

## II. TRADE AND INVESTMENT REGIMES

### (1) Institutional Framework

1. After 80 years as a British protectorate, Bechuanaland attained self-government in 1965 and became the independent Republic of Botswana on 30 September 1966. Since then, Botswana has retained a written Constitution providing for three separate branches of Government, as well as a Bill of Rights guaranteeing certain fundamental freedoms along the lines of the International Declaration of Human Rights.

2. The Constitution vests legislative power in a unicameral National Assembly, now with 40 elected members, the President (ex-officio), Speaker, Attorney-General and four members nominated by the president and subject to confirmation by the elected members. The Assembly is elected for five years on the basis of universal adult suffrage with full freedom to organize political parties. A 15-member House of Chiefs has advisory powers on matters affecting custom and tradition only and is not involved in the regular scrutiny of bills passed by the National Assembly. Executive power lies with the President, who is elected by the Parliament (in practice, by the party commanding a majority), and who presides over the Cabinet. The President is also the Commander-in-Chief of the Armed Forces. General elections must be held at least every five years; the President may, however, dissolve Parliament at any time. National elections were last held in 1994, contested by nine parties; however, the Botswana Democratic Party has held power continuously since 1965.

3. Under a local government system introduced at independence, there are nine district councils, one city (Gaborone) and four town councils (Francistown, Lobatse, Selebi-Phikwe and Jwaneng), which are responsible for primary education, local roads and certain local services. Local elections coincide with national elections and are also conducted on a party political basis.

4. An independent judiciary interprets and administers the Constitution and other laws. The Chief Justice and Judge President of the Court of Appeal are appointed by the President on the recommendation of the Judicial Service Commission. Except where notified by Statute, Roman-Dutch law is the commercial law while the criminal law is largely based on English law. In addition to the Court of Appeal, the formal legal system comprises a High Court and magistrate's courts; the High Court is located in Lobatse but holds sessions in Gaborone and other main towns. Customary law cases in rural areas are heard by tribal courts associated with village *kgotla*, with traditional chiefs acting as court presidents, although in towns they are replaced by Government appointees.

### (2) Trade Policy Formulation and Implementation

5. The trade policy process in Botswana reflects the history and nature of the trade agreements of which the country has been a member. The main agreement is the Southern African Customs Union (SACU), comprising South Africa, Botswana, Lesotho, Namibia (*de jure* since 1990) and Swaziland, with a common customs tariff and revenue collection and distribution system.

6. The Ministerial responsibility for SACU matters in Botswana resides with the Revenue Department of the Ministry of Finance. The lead role for SACU affairs and negotiations lies with the Secretary for Financial Affairs of the Ministry of Finance and Development Planning.

7. The administration of the SACU Agreement includes a number of subcommittees to address particular sectoral issues and trade disputes, involving the Ministries of Agriculture; Commerce and Industry; Works; Transport and Communications; and other Ministries as required by the particular

issue. These subcommittees also often address issues arising from the existence of bilateral trade agreements with neighbouring countries such as Zimbabwe and Zambia. In Botswana, most of these issues are the responsibility of the Ministry of Commerce and Industry, although the Ministry of Agriculture is frequently involved if agricultural products are under discussion.

8. Most of Botswana's export earnings are from minerals and beef products. The mineral products have generally free entry to their markets, while beef has preferential entry under the Lomé Convention to its major market in Europe. Thus, for a very large part of Botswana's export trade, there has been no need for active negotiation on tariff or access policies. There is, however, a significant amount of work involved in negotiating new contracts and terms and conditions of production and sale of these products. The responsibility for these negotiations lies with the Ministry of Mineral Resources and Water Affairs for minerals, or with the Ministry of Agriculture for beef.

9. The primary responsibility for policy work on the WTO Agreements and for regional trade agreements such as SACU, the Southern African Development Community (SADC), the Lomé Convention and the South Africa/EU trade negotiations lies with the Ministry of Commerce and Industry. With the exception of the Lomé Convention, most of these trade issues are of recent relevance to Botswana and hence the capacity to support them is still in an early stage of development.

