria) at the Lesotho Embassy. There are occasionally exceptions wherein visitors are admitted into the country with the proviso that they obtain visas within 72 hours from the Immigration Office in Maseru.

Requirements for foreign investors

- Memorandum and Articles of Association of the company
- Certificate of Incorporation
- Share Certificate
- Bank Statement
- Trading or Manufacturing Licence
- Work Permit
- Medical Certificate (including Chest X-ray report)
- Income Tax Registration Certificate
- Photocopies of Passport
- Two Photographs and M 10.00 application fee

Requirements for Foreign Employees

- Work Permit

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8 There are Lesotho embassies in Belgium, Canada, Denmark, Germany, Italy, RSA, UK and USA.

9 Under normal circumstances it there usually isn’t any problem with foreign investors and/or their employees getting temporary sojourn permits.
• Letter from employer
• Income Tax Certificate
• Educational Certificate
• Medical Certificate (including report of chest X-ray)
• Photocopies of passport
• Two photographs and M 10.00 application fee

Constraints

Visa Requirements: This constitutes the single biggest point of contention raised by investors. Given that in many instances investors come from a number of countries in the Far East and in Europe that do not have diplomatic relations with Lesotho, they then have to apply for visas outside their home countries. The one option they have is to pass by the Lesotho Embassy in Pretoria en route to Lesotho. The same applies to foreign workers hired to work in Lesotho.

Requirements for Resident Permit: Some of the requirements seem irrelevant to an application for a Resident Permit. For example, it is not clear why an Income Tax Certificate should be required. In addition it is also not clear why a Work Permit should necessarily precede a Resident Permit. There is no clear reason why they cannot be applied for and granted simultaneously. The additional requirement of an Educational Certificate for the purpose of applying for a Resident Permit is not clear, especially when considering that it would already have been submitted in application for a Work Permit.

Duration of Residence Permit: Residence Permits are only issued for a maximum of one year (and sometimes even only for three months)...

Centralised System: All applications for Resident Permits have to be made through the Headquarters office. Some functions that were decentralised in the past were to the central level due to the large amount of fraud that went on in the system.

Manual System: Record keeping in the department is all manual. The problems that this poses for the department are obvious.

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10 The theft of passports is a particular problem for the department. Apparently there is a very professional syndicate at work that even includes members of staff in the Immigration and Passport Services
Poor Quality Staff: In addition to there not being enough numbers of staff, the vast majority of employees in the department have only a school leaving certificate (O’ Level). This is a point of particular concern for the director given the complexities involved in the work done by the department.

Developments since 1997

Eligibility for Resident Permit

Recognising the amount of passport-related fraud, and the potentially deleterious effect it poses to the international reputation of the country, the GOL has recently instituted measures aimed at addressing this problem. No Resident Permits will be granted to individuals who do not have a sponsor/guarantor. The sponsor/guarantor may either be an institution (government ministry, LNDC, etc.) or a person residing in the country.

Procedures for Assessing Applications

As of February 2002, the department has introduced an internal “one-stop-shop” as a means of expediting the processing of applications for Resident Permits. This resulted from the recognition, on the part of the department, of the excessive delays that resulted from the fact of the department having to constantly refer back to all other departments “in the chain” in order to check the authenticity of documentation submitted in support of applications.

Recommendations

There is need to objectively assess and determine the validity period for a Resident Permit. The reasons for the current period of one year seem to have been arrived at in a very arbitrary manner, with the Minister having decided that it should match the duration of the trading licence granted.

It has been shown that some of the requirements for a Residence Permit seem redundant. GOL needs to review some of these and make a determination as to how necessary they really are to granting of a Resident Permit. The requirement of an Income Tax Certificate is one such. There is also the requirement of an Educational Certificate after it has already been produced for the granting of a Work Permit. There is also the issue of the Work Permit having to precede the Resident Permit when there doesn’t seem to be any good reason why they cannot be approved at the same time.

5.5 Cost of Conducting Business

5.5.1 Cost of Conducting Business (General)
The administration of taxes is straightforward. After incorporation, the investor is expected to register with the Income Tax Department within two (2) months. One registers as either a Trader or as an employer (2 different offices in the same building). Upon registration the taxpayer is given a company registration number. Every company engaged in business in Lesotho must be represented by an individual residing in the country. Companies must file an Annual Return of Income for the year ending 31st March.

The last revision of the tax rates was undertaken in April 1997. This stipulated that the tax on individuals be 25% on the first M 30 000; and 35% on the remainder. These taxes are collected monthly using the Pay-as-you-earn (PAYE) method. There is also a flat fee rebate of M 2640 per year to which all taxpayers (including manufacturers) are eligible (this translates to a M 220.00 monthly deduction on monthly tax amount). The PAYE is now payable on the gross monthly salary and not just on “chargeable income” as was the case in the past.

The Sales Tax rate is 10% on most items. Electricity and Telephones are charged at a rate of 5%. Luxury items such as alcohol and cigarettes are charged at a rate of 15%. Some items (particularly those related to the manufacturing industry) are exempt from sales tax:

- Goods acquired for re-supply in substantially the same state
- Goods acquired for use as raw materials or for use in manufacturing, if the investor is registered as a manufacturer
- Capital goods, including spare parts, if the investor is a manufacturer
- Services acquired for use directly in manufacturing and where these services consist of the installation, repair or maintenance of capital goods

5.5.2. Cost of Conducting Business (Import Operations)

Lesotho is a member of the South African Customs Union (SACU), which generates a significant percentage of the Lesotho Government Revenue. Most goods and services from within the SACU region are exempted from import and export duties and taxes.

Products Subject to Mandatory Technical Regulations

The Ministry of Trade, Industry & Marketing issues permits for goods in general while other ministries issue permits for specialised goods and services as tabled below. The

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11 This was the gross salary less subtractions/ deductions that were allowed under the Tax Order
majority of these permits form part of key documents required for clearing imports and exports in the country.

**TABLE 5.2: AGENCIES AND THE PRODUCTS FOR WHICH THEY PROVIDE PERMITS**

<table>
<thead>
<tr>
<th>Agency</th>
<th>Ministry of Tourism, Sports &amp; Culture</th>
<th>Ministry of Agriculture &amp; Marketing</th>
<th>Ministry of Local Government &amp; MCC</th>
<th>Ministry of Trade, Industry &amp; Marketing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product</td>
<td>Alcoholic Beverages</td>
<td>Agricultural products</td>
<td>Building Permits</td>
<td>General goods &amp; services</td>
</tr>
</tbody>
</table>

Purchasing in the Southern African Customs Union (SACU)

Imports are classified in two categories as those from within SACU and from outside SACU. The largest proportion however comes from SACU. Every importer has to fill up the CCA1 forms found at all the South Africa/ Lesotho border posts indicating the types of goods, quantities, prices and place of origin. Sales tax has to be paid and permits have to be presented for specialized items bought from within the region. The Customs officers at the entry points collect the necessary documents and ensure fulfilment of the requirements. This is done within a very short time and depends upon quantities bought, and the extent to which the Customs Duty requirements are fulfilled. The service is free of charge.

The department has two clearinghouses for goods bought mostly from outside the SACU region. One is at the Maseru Railway Station while the other is the State Warehouse located above the Maluti Mountain Brewery. For goods received through the two offices the following are required:

- A clearing agent to facilitate all clearing work at the harbours, airports, and border posts, up to the Government of Lesotho Customs offices.
- A duly completed Bill of Entry form CE500
- An import permit from the relevant Ministry before arrival of goods

A pro-forma invoice from the supplier, and an import permit attached to the Bill of entry form CE500. At times importers are requested to present additional documents (packing lists, bank statement to ensure payment for goods bought, freight & insurance documents and a worksheet of the clearing agent indicating computation of costs and conversion of foreign into local currency) depending on the types of goods, quantities bought and the value.
Clearance procedures differ at the two Customs clearing houses. A pre-clearance, that is the checking of documents and official seals, is done before arrival of the consignment at the Maseru Railway Station. Containers are kept in Bloemfontein and only recalled when the consignment has been cleared. It is however noteworthy that Spoornet in Bloemfontein only keeps the containers for 21 days while the Maseru Railway Station keeps them for a maximum of 28 days after which a penalty is charged. On arrival of the consignments, the goods are checked and reconciled with the documents presented. At the state warehouse there is no pre-clearance; clearance is done on arrival of the consignment. All containers are physically inspected on business site.

Duty & taxes and duty are paid as prescribed in the Harmonized Customs Tariff book used in the SACU area.

All manufacturing businesses registered under 470.03 referred to as “Manufacture under bond” are exempted from customs duties and are given rebate certificates that have to be attached to the bill of entry for customs clearance.

Constraints

Some businesses get involved in double invoicing (i.e., they present pro-forma invoices that indicate amounts lower than the value of actual goods while on the other hand they keep the original invoices for income tax purposes) in an effort to pay lower import tariffs.

The department operates manually and the clearing process takes longer than necessary. The department is also not able to verify information from the suppliers, especially in dubious cases where goods are extremely under valued.

There is inadequate storage space and poor security of goods at the Maseru railway station.

The service is highly centralized.

Recommendations

The department should computerise its customs & excise systems. This will accelerate clearance, facilitate verification of information with the outside world and improve efficiency.

The Ministry of Finance should pursue its plans of building its own warehouse at the railway station.

The Government of Lesotho should think of immediate decentralization of the proposed Revenue Authority. This should be done initially in towns with existing
industrial parks/ developments (Maputsoe and Mafeteng) and in those earmarked for further industrial development (Butha-Buthe, Mohales Hoek and Qacha’s Nek).

5.5.3 Cost of Conducting Business (Export Operations)

Border Procedures for Shipments outside of SACU

As with imports the department still classifies goods as the SACU and the outside SACU exports. Those outside SACU are further grouped in five categories and despatched with the following movement certificates:

1. EUR 1 (export to European Union Countries). All exports to EU countries are to be cleared with EUR 1 movement certificate and transhipment certificate. These documents serve as certificates of origin and facilitate qualification for duty free entry into the EU.

2. Form A / Generalised System of Preferences (GSP) certificate is used for exporting goods to the United States of America as long as they do not fall under the Africa Growth & Opportunities Act (AGOA). Under this arrangement, certain duties are paid but at very low rates.

3. AGOA movement certificate should be duly completed and presented for goods exported under the AGOA agreement. The document serves as a certificate of origin and for duty and quota free entry into the US market.

4. LES movement certificate is used for all goods exported to Africa but outside SACU. Goods cleared with this certificate are liable for duties and taxes as stipulated by the receiving country.

Examination Certificate obtainable from the Customs & Excise department is filled to certify inspection of goods packaged for export.

Procedures for Obtaining Certificates of Origin

Most of the listed certificates are obtainable from the Ministry of Trade, Industry and Marketing.

Role of the Department of Customs and Excise

The department processes the documents free of charge. Investors are required to pay customs tariffs based upon the “Certificate of Movement” used. The following are steps followed in the processing of exports:
• Completion of the appropriate movement certificates and attachment of the required documents e.g. invoice
• Processing of the export documents by customs
• Consignment inspection by the Customs Officers
• Preparation of the examination certificate
• Payment of taxes & duties depending on the movement certificate and registration of the exporter e.g. manufactures registered under 470.03 are exempted.

Constraints

Goods can be exported through three (Maseru, Mafeteng & Maputsoe) ports. However the customs offices in these locations are only mandated to handle administrative processes. Approval and physical inspection of consignments are the responsibility of the Maseru officers.

The Maseru office is understaffed. Investors have to wait for days or weeks for the Maseru officers to inspect and approve. It is also quite costly for the investors to be travelling to and fro for their goods to be checked and approved.

There are a number of reported cases of lost documents particularly for goods exported to the USA.

Recommendations

The department should computerise its customs & excise systems. This will accelerate clearance, facilitate verification of information with the outside world and improve efficiency.

The Ministry of Finance should pursue plans of building its own warehouse at the railway station.

The Government of Lesotho should think of immediate decentralization of the proposed Revenue Authority. This should initially be done in towns earmarked for further industrial development.
ANNEX 1
THE PIONEER INDUSTRIES BOARD

Establishment of the Board

This board was established through the “Pioneer Industries Encouragement Act (No. 19) of 1969. The then intention of government with this act was stated as follows: “To provide tax incentives for approved manufacturers and related industries, hotel and casino-keepers, and building companies establishing or expanding their operations in Lesotho; to establish a Pioneer Industries Board to grant such approval subject to the agreement of the Minister responsible for commerce and industry; and to provide for related or connected matters.”

Composition of the Board

1. The Minister of Commerce and Industry (now referred to as the Trade, Industry and Marketing)
2. The Minister of Finance (now referred to as Finance and Development Planning)
3. The Minister of Works
4. The Managing Director of LNDC

Procedures Guiding the Board (Re: approval of applications)

1. Applicant should be registered as a Lesotho company or as a cooperative society in accordance with the laws of Lesotho, and should be in possession of any licence required in respect of the manufacturing referred to in “2” below
2. The applicant undertakes to establish a new factory or plant in Lesotho engaging in manufacturing, or in a process which the board deems similar to manufacturing (or has established such a new factory or plant, with a date of production subsequent to the commencement of the Pioneer Industries Encouragement Act
3. The applicant should satisfy the board that the establishment for which the approval is being sought will contribute to the economic development of Lesotho
4. An approval under this act shall specify the activities to which it is applicable and an applicant approved, with the agreement of the Minister, shall be referred to as an “approved manufacturer” in respect of such activities
5. Subject to the agreement of the Minister, the board may specify such conditions in respect of the approval of an applicant under this section as it determines to
be in the interests of the economy or public weal of Lesotho or of the particular industry concerned.

