BOCCIM'S RECOMMENDATIONS TO THE GOVERNMENT OF BOTSWANA FOR THE RENEGOTIATION OF THE SOUTHERN AFRICAN CUSTOMS UNION AGREEMENT (SACUA)

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I. INTRODUCTION

BOCCIM fully supports the Government of Botswana's efforts to alter the provisions of the Southern African Customs Union Agreement (SACUA) to make it a more effective tool for encouraging the country's economic diversification. The creativity and the comprehensiveness of modifications proposed by Botswana to the SACUA and the strength of purpose behind such proposals will determine the success of these efforts.

BOCCIM has marshalled manufacturing and service sectors to advise the government on specific revisions to the agreement and to gain support both in Botswana and throughout the customs union for the successful attainment of these goals. Close coordination between the government and the private sector strengthens Botswana's efforts in these endeavors. The so-far successful defense by the Botswana government working with Botswana motor vehicle assemblers from proposed modifications in the trade regime illustrates the efficacy of this type of coordinated effort.

The Government has suggested that BOCCIM carefully review the official presentations made to the workshop "*Reconstituting & Democratizing The Southern African Customs Union*" held in Gaborone in March of 1994. In his welcoming remarks, Vice President and Minister of Finance and Development Planning Festus Mogae stated that although several alternative scenarios could be considered, "the immediate objective of SACU members will be to rationalize and modernize institutional structure and related rules and procedures...to provide for a better balance of costs and benefits."

In a keynote address, Acting Finance Permanent Secretary John Stoneham identified the following major issues at stake during the negotiations: 1) the level and form of external protection, 2) use of excise duties, 3) the revenue-sharing formula, 4) differential industrial promotional schemes, 5) establishment of a Secretariat for the SACU, 6) anti-dumping and subsidy controls, 7) dispute resolution procedures, 8) relationship to other trade organizations, 9) the surcharge, and 10) accession of new members. The private sector was asked to comment on these issues.

This presentation addresses all of these issues with the exception of the revenue sharing formula. It also addresses some additional issues such as the possibility of establishing special facilities for retail operations in Botswana and closer governmental-private sector consultations. BOCCIM emphasizes that this submission is the beginning of the process and looks forward to establishing regular consultative procedures for the period of negotiations and the implementation of the revised SACUA.

Paralleling the structure of the negotiations, BOCCIM recommen-dations address two types of issues. The first set of recommendations focuses on substantive issues under negotiation. Specifically those modifications in the SACUA which would facilitate Botswana diversifying into new pursuits consistent with its true comparative advantage. Emphasis is placed on measures promoting these pursuits in an open rather than closed economy and in ways fully consistent with obligations under the World Trade Organization (WTO). However, BOCCIM recommends some temporary deviations from liberal MFN trade principles which would allow Botswana to benefit from more favorable treatment in the short to medium term.

The paper sets forth specific recommendations for reform of both substantive and administrative provisions. Priority substantive recommendations include providing Botswana the right to a) deviate from the CET by immediately implementing Uruguay Round tariff reductions, b) grant duty drawbacks on components incorporated into products sold within SACU, c) provide some duty-free shopping facilities and d) impose higher infant industry duties on South African and third country imports. In addition, BOCCIM suggests introducing SACU-wide trade remedy laws and requiring consultations on the competitive damage to Botswana producers from the recent appreciation of the pula against the rand. Other substantive recommendations by BOCCIM cover standards, government procurement, services, intellectual property rights, investment protection, transportation, competition policy, labor rights and special groupings of the BLNS countries. The paper then discusses institutional provisions for decision making usually by consensus, impartial dispute settlement, SACU-wide fact-finding and injury determinations, plurilateral negotiations with third countries and mechanisms for closer government-private sector coordination.
We have intentionally limited the paper to 17 pages to make it more usable for busy policy makers. Important information is therefore contained in the eight annexes to the paper.

- Annex A discusses the negotiating environment which confronts Botswana negotiators.