10. All decisions involving international commitments and treaties must be approved by the Cabinet and authorized by the President. The signature of the President ratifies a treaty, and thus no parliamentary approval is needed.

11. Preparation of trade policy issues for Cabinet decision involves a Memorandum for the Cabinet by the Ministry primarily responsible for an issue. Inter-departmental consultations usually involve the Ministry of Finance and Development Planning, the Ministry of Commerce and Industry, and the Ministry of Agriculture, with participation as required by the Bank of Botswana, the Department of External affairs, the Ministry of Labour and Home Affairs (for issues on labour codes), and the Office of the President. However, there is no standing committee on trade policy in the senior bureaucracy through which all trade policy issues must be processed.

12. The data base and information systems on which trade policy relies are also in an early stage of development. Assistance to create such systems has been arranged with donors, and the base for policy analysis in the trade area will be improved in the near future. While there is no formal agency that carries out periodic reviews and assessments of trade policies, various studies have been carried out as part of ongoing work over the years.

### (3) Trade Policy Objectives

13. Its small domestic market means that Botswana must enter into trading relationships with other countries in order to achieve sustainable economic development. For this reason, Botswana is an active partner in the multilateral trading system and in several regional trade arrangements, including SACU and SADC. Botswana also has a bilateral trade agreement with Zimbabwe.

14. Botswana's general trade policy objective has been to achieve the broadest possible free and dependable access for Botswana's industrial products and services, especially within the southern African region. This means minimizing the net costs of preferential arrangements, and within that context, increasing Botswana's share of production for the SACU market, given the common external tariff.

(4) Trade and Investment Laws and Regulations

15. The main legislation governing foreign trade is the SACU agreement. The 1985 Controlled Goods Act provides for controls on certain products by means of permits. The Industrial Property Act deals with industrial property rights and competition.

16. There is relatively little regulation of foreign business activity in Botswana. The Employment Act of 1982 provides basic guidelines for employment in Botswana. This labour legislation controls minimum wages, length of work-week, annual and maternity leave, hiring, and termination. Although the law applies to both domestic and expatriate workers, some categories - such as managers, executives, administrators, and professional staff - are excluded from that part of the Act covering hours of work, overtime, rest periods, annual leave entitlement, sick leave and working on public holidays. Health and safety laws, embodied in the Factories Act of 1973, are designed to provide basic protection for workers from unsafe working conditions. Neither law represents an impediment to investment.

17. Foreign investment in publicly quoted shares on the Botswana Stock Exchange is limited to 5% of the equity for any individual investor, and 49% of equity for all foreign investors combined.

18. The Government of Botswana has Double Taxation agreements with the United Kingdom, South Africa and Sweden. The Minister of Finance and Development Planning may also, by order, known as the Development Approval Order, prescribe tax relief to a business if that business is shown to be promoting the development of the economy of Botswana. The factors that are given consideration are:

- the number of Botswana citizens employed and in what capacity;
- the facilities provided to train and impart skills to Botswana citizens;
- the provisions made for the eventual replacement of non-citizens;
- the provisions made for the participation of the Botswana citizens in management;
- the area where the business is located; and
- the contribution of the business to the reduction of the price of consumer goods.

The Minister may enter into a tax agreement, on behalf of the Government which becomes operative on ratification by Parliament, to vary the provisions of the Income Tax Act as regards the imposition of tax or any obligation under the Act; generally in cases of capital intensive projects, such as mining.

19. Botswana law guarantees the right to private ownership. There is a brief list of enterprises reserved for ownership by Botswana citizens<sup>1</sup>, but these restrictions do not represent any significant impediment to foreign investment. The right to establish, acquire, and dispose of interest in business enterprises is protected.

20. Botswana enjoys a dual legal system in that both the Common Law and the Roman-Dutch Law are operational in the judicial system. As with the British legal system, both secured and

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<sup>1</sup>For more details on reservation policy and the list of reserved activities, see Chapter III.

unsecured creditors have equal access to courts during insolvency proceedings. The right to access the courts extends equally to foreign and domestic parties. However, secured creditors rank top of other creditors during assets distribution. This performance is often remedied by the inclusion of the *pari passu* clause in most agreements.