6. An approval under this section of the act shall expire if the date of production of the approved manufacturer does not occur prior to three years from the date of approval (or prior to such later date as the Board may allow).
### Table A5.1: Summary of Progress Since 1997

<table>
<thead>
<tr>
<th></th>
<th>1997</th>
<th>2002</th>
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</thead>
<tbody>
<tr>
<td><strong>GENERAL APPROVALS, PERMITS AND LICENSES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Office of the Registrar General</strong></td>
<td>Separation of Services (i.e., general registration services from business registration services)</td>
<td>The registration of births and deaths has been transferred to the Ministry of Home Affairs; that for cars has been transferred to the Department of Transport. Plans are afoot to transfer the registration of marriages to the Ministry of Home Affairs, and Newspapers to the General Post Office</td>
</tr>
<tr>
<td></td>
<td>Computerisation of the filing system and information flow</td>
<td>The office of the Registrar General has acquired funding to computerise their information management system</td>
</tr>
<tr>
<td><strong>Immigration and Passport Services</strong></td>
<td></td>
<td>Committee not formed. However the department of Immigration and Passports has taken the initiative to form an in-house one-stop-shop as a means of reducing delays</td>
</tr>
<tr>
<td></td>
<td>Joint committee between Ministry of Employment and Ministry of Local Government to simultaneously grant work permits and residential permits to foreign investors and foreign employees</td>
<td>Resident Permit still just valid for one year</td>
</tr>
<tr>
<td></td>
<td>Resident Permit validity should be extended to a minimum of two (2) years</td>
<td>No reduction on number of documents</td>
</tr>
<tr>
<td></td>
<td>Reduce number of documents required for a Resident Permit</td>
<td>Visa processing is still cumbersome</td>
</tr>
<tr>
<td></td>
<td>Reduce time period required for processing visas</td>
<td></td>
</tr>
<tr>
<td><strong>SITE DEVELOPMENT</strong></td>
<td></td>
<td></td>
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<tr>
<td><strong>Land Survey and Physical Planning</strong></td>
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<tr>
<td>1997</td>
<td>2002</td>
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<tr>
<td>------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Minimise role of Minister in land allocation and land management</td>
<td>Minister is still responsible</td>
<td></td>
</tr>
<tr>
<td>Abolish need for Ministerial consent for lease transfer, subleases and mortgages</td>
<td>Ministerial consent is still required; the only exception is in the case of a sublease that is going to be for less than 20 years... in that case the Commissioner of Lands signs</td>
<td></td>
</tr>
<tr>
<td>Computerise information management in LSPP</td>
<td>System is still manual</td>
<td></td>
</tr>
<tr>
<td>Rationalise stamp duty on sublease with that on leases</td>
<td>Stamp duties are still unequal... sublease duty is determined by the Law Office</td>
<td></td>
</tr>
<tr>
<td>Continue declaration of selected Development Areas</td>
<td>Three new industrial parks have been declared (Mohale's Hoek, Butha-Buthe and Qacha's Nek)</td>
<td></td>
</tr>
<tr>
<td>Lesotho National Development Corporation (LNDC)</td>
<td>GOL still highly supportive of LNDC</td>
<td></td>
</tr>
<tr>
<td>Government efforts in support of LNDC should continue</td>
<td>All concerns raised with regard to LEC are being addressed in the context of the ongoing privatisation exercise... the organisation is currently under a private management consortium that has been appointed to make it attractive to investors as part of the government's privatisation programme</td>
<td></td>
</tr>
<tr>
<td>Lesotho Electricity Corporation (LEC)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduce cost of electricity to levels comparable with other parts of Southern Africa</td>
<td></td>
<td></td>
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<tr>
<td>Remove current tariff structure bias against industrial customers in favour of residential ones</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Improve reliability of electricity supplies</td>
<td></td>
<td></td>
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<tr>
<td>Charge new industrial enterprises a negotiated tariff based on LEC’s short-run marginal costs of supply</td>
<td></td>
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<tr>
<td>Eliminate LEC’s monopoly position as the sole supplier of electricity</td>
<td></td>
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<tr>
<td>Establish a firm timetable for LEC to improve its performance, reduce costs and revamp its operation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Water and Sewage Authority of Lesotho (WASA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Improve technical performance of WASA in respect of water losses and overstaffing</td>
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<tr>
<td>Institute single price structure for all users of water and reduce sanitation charges to 60% of water bills</td>
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<tr>
<td>Permit industries using large amounts of water (non-drinking quality) to draw raw water from across the border or from private intakes</td>
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<tr>
<td>Lesotho Telecommunications Authority</td>
<td>LTC has been privatised and is now known as Telcom Lesotho (TCL). The new company is actively involved in ways of improving their service delivery and has a specific strategy of</td>
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<tr>
<td>LTC should give priority to service over production, expand the network in the regions outside of Maseru, improve management of line installation and repairs,</td>
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<tr>
<td>1997</td>
<td>2002</td>
<td></td>
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<td>----------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
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<tr>
<td>improve staff skills, and improve MIS</td>
<td>addressing the concerns of large industry</td>
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<tr>
<td>Restructure tariff Structure</td>
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<tr>
<td>Post Office</td>
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<tr>
<td>Post Office needs to complete new facilities</td>
<td>The new post office facilities have been completed (1999)</td>
<td></td>
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<tr>
<td><strong>SPECIALISED APPROVALS</strong></td>
<td></td>
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<tr>
<td>Ministry of Trade, Industry and Marketing (MTIM)</td>
<td></td>
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<tr>
<td>Government move away from a system of licensing to one of registration</td>
<td>Licensing is still the method of operation</td>
<td></td>
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<tr>
<td>Reduce amount of information to be included in the application form</td>
<td>Forms have not as yet been revised</td>
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<tr>
<td>Introduce a “negative list” of trading activities closed to foreign</td>
<td>There is a range of trades referred to as “reserved”. Only Basotho</td>
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<tr>
<td>investors. In addition, GOL should introduce entreprenual support</td>
<td>citizens may operate within these trades</td>
<td></td>
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<tr>
<td>activities such as training and micro-financing schemes. As for</td>
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<tr>
<td>manufacturing, replace licence requirements with simple registration</td>
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<tr>
<td>Ministry of Tourism, Sports and Culture</td>
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<tr>
<td>Abandon business licensing of hotels and lodges while fully</td>
<td>Hotels and lodges are still being licensed</td>
<td></td>
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<tr>
<td>maintaining the process of inspection</td>
<td></td>
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<tr>
<td><strong>OPERATIONAL REQUIREMENTS</strong></td>
<td></td>
<td></td>
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<tr>
<td>Ministry of Employment and Labor</td>
<td></td>
<td></td>
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<tr>
<td>Reduce obstacles in the processing of Work Permits</td>
<td>No change from previous regulations</td>
<td></td>
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<tr>
<td>Central Tender Board</td>
<td></td>
<td></td>
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<tr>
<td>Standardise the different forms required by having a standard form</td>
<td>There still different forms being used</td>
<td></td>
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<tr>
<td>for basic information which goes with each tender</td>
<td></td>
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<tr>
<td>Consider remuneration (sitting allowance) for Board members</td>
<td>No remuneration for Board members. They still on a voluntary basis</td>
<td></td>
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<tr>
<td>Increase the range of concessions for SME’s</td>
<td>Concessions as before (i.e., still limited)</td>
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CHAPTER 6 LEGAL AND ADMINISTRATIVE FRAMEWORK:
DOES IT ENCOURAGE INVESTMENT ACTIVITY?

6.1 Introduction

Lesotho is a small, mountainous, least developed country entirely surrounded by South Africa and is heavily dependent on it. In 1993, 49% of the population was classified as poor and 26% as very poor. Measured unemployment is extremely high at over 45%.

When Lesotho attained independence in 1966, the only industry that existed in the country was the printing industry that was set up by the missionaries. The initial industrial strategy of the government was inward looking and focused on import substitution to serve the domestic market. Loti Bricks, Lesotho Flour Mills and the Maluti Mountain Brewery were major examples of this strategy. There were few exceptions, though. Canneries geared primarily to tap European market and a pharmaceutical company to supply generic drugs locally and to other countries in the region were also set up. This phase continued right through 1980s. In this phase, Lesotho National Development Corporation (LNDC) was also set up basically to initiate, promote and facilitate foreign investment in manufacturing industries.

The focus changed in the 1990s. The role of export trade as a tool of economic development began to be clearly recognized. With the advent of WTO, the focus on export trade has deepened. The present policy aims at increasing employment opportunities, improving balance of payments through exports, reducing dependence on South Africa as an export market by exploring other markets and greater processing and utilization of indigenous raw materials. The role of LNDC has changed too. It is now primarily a facilitator of foreign investments in Lesotho.

The largest export from Lesotho has traditionally been the migrant labor. In 1990, 125,786 Basotho were employed principally in South African mines. The number has fallen to 61,948 at the end of June 2001. The sticky gold price, greater mechanization and increasing localization of labor in South African mines due to

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attractive wages\textsuperscript{14} are responsible for the fall in migrant labor numbers. The wages, particularly deferred wages, of the migrant labor system sustain some five people per migrant worker. Most of the retrenched migrant workers have simply added to the army of unemployed in Lesotho. Restructuring and privatization of the parastatals and that of the civil service have also resulted in loss of employment for many.

This leaves Lesotho with no choice but to encourage investment in sectors where Lesotho has competitive advantage. Lesotho has succeeded in attracting export-oriented, foreign investments in clothing, footwear and consumer electronics. Local investment has been largely in the informal micro enterprises, which are estimated to have created some 220,000 jobs in 1999.\textsuperscript{15} Such micro enterprises are largely run by women and are visible almost everywhere. The micro-entrepreneurs have no access to credit from formal banking sector and have very little of bookkeeping and managerial skills. The impetus for micro investment is largely a part of survival strategies.

Local investment in the formal export sector is conspicuous largely by its relative absence. Mr. S.K. Phafane, the interim chairman of the Lesotho Chamber of Commerce told me that the local investment, particularly Basotho investment, in export sector is relatively very small and is presently confined to mohair tapestries that are generally exported to the Nordic countries and leather goods, which due to the low quality, can only be exported to the regional market. Wool and mohair have been traditional exports from Lesotho. Merino sheep and Angora goats are raised by a large number of households in the rural areas. The wool and mohair from them is regularly exported to South Africa and then auctioned in Durban and Port Elizabeth for global markets. This is discussed further under the heading: mohair and wool.

In sum, the local entrepreneurial class in the formal export sector is minuscule. Local entrepreneurial class even otherwise is mostly limited to small and micro enterprises and is very little in manufacturing. The absence of a vigorous local entrepreneurial class constitutes a major impediment to economic growth in Lesotho.

This translates into several negative perceptions. One of them is that foreign investors are usually reluctant to invest in a country where local investment in the manufacturing sector is almost nil. The relatively small manufacturing sector in Lesotho is almost entirely owned by the foreigners. It is also characterized by

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\textsuperscript{14} They are now about R2,600 per month on an average. So long as they were below R2,000 a month, they did not hold much attraction for local South Africa labour.

\textsuperscript{15} Action Programme at page 6.
rather weak linkages with the rest of the economy. The dominance of foreigners in the manufacturing and other sectors is resented by the nationals. Foreign investors are seen as exploiting the workers, repatriating all their profits and investing nothing in the social sector. A random survey of foreign investors in Maseru conducted few years ago revealed that the foreign investors’ perception is that no matter how long they stay in the country, they would forever be regarded as outsiders. This negative perception is reinforced by the fact that foreigners have always been a target in every riot that took place in Lesotho, even when the origin and causes of riot lay elsewhere. This perception of insecurity impacts negatively on prospects of large scale foreign investment.

There has never been a systematic study to investigate scientifically the reasons for lack of an entrepreneurial class in Lesotho. South Africa is only marginally better. Carel and Isa Van Aardt have tried explaining it in the context of South Africa. Many scholars have lamented that there is a huge shortage of entrepreneurs, particularly in the formal sector, in South Africa. There are two few people with entrepreneurial qualities, which leads to a poorly performing economy. They state that by and large South Africans are neither socialised nor educated to become entrepreneurs but are propelled and encouraged to enter the labour market as employees. And, as employees, they become consumers of existing jobs instead of creators of new jobs. This is especially true of Africans, according to the authors. They quote Alex Molekoane who blames it on the historical circumstances and the mindset of Africans. He says that if you were a black, it was a foregone conclusion you would work for a white corporation. So the African mindset was to go out and look for a job. Parents didn’t encourage their children to get into business because they knew it was impossible for themselves and they dogmatically believed it would be impossible for their children as well. Among those who do become entrepreneurs, many do so because they fail to find employment in the formal sector of the economy. In other words, they do so to survive financially. Furthermore, among those who do take the challenge of entrepreneurship, only a small percentage succeeds. This reinforces the belief among Africans that it is preferable to be an employee rather than an entrepreneur. These observations apply to Lesotho as well.

Batusbenga, a Zairean, believes that entrepreneurial skills require a social and economic mindset and a cultural framework which is very western in nature.

16 Central Bank of Lesotho, 1996, Annual Report. According to the Chamber of Commerce, it is the present position as well.
17 See, for example, Public Eye, a local newspaper dated 17 March 2002.
He agrees with Pisani that any development carries with it a set of ideas, a mode of thinking, specific skills and the recipient of development has to change accordingly. African entrepreneurs, it is argued, must be prepared to embrace a set of cultural and social values, which are not African in nature. This process of adaptation of traditional behaviour patterns and structures to the requirements of entrepreneurship could be described as >acculturation<. This is far from easy. Thomashausen, a South African scholar, is emphatic that the problems of economic under-development are not only economic and cannot be resolved by economic measures alone; the human factor is crucial. Can it be true that entrepreneurial goals demand too much of a sacrifice in life style changes that many find it difficult to embrace? There are too few entrepreneurial success stories involving nationals in Lesotho. This reinforces the negative perception and discourages potential investors.

It would seem there is a great deal of ignorance and misapprehension not only about starting an enterprise but even about investing in the shares of a private company. LNDC have been trying very hard to encourage Basotho to invest in the economy and take up shares in the parastatals undergoing privatization. The privatization unit has also made serious efforts. But reservations about investing in private companies persist. One of my colleagues has been trying very hard to raise sufficient cash to buy 15% of the government stake in Vodacom. She set up a company to raise the required amount but found it a very frustrating experience. She found the reluctance of Basotho to invest in the equity of a dividend-paying, successful enterprise difficult to explain. A senior manager at the LNDC believes that by and large Africans like to invest in property, which is considerably easier to manage and is otherwise a low risk investment. He told me that the level of managerial, financial and technical expertise that starting and running an enterprise demand are very intimidating to prospective Basotho investors. Both the Chamber of Commerce and the Ministry of Trade and Industry are alive to the problem and are working hard at encouraging potential local investors to invest, particularly in the export sector.

One of the steps that the Lesotho government took in 1999 was to amend the law and allow the setting up of the first Unit Trust in Lesotho. The Lesotho Unit Trust is jointly run by the Standard Bank Lesotho Unit Trust Management and a trustee B AON Lesotho. The overall responsibility for regulating the Unit Trust is with the Central Bank. The minimum investment has been deliberately kept low at only M500. It is planned that the initial portfolio will have some 40% in the government securities, 30% in the shares of the privatised companies and 25% in foreign quoted equities; the rest will be in cash. The idea is to begin with a balanced portfolio with guaranteed income coming from the government.

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22 This expression was first used by the well-known sociologist, Talcott Parsons.
securities. The Unit Trust vehicle offers nationals a unique opportunity to participate in the growth and profits of privatized enterprises. It is hoped that the Unit Trust may also encourage a culture of saving and investing and, in the medium term, may encourage the growth of a sophisticated capital market. It is too early to assess the success of this mechanism. It may hinge on the return to capital and income that investors in the unit trust may secure. If it succeeds in encouraging nationals to channel their savings into equity investments for establishing or expanding productive businesses to fuel economic growth, it would be a great beginning in changing the attitude of Basotho to invest in businesses.

It is argued sometimes that extended family system, very high fertility rates and the traditional life-style-demands are responsible for lack of savings by nationals in the economy in Lesotho. There is some truth in it. The Central Bank of Lesotho states that the ratio of gross savings to GNP in the five-year period to 2000 have been about 17.7%, which though relatively high from developing country standards, falls far short of, in the context of Lesotho, the amount required to finance investment and thus expand productive capacity.

| Table 6.1: Gross Savings in GNP (Million of Maloti at Current Prices and Percent) |
|-------------------|---|---|---|---|---|
| GNP              | 5,471.3 | 6,244.4 | 6,289.4 | 7,115.6 | 7,681.3 |
| Gross Savings    | 1,179.9 | 1,434.6 | 1,085.9 | 1,428.9 | 1,456.6 |
| Saving Ratio %   | 18.8 | 19.9 | 15.2 | 17.8 | 16.9 |


Central Bank does not keep data on investments. But it does keep data on credit given to business enterprises, which gives an indication of the investment activity in Lesotho (Table 6.2).

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23 Though the total fertility rates have dropped from 5.74% in the 1970s to 5% in the early 1990s, Lesotho rates are considered very high in the sub-region. Action Programme at page 9.