- Annex B reviews SACU background and provisions.

- Annex C and Annex D describe trade and industrial policy mechanisms included in Western Hemispheric agreements as useful precedents for Botswana. The annexes draw on provisions from the Andean Common Market (ACM), Caribbean Common Market (CARICOM), Central American Common Market (CACM), Latin American Southern Cone common market (MERCOSUR) and Latin American Integration Association (ALADI). Annex C includes actual texts from a number of these agreements.

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- Annex E discusses some implications of SACU expansion.

- Annex F reviews some of the problems identified by the private sector and how these problems would be addressed if BOCCIM's recommendations were reflected in the revised SACUA.

- Annex G describes the American system for private sector consultations and for injury determinations.

- Annex H lists the large number of background documents provided to BOCCIM by the consultants. These include the texts of NAFTA and other agreements which could be useful in negotiations.

A word on how these recommendations were put together. BOCCIM retained the firm of Manchester Trade, experienced in international trade negotiations, to develop trade policy tools which would make a revised SACUA more responsive to the needs of the Botswana business community and facilitate the country's economic diversification. It presented Manchester Trade with a general outline of concerns. Manchester Trade, led by Mr. Stephen Lande, then retained two consultants with wide experience in Western Hemispheric economic integration to assist in the effort: Mr. Henry Gill, the principle author of Annex C, and Dr. Anthony Peter Gonzalez, the principle author of Annex D. A fourth consultant, Mr. Anthony Carroll, was retained for his expertise on African development and business, and Botswana in particular.

The consultants paid two visits to Botswana to learn the specific policy priorities of BOCCIM and its membership in the SACUA renegotiations. They also held informal discussions with government officials to understand the dynamics of these negotiations. The consultants then suggested trade policy instruments which could address the problems identified by the private sector. BOCCIM and its members then reviewed the final document to assure that it responded to its members' objectives, without necessarily endorsing all the technical aspects of the recommendations.

II. BOCCIM PRIORITY RECOMMENDATIONS FOR REFORM OF SUBSTANTIVE PROVISIONS

A. Low Duty Entry for Products Imported into Botswana

The high level of the Common External Tariff (CET) harms Botswana's competitiveness. This is not surprising in light of the fact that the CET is identical to the South African tariff schedule, developed to protect its much larger and diversified economy.

Annexes C and D discuss a number of customs unions operating with more than one CET rate to reflect divergent interests among members. The less diversified extent of the Botswana economy compared to that of South Africa justifies far fewer tariff peaks and significantly lower average and median level duty schedules than the current CET contains. We recommend that, at least temporarily, Botswana adopt a duty schedule different from South Africa's.

BOCCIM recommends allowing individual BLNS countries to implement the final rates agreed to by South Africa in its Uruguay Round notification on January 1, 1997 or at the time the revised SACUA takes effect, whichever is earlier. South Africa agreed to reduce its duties by about 33 percent, with the first two stages of the five reductions being implemented by that date. This would allow Botswana to reduce duties by about 20 percent three years ahead of schedule. This immediate implementation of Uruguay Round tariff reductions would provide a simple way to stimulate Botswana competitiveness. Immediate implementation by Botswana would also encourage South Africa to unilaterally accelerate its own duty reductions.

Botswana and South African rates would converge again by January 1, 2000. During this interim period, the member countries could decide whether to reduce the CET below South Africa's bound duty schedule. If a common CET level could not be agreed upon, Botswana and the other developing members could be authorized to again diverge from the CET with lower duties.

B. Duty-Free Components and Intermediary Products

Botswana should seek modifications in the SACUA which encourages development of specific industries producing for SACU destinations. Protectionist devices such as high tariffs are currently frowned upon for small economies such as Botswana's and are appropriate only in a limited number of cases. In fact, excessive use of these instruments often results in inefficient local industries which never become world class competitors. Ironically, such inefficient industries actually discourage diversification since they raise costs throughout the economy making production less competitive.
A more market-oriented approach is to allow duty exoneration for machinery and for materials and components incorporated into production destined for sale within the customs union. Such duty exonerations already are provided for export production sold outside of the union. This would give Botswana producers access to competitively priced inputs under similar conditions as other countries.