(5) Trade Agreements and Regional Co-operation

21. Botswana's goal is to ensure that regional economic integration arrangements are equitable in terms of benefits received by all members. Regional economic integration also presents opportunities for cooperation in developing the infrastructure and harnessing of water and energy resources, some of which are particularly scarce in Botswana.

(i) The WTO Agreement

22. Botswana became a founding WTO member in December 1994. The major benefit to Botswana of the Uruguay Round is seen as being reductions in the cost to Botswana of the common external tariff. Tariffication of agricultural quotas is expected, in time, to reduce the cost of some agricultural products within the SACU. However, reduction of European subsidies on agricultural products may lead to a reduction in the price of beef products from Botswana and may also gradually eliminate the current marginal advantage of access to the European market under the Lomé Convention.

23. In acceding to the WTO Agreement, Botswana acceded to the General Agreement on Trade in Services. Under this Agreement, Botswana has already made commitments on the treatment of foreign services providers in a number of sectors. These sectors include:

(a) Business services:

Professional services including architectural services, engineering services, integrated engineering services, medical and dental services, veterinary services, services provided by midwives, nurses, physiotherapists and paramedical personnel and other medical services;

Computer and related services, particularly consultancy services, installation of computer hardware, software implementation services, data-processing services, and data-base services and maintenance and repair of office machinery and equipment;

Research and development services relating to social sciences and humanities (including law and economics);

Real-estate services involving own or leased property, or on a fee or contract basis;

Other business services, particularly maintenance and repair of equipment (excluding maritime vessels, aircraft or other transport equipment) and translation and interpretation services.

(b) Communication services: commercial courier services.

(c) Tourism and related services: hotel and restaurant catering, and travel agencies and tour operators.

24. Botswana's tariff schedule in the Uruguay Round corresponds to that of South Africa, with a few exceptions (bindings of 20% on dairy products, wheat, maize, rice, groundnuts, sunflower seeds, and small tractors). Nevertheless, although SACU governs much of Botswana's trade policy, the individual countries, not SACU, are members of the WTO, and Botswana has notified some of its external arrangements to the WTO (Table II.1).

**Table II.1**  
**Status of Botswana's selected notification requirements to the WTO, as at 6 January 1998**

WTO Agreement	Description of requirements	Periodicity	Document No. of most recent notification	Comments
Anti-dumping (Art. 16.4)	Laws and regulations	Once by 3.95, then changes	G/ADP/N/1/BWA/1, 9.9.95	No laws on anti-dumping
Agriculture	Aggregate measure of support	Annual (end of marketing year)	G/AG/N/BWA/5, 15.4.97	List of 'Green Box' measures
Agriculture (Art. 5.7 and 18.2)	Special safeguard provisions	Annual	G/AG/N/BWA/3, 21.2.97	
Agriculture (Art. 10 and 18.2)	Export subsidies	Annual (end of marketing year)	G/AG/N/BWA/4, 24.2.97	No export subsidies up to end 1996.
Subsidies and countervailing measures (Art. 25.11)	Subsidies	Annual (triennial then annual changes)	G/SCM/N/3/BWA and Add.1 27.2.96	Maintains notifiable subsidies
Subsidies and countervailing measures (Art. 25.11)	Countervailing actions taken	Semi-annual	G/SCM/N/23 and Add.1, 22.4.97	No countervailing duty actions were taken
Safeguards (Art. 12.6)	Pre-existing Art. XIX measures	End of February 95	G/SG/N/BWA/1, 11.2.97	No laws relevant to agreement
Sanitary and phytosanitary measures (Art. 7, Annex B)	SPS to be notified promptly	Ad hoc	G/SPS/N/BWA/1 and 2, 27.11.96	Control of infant formula and food.
Understanding on the implementation of Art. XVII	State trading enterprises	Not specified	G/STR/N/1/BWA, 11.2.97	No state trading enterprises
Technical Barriers to Trade (Art. 10.6)	Measures taken		G/TBT/Notif.96.418, 6.12.96	Regulation of infant foods and articles

Source: WTO documents.