Central Bank believes that if the rate of gross savings increases substantially, a much higher level of investment can be financed from internal resources. This is necessary if Lesotho is to increase its economic growth to about 4% annually and to sustain it at that level to reduce poverty by half by 2015. Gross investment (excluding LHWP) since 1997 has been below one-third of GNP. Central Bank states that the existence of a large savings-investment gap is one of the major impediments to economic growth in Lesotho and FDI is needed to narrow this savings gap. It asks the government to aggressively pursue a policy of promoting foreign investment to complement domestic enterprise.25

Moreover, the risk-averse and conservative nature of Lesotho’s banking sector means that commercial banks are reluctant to extend credit to the private sector. In such an environment, it is difficult for new businesses to emerge or existing ones to expand. The result is that the economy does not fulfill its growth potential.26 On the other hand, it has been reported in South Africa27 that the amount of money that goes to casinos and beer parlours28 is in billions of rands every year and that if only a slice of it could be diverted into productive sectors of the economy, it will make a significant difference. If that is true of Lesotho as well, then changing traditional attitudes to thrift and investment are likely to help a great deal.

This does not mean that there is no entrepreneurial potential in Lesotho. Mr. Phafane, the interim chairman of the Lesotho Chamber of Commerce told me that the Chamber is engaged in very serious discussions on how to enhance entrepreneurial activities, particularly those that could exploit the growing global opportunities that are available to businesses in Lesotho. He believes that technical and marketing expertise to produce and market goods that can compare in quality and price with goods produced in South Africa and globally are lacking. LNDC do not assist local entrepreneurs at present. The Ministry of

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27 Sunday Times, some 7-8 months ago.
28 The Sunday Times reported that average funeral expenses for an African is more than R10,000 as compared to some R4,000 for a white and some R2,500 for an Asian.
Trade does but much more needs to be done. The ITC is reported to be working with the Ministry of Trade & Industry in a focused manner.

6.2 LEGAL AND ADMINISTRATIVE FRAMEWORK

At the end of 1996, a review of the major administrative barriers to Lesotho was undertaken and its findings published in June 1997. Administrative and legal barriers increase the transaction cost of doing business in Lesotho. Foreign investors feel strongly that anti-foreign sentiment plays a major role in the administrative delays and procedural obstacles they continually face. The review concluded that taken together, the administrative barriers comprise an unnecessarily long, difficult and expensive path for new investors to realize business operations in the country. This sends a wrong signal to the investors that the government is not business-like in their approach to investors. In most cases, all that is required is a change in attitude to perform necessary regulatory functions in a cost-efficient and time-efficient manner. The traditional attitudes of being indifferent to cost function of delays has to change.

6.2.1. Land Laws

Lesotho has a dual land tenure system reflecting both the customary laws, on the one hand and the ‘received’ law in the form of statutory land tenure on the other. (See Appendix I on the legal dualism). The fundamental feature of the customary land tenure system is that land is communally owned and cannot be traded commercially by the landholder. This feature of the customary land system has influenced both the Constitution of Lesotho and the statutory land tenure, which is contained in the Land Act, 1979.

Customary land tenure system has several weaknesses. Firstly, the power to allocate land is vested in every gazetted chief or headman within the area of his jurisdiction. He is supposed to allocate land “fairly and impartially’ but in practice, it is not so. The customary law does not penalize the allocating chief or headman, if he allocates land unfairly or arbitrarily and there is great deal of evidence of it.

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29 It was done by the Foreign Investment Advisory Service (FIAS), which is a joint service of the International Finance Corporation and the World Bank.
31 Ibid at page 7.
Secondly, allocating chief or headman has power to allocate land exclusively to their own ‘subjects’. They cannot allocate land to a foreign investor, for example.

Thirdly, customary land tenure system is designed to encourage subsistence farming and, in fact, discourages allocation of land for commercial farming. Indeed, land can be taken away from a person who in the opinion of the allocating chief or headman has more land than necessary for the needs of their household.

Fourthly, the customary land tenure system does not offer security of tenure. The allottee is entitled only to a form of usufruct during his lifetime. On his death, the land reverts to the allocating chief or headman for reallocation. The allottee can neither sell the land nor lease the land. Lesotho is a patriarchal society. Consequently, on the death of the allottee his heir is the first male child of the first married wife. Women, on the whole, are considered minors in the customary law and cannot be allocated land in their own name.

Because of these deficiencies, Land Policy Review Commission, 2000, recommended that the customary land tenure system should be abolished. It specifically highlighted that the system discourages commercial investment in land both by domestic and foreign investors and no longer serves the national interest.

The statutory land tenure system is embodied in the Land Act, 1979. The Constitution of Lesotho and the Land Act vest all land in Lesotho in the Basotho Nation. Under the Land Act, in rural areas, land is held in the form of an allocation, which is neither registrable nor transferable. Land in urban areas is held in the form of a lease, which can be registered and transferred. In rural areas, Village Development Councils (VDCs) have the power to grant title to land in the form of an allocation. They also have been given power to revoke allocations. In urban areas, it is the relevant Urban Land Committee (ULC) which grants title to land.

Section 6 of the Land Act, specifically discriminates against foreign investors so far as title to land is concerned. A citizen of Lesotho, who is a Mosotho, can only hold title to land. The question whether a person is a citizen of Lesotho and a Mosotho is determined by the Minister responsible for local government in his discretion. Thus, citizens who are not Basotho, or foreigners cannot acquire land in Lesotho. A company or a partnership can only hold land in Lesotho provided

33 Section 107 of the Constitution.
34 In rural areas, allottees are not aware of the benefits of a leasehold title and in any case, section 9 of the Land Act, 1979, placed the onus of applying for a lease in a rural area to the allottee withing a certain time. To date, not a single lease has been granted in a rural area.
at all times, 51% of the shares in the company or majority of the partners are citizens of Lesotho who are Basotho.35

As pointed out earlier, in urban areas, leases are the norm. A lessee not only has a right to the exclusive possession of the leased land subject to certain statutory conditions but also has a right to dispose of his interest, to mortgage the lease and to sub-let the land with the consent of the Minister. However, mortgaging a lease for a loan from commercial banks is problematic because there is no formal market for land.

Foreign investors or citizens, who are not Basotho, can only hold land as a sub-lessee for a limited duration. Subleases of factory shells are still usually of 10 years of duration. But the sublease is renewable and can be renewed indefinitely, if need be. The subleasing of land to a foreign investor to build a factory is of a much longer duration, but LNDC’s capacity to sublease land or factory shells is constrained legally by its own duration of lease. Subleases cannot obviously exceed the period of lease. LNDC has been exempted from paying stamp duty on leases. Therefore, subleases granted by the LNDC no longer attract any stamp duty either.

The Lesotho National Development Corporation (LNDC) assists foreign investors, which have been leased tracks of land for setting up industrial estates. Securing a lease continues to be a complicated, long, costly and uncertain process.36 The Report of the Land Policy Review Commission, September 2000, authored by Justice Ramodibedi of the Lesotho High Court, states that due to inadequate human, technical and financial resources, land administration is chaotic and that a simple exercise like registration of a lease sometimes takes upwards of six years to complete.37 Three to four years is considered normal. He points out that the system of land administration that Lesotho has is such that delays especially in the issuing of leases are inevitable.38 One reason for the delay is that under the Land Act, 1979, Ministerial consent is required at various stages before a lease or a sublease can be granted. Another reason is that the land administration is fragmented into nine separate ministries with very little coordination. Bureaucratic paperwork that is required to register a lease is unnecessarily large and very complex. Surveying and valuation facilities are minimal. There is no register or record to indicate how much land individual

35 Section 4 of the Land Act, 1979.
36 FIAS Report at page 15.
38 Ibid at page 92.
39 Ministries of Agriculture, of Local Government, of Justice, of Trade and Industry, of Public Works, of Natural Resources, of Tourism, of Environment, of Education and of Finance are involved for a variety of reasons.
holders have in Lesotho and the value of their holdings. Between 1990/91 and 1998/99, only about 50% of the lease applications could be processed.40

This system constrains the foreign investors to set up enterprises only in the existing LNDC industrial estates. FIAS Report stated that because of this constraint, foreign investment tends to be low value-added and highly foot-loose and Lesotho is self-selecting what may be the sub-optimal types of foreign investment.41 It recommended that the built-in bias in the present system to attract low-end investments should be eliminated and cautioned that after the expiration of the Multi-Fibre Arrangement in 2005, not only Lesotho may find it difficult to attract further investments in the garment sector but may even encounter dis-investment from the present enterprises.42

Land Policy Review Commission stated in its report, submitted in September 2000, that the present provisions in the Land Act have proved to be a disincentive to foreign investments. Firstly, there are only few Basotho who have the willingness and resources to hold 51% shares in a company or be majority of the partners. As a result, foreign investors in companies and partnerships have to have the majority of the shares or be majority of the partners. Law then makes them ineligible to hold land in Lesotho for the purpose of commercial or industrial development. This impacts negatively on their investment decision-making.

Secondly, foreign investors complain that sub-leases of limited duration, normally 30 years43 and at most 40 years, make it difficult for them to plan meaningful investments.

Thirdly, they find it difficult to expand their production because the land that is sublet to them may not be able to accommodate an expansion.

Fourthly, they also cannot access credit and put the land they operate on as collateral. The Commission also pointed out that when state-owned enterprises are privatized, often they are acquired by foreign investors as majority shareholders. The majority shareholding prevents their company to hold land in Lesotho except as a sub-lessee. This creates a very anomalous situation and special dispensation is required. For example, when Lesotho Bank, which held a lot of land, was privatized, Parliament had to enact a law to allow the Standard Bank (South Africa), a foreign investor holding 70% of the privatized bank, to hold land in its own right and not as a sub-lessee. This law covers only the

41 FIAS Report at 18.
42 Ibid at 19.
43 Usually, through renew of leases of 10 years.
Standard Bank and does not apply to any other investors, whether local or foreign.

The Commission has recommended a complete overhaul of the land tenure system and simplification of the whole process of allotting land in the form of leases. It recommends that discrimination against foreigners and citizens, who are not Basotho, and against women, be done away with. Companies and partnerships should not be required to have Basotho as majority shareholders or partners before they become eligible for acquiring land. In order to promote economic development, it recommends that foreign investors and any company or partnership should be allowed to hold land in the form of a freehold in designated areas for industrial development and for approved industrial purposes, high rise buildings for residential and commercial use and for special projects. Suitable safeguards to prevent misuse or abuse of commercial allocation of land as a freehold have also been proposed. It also recommended setting up a land ministry to take charge of and coordinate all matters relating to land. Leases are registered under the Deeds Registry Act, 1967. [See Appendix 2 for further details.] However, the Act discriminates against women and under section 14 of the Act, the Registrar of Deeds can refuse, except under an order of the court, to attest, execute, register all deeds and documents in respect of immovable property in favor of a married woman, whose rights are governed by Basotho law and custom where such registration would be in conflict with customary law. The Commission has recommended its repeal as well.

It is believed that the government is seriously considering to implement some or all of the recommendations made by the Land Policy Review Commission.

6.2.2. Laws on Regional Arrangements

Southern African Customs Union agreement, 1969, SADC Trade Protocol, Cotonou Agreement, 2000, and AGOA, 2000 are treaties that deal with regional arrangements.

Southern African Customs Union (SACU) is a regional arrangement between Lesotho, Botswana, Namibia, South Africa and Swaziland. Its consistency with Article XXIV of GATT 1994 has not yet been determined by the General Council of WTO. As such SACU is not a “customs territory” for the purposes of article XXIV and members of SACU have individual contracting status with respect to GATT 1994. SACU deals with goods only; services and intellectual property are

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44 Law Reform Commission has drafted a Bill to eliminate gender discrimination. It is now with the government.
46 The arrangement was submitted to the WTO but later withdrawn in view of the negotiations to reform the arrangement. In 1998, SACU was subjected to the Trade Policy Review Mechanism (TRPM) of SACU and the report published in two volumes in 1998.
not dealt with in the treaty. SACU is supplemented by the Common Monetary Area agreement of 1992, which allows South African Rand to circulate freely in Lesotho and permits exchange of local currency Maloti into South African Rand at par in the ratio of 1:1. South African Rand is the unit of account for the Central Banks of the SACU countries for all SACU transactions.

Though Lesotho is the only least developed state member of SACU, the treaty does not recognize Lesotho’s special status and SACU members are not obliged to, and do not, accord it special and differential treatment. Consequently, in the SACU environment, Lesotho, for the most part is unable to take advantage of any of the provisions that the GATT 1994 or the WTO agreements have for the least-developed countries.

Under the treaty, the laws relating to customs and excise duties are effectively determined and set by South Africa. Tariff, additional duties on imports from outside the SACU area, as well as, rebates, refunds or drawbacks of customs duty on imported inputs for use in any domestic industry in a member state are also effectively set by South Africa. Anti-dumping, countervailing and safeguard duties too are effectively determined by South Africa for the entire Union. South African laws in this regard are simply adopted by the member states.

In principle, SACU allows free interchange of goods between member countries. Member states cannot impose duties or quantitative restrictions on goods grown, produced or manufactured in or imported into the CCA. There are no rules of origin requirements either. Since Lesotho’s own domestic market is rather small, free interchange of goods provisions in the SACU treaty provide an opportunity to entrepreneurs in Lesotho to take advantage of the enlarged CCA market and use it as a stepping stone to expand globally.

Article 6 of SACU provides for the infant industry protection for industries in Lesotho that are not more than eight years old. This clause does not cover new products of an existing industry. This protection may take the form of additional duties on competing goods imported into its territory with prior consultation with the other SACU members. Lesotho has never invoked article 6 because it finds it to be severely deficient in three areas. Firstly, the additional duties that are collected do not go to support the infant industry but to the SACU revenue pool and shared by all the members. At the same time, the Lesotho consumers have to bear the burden of paying extra costs to support the infant industry. Secondly, article 6 shelters an infant industry from competition only in the particular state invoking the protection. It presupposes that the domestic market

47 That is the combined territories of Lesotho, Botswana, Namibia, Swaziland and South Africa.
of that state is large enough to sustain the industry during the period of protection. But Lesotho’s internal market is too small to support an industry. Thirdly, Lesotho shares fairly porous border with South Africa and the administrative cost of patrolling the border to prevent smuggling of competing cheaper goods from South Africa would be unacceptably high.

The SACU treaty allows Lesotho and other member states to have an import and export control legislation so long as it is consistent with the requirements of article 11 of the SACU treaty for protecting any class or kind of goods from SACU competition. Lesotho has enacted Export and Import Control Act, 1984, for this purpose. The implications of this legislation are discussed in greater detail later.

Article 7 of the SACU treaty allows the member states to set up of a major industry in which is, or likely to be, of major importance to its economy and shelter it from competition for an agreed period. Such an industry must meet at least 60% of the total needs of the SACU-states. During such period, customs duties on goods competing with the specified industry cannot be decreased or abrogated without the consent of the concerned state and could even be increased. Furthermore, customs duty on any inputs used directly in the production by such specified industry could be reduced or even abrogated. Lesotho has never used article 7 either.

Both article 6 and article 7 too appear to be inconsistent with GATT 1994 in as much as they may require South Africa to levy tariff on certain goods over and above the tariff binding included in its schedule of commitments.

SACU treaty also covers agricultural commodities. Member states are obliged to “consult each other from time to time” on matters affecting production, consumption and marketing of agricultural commodities. This had led to a proliferation of marketing regulations, principally in Lesotho and South Africa, as part of self-reliance strategies. They have, in principle, been largely given up in the last few years as they were found to be largely ineffective and self-defeating. Lesotho has been assisted by the World Bank and the African Development Bank to complete the marketing policy reforms and liberalisation by mid-2004 in the agricultural sector. Marketing of certain agricultural commodities like bread, fruits and vegetables, dairy and dairy products, sugar, pulses, livestock and livestock products are still regulated and this affects private sector investment negatively.

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The SADC Trade Protocol has been made in terms of article 22 of the SADC treaty. It attempts to establish a free trade area covering both goods and services. It entered into force on 25 January 2000. It is only partly operational as all SADC countries have not yet ratified the Protocol. SACU countries have.