1. PRODUCTION FOR SALES WITHIN SACU

Duties can be exonerated on components incorporated into production for sale within SACU only if the Government of South Africa acting on the advice of the Board of Tariff and Trade (BTT) agrees. Motor vehicles assemblers, specifically cab chassis and automobile producers, are the only current beneficiaries in Botswana for duty drawback privileges for SACU production. However, the Botswana and South African governments are currently disputing the legality of the duty-free status for the importation of knocked down cab chassis. Apparel producers located in Botswana benefitted from drawback for a short period of time until South African authorities unilaterally withdrew the right from all producers within the union including the Botswana producers.

Drawback is widely available to industries producing in South Africa. South African Customs has announced its intention to reduce the use of duty exonerations on components in the future. They argue that such exonerations are an administrative burden and will erode the protection and encouragement afforded by customs duties. Thus without modifying SACUA to provide a greater role for Botswana in deciding whether to allow drawback for production destined for the customs union, South Africa is expected to refuse most, if not all, Botswana requests for use of this facility.

Drawback is important to Botswana's ability to attract new industries. BOCCIM suggests that a high priority for Botswana negotiators should be to gain the right of each national authority to approve company requests to import duty-free components and materials as well as machinery used for production destined for sale in the union. The need to partially offset Botswana's numerous disadvantages justifies the advantages which this access would provide Botswana manufacturers over their South African counterparts. The advantage accruing to Botswana producers from drawbacks can be compensation for the inefficiencies introduced into Botswana's economy from living under a tariff schedule whose only objective was to encourage South African development.

Drawback for components and machinery is especially important since Zimbabwe has preferential agreements with South Africa under which they can export duty-free or with low duties. Zimbabwe is already more diversified than Botswana, has lower infrastructure costs, and a more competitive wage/productivity structure. Since Zimbabwe does not belong to SACU, they can rebate duties on all components incorporated into production destined for export to South Africa. Provided the products meet origin rule requirements, they can enter South Africa under more competitive conditions than can products from Botswana. Malawi and Mozambique are potential threats if they are able to become more competitive since they also have preferential agreements with South Africa.

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Duty exoneration would have to be subject to some limitation. If not, production allowed under this loophole could overwhelm South African manufacturing. Annex D describes some of the problems with such schemes in Latin America. Those projects became a front for evading the CET, provided minimal value added activities in the host country, and made no contribution to the economies which provided duty-free entry are discussed in particular. However, we do not expect such difficulties from these drawback proposals; since the system advocated in this paper will only be approved after a company demonstrates that real production will occur and a procedure is in place for review and assessment of the program after it is put into operation.

Various mechanisms have been proposed to assure that drawback programs contribute to economic development and diversifica- tion, and do not become a simple tariff loophole. Various Latin American schemes prevent abuses through time limit (from two to five years), assignment to specific companies and/or a quantitative limit on duty-free entry. Another instrument is to impose strict origin rules on such production to prevent their duty-free exportation throughout the customs union without adding significant local value. Sometimes companies must increase local value added over time in order to maintain the drawback privilege.

BOCCIM would like to suggest a system involving consultations and in case of disagreement, impartial findings. The member country can decide whether economic benefits from the proposed operation justify the duty exonerations and if so under what conditions will the duty exoneration be granted. The member country is required to inform other member states that it is considering a request to provide duty exoneration and consult with any member expressing a concern. However, the decision remains in the hands of the member country where the production takes place.

If a member of the customs union believes that sales of production incorporating duty free inputs by another member within SACU is threatening or causing injury to a production unit within its territory, it can request the latter to withdraw the right or impose limitations on use of duty exemptions in the future. If the two countries cannot work out an agreement, they will then submit their dispute to review by an impartial body of experts. If the experts determine that an agreed upon threshold of injury has occurred or is likely to occur, the experts will suggest or possibly order remedial measures.