## (ii) The Southern African Customs Union (SACU)

25. On 1 March 1970, the Southern African Customs Union (SACU) Agreement, concluded on 11 December 1969, replaced the 1910 Customs Union, which linked the former British protectorates of Botswana, Lesotho and Swaziland (BLS) with South Africa. Namibia became a *de jure* member on 10 July 1990, having been a member *de facto* while it was administered by South Africa. The aims of the SACU, as expressed in the preamble to the 1969 Agreement, are to advance economic development, in particular in the less-developed member countries and diversify their economies, and afford all parties equitable benefits arising from intra-Union and international trade. The Customs Union Commission, the administering body of SACU, meets annually in each of its members' capitals in turn. SACU also has three liaison committees: Customs Technical Liaison Committee, Trade and Industry, and Transport.

26. Under the SACU Agreement, members apply the customs duties, including tariffs, and excise, sales, anti-dumping, countervailing and safeguard duties as well as related law, set by South Africa, to goods imported to the common customs area from third countries outside the Union. A SACU

member country may enter separately into, or amend, trade agreements with a country outside the common customs area, provided the terms of such agreements or amendments do not conflict in any way with the provisions of the SACU Agreement. Members may not impose duties or quantitative restrictions on goods imported, exported or re-exported within the SACU area (Articles 2 and 3 of the Agreement), except in specified exceptional circumstances.<sup>2</sup> Botswana, Lesotho, Namibia and Swaziland (the BLNS States), but not South Africa, may, following consultation, apply additional duties or increase duties for protection of infant industries and of industries deemed to be of major importance to their economies (Articles 6 and 7 of the Agreement); Botswana has used this twice (Chapter IV).<sup>3</sup> Rebates, refunds and drawbacks extended by members should generally be identical, except in specified circumstances including emergency situations, obligations under multilateral agreements or technical assistance agreements. However, a member may also grant a rebate, with the prior approval of other members, for purposes that may be agreed by the parties. Exceptional restrictions may be justified on, *inter alia*, economic, social, and cultural grounds. Moreover, members participate in marketing arrangements under which agricultural imports from other SACU countries may be restricted, particularly at harvest time (Chapter IV).

27. Rights of transit across South African territory are provided to SACU members under the Agreement. The provision for duty-free circulation of goods within the SACU area implies the collection by South Africa of applicable customs duties and excise taxes on virtually all the external trade and production of land-locked Botswana, Lesotho and Swaziland. All customs duties, and sales and excise taxes collected by members are pooled in the Consolidated Revenue Fund of South Africa. The pooled revenue is distributed to member countries. The shares of the BLNS countries are determined on the basis of a revenue sharing formula and the residual (after BLNS countries have been paid) is allocated to South Africa.

28. The original revenue-sharing formula was based on the respective contribution of the BLS countries to total imports into, and consumption of excisable goods produced within, the SACU area. The 1969 formula provided for a compensation factor of 42% of the shares of the BLS countries; this factor was introduced to compensate the BLS countries for the fiscal lags in the distribution of revenue, the "price-raising" (trade diversion) and "industrial polarization" effects, and the "loss of fiscal discretion" related to the Agreement. The formula was renegotiated in 1975 and a "stabilization factor" was added in 1977 to stabilize the revenue shares of the BLS (the BLNS since 1990) countries at about 20%, and allow them to fluctuate between 17 and 23% (Box II.1). In recent years, 17% has been the operative figure.

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<sup>2</sup>Article 5 (1) of the SACU Agreement requires South Africa to afford the other members adequate opportunity for consultation before imposing, amending or abrogating customs duties, except in specified cases.

<sup>3</sup>Protection of infant industries is normally allowed for a maximum of eight years. This time limit is provided under Article 6 for own country protection and has never been used in Botswana. However, Article 7 allows a member State to apply for protection under the Common External Tariff but the use of such protection has been restricted by various quantitative and qualitative requirements, e.g. proof of the non-availability, in the common customs area, of the good to be produced is required if a reduction of duties were requested on industrial inputs; and the supply of more than 60% of the SACU market is required if an increase in duties on final products were requested to protect new industries.