It is envisaged that 85% of all tariff and non-tariff barriers to intra-SADC trade will be eliminated by 24 January 2008 and 100% of them will be eliminated by 24 January 2012. The markets in the SADC countries may be liberalized in an asymmetrical manner with SACU countries liberalizing faster than the rest.

SADC Trade Protocol is important for existing and potential entrepreneurs in Lesotho for two reasons: Firstly, it creates potential market opportunities—SADC market is much larger than the SACU market. At the same time, it subjects the existing and potential entrepreneurs to increased competition from SADC countries. Secondly, though unlike SACU, the SADC Trade Protocol has Rules of Origin, there is a provision for cumulative treatment. It provides that all SADC countries shall be considered as one territory for applying rules of origin. Raw materials or semi-finished goods originating in any SADC country and worked or processed in or more SADC countries shall be deemed to have originated in that SADC country where the final processing or manufacturing takes place. This should help Lesotho entrepreneurs to meet the Rules of Origin in most, if not all, cases.

Cotonou Agreement, 2,000, between the ACP countries and the European Community and its member states, which has a life until 31 December 2007, also has a provision on regional cumulation. Article 6 of Protocol 1 of Annex V of the Agreement provides, in effect, that a product incorporating materials originating in South Africa shall be regarded as a product originating from Lesotho provided the value added in Lesotho exceeds the value of the materials originating in South Africa. It means that 100% value has been added to the import value of the product. Furthermore, this is subject to several limitations. Firstly, this derogation applies only from January 1, 2003. Secondly, it has to be in the context of a regional economic integration agreement. Thirdly, certain products are not eligible for the derogation until


49 Angola, Congo and Seychelles have not ratified.
52 That is three years from the entry into force of the SA-EU Agreement on Trade, Development and co-operation.
tariffs on those products have been completely eliminated both in South Africa and the European Community.

On 5 October 2000, European Community agreed to grant duty free and quota free access to all the least developed countries, including Lesotho. One of the features of the agreed resolution concerns regional cumulation, which should be of particular significance to Lesotho’s existing and potential entrepreneurs. In the context of the EU’s resolution, regional cumulation means, in effect, that a least-developed country like Lesotho can export as their own goods, which consist of products originating from a country of the same regional organization like SACU and possibly SADC provided (a) the value added in Lesotho is greater than the highest customs value of the products used that originated in another member country of the regional organization; and (b) the working or processing carried out in Lesotho exceeds the minimal operations. There are some other administrative rules, which also have to be met. At the moment, Lesotho entrepreneurs do not find Cotonou Agreement attractive and there is very little export to the European Union.

From the point of view of market opportunities, AGOA is another international agreement. AGOA began operating for Lesotho as from 1 April 2001 when Export Control Regulations, 2001, were gazetted. AGOA requires certain eligibility conditions, which include, among others protection of private property rights; open, rule-based trading system; minimization of governmental interference in the economy; promotion of private enterprise; protection of intellectual property; encouraging the formation of capital markets through micro-credit; combating corruption and bribery and others. These requirements are a strong incentive for the Lesotho government to ensure that Lesotho has an investor-friendly regime.

An attractive part of AGOA is that Lesotho exporters do not have to satisfy the 35% value-added requirement of the United States’ GSP program. Exporters of apparel articles have benefited most from it because until 2004, they are free to import their inputs from anywhere in the world. At the moment, Lesotho, 53 It is a long list and is included in Annex IV of the Agreement.
54 That is 100% value added to the import value, which means ex-works price minus customs value.
55 Like the operations to ensure the preservation of products in good condition, simple operations, etc.
56 It is really part of the Trade and Development Act of 2000 enacted by the 106th Congress of the U.S.A.
57 The regulations were made in terms of the Import Export Control Act, 1984.
58 Lesotho has enacted the Prevention of Corruption and Economic Crimes Act in 1999.
59 It may be interesting to note the observation of Finger, M and Schuler, P that the cost of implementing the membership commitments of WTO which requires exhausting institutional reform may be as high as $150 million. No one has estimated the money cost of implementing institutional and regulatory framework changes for AGOA. See Implementation of Uruguay Round Commitments, in the Development Challenge, October 1999.
Mauritius and South Africa take advantage of AGOA and some 18 new investors have expressed an interest to set up their garment exporting factories in Lesotho. However, AGOA’s quota for sub-Saharan Africa is only 3.5% of the total US textile and apparel imports in any one year. Hong Kong alone by comparison exports over 30% of the textile and apparel requirements of the USA in any one year.

Ministry of Trade and Industry in Lesotho is trying hard to persuade entrepreneurs to export handicraft and leather goods to the USA taking advantage of AGOA provisions.

6.2.3. Licensing Laws

An investor, particularly foreign investor, requires a host of specialized approvals for setting up and running a business in Lesotho. The system of licensing is basically designed to allow the government to micro-manage the economic activities in Lesotho. This is achieved by a framework of sector-specific laws and regulations. The underlying rationale for the pervasive licensing and permit system are protection of local investors from established foreign firms and experienced foreign investors and protecting the commercial viability of businesses by limiting the competition through restricting the number of competitors, by activities and by location. Existing well-established businesses are known to have put pressure on the licensing authorities not to grant licenses, thereby blocking the new entrants without clout. Lastly, any system of licensing and permits also involves visible and invisible costs and investors have expressed their concerns about them. They also have expressed their concerns about the uncertainty and unpredictability that invariably accompanies renewals of various licenses and permits. In short, the current licensing and permits system and practices stifle the natural growth and development of private sector in Lesotho. It is necessary to have a system that is transparent, as far as possible automatic, and certain. While we focus below on the system of licensing and permit for industries, similar problems and possible solutions could be extended to other sectors like tourism and transport.

The Industrial Licensing Act, 1969, regulates the industrial sector by requiring that any manufacturing enterprise, employing 10 or more persons or using the aggregate mechanical energy of not less than 25 horse power, must obtain a license under the Act. A license can be refused when a similar license has been granted for the same product in the same part of Lesotho to others. An exclusive

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60 For example, the provisions of Industrial Licensing Act, 1969, and Trading Enterprises Order, 1993, they are discussed below.
61 It is impossible to verify such claims. The FIAS Report makes a reference to them as well.
63 Including clerical and managerial staff and directors.
license can be granted under section 16 of the Act to a manufacturer with the guarantee that no one else will be granted a license to manufacture a similar product in Lesotho or a part of Lesotho. [See Appendix 3 for details about the Act]

Industrial Licensing Act was designed to implement the inward-looking policy of import substitution and protection of local investors. Its objectives are to establish a system of licensing for manufacturers and to authorize the grant of exclusive protection to a manufacturer producing one or more specified products. The Act has never been amended and it is still in force. However, the Ministry of Trade & Industry is aware of its shortcomings and has been planning to revise it for quite sometime. The Ministry has informed me that pending its revision, the Ministry no longer uses the competition-limiting provisions of the Act. However, in view of their potential for misuse, it is recommended that those provisions be repealed and the whole system of licensing be replaced by a simple system of registration of enterprises with suitable regulations to control activities that harm the environment, health, morals or involve unlawful or fraudulent practices.

Selected investors, particularly foreign investors, were protected under the Pioneer Industries Encouragement Act, 1969, which offered tax incentives in the form of tax holidays for up to 10 years, accelerated depreciation and various other tax-efficient allowances. The Pioneer Industries Board also acted as the Licensing Board under the Industrial Licensing Act, 1969, and had the power to grant an exclusive license to a foreign investor. Pioneer Industries Encouragement Act, 1969, is still on the statute book but is no longer used. The Income Tax Act, 1993, offers a major tax incentive to all manufacturers; their taxable income is only taxed at 15%, which appears to be the lowest in the region.

It is time that the Pioneer Industries Encouragement Act, 1969, is repealed for two reasons. Firstly, it is no longer being used and secondly, it provides for subsidies like tax holidays, etc. whose legality under the WTO Agreement on Subsidies and Countervailing Measures is a matter of some doubt.

The policy of limiting competition and statutory provisions for exclusive licensing cannot, work because of Lesotho’s membership of the Southern African Customs Union (SACU) which allows free interchange of goods throughout the customs union area. An exclusive licensee in Lesotho would still have to contend with imports of competitively priced South African goods and the exclusive licensee would have to compete with them. Limiting competition inside Lesotho through restrictive or exclusive licensing are unlikely to act as incentives for efficient production and marketing.
Another statute which was used to protect certain domestic producers was the Exportation and Importation Restriction Proclamation, 1941. The Export and Import Control Act replaced it in 1984. [See Appendix 4 for details] It authorizes the Minister responsible for trade and industry to impose import controls on any class or kind of goods, whenever he deems it necessary or expedient in the public interest. Once any class of goods is made subject to the Act, an import permit is required. The permit may prescribe the quantity or value of goods, which may be imported or exported, the price at which, the period within which, the port through or from which, the country or territory from or to which and manner in which such goods may be imported or exported. The permit may also include such other conditions of whatever nature as the Minister may direct. The Minister is not required to consult the Cabinet before taking a decision under the Act. Nor is there any requirement to report to the Parliament. The Minister has very wide powers. Their exercise depends on the discretion of the Minister and the policy of the Ministry. In the agriculture sector, import and export control is exercised through the Agricultural Marketing Act, 1967, as amended, where again a large discretion plays a role. Import control regulations are gazetted from time to time and their primary purpose is to protect basically domestic farm producers. All SACU member states have similar legislation and they use and misuse it to protect domestic producers. South African use of such legislation led to the closure of the Hyundai motorcar and truck assembly plant in Botswana. The import and sale of Hyundai cars and trucks was heavily restricted in South Africa. In my opinion, the legality of the use of the legislation, in terms of the Southern African Customs Union Agreement, to protect domestic industries is a matter of some doubt.

Export and Import Control Act, 1984, has been made in terms of Article 11(1) of the SACU treaty, which recognizes the right of a member country to prohibit or restrict the import into, or export from, its territory of any goods for, inter alia, economic or other reasons. However, the use of Article 11(1) is constrained by Article 11(3), whose effect is to safeguard against unfair competition by limiting the functional reach of Article 11(1); it outlaws the use of Article 11(1) to protect ones industries producing such goods. In short, Lesotho’s Export and Import Control Act, 1984, cannot prohibit or restrict the import into its territory of any goods grown, produced or manufactured in the territory of another member C to wit, Botswana, Namibia, South Africa and Swaziland C to protect its own domestic industry producing such goods. However, in practice, all SACU-states use their import and export control legislation to protect domestic producers, which seems to be a breach of article 11(3).

The justification for the use of Export and Import Act to limit imports or exports is to be found in Article 11(5) of the SACU treaty. It obliges a member state to cooperate in the fulfillment of economic objectives of import control legislation of
other members. Lesotho, for example, together with other members of the SACU are completely free to enact any kind of import control legislation they like and pursue such economic objectives as are best suited to their economy at any time. There is no machinery for coordination in this regard and no requirement of even a rudimentary consultation. Non-tariff barriers, for example, could be, and are embodied in the import and export policy of a member country. Lesotho continues to protect its beer and some agricultural products using article 11. But, as pointed out earlier, their legality can be questioned under article 11(3), which does not allow it to protect domestic industries.

SACU treaty is being revised. The revised draft of the treaty has attempted to improve in Article 26 the provisions of Article 11. Article 26 specifically obliges member countries to impose export control restrictions on second hand goods imported from outside the customs union territory and authorizes SACU member countries to impose import prohibition measures with respect to such second hand goods. This is obviously to protect the affected local domestic industries of a member country producing competing goods. The draft of the revised SACU treaty also provides a safeguard to prevent misuse of import and export control legislation that any import or export control measure would require the consent of the proposed SACU Council of Ministers.

There have been ongoing discussions for the development of competition policies and laws, and policies and instruments to address unfair trade practices that have been a source of friction between SACU member countries. Discussions are also taking place on limiting the use of marketing regulations to protect agricultural products of a country. Lesotho does use regulations to restrict the import of a number of agricultural products like maize flour, dairy products, beef and the like to protect local producers. There are ongoing discussions to limit the reach of such regulations to only agreed emergent agriculture, related agro-industries or any other purpose that the member states may agree from time to time. And, in that case, subject them to a negotiated sunset clause outlining its conditions and periods before putting such trade-distorting regulations into force.

There has never been an impact study of the Import and Export Control legislation in the SACU area or in Lesotho. Senior officers in the Ministry of Trade & Industry support the idea of such a study. But since above all it is an SACU matter, it can only be satisfactorily resolved with the consent of all SACU member states. Lesotho alone cannot risk to abolish or dilute its own Import and Export Control Act.

Another licensing legislation is Trading Enterprises Order, 1993, which regulates the trading enterprises and services that are set up and managed by the local entrepreneurs. [See Appendix 6 for details] Both manufacturing and trading
licenses require extensive documentation, which needs considerable simplification. The system of manufacturing and trading licensing have outlived their utility and should be replaced by a fairly simple system of registration, which could be suspended or canceled if the activity of the enterprise or its products constitute a danger to public health, morality or involve unlawful or fraudulent activities. It may be added that South Africa follows a system of registration as against licensing.

Registration and licensing are needed for setting up a company in Lesotho. The present system requires drafting and submitting several documents to the Registrar of Companies for the formation of a company. Thereafter, a large number of documents are required to be filed with the Registrar for various activities of a company. The operating legislation, the Companies Act, 1967, is unsatisfactory for a number of reasons. From an investor’s perspective, it is incomplete and needlessly complex. It was designed for a different era when companies were prevented to engage in activities not stated in their memorandum of association, the duties of directors were lax and many essential rules regarding the operation and management of companies were buried in the decisions of the court rather than provided in the statute. In 1998, draft of a new company law was made. It underwent national workshops but it is still awaiting enactment. The new law, when enacted, would simplify the formation of companies, remove outdated requirements for operating the companies and provide better investor protection to the shareholders. It also provides that office of the Registrar of Companies be located in the Ministry of Trade & Industry. At present the office of the Registrar of Companies, located in the Ministry of Law, is unable to serve the business community efficiently because it is overburdened with miscellaneous work and lacks both adequate staff and resources.

6.2.4. Immigration Laws

Aliens Control Act no. 16 of 1996 regulates entry and residence of foreign investors in Lesotho. Foreign investors and their employees and tourists require a visa to enter Lesotho. Lesotho has limited diplomatic missions abroad and they are authorized only to issue a single entry visa. Perhaps, Lesotho is the only country in the world whose overseas diplomatic missions cannot issue multiple-entry visa. This should change. Then for visitors and investors from countries without a Lesotho mission, for example, Japan, the only alternative is to pass by the Lesotho Embassy in Pretoria en route. The cost of obtaining the initial visa and its conversion to multiple-entry visa cost M1 000 and is the highest in the region. It should be looked into. This cumbersome procedure of obtaining a visa and the cost that goes with it affect negatively not only the tourism sector but also the willingness of businessmen to invest, be employed and reside in
Lesotho. Perhaps, arrangements could be negotiated with the South African government so that their diplomatic missions abroad could also issue Lesotho visa or, alternately, an SACU-wide visa like Schengen in Europe could be considered.

Requirements for obtaining residence permit from the Ministry of Home Affairs require a long list of documents and a procedure that is unnecessarily complex and the process itself prone to delays. Ministry of Employment and Labor issues work permits. The permits thus are issued by different ministries and for a relatively short period, usually one year and sometimes less than that. A joint body of the relevant ministries should be authorized to grant simultaneously work and residence permits to foreign investors and their foreign employees, permits should be issued expeditiously for not less than two (preferably three years) and the number of documents required should be streamlined and reduced.