The preferred remedial measure would be to eliminate or reduce the SACU duty on the component or machinery so all producers in the Union would have the same access. This would eliminate Botswana's advantage over South African producers of similar products. On the other hand, removal of the duty would increase the overall competitiveness of SACU producers since they would have access at world prices. A second remedy would be to gradually increase value-added or local content requirements as a precoition for allowing sale of the product throughout the union.

A third remedy would be to continue the drawback but subject the finished product to full SACU duties if the products entered the commerce of another SACU member.

The final suggestion would require the host country not to extend the drawback on the component to new production. However, imports of duty-free inputs for production in existing or committed capacity could only be limited with the consent of the country granting the exoneration.

The discussion below on new institutions reviews the advisability of establishing a SACU-wide organization to carry out impact studies and make recommendations. A model for such an institution is the United States International Trade Commission (USITC) which carries out such impartial studies in the United States. An interim solution until the new organization could be set up would be to use the existing BTT as the investigating body but democratize its processes by including representatives from Botswana and other BLNS members when making decisions directly affecting their economies. Another interim recommendation would be to convene ad hoc expert panels to look into these cases.

2. PRODUCTION FOR SALES OUTSIDE OF SACU

The negotiators should modify current procedures for duty exoneration on inputs incorporated into SACU production for export and for machinery imported for such production. Currently SACU provisions allow duty exoneration only when there is no production of competitively priced inputs and machinery within the union. We understand that South Africa currently agrees to exonerations for all inputs into Botswana but not for all machinery. BOCCIM suggests that the revised SACU automatically allow duty exoneration for materials and machinery if agreed to by the country in which the production is to take place. Also, paperwork requirements would be eased for such duty free entry by eliminating the current need for special inspection at the Botswana-RSA border for goods already cleared by South Africa.

C. Providing Botswana With Some Duty-Free Shopping Facilities

Duty-free zones operate under special rules in many of the customs unions within South America including St. Margaret Island in Venezuela, Tierra del Fuego in Argentina and Manaus in Brazil. Basically, these zones are allowed to import free of duty for retail sale within the duty-free areas. Returning residents to other parts of the Customs Union are assessed duties on their purchases within the zone.

Despite the fact that duties are levied on returning residents, these zones still encourage retailing and touristic activities.

1. Third country tourists and businessmen are completely exempted from duties.

2. Returning residents are provided a duty-free exemption up to a preset maximum.

3. Purchases above the maximum are usually subject to a flat duty rate. Flat duty rates are usually only 10 or 20 percent. This is much lower than the high duty rates assessed on many of these consumer products.

   In the case of SACU, current MFN duties including surcharges are quite high. Thus a flat rate of 20 percent would represent a significant savings.

a.	Cotton dress	Duty	90 percent
		Surcharge	0 percent
			90 percent
b.	Pocket Camera 35 mm	Duty	6 percent
		Surcharg	15 percent
			21 percent
c.	TV	Duty	60 percent
		Surcharge	40 percent
			100 percent
d.	Watches	Duty	10 percent
		Surcharge	40 percent
			50 percent

4. The incident of the flat duty rate assessed on the returning residents is much less than that of a customs duty assessed at the time of importation. In the latter case, the duty is included in each additional mark up through the various distribution levels.

The scheme for duty-free shopping could operate as follows. South Africa could tax returning residents on duty-free purchases made in Botswana in excess of the duty-free maximum. Currently South African citizens are assessed the 14 percent value-added tax on purchases made in Botswana after they receive a rebate of the 10 percent sales tax paid in South Africa. At the same time, one could agree on a minimum tax on such duty-free purchases of perhaps 10 to 20 percent making a total tax collection of 20 or 30 percent.