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

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

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

where:

- S = share allotted to a specific member country.
- A = c.i.f. value (at the border) of imports into the country irrespective of their origin and including all duties paid or payable thereon; imports from the customs area (in particular the RSA) are thus included.
- B = value of excisable and taxable (sales tax) goods produced and consumed in the country.
- C = excise and sales duties paid on B.
- D = c.i.f. value of imports into the SACU area, excluding intra-regional trade in common customs area.
- E = customs and sales duties paid on D.
- F = value of excisable and taxable (sales tax) goods produced and consumed in the SACU.
- G = excise and sales duties paid on F.
- R = the total revenue pool of customs, excise and sales duties, i.e. E + G.

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

If the formula yields a revenue rate of less (more) than 20% an additional amount is added (subtracted) equal to the difference between the amount calculated and the amount commensurate with a 20% revenue rate, provided that the resultatory rate is not less (more) than 17 (23)%; thus the formula is applied subject to

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

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

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

29. All Members recognize that certain aspects of the SACU Agreement have become outdated. Re-negotiations started in 1994. The emphasis seen from Botswana, has been on democratization and changing the institutional structure of the SACU Agreement, as well as technical revision of the revenue-sharing formula (the level of compensation for the price-raising and the industrial polarization effects, and for the loss of fiscal discretion, as well as the stabilization factor), the time

lags in distribution of revenue by South Africa, the management of the SACU system and the need for a dispute settlement mechanism.<sup>4</sup>

30. Proposals provide for the exclusion from the customs union of excise duties (which could then be set independently) and for introducing a consistent set of calculations for all five members, rather than treating South Africa as the residual. This could require more structured regulation of individual countries' use of special drawbacks or other concessions, as effects on the total revenue to be distributed would then affect the actual shares paid.

(iii) The Southern African Development Community (SADC)

31. Botswana has been an active participant in the Southern African Development Coordination Conference (SADCC) since its creation in 1980. The basic objective of this association of ten States was initially to reduce dependence on South Africa, with the coordination of regional infrastructure development projects (and related external financial assistance) being the principal means employed for pursuing this objective. While SADCC initiatives had not focused on regional trading relationships, the 1992 summit changed the name of the organization to the Southern African Development Community (SADC) and redirected the institution's programmes towards a broader concept of regional economic cooperation and integration with more emphasis on facilitation of international trade within the region. SADC currently has 14 members: Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

32. The organs of SADC include the Summit of Heads of State and Government (the supreme policy-making body), the Council of Ministers and its Secretariat based in Gaborone, Botswana. SADC aims to promote regional cooperation and economic integration towards a single common regional market, with a common currency system, and balanced and equitable mutual benefits; its ultimate goals are the development and economic growth of Southern Africa. To achieve its objectives, SADC seeks to develop policies aimed at the progressive elimination of barriers to free movement of capital, labour, goods and services, and to mobilize support for national and regional projects.

33. SADC promotes cooperation in sectoral activities such as transport, communications, tourism, energy, industry and mining between member States, and runs projects partially financed by foreign sources. Specific sectoral tasks with coordination offices are allotted to member States; Botswana coordinates agricultural research and training. In late 1994, a decision was taken to set up a regional rapid-deployment peacekeeping force. The creation of a regional development bank and a regional Parliament is also envisaged. SADC holds consultative conferences with cooperating Governments and international agencies. In September 1994, SADC and the EU launched a joint cooperation programme in areas such as trade promotion and control of illegal drug trafficking.<sup>5</sup>

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<sup>4</sup>The loss of fiscal discretion results from the fact that South Africa sets the common tariffs and excise tax schedules for the whole customs union. The structure of import duties has historically protected South African producers from non-SACU competition. The industrial polarization effect results from the fact that industries serving the whole customs union market were located primarily in South Africa. A two-year lag exists between the date of payment of revenue to BLNS countries and the relevant statistics on which it is based (each member's share in the revenue pool is determined before the start of the financial year).

<sup>5</sup>EIU (1996a).