In February 2002, the Ministry of Home Affairs has tried to simplify the procedure for residence permits a little bit. The delay in obtaining a work permit has been reduced. But far more needs to be done. This requires changes in the Aliens Control legislation and associated regulations.

6.2.5. Access to Credit

For a variety of reasons, entrepreneurs find it difficult to obtain credit from banking sector. In late 1980s, the Central Bank used credit ceilings to limit money supply and this induced banks to limit credit only to well-established corporate customers. This is no longer the case but the banks are generally reluctant to provide credit without adequate collateral. The culture of non-payment of accounts and loans is widespread throughout southern Africa, including Lesotho. It is partly based on the ignorance of the economic function that a bank performs and partly on the traditional perceptions that took root when the economy was centered on barter system. In Lesotho tradition a debt never dies (molatoa ha o bole) and the payment of interest on a debt is little understood. In rural areas, in particular, once what has been borrowed is repaid; the debt is deemed to be discharged. The received law of prescription, on the other hand, provides that if a loan has not been recovered within seven years, it is prescribed, meaning it may then not be recoverable through the legal process. The management of the former State-owned Lesotho bank was shocked to learn of this rule and the Bank had to write off a considerable amount of debt. As regards the payment of interest, Barclays Bank once had to sue a borrower in Lesotho,

64 FIAS Report at page 11.

65 Ibid.
who firmly believed that since he had returned the amount to the Bank he borrowed, the Bank had no right to claim anything more. The High Court, of course, allowed the Bank to recover interest from a very indignant borrower! See Appendix 5 for details of the case.

Moreover, prevailing rates of interest for depositors are too low and for borrowers too high, as compared to South Africa. Partly, this reflects lack of competition between financial institutions, partly the higher transaction costs in servicing relatively smaller amounts of deposits and lending and partly the policies of the Central Bank to regulate and control the prime lending rate. Since 1998, banks have been permitted to determine their own interest rates and one hopes, they will tend to be more reflective of market demand and supply conditions and, hopefully, would be more or less same as in South Africa in due course. It has not yet happened though and the interest rate margin is relatively higher than South Africa even now. On an average, the interest rate margin in South Africa rarely exceeds 5% and is usually lower than that. As against, the interest rate margin in Lesotho is considerably higher as the following table would show.
### Table 6.3:

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<tbody>
<tr>
<td>Prime lending rate</td>
<td>18%</td>
<td>17.1%</td>
<td>22%</td>
<td>17%</td>
<td>17%</td>
<td>16.3%</td>
</tr>
<tr>
<td>31-day deposit rate</td>
<td>10%</td>
<td>8.8%</td>
<td>11%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
</tr>
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Note: The figures for 1998, 1999 and 2000 are for the average rates of all commercial Banks operating in Lesotho prevailing in December of each year. The 2001 figures are for the average rates prevailing in November 2001.

Source: Central Bank of Lesotho.

On the legal side, when a borrower defaults, the legal procedures and the congestion of the court system ensure that it takes many years to get a judgment against a defaulting borrower. Execution of the judgment is often a problem too. This means in practice that access to bank credit tends to be limited to only quality loans where the possibility of default is very low. New entrepreneurs without adequate collateral suffer thereby. A new court, Commercial Court, began working in May 2000 to hear only those cases that are of a commercial nature. One of the judges of the High Court sits on Wednesdays in the Commercial Court. However, the court has failed to make any impact, so far, because the underlying procedures have not yet been streamlined.

#### 6.2.6. Export Finance and Insurance Scheme

The Central Bank has launched the Export Finance and Insurance Scheme on 28 November 2001 to provide export finance to eligible small and medium sized exporters (SMEs) and to large companies. The maximum credit facility is limited to M1 million for SMEs and M5 million for large companies. The risk of default is shared between the borrower, the commercial bank providing the loan and the Central Bank. I was informed in early May 2002 that while the banks have received some applications, actual disbursement has not yet begun. Perhaps, it is too early to assess the impact of the Scheme.

#### 6.2.7. Tax Laws

Income Tax Order, 1993, provides in the Third Schedule that the rate of tax on manufacturing income or any manufacturing activity of an industrial, scientific or educational nature, which promotes industrial scientific, educational or other development is 15%. All other corporate income is taxed at 40%. Resident individuals are taxed at 40% on chargeable income above M40,000, which, in Southern Africa, is the highest tax rate. After tax profits of foreign manufacturing and other enterprises are fully repatriable. There is no withholding tax on dividend distributed by foreign enterprises. Full rebates are granted on imported inputs used solely in the process of manufacturing of goods for the export
market. General sales tax exemption is available on capital machinery and equipment for manufacturers. There are no export duties. Double taxation agreements have been concluded to avoid double taxation with Germany, Mauritius, South Africa and United Kingdom. However, unlike other countries in the sub-region, Lesotho’s income tax law does not provide for accelerated depreciation. Pioneer Industries Encouragement Act, 1969, provided for the accelerated depreciation but that statute only exists on paper. It would be a good idea to provide for accelerated depreciation in the income tax legislation. The administration of income tax system, by and large, has not generated criticism from the investor community.

The Sales Tax Act, 1995, levies a general sales tax of 10% but exports are exempted from sales tax. Rentals of factories do attract sales tax. The Act is due to be replaced by the Value Added Tax Act, 2001, in order to broaden the tax base. Under section 6 of the VAT Act, unimproved land, leases or letting of immovable property where the tenant is a manufacturer and the property is used to carry on a manufacturing activity will be exempted from VAT. So far, the administration of sales tax laws has not given rise to problems.

6.2.8. Intellectual Property Laws

Industrial Property Order, 1989, provides for the grant of patents, registration of utility model certificates, industrial designs and marks, collective marks and trade names. It also defines acts of unfair competition in the context of industrial property and provides a remedy.

Copyright Order, 1989, provides for the protection of authors works, expressions of folklore and neighboring rights.

Both the laws are more or less consistent with WTO’s TRIPs agreement but does require some changes to make them one hundred percent compatible.

At the moment, except for South Africa, Lesotho’s intellectual property laws provide the most modern protection for intellectual property in the whole of the SADC region.

6.2.9. Labor Laws

Part XII of the Labor Code 1992 deals with the employment of foreigners in Lesotho. Foreigners require a valid certificate of employment, commonly known as the work permit from the Ministry of Employment and Labor. Both the employer and the employee commit an offense if the employee is a foreigner and is employed without a work permit. Before granting a work permit, the National Employment Service needs to certify that no Lesotho citizen is at that time qualified and available for the employment in question. The validity of a Work
Permit cannot exceed 24 months. The Managing Director of an enterprise can obtain the work permit relatively easily but others in the enterprise take far more time. Meetings to clear the work permits are now held weekly but it still takes on an average 4 to 6 weeks for a work permit. The documentation required is unnecessarily complex.

Labor Code is fairly detailed and deals with almost all aspects of employment in Lesotho including regulations for employment, wage-fixing machinery, termination, dismissal and redundancy, health safety and welfare of workers, employment of children, young persons and women, trade unions, unfair labor practices, strikes and lockouts, settlement of disputes and the labor court.

Recently, the Directorate of Dispute Prevention and Resolution has been set up under the Labor Code. It is a new kind of machinery specially set up to resolve the disputes expeditiously and economically through conciliation and arbitration. The Directorate is independent of government, any political party and any employer or employee organization. It consists of a director, deputy director, conciliators and arbitrators. They are appointed by the Minister responsible for labor after consultation with the Industrial Relations Council set up under the Labor Code.

The functions of the Directorate are,

- to attempt to prevent and resolve trade disputes through conciliation;
- to resolve trade disputes through arbitration;
- to advise employers, employers organizations, employees and trade unions on the prevention and resolution of trade disputes; and
- To compile and publish, among others, significant arbitration awards.

Any disputes of interest must be referred to the Directorate, which, in the first place, endeavors to settle it through conciliation within 30 days of the referral of the dispute. If conciliation fails to resolve the dispute, it is referred to arbitration provided parties to the dispute agree in writing. [Section 225]. The arbitrator must make the award within 30 days of the conclusion of the arbitration proceedings. The award is final and binding on the parties; it can be enforced as if it is an order of the Labor Court. An award, however, can be reviewed by the Labor Appeal Court on any ground permissible in law and any mistake of law that materially affects the award.

Section 226 of the Labor Code requires that the following disputes of right must be resolved by arbitration, through the Directorate:
• Any dispute which parties agree should be settled by arbitration;
• any dispute concerning the application or interpretation of a collective agreement, a breach of contract of employment or a wages order;
• any dispute concerning the underpayment of any monies due under the Labor Code; and
• any unfair dismissal other than those for participating in a strike, a consequence of a lockout or in relation to the operational requirements of the employer.

The Director of the Directorate may refer any of these disputes of right to the Labor Court if he is of the opinion that it may also concern matters that fall within the jurisdiction of the Labor Court.

The Directorate has been successful in resolving disputes. In the first three months of its existence, that is until the end of March 2002, it has settled 544 disputes which related to underpayment of wages, non-payment of overtime wages, wages in lieu of notice, severance payment and unfair dismissals.

6.2.10. Environment Laws

Lesotho has enacted the Environment Act, 2001, which has provisions that are of interest to existing and potential investors. Section 4 of the Act grants every person in Lesotho a right to a clean and healthy environment and places a duty on him to safeguard and enhance the environment. He is entitled to take legal action, among others, against any enterprise, which threatens his right to a clean and healthy environment. The Act enshrines the basic principles of environment management like the polluter pays principle, the precautionary principle, the principle of ecosystem integrity, the principle of public participation in the development policies, plans and processes and the principle of inter-generational or intra-generational equity. A Lesotho Environment Authority has been set up with its own Board of Directors as the principal agency to manage the environment. The Act requires an environment impact assessment on all projects and activities that may potentially affect environment. The Act prescribes environment quality standards with respect to water, air, waste, soil quality, noise, ionization and noxious smells. There are detailed provisions on pollution control, which every enterprise in Lesotho has to comply with. The Act is not yet fully operational but when it does the cost of complying with the Act will have to be factored in. The infrastructure like sewerage system is not yet ready. As a result, all garment factories in Lesotho at present are not complying with the Act as regards the safe disposal of effluents, in particular. They are required under the Act to discharge them into a proper sewerage system, which does not exist.
6.2.11. Concluding Remarks

Lesotho urgently needs an investment promotion law to regulate and promote investments and to provide assurance to foreign investors against expropriation, nationalization, non-discriminatory treatment, international arbitration and freedom of investment in permissible areas. The Constitution does prohibit arbitrary seizure of private property and provides for payment of compensation when private property has to be acquired in public interest. Lesotho has bilateral and multilateral investment agreements, (a) with the United Kingdom: Promotion and Protection of Investment, signed on 18 October 1981 and (b) with Germany: Encouragement and Reciprocal Protection of Investment, signed on 11 November 1982. Lesotho is a party to the Convention on the Settlement of the Investment Disputes between States and Nationals of Other States, 1965, and has implemented it by passing the Arbitration (International Investment Disputes) Act, 1965. While ratifying the Convention and implementing it by a national legislation, Lesotho has made no reservations.

The investment promotion law must establish a single agency to handle licensing and permits. This is sometimes described as a one-stop shop. LNDC does help foreign investors but that cannot be a substitute for a one-stop shop.

There is also an urgent need to have an Investors Handbook, which should have all the relevant laws, regulations, procedures, copies of various forms, a list of various fees that are required and a summary of such decisions of the courts as affect investors. This should be regularly updated. International Bureau of Fiscal Documentation, based in Netherlands, does this for every country on the African Continent as regards tax laws. It updates them once in three months. A similar Handbook for investors is desperately needed. UNDP should look into the feasibility of preparing such a report and bear the initial costs. The Ministry of Trade and Industry could absorb the recurring costs.

In conclusion, we can reproduce a recent newspaper report from South Africa that some 700 craft workers, mostly women, in a poor rural village in Kwazulu Natal produce hand made beadwork to the designs provided by 10 British designers and sold by Sotheby in the United Kingdom. The workers have formed themselves into Khumbulazula Craft Rural Development Organization (part of Siyazisiza Trust) and they plan to expand into supplying into retail markets. Income per worker has gone up by nearly 300% to about R90 a day in a few
This can be replicated in Lesotho as well, given targeted administrative effort.

One of the unique legal features of Lesotho is legal dualism. It means that Lesotho has a dual legal system and a dual system of courts. This is due to the historical reasons.

Lesotho sought the protection of Britain and became a British colony on 12 March 1868. The present day boundaries of Lesotho were set by the British and in this process of settlement; Lesotho lost a considerable amount of land to what is now South Africa. Between 1871 and February 1884, Britain annexed Basutoland (as it was then known) to the Cape Colony. Direct rule was resumed by Britain in February 1884 and continued until independence on 4 October 1966.

It was during the period between 1871 and 1884, when the Cape colonial government on behalf of Britain administered Basutoland, that the Roman-Dutch law was first introduced. Following the disannexation of Basutoland from the Cape Colony on 2 February 1884, Britain proclaimed that all laws in force in Basutoland at that time should continue to be in force until repealed or replaced by a Proclamation of their High Commissioner. Some four months later, on 29th May 1884, the General Law Proclamation was issued. Section 2 of Proclamation 2B of 1884 continues to be of great significance even today. It provided that:

"... in all suits, actions, or proceedings, civil or criminal, the law to be administered shall as nearly as the circumstances of the country will permit be the same as the law for the time being in force in the Colony of Cape of Good Hope: Provided however, that in all suits, actions or proceedings in any court to which all the parties are Africans and in all suits, actions or proceedings whatsoever before any Basotho Court, African Law may be administered ..."

Section 2 of Proclamation 2B is still valid. It was adopted by the Constitution of Lesotho after independence in 1966 and again by the present 1993 Constitution [section 156(1)]. All existing laws including Section 2 of Proclamation 2B "continue in force and effect ... as if they had been made in pursuance of (the 1993) Constitution." It could not have been otherwise in view of the numerous commercial and other transactions that had taken place and continue to take place in accordance with the principles of the >received law.

By received law is meant that the law of the Cape Colony, a foreign country, was by law authorized to be received in Lesotho and placed on the same footing as its own indigenous laws. The law of Cape Colony, which was received in Lesotho, is loosely referred to as the Roman-Dutch common law. The Cape Colony became a part of the Republic of South Africa in 1910 and is now part of Eastern Cape province, the Northern Cape Province and the Western Cape Province. The
law administered in these provinces is, inter alia, the South African common law. This by implication constitutes the modern common law of Lesotho to the extent the circumstances of Lesotho allow it. The courts, thus, have discretion to modify the South African common law where necessary to fit the circumstances of Lesotho. Most of the commercial law in force in Lesotho is basically South African Common law with the addition of particular statutes. In some fields, it is substantially similar to English Law. In some areas, English Law has been followed almost completely, in others; it is common to find the courts referring to English decisions for guidance.

In short, legal dualism is a result of section 2 of Proclamation 2B of 1884. It makes customary legal system on the same footing as the received law. There are special courts that administer customary laws alone.
APPENDIX 2
DEEDS REGISTRY ACT, 1967

Section 5 of the Act lays down the duties of the Registrar of Deeds, which are C

(1) To register grants or leases of the right to occupy land lawfully issued by the proper authority;

(2) To register grants or leases of rights to minerals lawfully issued by the proper authority;

(3) To keep the register prescribed under the Act and to maintain an efficient system of registration to afford security of title and ready reference to any registered deed.

The Act discriminates against women. Section 14 authorizes the Registrar to refuse, except under an order of the court, to attest, execute or register deeds and documents in respect of immovable property in favor of a married woman, whose rights are governed by Basotho law and custom where such registration would be in conflict with Basotho law.