D. Trade Remedy Laws (Antidumping, Countervailing and Safeguards)

The revised SACU will have to establish institutions to assure impartial application of trade remedy laws against imports from third countries. Trade remedies establish procedures for levying antidumping, countervailing and safeguard duties against unfairly priced, subsidized and low priced surging imports, respectively.
Currently, South African institutions administer trade remedy laws for the whole union. They decide whether an unfair trade practice is occurring and if so whether there is injury to SACU producers. If both these determinations are positive, South Africa then decides whether it is its national interest to apply the offsetting duties.

The renegotiation would have to establish SACU-wide institutions for administering these laws. The same fact-finding body recommended to review the operation of duty drawbacks could determine whether unfair trade has taken place and whether injury has occurred. The body would be modeled after the USITC. An interim measure would be for nationals of BLNS countries to serve on South African institutions making such findings.

NOTE: Botswana may wish to retain the right to be exempted from imposing offsetting duties in cases where imports into Botswana are not the cause of injury to SACU producers. The administering body determining injury can be asked to rule on this question. The body should also monitor imports into Botswana to make sure they do not surge and threaten the integrity of the unfair trade remedy.

E. Infant Industry Protection

As we pointed out above, the establishment of protective barriers such as infant industry duty protection is rarely considered an efficient method to encourage new industries. In fact, given the number of failures of this method of protection and the cost to the competitiveness of the whole economy, the world is seeing less of infant industry protection to develop new pursuits.

It is difficult for infant industries to operate efficiently in markets as small as Botswana. The Botswana market is so small that any new production unit is unable to attain world class competitive economies of scale or to meet the competitive challenge necessary to become efficient.

Two types of action could be taken to protect the markets for an infant industry: SACU-wide or on a subunion basis.

1. SACU-Wide

The same body administering the trade remedy injury findings could determine justification of infant industry protection. The body would make such a ruling in response to a petition from a company in a member country. The body could decide whether the industry has the potential of becoming competitive over time and if so they could choose the least restrictive type of protection necessary. The other countries would have to accede to this body's decision.
The fact that SACU's CET is identical to the South African schedules introduces an impediment to SACU-wide infant industry protection. The RSA tariff schedule has been bound in the Uruguay Round. This means that duties could not be increased without going through WTO procedures. Since the bound South African duties are identical to the CET for SACU, the CET could not be raised to protect a Botswana infant industry without going through WTO procedures. Any decision by SACU to reduce the CET unilaterally below South African bindings will allow this type of protection to be utilized in the future. The infant industry duty could be raised to the bound levels if the effective duty rates are lower.

The WTO usually allows countries to increase duties above bound levels only after GATT Article XXVIII notifications and negotiations. The country must notify the principal suppliers of the products it plans to increase duty levels on to protect an infant industry. It then must either agree with them on a compensation package under which it reduces duties on other products or allows countries whose suppliers have been harmed to raise duties against its exports in retaliation.

GATT Article XVIII allowed developing countries to raise duties for infant industry protection provided they followed consultation and compensation procedures. The United States complained for many years that developing countries increased duties at will under Article XVIII, often ignoring the consultation and compensation procedures. We do not know how the WTO is going to treat such attempts to raise duties. Furthermore, we do not know definitively whether South Africa has classified itself as a developed country for this purpose. This classification would determine whether SACU duties could be modified under these procedures for infant industry purposes. (See note below.)

NOTE: We have not seen the actual South African commitment. Thus, we suggest that during the next round of the SACUA renegotiations, Botswana negotiators confirm that South Africa is notified as a developed country and therefore cannot raise duties without going through the WTO version of GATT Article XXVIII renegotiation procedures. BOCCIM's consultants have requested information from the WTO on the current status of GATT Article XVIII as well as whether South Africa could avail itself of the procedures if in effect. The initial response is that both these questions have yet to be sorted out.

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2. Country-Wide

Current SACUA provisions allow member countries to impose higher duties for a period of up to eight years to protect new industries. These provisions are subject to a number of limitations. The major impediment is that the requesting country can only utilize this protection for a brand new industrial pursuit and it must be applied against all other SACU members as well as third countries, thereby severely limiting the potential production scale for the new industry.
Since Botswana and other BLNS countries have not bound their duties in the WTO at current levels, they probably have the right to increase them. This method of protection is consistent with WTO rules due to the ceiling bindings notified by Botswana to the WTO.