34. The SADC Treaty provides for protocols that will set out principles and procedures under which member States will conduct their cooperation in specified areas. A protocol on Shared Watercourse Systems was signed in 1995 and four others were signed at the Maseru (Lesotho) Summit in August 1996. The four protocols deal with: illicit drug trafficking; energy; transport, communication and meteorology; and trade. As at the end of 1997, the Trade Protocol had only been ratified by Botswana, Mauritius and Tanzania.<sup>6</sup> The Protocol aims to establish a Free Trade Area (FTA) in the SADC region; it provides for intra-SADC trade liberalization, with the removal of tariff and non-tariff barriers within eight years from its entry into force.

35. The timeframe and the process that would lead to the establishment of the FTA will be determined by the Committee of Ministers responsible for trade matters, and may be asymmetrical; countries with higher tariff rates would be the first to start lowering the levels of their tariffs.<sup>7</sup> The Committee will also take into account sensitive sectors or products in each member country. SACU members will make a common tariff commitment.<sup>8</sup> Intra-SADC trade, particularly in food and beverages; agricultural, mining and chemical products; textiles and clothing; and wood products, increased by about 12.4% between 1990 and mid-1996.

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

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

38. The treaty also provides for a protocol to establish a disputes tribunal, which will adjudicate upon disputes arising from the Treaty that cannot be settled amicably between member States (Article 32 of the Treaty). Members of the tribunal will be appointed for a specified period. Decisions of the tribunal will be final and binding.

(iv) SACU-SADC interaction

39. Given Botswana's major role in SADC, as the seat of the secretariat, and simultaneous membership in SACU, the potential interaction between the two arrangements is seen by Botswana as significant.

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<sup>6</sup>The Protocol on Trade was not signed by Angola.

<sup>7</sup>*Marchés Tropicaux*, 30 August 1996; and *Jeune Afrique Economie*, No. 225, 16 September 1996.

<sup>8</sup>An overlap exists between SADC and SACU on the one hand, and SADC and the Common Market for Eastern and Southern Africa (COMESA) on the other.

40. The SADC agreement will lower tariffs and tariff revenues significantly for imports from non-SACU members of SADC compared to the Common External Tariff. The non-SACU, SADC region is a reasonably important source of imports for the SACU, and the elimination of tariffs on these imports will reduce revenues. Precisely how this reduction will be distributed among the SACU members will depend on the structure of their imports from the region and the nature of the new formula that may be agreed for their division.

41. The SACU-SADC interrelationship poses other problems. The SADC is a Free Trade Agreement, with separate external tariff regimes. On the other hand, the SACU is a Customs Union with a common external tariff. Since both arrangements provide free market access for goods of other members, with some limited exceptions for Free Trade Areas, countries with a Free Trade Area status would have the capacity to lower tariffs on inputs, and thus on costs, while Customs Union members would need a joint decision of all members to adjust the common external tariff. This has important implications for the flexibility of the tariff policy to meet the competitive conditions of other Free Trade Area members. The implication is that a non-SACU member of an SADC Free Trade Area would be able to reduce the tariff on an imported input in order to reduce the cost of an exporter to, say, the South African market. This would give an advantage over a SACU member unable to reduce imported input costs in the same way.

(v) Botswana/Zimbabwe Trade Agreement

42. The Customs Agreement between the Federation of Rhodesia and Nyasaland, the Bechuanaland Protectorate and Swaziland - which originally came into force in 1956 - was the forerunner of the present-day trade agreement between the Republic of Botswana and the Republic of Zimbabwe (B/ZTA). While this bilateral agreement was premised on mutual recognition of the benefits to be derived from free trade, following the achievement of independence by Zimbabwe in 1980, several developments generated friction in the trading arrangement between the two countries.

43. Of particular importance was the relocation of some Zimbabwean manufacturing enterprises, motivated by the severity at the time of Zimbabwean foreign exchange controls and the easier access to imported inputs in Botswana. The stress in the relationship became more pronounced as Zimbabwe experienced increasingly severe balance-of-payments difficulties, causing the Zimbabwean authorities to impose import quotas and tighten local-content requirements on goods imported from Botswana, and as several manufacturers in Botswana perceived that they were injured by the "dumping" practices of some Zimbabwean enterprises.