Section 15 of the Deeds Registry Act provides that no deed or agreement purporting to or having the effect of conferring, conveying or transferring the right of ownership in and to land shall be executed, attested or registered in the deed registry. The rationale of this section is to recognize and implement the principle that land belongs to the Basotho Nation and consequently, cannot be owned by an individual. What the Act permit is a registered certificate of title to occupy or use of the land, which is far short of the right of ownership.
This Act was enacted to establish a system of licensing for manufacturers, to grant exclusive protection in respect of a manufacturer producing one or more specified products and to empower the Pioneer Industries Board set up under the Pioneer Industries Act, 1969.

The Act applies to any manufacturing enterprise that employs in the aggregate 10 or more persons in Lesotho, including managers, directors or clerical, sales or other staff, or uses in the aggregate mechanical energy of not less than 25 horsepower. The Act does not apply to trading other commercial enterprises. However, the Minister responsible for trade and industry has power to declare that any specific enterprise, whether it employs 10 or more or uses 25 horsepower or more of mechanical energy or is a trading or commercial enterprise, must apply and obtain a license under the Act. The Minister also has power to exempt any specific enterprise, which should normally obtain a license under the Act, from the operation of the Act.

The Board that grants an industrial license is exactly same as the Board constituted by the Pioneer Industries Act, 1969.

Under the Act, an enterprise can apply for a license to manufacture a product on an exclusive or a non-exclusive basis. If it is on an exclusive basis, then the enterprise applies for protection to manufacture a particular product during the specified period to the exclusion, either generally or in respect of any part of Lesotho, of any manufacturer who has not yet been granted a license to manufacture that product. In that case, objections against granting the exclusive protection are invited and any person may appear and give evidence in person and submit verbal or written evidence concerning the application. The Minister responsible for trade and industry may also, in suitable cases when in his opinion circumstances so warrant, appoint a person or persons to conduct an inquiry into the application seeking exclusive protection and any representations made against it and submit to the Minister and the Board a report.

The powers of the Board to grant an exclusive or a non-exclusive license are identical. In either case, the Board grants a license subject to the approval of the Minister. The Board may grant or grant in part or refuse to grant a license. The Act specifically states that a non-exclusive license to manufacture a product may be refused if an exclusive license to manufacture an identical product has already been granted to another person in respect of the same part of Lesotho or an application for the grant of such an exclusive license is under consideration of
the Board. All licenses may have such conditions as may have been determined by the Board to be in the interests of the economy or public weal of Lesotho or of the particular industry concerned.

The exclusive license is granted by the Board if it is satisfied that it is in the public interest and in the interest of the efficient development of the industry concerned. The exclusive protection is granted for any period up to but not exceeding 5 years.

If the holder of a license, exclusive or non-exclusive, (a) fails, within a reasonable time, to commence manufacture of the product for which the license was granted, or (b) ceases to manufacture the product for which the license was granted, or (c) fails to comply substantially with the Act or any of the conditions of the license, the Board may, subject to the approval of the Minister, cancel the license if the holder of the license fails to show cause to the satisfaction of the Board.

The duration of a non-exclusive license is only one year but can be renewed indefinitely from year to year on payment of the prescribed fee.
APPENDIX 4
EXPORT & IMPORT CONTROL ACT, 1984, AS AMENDED.

The Act empowers the Minister responsible for trade and industry to prescribe by notice in the Government Gazette, whenever he deems it necessary or expedient in the public interest, that no goods of a specified class or kind or no goods other than goods of a specified class or kind shall be (a) imported into Lesotho, or (b) imported only if a permit has been granted for their import and in accordance with the conditions stated in that permit, or (c) exported from Lesotho, or (d) exported only if a permit has been granted for their export and in accordance with the conditions stated in that permit.

Under the Act, goods may be classified on the basis of their source of origin, or their intermediate or final destination, or the channels or manner in which they are imported or exported or their intended use or uses.

A permit (import or export) may prescribe the quantity or value of goods which may be imported or exported, the price at which they may be imported or exported, the period within which they may be imported or exported, the port through or from which they may be imported or exported, the country or territory from which or to which and manner in which they may be imported or exported. The Minister is entitled to include other conditions of whatever nature as well.

The commissioner of trade, subject to the control of the Minister, administers the provisions of the Act.

Any breach of the Act carries penalties that include fine, imprisonment or both.

Marcellus borrowed a sum of M30,000 from Barclays Bank on 13 September 1984 under an oral agreement. The Manager of the Bank did explain to Marcellus that he would be required to pay an interest on the principal amount as well.

Marcellus had agreed to repay the loan at the rate of M1250 per month. He paid this amount every month for 24 months as a result of which he was able to repay the Barclays Bank M30,000 by the end of April 1986. He then stopped payment.

The Bank reminded him that he still owed the Bank interest, which varied month to month, and other Bank charges. When he refused to pay the amount, Barclays Bank sued him in the High Court claiming M24,727.83 as on 31 August 1988 when the case was filed.

Justice Allen who delivered the judgment stated, among others, that Marcellus thought that the monthly interest claimed by the Bank, which varied because of the repayment of the principal amount, should not have been reflected in the account and this probably resulted from his lack of understanding; the Bank Manager may not have well-explained to him the bank charges and the interest that he would have to pay as well. Marcellus stopped repayment perhaps due to his failing to understand the terms and conditions of the loan. The court gave a judgment in favor of the Bank for M24,727.83 with interest at the rate of 18% from 1st September 1988 until the amount was paid back to the Bank.
Trading Enterprises Regulations, 1999

They provide for a system of licensing for trading enterprises. All lawful trade or occupation requires a license and carrying on any trading activity or occupation without a license is a criminal offense punishable with fine or imprisonment, or both. The licenses are granted for one year at a time but can be renewed, if the Board so wishes. However, if an enterprise has been granted a license under the Industrial Licensing Act, 1969, it does not require a license under the Order for trading in goods manufactured by it.

The Order sets up a Trading Enterprises Board consisting of principal secretaries of the ministries responsible for trade & industry; interior & chieftainship affairs; health; employment & social welfare and agriculture, cooperatives & marketing. In addition, the Board has representatives of the army and police, a representative of the Lesotho Chamber of Commerce appointed by the Minister responsible for trade and industry and the commissioner of trade.

The Board, among others, (a) makes recommendations to the Minister responsible for trade & industry for proper implementation of the policy of government regarding trading activities and services. (b) promotes citizens' participation in trading, investment, ownership, management and control of enterprises; (c) identifies areas where non-citizens may undertake trading activities in joint ventures citizens, (d) issues licenses subject to conditions that may be specified in the licenses, and (e) suspends or cancels licenses in appropriate circumstances as provided in the Order. Appeals against the decisions of the Board lie to the Minister under the Order. Under the general law, it is possible to challenge the decision of the Minister.

The Regulations set up a pre-selection committee, which is composed of representatives of the Lesotho Chamber of Commerce, Ministry of Trade & Industry, Lesotho Consumer Organization, Local Government Authority and Health. The pre-selection committee makes recommendations to the Local Licensing Board, which have been set up in every district in Lesotho and which make recommendations to the Trading Enterprises Board.
The criteria for granting a license include national priorities, magnitude and origin of tangible and intangible assets, employment generation, strategic nature of the enterprise, possibility of transfer of business expertise, promotion of local enterprise and environment protection.

The Regulations define a foreign enterprise to mean any enterprise engaged in trading, whose sole proprietor is a non-citizen or, if it is a partnership then any of its partners is a non-citizen or if it is a body corporate, then any of the directors or shareholders is a non-citizen. Therefore, contributing any capital to any trading enterprise by a non-citizen makes that enterprise a foreign enterprise. Seventeen businesses have been reserved for citizens only. They are: agency of a foreign firm, barber, Basotho beer shop, butcher, snack-bar, domestic fuel dealer, dairy shop, general café, general dealer, greengrocer, hawker, street photographer, broker, mini supermarket, hair and beauty salon, petrol dealer and tentage dealer.

A trading enterprise cannot have a trade name which (a) misleads the public, (b) causes offense to any person or class of persons, (c) is suggestive of blasphemy or indecency, and (d) includes the words imperial, royal, crown, empire, government, state, commonwealth, dominion, United Nations, or any other word, which imports or suggests that it enjoys the patronage of the foreign or any international organization.

Regulations empower the commissioner of trade to prohibit any advertisement, which is false, misleading, or causes public disturbance.
CHAPTER 7
THE INITIAL IMPACT OF AGOA ON U.S. IMPORTS FROM LESOTHO

This paper examines very briefly the impact of the United States African Growth and Opportunity Act (AGOA) on exports from Lesotho to the United States. The main issue I review is AGOA’s effect on Lesotho’s trade with the U.S. in 2001, the first year the trade preferences were in effect. I find the following:

- Virtually all of U.S. imports from Lesotho are clothing and apparel.
- AGOA is increasing the volume of these imports.
- Most of the imports entering under the AGOA program is within product lines that were already traded, although there is some expansion to products that had not been traded in recent years.
- AGOA has encouraged imports of slightly higher valued clothing products.

7.1 LDC Special Rule for Clothing and Textiles

One should note first that all imports from Lesotho entering with preferential treatment under AGOA in 2001 were clothing, falling into U.S. Harmonized Tariff Schedule categories 61 and 62, entering under the special rule for LDCs.

(This is not to say that all clothing imports received preferential treatment. More on this below.) The U.S. tariff schedule contains many other goods that qualify for duty-free treatment under AGOA; Lesotho exported none of these to the U.S. in 2001. This is an important point because the special exemption for clothing imported from African LDCs expires on 30 September 2004, after which date the U.S. will grant duty-free access only to clothing made with inputs made in the

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68 I use commodity tariff and trade data from the USITC for the years 1996-2001, disaggregated at the HTS 10-digit level. An advantage of this dataset is that USITC reports the values of trade entering under special trade programs, such as GSP, AGOA, NAFTA, etc. The dataset is available at http://datawebb.usitc.gov.

69 This exemption allows duty- and quota-free treatment on textiles and clothing for articles assembled in qualifying LDCs. Components may come from any country. The LDCs must have a “visa” system for the articles to prevent fraud. The USTR certified that Lesotho qualified for this special rule in April 2001. Imports received (or moved out of warehouse) before April 23, 2001, were subject to the same tariff treatment as other AGOA members.
U.S. or in another AGOA country. Manufacturers in Lesotho currently rely on inputs originating primarily in East Asia.

7.2. AGGREGATE TRADE LEVELS

Total imports from Lesotho rose by $75 million from 2000 to 2001. This is a rather dramatic increase of 53 percent, and is much larger than annual percentage increases in previous years. The chart below shows the value of total imports from Lesotho during 1996-2001. Actual data values are indicated by the points on the heavy line, while the trend over time is the thin line. (The trend line is based on a linear fit of actual data from 1996 to 2000, and is then extrapolated to 2001.) Actual imports in 2001 exceed the predicted value by over $60 million. Clearly something happened in 2001.

**Figure 7.1: U.S. Imports from Lesotho, 1996-2001**

![Graph showing U.S. imports from Lesotho, 1996-2001](image)

Source: Author’s calculations using USITC data.
TABLE 7.1: U.S. IMPORTS FROM LESOTHO, 1996-2001

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>65,353,3</td>
<td>86,364,990</td>
<td>100,133,006</td>
<td>110,826,251</td>
<td>140,315,890</td>
<td>215,262,659</td>
</tr>
<tr>
<td>Increase</td>
<td>32%</td>
<td>16%</td>
<td>11%</td>
<td>27%</td>
<td>53%</td>
<td>129,241,515</td>
</tr>
<tr>
<td>AGOA</td>
<td>Source: Author’s calculations using USITC data.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Virtually all of this recent increase in trade appears at first glance to result from the introduction of AGOA trade preferences. Imports entering under AGOA were $129 million, which exceeds the $75 million increase in total trade since 2000. Nevertheless, Lesotho’s exports of non-clothing exports to the U.S. (none of which are eligible for AGOA treatment) increased by 389 percent between 2000 and 2001—far more than the rate of increase for clothing.

TABLE 7.2: INCREASE IN IMPORTS: CLOTHING VERSUS OTHER GOODS

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cloth</td>
<td>65,214,80</td>
<td>86,280,533</td>
<td>100,072,006</td>
<td>110,759,155</td>
<td>140,219,043</td>
<td>214,789,060</td>
</tr>
<tr>
<td>Increas</td>
<td>32%</td>
<td>16%</td>
<td>11%</td>
<td>27%</td>
<td>53%</td>
<td>129,241,515</td>
</tr>
<tr>
<td>Other</td>
<td>138,562</td>
<td>84,457</td>
<td>61,000</td>
<td>67,096</td>
<td>98,847</td>
<td>473,599</td>
</tr>
<tr>
<td>Increas</td>
<td>-39%</td>
<td>-28%</td>
<td>10%</td>
<td>44%</td>
<td>389%</td>
<td></td>
</tr>
</tbody>
</table>

Source: Author’s calculations using USITC data.

Since the value of imports receiving AGOA preferences exceeds the increase in total trade, it appears that some imports entering under AGOA are substitutes for existing imports. This feature becomes more apparent when one looks at data that are disaggregated by product line.

7.3 COMPOSITION OF AGOA TRADE

AGOA has not (yet) expanded Lesotho’s exports into many new types of products (measured in terms of HTS 10-digit product categories). The U.S. imported goods from Lesotho in 189 different product lines during 1996-2001 (not all goods are traded each year). Of these, 72 product lines contained trade under the AGOA program in 2001, all of which are clothing. Lesotho’s manufacturers have not taken advantage of AGOA preferences in any goods other than clothing. Furthermore, even within the broader category of clothing, AGOA has not generated trade in many new product lines. The table below shows that the majority of product lines with imports entering under AGOA
were lines where established trade was already occurring prior to 2001. This trade in established product lines represents 96 percent of the total value of trade receiving AGOA treatment. AGOA generated new trade in 10 product lines where Lesotho had not exported to the U.S. prior to 2001. And there are 11 product lines where the U.S. did not import anything from Lesotho in the year prior to the implementation of AGOA, but did import during some previous year. Collectively these 22 product lines make up only four percent of the value of AGOA trade in 2001.

**Table 7.3. Lack of Product Diversification**

<table>
<thead>
<tr>
<th>Product Lines with AGOA Trade in 2001</th>
<th>Product Lines</th>
<th>Share of AGOA Lines</th>
<th>Value of Imports (millions of dollars)</th>
<th>Share of AGOA Imports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of which:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imports from Lesotho in 2000</td>
<td>51</td>
<td>71%</td>
<td>$124.2</td>
<td>96%</td>
</tr>
<tr>
<td>No imports in 2000, but traded earlier</td>
<td>11</td>
<td>15%</td>
<td>$4.1</td>
<td>3%</td>
</tr>
<tr>
<td>No imports prior to AGOA</td>
<td>10</td>
<td>14%</td>
<td>$0.89</td>
<td>1%</td>
</tr>
</tbody>
</table>

Source: Author's calculations using USITC data.

In the 2001 data there are product lines where some imports enter under AGOA while others receive MFN treatment. In addition, there are quite a few clothing products where no imports received AGOA treatment in 2001. In part this is matter of timing: the U.S. government certified that Lesotho qualified for the LDC exemption in April 2001; clothing imports entering before 23 April 2001 would not have qualified for duty- and quota-free treatment. Figure 7.3. shows the share of monthly garment imports that qualified for duty-free treatment during the first year of the program. Note that garment shippers responded to the new law within a matter of months after Lesotho was certified.