Annex C and Annex D provide examples of how unsuccessful infant industry protection has been in small countries. In fact, infant industry protection is frowned upon by many development experts. Nevertheless, infant industry protection is appropriate in a limited number of cases, especially if applied in a different manner than before. SACUA should allow flexibility if Botswana decides to use this development tool in the future.

BOCCIM suggests the following modifications in the current operations of infant industry protection:

a. The four less developed members should be treated as a unit. Thus, the country providing the protection should not apply it against other BLNS countries. Currently such infant industry protection must be applied against imports from the whole region and cannot be applied selectively.

b. Limits on the amount of protection should be agreed upon, perhaps holding duty increases to no more than fifty percent. Full protection should not last for the full eight year period as allowed currently. The protection should be progressively liberalized and if possible phased out over a given period of time. This would avoid the problem of a completely protected industry suddenly confronting duty-free SACU competition without a period of adjustment.

F. Balance of Payments and Exchange Rate Surcharge

Manchester Trade is not in a position to comment on whether the current exchange rate is unfair to Botswana manufacturers and thus whether export subsidies or import surcharges are appropriate. It has been pointed out by officials from the Bank of Botswana that the Rand-Pula exchange rate is justified based on macroeconomic considerations. In fact the pula has been undergoing measured devaluation.

Nevertheless, businessmen in Botswana either exporting to South Africa or confronting South African competition in the Botswana market feel disadvantaged by the appreciation of the pula against the rand and the absence of parity between the two currencies. They argue that the fact that the rand is now equivalent to only 70 thebes gives consumers an incentive to purchase South African products.

BOCCIM would not call for a special balance of payments or exchange rate provision within SACU. A balance of payments provision allows a country experiencing a serious balance of payments deficit to impose a temporary surcharge against other SACU members. The strong overall balance of payments situation in Botswana does not justify such action in the foreseeable future, even given its negative balance with the RSA.

Similarly, BOCCIM has serious question about including provisions in the renegotiated SACUA that allow Botswana to effectively restore a 1:1 pula-rand rate through imposition of import duties and export subsidies. Instead, BOCCIM suggests consultations between the two governments to deal with any trading disequilibria caused by the divergence of these rates.

III. OTHER SUBSTANTIVE RECOMMENDATIONS BY BOCCIM

A. Standards

The South African standard-setting body should be expanded to cover the whole customs union and include representatives from all SACU members. This would facilitate the application of similar standards in all countries under the Customs Union. In instances where different standards exist, the body could arrange for recognition of each country's standards throughout SACU as being equivalent to each other. Also, the standard-setting body could arrange for SACU-wide certification of standards testing groups.

B. Government Procurement

In some cases, SACU bidders could have preferential status over non-SACU members for government procurement contracts open to international competition. However in all cases, producers located in less developed SACU countries or in less developed regions within South Africa should have preferences over third countries and the more developed areas of South Africa. Government procurement is one area where such preferences can be granted since WTO discipline only extends to countries which have joined the government procurement code and there is no requirement for any country to join the code. As far as BOCCIM knows, Botswana and South Africa have not joined the code.

C. Code of Conduct for Services

A code of conduct for service trades should be devised. It should include the following provisions:

1. A general commitment should allow the free cross border flow of services, except if specific exceptions are taken.

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2. Any restrictions restricting a service provider from one SACU member locating in another member should be notified within one year of the effective date of the revised SACUA.

3. No new restrictions should be placed beyond those in existence on January 1, 1995.

4. Negotiations establishing a schedule for removing such restrictions on a reciprocal basis should take place at least once every other year.