44. After several years of protracted negotiations, a new agreement was finally signed in October 1988. The provisions of the amended document, and especially their administration, reflected reservations on the part of both contracting parties. In particular, Zimbabwe has continued to seek ways to prevent Botswana's SACU affiliation from serving as a vehicle for South African goods circumventing the more restrictive provisions of the South Africa/Zimbabwe trade agreement. On the other hand, Botswana has continued to object to Zimbabwean impediments to its exports, and has occasionally resorted to retaliatory measures.

45. The current version of the agreement provides that trade is generally to be free of customs duties and quantitative export and import restrictions. However, in order to qualify for such treatment, goods must meet specific qualifications, rules of origin and related documentation procedures. There are also limitations on transport facilities and port of entry.

46. To be considered as originating from Botswana or Zimbabwe, manufactured goods must meet a 25% or more local-content requirement. The formula for the calculation of local content includes the following items, which constitute manufacturing costs: the cost of materials grown, produced or manufactured in Botswana or Zimbabwe used in the manufacture of goods to be exported to Zimbabwe or Botswana; and the cost of "direct labour involved in the manufacture of goods". This definition of local content excludes managerial salaries and local-owned profit. It is therefore very stringent and has been the subject of much conflict, including (temporary) abrogation of the Trade Agreement by Zimbabwe on more than one occasion.

47. Following the Zimbabwean devaluation in 1991, Botswana's products lost much of their competitive advantage in Zimbabwe and the South African market became more important for Botswana.

(vi) The Lomé Convention

48. Since 1975, Botswana's exports have been eligible under the Lomé Convention for virtually duty-free access to the European market. The current, fourth, Lomé Convention (Lomé IV) was concluded for ten years starting from 1990.

49. Subject to a safeguard clause and rules of origin, commodities from ACP States, except those covered by the Common Agricultural Policy, enter the EU free of customs duties and quantitative restrictions. Preferences under Lomé IV are estimated to cover some 40% of EU imports from ACP States, with a large majority of the remaining imports entering the EU market duty free either on an MFN basis or under GSP rates.<sup>9</sup> The ACP States are required to extend MFN treatment to EU products (Article 174).

50. Under the Beef Protocol of Lomé IV, traditional beef exporting countries are granted a 90% rebate of the specific element of the EU tariff (previously, of the variable levy) on beef imports. Botswana has been favoured with a particularly generous beef quota (presently 18,916 tonnes per annum until the year 2000), which it now does not manage to fill. Not all beef produced in Botswana is eligible for sale in the EU market owing to the risk of foot and mouth disease in some parts of the country. Part of Botswana's beef is sold elsewhere, including some to South Africa at SACU prices, which are somewhat higher than world prices but less than the EU price. Other Botswana non-traditional exports, such as clothing and textiles, also benefit from preferential treatment under the Lomé Convention because they are not constrained by quotas.

51. As a result of tariffication following the implementation of the WTO Agreement, the EU market may in time become more accessible to other more competitive beef exporters such as Australia and New Zealand, previously denied access by the variable levy system. Liberalizing the EU market is expected to affect the Botswana beef industry in two ways. On the one hand, reduction of EU beef subsidies and tariffs may reduce EU market prices; as EU beef prices decrease, Botswana's beef export prices would also decrease. On the other hand, world beef prices have been projected to increase by 5% above pre-Uruguay Round levels following liberalization of beef markets (FAO, 1994). This increase is attributable to the reduction of subsidized exports for both the EU and the United States and the expansion in import demand in Asian countries. The combined impact of these two factors on Botswana's beef prices depends on whether the EU will continue to be Botswana's major beef market and whether increases in global beef prices are greater or less than EU price decreases.<sup>10</sup>

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<sup>9</sup>WTO (1996).

<sup>10</sup>See Fidzani et. al (1996).

(vii) Other trading arrangements and international agreements

52. Botswana has preferential access to North American and other developed markets through the Generalized System of Preferences (GSP). However, Botswana's trade with the United States is currently very small.

53. Botswana is a member of the United Nations and its agencies, the Organisation of African Unity (OAU), the International Monetary Fund, the World Bank, the Non-Aligned Movement, the African Development Bank, and the Commonwealth. Botswana has also acceded to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Centre for the Settlement of Investment Disputes (ICSID), and the Multilateral Investment Guarantee Agency (MIGA).