The fact that most of the increase in total imports came in existing product lines does not mean that every single product line with AGOA trade experienced an increase in imports. Of the 51 product lines with imports entering under AGOA, about 60 percent experienced increased trade volume, while imports declined in about 40 percent of these product lines. Trade volumes at the 10-digit HTS product level are fairly volatile, so it's not obvious what magnitude of change should be considered "large" or "small." It's worth noting, however, that in about one-third of the lines with AGOA, imports from Lesotho more than doubled between 2000 and 2001. This seems like a substantial increase in trade, by any measure.
**Figure 7.2: Garment Imports Qualifying for AGOA Benefits, 2001-2002**

Source: Author's calculations from USTIC data.

**Table 7.4: Changes in Trade Flows Across Products**

<table>
<thead>
<tr>
<th></th>
<th>Number of Product Lines</th>
<th>Share of Product Lines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of trade DECLINED from 2000 to 2001</td>
<td>21</td>
<td>41%</td>
</tr>
<tr>
<td>by 50-100%</td>
<td>7</td>
<td>14%</td>
</tr>
<tr>
<td>by 1-50%</td>
<td>14</td>
<td>27%</td>
</tr>
<tr>
<td>Value of trade INCREASED from 2000 to 2001</td>
<td>30</td>
<td>59%</td>
</tr>
<tr>
<td>by 1- 50%</td>
<td>6</td>
<td>12%</td>
</tr>
<tr>
<td>by 51- 100%</td>
<td>6</td>
<td>12%</td>
</tr>
<tr>
<td>by 101-500%</td>
<td>13</td>
<td>25%</td>
</tr>
<tr>
<td>by &gt; 500%</td>
<td>5</td>
<td>10%</td>
</tr>
<tr>
<td>Product lines traded in 2000 with trade under AGOA</td>
<td>51</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Author’s calculations using USITC data.
7.4 Effects on Unit Values

Preferential treatment under AGOA might shift trade into higher or lower value goods within the same 10-digit product category. One would expect that exporters will try to shift as much higher value-added production as possible into product lines that qualify for duty- and quota-free treatment. Conversely (or symmetrically), one can imagine that U.S. manufacturers competing with African imports will lobby for loopholes in trade rules to protect them from competition in higher value-added goods, in which case one would expect AGOA goods to have lower average values than their counterparts that do not enjoy preferential treatment.

Table 7.5: Unit Values, 1996–2001

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Dozens</td>
<td>1,684,481</td>
<td>1,918,801</td>
<td>2,271,948</td>
<td>2,518,371</td>
<td>3,320,833</td>
<td>4,904,489</td>
</tr>
<tr>
<td>Dollars</td>
<td>$65,214,806</td>
<td>$86,280,533</td>
<td>$100,072,006</td>
<td>$110,759,155</td>
<td>$140,219,043</td>
<td>$214,789,060</td>
</tr>
<tr>
<td>Unit Values</td>
<td>$38.72</td>
<td>$44.97</td>
<td>$44.05</td>
<td>$43.98</td>
<td>$42.22</td>
<td>$43.79</td>
</tr>
<tr>
<td>AGOA only</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$46.14</td>
</tr>
<tr>
<td>Excluding AGOA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$40.67</td>
</tr>
</tbody>
</table>

Source: Author’s calculations using USITC data.

The 2001 data show a slight increase in unit values of clothing imports associated with the AGOA program. In 2001 the unit value of clothing imported from Lesotho under the AGOA program was $46.14 per dozen articles of clothing, versus only $40.67 for clothing imported under regular status (i.e., MFN treatment). This effect of the AGOA program reversed a steady decline in unit values of clothing imports from 1997 to 2000. (The table above shows data for trade HTS 61 and 62 product lines only.)

Not all goods increased in value: in 23 product lines, the unit value of imports entering under AGOA in 2001 was lower than the unit value in the most recent year that the good was imported from Lesotho, while unit values rose in the remaining 49 product lines.

Figure 7.3 shows how does Lesotho’s trade compare with clothing imported into the U.S. from other countries. The unit price of clothing imported into the U.S. from the world as a whole has been declining steadily over the past five years, from $49 to $42 (per dozen articles of clothing). During this same period, the unit

Differences in unit values of goods within a common product classification are often associated with different quality levels.
value of clothing imported from the Peoples Republic of China (the source of approximately 10-12 percent of U.S. clothing imports during this period) has declined from $68 to $54. Excluding clothing entering under AGOA, Lesotho’s exports to the U.S. follow this same downward trend. The particular goods from Lesotho receiving preferential treatment under AGOA run counter to the general trend, as shown in the chart below. If this represents a shift of production into higher value-added product varieties, this is a good omen.

**Figure 7.3: Unit Values of Clothing Imports to U.S.**

Garments made from fabrics and yarns produced outside the U.S. are subject to a tariff rate quota that expands gradually over the eight years of the program. This is expressed as a share of the total quantity (measured in square meter

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7.5 How does the TRQ affect Lesotho’s exports to the U.S.?

Garments made from fabrics and yarns produced outside the U.S. are subject to a tariff rate quota that expands gradually over the eight years of the program. This is expressed as a share of the total quantity (measured in square meter

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7. Preferential liberalization should also increase unit values: an import tariff pushes up the domestic (U.S.) price of all units sold; exporters receiving duty-free access receive that full domestic price, capturing what had formerly been tariff revenue received by the government. If this were the only thing happening, unit values would rise across all products, which is not the case. Presumably changing market conditions, which may include a shift into higher value varieties, outweigh the redistribution of what had been tariff revenue to Lesotho’s exporters.
equivalents) of previous year’s garment imports into the U.S. from the rest of the world. In fiscal year 2001, the level was set at 1.5 percent of imports in FY 2000. This will expand each year until FY 2008, when it reaches a level of 3.5 percent of imports in FY 2007.

**TABLE 7.6: QUOTA FILL RATES IN AGOA COUNTRIES, 2001–2002**

<table>
<thead>
<tr>
<th></th>
<th>FY2001</th>
<th>FY2002*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Imports</td>
<td>Fill Rate</td>
</tr>
<tr>
<td>AGOA Preference Level**</td>
<td>246,500,393</td>
<td>313,303,986</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>489,912</td>
<td></td>
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<tr>
<td>Kenya</td>
<td>11,078,027</td>
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<td>Lesotho</td>
<td>15,491,604</td>
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<tr>
<td>Madagascar</td>
<td>9,040,281</td>
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<tr>
<td>Malawi</td>
<td>19,110</td>
<td>0.01%</td>
</tr>
<tr>
<td>Swaziland</td>
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<td></td>
</tr>
<tr>
<td>Total LDCs</td>
<td>35,629,022</td>
<td>14.45%</td>
</tr>
<tr>
<td>Botswana</td>
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<td></td>
</tr>
<tr>
<td>Mauritania</td>
<td>3,382,260</td>
<td>1.37%</td>
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<tr>
<td>R.S.A.</td>
<td>2,921,836</td>
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<tr>
<td>Total non-LDCs</td>
<td>6,304,096</td>
<td>2.56%</td>
</tr>
<tr>
<td>Total AGOA</td>
<td>41,933,118</td>
<td>17.01%</td>
</tr>
</tbody>
</table>

* Data for October 2001 through February 2002.
** The preference level is expressed in square meter equivalents.
Source: Author’s calculations using USITC data.

Thus far AGOA beneficiary countries have not come close to hitting the cap. The fill rate (imports as a share of total quantity eligible for duty-free treatment) was only 17 percent during FY 2001 (October 2000 through September 2001). Apparel imports from AGOA countries from October 2001 through February 2002

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72 The U.S. government’s fiscal year runs from October 1 through September 30.
73 In July 2002 the U.S. Congress amended the law to double the size of the tariff rate quotas. These will now rise to 7.0 percent of previous year imports by 2008.
presently comprise 21.5 percent of the FY2002 quota. If imports continue to flow in at the same rate during the remainder of the fiscal year, the fill rate should reach around 50 percent of the available quota.

Will the AGOA countries bump up against the cap in the future? The answer depends primarily on the ability of sub-Saharan African countries to increase clothing exports to the U.S. If trade continues to expand at the rate experienced during 2001, the cap may be reached in only a few years. At that time, exports exceeding the cap would be subject to the same duties paid before AGOA took effect.

7.6 Extension and Expansion of AGOA

There a widely held belief that the U.S. government will extend AGOA trade preferences beyond the 2008 expiration date, based on the strong support for AGOA expressed in speeches by President Bush and USTR Zoellick. In July 2002, the U.S. Congress doubled the size of the tariff rate quotas, as was widely expected (although this measure had been rejected by the U.S. Senate the previous year). The newly amended law also clarifies an inconsistency related to knit versus woven garments, and it extends the LDC exemption to both Botswana and Namibia, despite their higher levels of income.

7.7 Conclusions

What is the impact of AGOA on Lesotho? How might this affect its trade in the future? One might take a dim view of AGOA’s benefits to Lesotho if the same value of trade occurred in the same product lines, and any expansion of total trade occurred in product lines not even subject to AGOA preferences. This might be the case if Lesotho lacked the capacity to expand supply or if hidden trade barriers in the U.S. prevented additional imports in the AGOA product lines. To be sure, the exporter would receive the full domestic price (equal to the world price marked up by the tariff rate) instead of the world price, which may

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74 At the Integrated Framework conference held in Maseru on March 27, 2002, U.S. Deputy Chief of Mission Daniel Bellegarde indicated that the question was not whether AGOA would be renewed, but when it would be renewed. He indicated that even if the U.S. Congress did not pass the appropriate legislation until after the current law expired, exporters would eventually be reimbursed whatever duties they might have to pay.

75 The U.S. Customs Bureau had be interpreting the original law narrowly, applying benefits on “cut-to-shape” garments only to those made with woven fabrics. This effectively prevented articles such cotton sweatshirts from enjoying duty-free access.
or may not be passed along as higher wages to workers. But this would last only until AGOA expires, and any additional revenue would shrink if the U.S. lowered MFN tariffs in the meantime. Fortunately this pessimistic view is not supported by the data.

Benefits to Lesotho might still be fairly limited if the only effect of AGOA trade preferences is that Lesotho now exports larger quantities of the same products it has always been shipping to the U.S., without any expansion of exports into new product lines. Unfortunately, this seems to be closer to the picture borne out in the 2001 trade data, in the sense that virtually all of the AGOA trade occurs within established product lines. However, the items receiving AGOA treatment generally sell for higher prices than items in the same product classifications that do not benefit from trade preferences. In addition, this increase in unit values comes during a period of steadily falling clothing prices on world markets. This suggests that Lesotho’s exporters have been able to shift production into at least slightly more valuable varieties of existing products.

What does the future hold? Lesotho presently benefits from a temporary waiver of restrictions on clothing exports, by virtue of its status as a least developed country. This special rule for LDCs expires in 2004, after which time Lesotho’s clothing exports will be subject to a tariff rate quota and must be made from regional or American inputs. Lesotho may not be greatly affected by the former. The latter may create problems for exporters if they do not develop regional suppliers of fabrics and yarns.

Finally, all AGOA trade preferences expire in 2008. In the meantime, Lesotho and other countries participating in AGOA will see their current tariff advantage erode as Multi Fibre Arrangement quotas are relaxed and if the U.S. offers tariff reductions to other countries (such as MFN liberalization through the WTO or preferential reductions through other regional arrangements). The challenge for Lesotho is to use the temporary advantage it currently enjoys to build the capacity to expand exports into new products.
CHAPTER 8
LESOTHO’S INDUSTRIAL GARMENT SUB-SECTOR: THE SUSTAINABILITY OF GARMENT EXPORTS AND CONSTRAINTS TO THEIR FURTHER EXPANSION.

8.1 INTRODUCTION

The formal garment industry in Lesotho has shown remarkable growth in recent years with employment in the industry surging by over 50 percent in 2001. In the same year Lesotho was the leading exporter of clothing under AGOA (African Growth and Opportunity Act) in both knitted and woven garments. 76

The Lesotho Government commissioned a sub-sector study of the formal garment industry that was completed in February 2001. The report, funded by the Department for International Development (DFID), has yet to be released by the Government. 77 Subsequent to the completion of the DFID funded study it was felt that additional research should be conducted into the supply side bottlenecks affecting the garment industry and possibly constraining its further expansion.

8.2 OVERVIEW OF THE SUB-SECTOR

The vast majority of Lesotho’s garment exports are to the USA. In 1997 exports of clothing into the SADC region were larger than those to the USA but they have declined in recent years.

Up to the mid 1990s most of Lesotho’s garment exports outside of the South African Customs Union (SACU) were going to Europe while exporters took advantage of the derogation from the cumulation clause of the Lome agreement. When this derogation expired garment industrialists switched their efforts to the USA market, which they managed to penetrate successfully despite the regime of quotas and import duties. Lesotho did enjoy some preference for exports into the USA under the GSP arrangement with duties on clothing being approximately 17%.

76 USA Customs website.

77 Lesotho Garment Industry Subsector Study for The Government of Lesotho - A. Salm (Team Leader), W. Grant, J. Haycock, T. Green, J. Raimondo
While the data from the Bureau of Statistics in Lesotho are unreliable and do not match the USA import data for the year 2000, it is interesting to note that the significant increases in Lesotho’s penetration of the market took place before the preferential arrangements of AGOA were introduced.

USA import data indicates that the value of garment imports from Lesotho increased from $62 million in 1996 to $140 million in 2000. With the introduction of AGOA, garment imports increased to $215 million in 2001, an increase of 53% on the previous year.78

8.3 Driving Forces

The efforts and achievements of the Lesotho Government in attracting Foreign Direct Investment are highly credible. They embarked on a programme of building factory shells in serviced industrial sites in the 1980s that facilitated the establishment of the garment industry in the country. They were also quick to respond to the changing nature of the industry and have actively encouraged South East Asian investors who dominate the industry globally.

The East Asian investors have brought their considerable experience in sales, marketing and international logistics to the sector and they dominate the ownership of the garment industry in Lesotho. There are 38 distinct factories of

78 See Philip Schuler in this volume.
which some are commonly owned resulting in 27 factory groups. 81 percent of the industry is owned and operated by East Asians employing 97 percent of the workers in the industry.

A major driving force in the current growth of the industry is AGOA which, allowing duty and quota free access to the USA, has stimulated the growth in both employment and exports.

Another driving force is the International Consumer Standards, which is forcing significant change in the working conditions on the factory floors. The fact that the industry in Lesotho has embraced the changes required by AGOA and the customers’ Codes of Conduct have made it a safe sourcing destination for customers sensitive to the negative publicity that could ensue were this not the case.

The significant fall in the Maloti vis-à-vis the US dollar must also be considered a driving force that is helping to keep Lesotho’s produce competitive. The Maloti declined in value by about 30% in 2001. Industrialists negotiated a wage increase with the Trade Union of 10% resulting in a real decline in wage costs of some 20% during the year. The cost in dollar terms of utilities and other local expenditure dropped by 30% thereby improving the cost competitiveness of Lesotho’s garments.

8.4 The Structure of the Garment Industry

To fully understand the constraints on the consolidation of the garment industry and its future growth it is important to look at the structure of the industry.

The industry is divided into two distinct branches, one producing garments manufactured from knitted cloth and the other producing garments from woven cloth which is predominantly denim. In 2001 the entire industry consumed in the region of 5 million square meters of cloth per month. Historically all fabric inputs have been imported.

A new $100m mill that is being built in the Thetsane Industrial estate will produce one million square metres of denim cloth monthly when it comes on stream in 2003. The new mill will be sufficient to supply half the current denim requirements of 2 million square meters per month. The woven/denim segment of the industry employs 35 percent of the workers.

In addition one of the larger denim garment producers has acquired a denim mill in KwaZulu Natal, South Africa, which will supply the other half of Lesotho’s
denim requirements. It can therefore be seen that Lesotho’s denim segment of the garment industry had secured its preferential status beyond the 2004 LDC cut off.

This is not the case with the segment of the industry producing garments made from knitted fabrics, which currently employs 57 percent of the workers in the industry. Employment in the garment industry at the end of 2001 stood at 32,500. 17,700 workers are involved in the segment producing garments made from knitted fabrics and 35 percent or 11,375 workers are employed in the production of woven/denim garments, and 8 percent or 2,600 workers are employed in factories producing a mix of knit fabric and woven fabric garments.

At the time of this report there were no knitted fabric mills in Lesotho or confirmed plans to establish any. A number of factories have expressed their interest in starting fabric mills but it would appear that they are sitting on the fence. They are waiting to see if the preferential provisions of AGOA for LDC’s will be extended beyond 2004.

On the positive side it must be noted that knitted mills are far less capital intensive than woven mills and they can be set up in a relatively short time. In addition the knitted mills can be set up in standard factory shells without special building requirements.

The problem with knitting mills lies in the finishing processes where scouring and dyeing require consistent supplies of water in large volumes.

8.5 Constraints on Further Growth

While the Lesotho Government has made extraordinary progress in attracting a relatively large garment industry, it has become a victim of its own success as the provision of utilities, and particularly water, have been stretched close to their limits.

The establishment of the denim mill at Thetsane was a coup for Lesotho, as it will result in 5,000 new jobs within the industry. The GoL had to make major commitments with regard to the provision of utilities to the mill site including the provision of an adequate water supply. A task force has been established by Government to ensure the timely provision of all utilities and work is progressing smoothly. The concentration of resources including human, financial and utilities into this one project has left little capacity to address the expansion requirements of the industry as a whole.
The major physical constraints to the consolidation and further growth of the industry may be listed as follows:

- Lack of backward linkages and in particular knitted fabric mills.
- Insufficient or erratic supplies of water to all the major industrial estates.
- Lack of available factory shells.
- Lack of serviced industrial sites.
- Totally inadequate conditions and handling facilities at the Maseru Railhead.

8.5.1. Knitted Fabric Mills

To maintain the LDC advantage under AGOA post 2004 the Lesotho garment industry will have to source its fabric from Lesotho based fabric mills, from an accredited AGOA state or from the USA. As over half the employees involved in the industry in Lesotho are working in factories that use knitted fabric as their main raw material, a significant portion of the industry must be considered to be at risk unless the necessary backward linkages are created.

8.5.2. Water

Fabric mills and many garment production industries require significant volumes of water for the post-production processing of their produce. Water supply throughout the Lesotho industrial estates is erratic and inadequate at the present time. The GoL is aware of the problem and has committed significant resources to improving the supply to the Thetsane estate. A number of studies have been commissioned to look at long-term solutions to the problem.

As the window of opportunity under AGOA is limited the GoL will struggle to address the problem in time. Investment in the maintenance of Maseru’s existing reticulation system where approximately 40% of water is lost, will provide additional water capacity for the establishment of new factories.

8.5.3. Factory Shells and Serviced Industrial Sites

In the past Lesotho embarked on a program of building factory shells on a speculative basis. These proved to be an attractive incentive for entrepreneurs
moving into the country as it shortened start-up times. With the major expansions that have taken place in the industry, the LNDC has committed enormous financial resources to the provision of factories and now has very limited facilities for its building programme.

A number of entrepreneurs, impatient to establish their businesses, have agreed to finance the building of their factories themselves. This has been a very encouraging development as it implies a commitment to remaining in the country. The pressures of expansion of the industry have resulted in a shortage of serviced industrial sites. Industrial land has been acquired in Ha Tikoe near Maseru, Mafeteng, Mohale’s Hoek and Butha Buthe. None of this land is serviced and investment in the servicing of the industrial sites and the provision of utilities is urgently required to provide the land resources for further expansion of the industry.

8.5.4. The Maseru Railhead

The facilities at the Maseru Railhead are completely inadequate and need to be addressed as a matter or urgency. No part of the station is paved and containers are lifted off the rail trucks by crane or forklift trucks. Given that the working surface is uneven and in wet weather turns into a quagmire, the entire operation of the station is dangerous and insufficient to handle Lesotho’s development requirements.

Currently 40 containers a day are brought into the station on two trains. At any time there are a large number of containers consigned to Lesotho stored in Bloemfontein because there are no storage facilities in Lesotho. Full containers cannot be stored on an uneven surface as it is virtually impossible to lift them again with a forklift. Containers stored in Bloemfontein attract a demurrage charge of M295 per day. This is revenue that should and could be earned in Lesotho. The railhead is currently operating at full capacity and there do not appear to be any plans to increase capacity despite the fact that the denim mill alone will increase container traffic by 10%.

The facilities for handling containers include three forklift trucks and a mobile crane. Breakdowns are frequent, as the machinery is old. When breakdowns occur a mechanic has to be called from Bloemfontein in South Africa some 1½ half hours drive away.

Spoornet, the South African rail operator, operates the railhead. They have been reluctant to develop the site because they do not have any form of tenure on the site. Recently the Department of Customs in Lesotho has been granted a lease over the site and are arranging a sub-lease for Spoornet which may give them sufficient tenure to consider developing the facility.
A further problem is that Spoornet does not consider the Maseru site to be profitable due to a simple anomaly in its accounting systems. All revenues for containers sent to Maseru are allocated to the sending station, which is normally Port Elizabeth in South Africa. This means that the only revenue earned by the Maseru railhead is for the movement of containers from the railhead to the factories, which is subcontracted to private truck operators, and for the return of empty containers back to the port. A limited number of full containers are consigned from Maseru but industrialists prefer to use road transport for their finished goods where the transit time is 24 hours as opposed to four or five days by rail. The cost of shipping a six metre container by rail from Maseru to Port Elizabeth is approximately M2,900 while shipping by road would be M4,500.

If the Maseru Railhead was given a reasonable portion of the revenue for its incoming containers and was able to earn the demurrage on containers in storage it is likely that it would be profitable and self-sustaining. To achieve this it needs to be completely upgraded with the provision of suitable container handling facilities, increased siding length and paved storage and handling areas.

8.5.5. Customs Facilities

The majority of raw materials for the garment industry are imported into Lesotho by rail. All raw materials imported under rebate have to be inspected by Customs during unloading of the containers. In addition all exports to the USA and Europe must be verified by Customs during the loading process.

The garment industry is currently concentrated near Maseru and Maputsoe. While inspection facilities are available at Maputsoe, final document clearances and verification must be done in Maseru, some 100 kilometres away.

While it is possible to import containers through Ficksburg, which is the South African border town with Maputsoe, the document clearances must still take place in Maseru. Industrialists claim that this requires a senior employee to travel to Maseru where a whole day may be wasted every time a consignment arrives or leaves. Currently containers consigned to Mafeteng and cleared through the Maseru Railhead have to be accompanied by a customs official to the factory where they are inspected. This is a round trip of some three hours.

The Director of Customs has stated that it is the intention of his department to establish full clearance and export facilities in Maputsoe but it is being constrained by the difficulty of ensuring that such a facility would be able to maintain the integrity of the customs service in an industry which is prone to corruption. A facility of this nature would be of enormous benefit to the garment
industry in Maputsoe and could be a pilot scheme for the development of similar facilities in the future expansion areas of Mafeteng, Mohale’s Hoek and Butha Buthe.

8.6 The Challenge of Competing as Preferential Advantages are Lost

While AGOA offers considerable advantages to Lesotho for the export of its products to the USA all these advantages have a life span and the window of opportunity is limited. Lesotho’s garment industry has to maintain its level of cost competitiveness as the advantages are eroded.

In 2004 Lesotho loses the LDC advantage and will have to source the fabric for its garment production from either another AGOA accredited state, from the USA or it will have to manufacture the fabric in Lesotho.

The second hurdle will occur in 2005 when the Multi Fibre Agreement (MFA) expires and all quota restrictions will be removed to global trade. This will open the USA garment trade to the full potential of Lesotho’s competitor countries including China and the rest of South East Asia.

AGOA itself expires in 2008 and, unless the agreement is extended, all garment-producing countries will be competing on equal terms. Lesotho will then have to fully compete in the global market.

Can it do this or will the industry simply relocate to more competitive countries? One should consider that the investors have, in many cases, bought or built the factories in which they are operating. Many of them have been in Lesotho in for over 15 years and have successfully penetrated and competed in the USA market prior to any of the advantages enjoyed under AGOA. It seems apparent that the Lesotho garment investors are in the country for the long haul and, being the resourceful people that they are, will remain competitive as the tariff and quota advantages drop away.

To continue to compete successfully the industry needs to adapt to the changing requirements of the markets. Significant investment in the provision of industry specific training, induction and industrial relations programmes is a prerequisite for achieving this aim.

8.6.1 The Investment Climate

To consolidate the successes of the garment industry it is important that the investment climate remains positive for existing and prospective industrialists. A precondition is obviously the regulatory climate. The investors currently in
Lesotho have all stated that they have few problems doing business in the country in terms of bureaucratic red tape.

A major problem that may not be immediately apparent is the almost universal distrust with which most Basotho view the South East Asian investors. Much of this resentment is due to business malpractice that occurred in the past and the penetration of S. E. Asians into small businesses throughout the country that were historically the preserve of the Basotho themselves. They have done this despite laws that specifically exclude foreigners from owning small and micro businesses. Many Basotho believe that Basotho businesses have been compromised by the Government’s inability or unwillingness to control the proliferation of S. E. Asian trading businesses with which they cannot compete. No distinction is made between the micro businesses and the large industries in the industrial estates, which places the latter at risk in the event of political or industrial unrest.

Many of the East Asian industrialists, unable to communicate with their Basotho staff in English have employed supervisors recruited from China to run their production lines. These supervisors are also not able to communicate effectively with the workers and resort to tactics to achieve results on the production lines that are unacceptable to Basotho labour. Resentment, distrust and a lack of understanding are endemic in the industry. In many cases where Basotho supervisors have been appointed they are not necessarily chosen on their ability or suitability and invariably receive inadequate training to equip them for the job on hand.

8.6.2. Improving Productivity through Training

No training facility specifically targeting the industrial garment sector exists in Lesotho despite the fact that such a facility is a pre-requisite for maintaining the industry’s cost competitiveness and industrial peace. A delegation from the Lesotho Government recently visited a clothing training facility in Cape Town, however the establishment of any training facility specifically targeting the garment industry should have the complete involvement and commitment of the industry itself.

For Lesotho to maintain its cost competitiveness post 2004, 2005 and 2008 where it will be competing on an even playing field with all major garment producing nations it will have to increase its productivity. While a few factories have achieved high levels of productivity many are highly inefficient. This could be regarded as an advantage as it implies that there is room for significant improvement. This improvement should take place through a relevant training facility owned and operated by the industry with assistance from the Government and donor agencies.
It is essential that expatriate staff are properly inducted into both the provisions of Lesotho’s Labour Code and Basotho culture and that Basotho supervisors receive appropriate training in modern motivational techniques. The training of Basotho supervisors will not only assist enormously in promoting industrial stability but it also provides the entry point for full Basotho participation in the higher management in the industry and to the establishment of Basotho owed and managed factories.

8.7 Conclusions

The formal garment sector in Lesotho is driving growth in terms of foreign investment, employment and its contribution to GNP. The industry is the largest provider of private sector income that is having a spillage effect across the country with significant remittances being transferred into the poorer rural areas.

While the Government of Lesotho has made significant achievements in the promotion and stabilising of the garment sector, it is hard-pressed to keep up with the investment requirements to continue the growth in the industry given the short time frame of the advantages it enjoys under AGOA.

There are capacity problems developing in the infrastructural matrix that will constrain the further expansion of the industry unless urgently addressed. The main constraints being the adequate and reliable supply of water to the industrial estates, the provision of serviced industrial land, pre-built factory shells and the handling capacity of the Maseru Railhead.

Other constraints include the cost competitiveness of the industry once the preferential protections fall away and the lack of backward linkages and in particular knitted fabric mills. There is a lack of adequate training across the entire spectrum of the industry this is limiting the ability of Basotho to fully participate in the growth and success of the industry. The industry in Lesotho needs to concentrate on increasing its productivity through targeted induction, staff selection and training if it wishes to maintain its cost competitiveness in the future.
# Recommendation and Action Plan

<table>
<thead>
<tr>
<th>Infrastructure Requirements</th>
<th>Major Actions</th>
<th>Recommendations</th>
<th>Responsibility</th>
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<tbody>
<tr>
<td>Serviced industrial sites</td>
<td>Provide Additional Serviced Industrial Sites</td>
<td>Provide Services To Industrial Estates In Ha Tikoe, Mafeteng And Mohale's Hoek.</td>
<td>GoL/ LNDC</td>
</tr>
<tr>
<td>Factory Shells</td>
<td>Provide additional factory shells</td>
<td>• Facilitate investors to build their own shells &lt;br&gt;• Build factory shells for committed investors</td>
<td>LNDC&lt;br&gt;GoL/ LNDC</td>
</tr>
<tr>
<td>Reliable water supply</td>
<td>Upgrade water supply</td>
<td>Enhance the water supply to existing industrial estates</td>
<td>GoL/ WASA</td>
</tr>
<tr>
<td>Logistical Capacity</td>
<td>Increase handling capacity at Mascon railhead. &lt;br&gt;Improve customs clearance efficiencies.</td>
<td>• Conclude strategy plan and negotiations for the development of the Mascon site. &lt;br&gt;• Facilitate the development of the Mascon site into a modern container handling and storage facility. &lt;br&gt;• Develop full customs clearance facilities on Maputsoe/ Ficksburg border.</td>
<td>GoL&lt;br&gt;GoL/ LNDC&lt;br&gt;GoL/ Customs</td>
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<tr>
<td>Fabric knitting Mills</td>
<td>Encourage and promote the development of Fabric knitting mills in Lesotho.</td>
<td>• Designate a new industrial estate as a potential site for wet industry development. &lt;br&gt;• Provide services and wastewater treatment facilities to the new wet industry estate. &lt;br&gt;• Facilitate investors who wish to establish fabric knitting mills and dye plants.</td>
<td>LNDC&lt;br&gt;GoL/ LNDC&lt;br&gt;LNDC</td>
</tr>
<tr>
<td>Cost competitiveness</td>
<td>Establish Productivity and Training Institute</td>
<td>Implement comprehensive training programme to upgrade factory efficiencies and productivity improvement.</td>
<td>GoL/ Industrialists</td>
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# Annex 1

## Railage and Transport Costs in Lesotho

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<tr>
<th>Service Description</th>
<th>20 foot Container</th>
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<td>Railage from Port Elizabeth</td>
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<td>M2911</td>
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<td>Railage from Durban</td>
<td>M1422</td>
<td>M2606</td>
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<td>Loading an empty container onto a road trailer at Maseru Station.</td>
<td>M377</td>
<td>M477</td>
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<td>Local road delivery of containers from Maseru railhead. 0 – 5 kilometers</td>
<td>M314</td>
<td>M467</td>
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<td>Local road delivery of containers from Maseru railhead. 5 – 10 kilometers</td>
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<td>M618</td>
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<td>Local road delivery of containers from Maseru to Maputsoe</td>
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<td>Road Transport - Lesotho to South African Port</td>
<td>M4,200</td>
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<td>Shipping charges ex Far East to South African Port.</td>
<td>US $2500</td>
<td>US$4000</td>
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<td>Shipping charges ex South African Port to USA.</td>
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