5. A dispute settlement mechanism should be established to deal with disagreements in the service sector.

D. **Intellectual Property Rights**

A code on protection of Intellectual Property Rights, including border protection, would be administered by SACU. This code would be similar to that under NAFTA which goes beyond WTO provisions. This would be an unusual subject for customs unions since as far as we know, only the Andean Pact has undertaken tentative steps in this area.

E. **Investment Code**

A code of conduct on investment flow similar to the code on services could be established. Countries would agree to give notification of existing investment restrictions (including any sector reserved for domestic investors), not to apply new restrictions and to negotiate the removal of existing restrictions. We do not believe that special rules for arbitration of SACU investment disputes is necessary since each country accedes to multinational dispute settlement.

F. **Transportation**

SACU already has provisions assuring freedom of transportation. It is suggested that this provision also be incorporated in a separate agreement so that, in the event that Botswana left SACU, it would be assured of the same rights and could avoid South African leverage on this land-locked state. The SADC transportation provisions should be reviewed.

G. **Competition Policy**

SACUA must eventually effectively address competition policy given the strength of business groupings within South Africa. Article 20 as amended states that collusive practices, such as acting in concert and abusing a dominant position, are incompatible with the agreement. However, as far as we could determine, this provision has not been invoked.

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The complexity of competition policy means that it may not be feasible to address it during the current renegotiations of the arrangement. However, the members should agree to establish a special working group once the SACUA revision is completed. The group would focus on the type of antimonopoly institutions to be established if it is decided that SACUA should cover this issue. A possible alternative would be to harmonize laws and practices throughout SACU and provide standing for member country companies to register complaints in any other member country.

H. Labor Rights

During negotiations of the NAFTA, American labor unions advocated that the countries establish NAFTA-wide minimal labor norms for minimum wages and work conditions. Instead, the NAFTA agreed only upon procedures to assure that each country enforces its own labor laws. A third issue which was considered but not covered involved cross-border flows of workers and their treatment in other member countries.

Given the complexity of these issues and the different labor situations among the five SACU members, it would be better not to include labor provisions in the revised SACUA. Instead, a working group composed of representatives of each country's Ministry of Labor should be established to review the subject in the future.

I. Special Grouping of Lesser Developed Countries in SACU

A subunit should be established within SACU for the four less developed countries. These countries could be treated as a group for duty drawback, free trade zones, trade remedy and infant industry purposes. Also, they could work together in establishing any industrial policy designed to promote economic diversification within the BLNS countries and less developed regions within South Africa.

IV. DECISION MAKING, DISPUTE SETTLEMENT, FACT FINDING AND NEGOTIATIONS WITH THIRD COUNTRIES

There appears to be a consensus that decision making, dispute settlement, fact finding, and at least some third country negotiations should be carried out by SACU. New mechanisms and organizations must be established to replace South Africa's current monopoly on decision making. Pages 25-36 of Annex A describe various decision making schemes in effect in other countries. We recommend a very traditional decision making process.

Most groups utilize two structures to run the organization. A commission consisting of representatives from each government is often the major decision making structure. In most cases the negotiation process results in a consensus, although different voting structures ranging from majority, qualified majority (2/3 or 3/4), weighted voting by size, consensus (no objection) and unanimity can be utilized. Based on Latin American experiences, most significant progress is made at the heads of state level through consensus without formal voting.

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A Junta or Commission is established to run the organization on a day to day basis. It usually consists of a secretary general chosen by the member states and a small secretariat located in one of the founding countries.

Customs unions settle disputes either through panels or a permanent court system. A court system has the advantage of developing a reserve of experience and precedents. Nevertheless, it may be too cumbersome and formal for this stage of SACU's development. An alternative is utilizing ad hoc panels which rule on disputes arising from differing national interpretations of obligations and rights under the agreement. The dispute could be settled with a binding decision by experts chosen through established procedures by the parties to the dispute.

An impartial fact finding body is necessary to make determinations in trade remedy cases, complaints about drawbacks and infant industry protection.

Finally, a functioning customs union should negotiate as a group. This is now particularly important in WTO considerations where matters under SACU wide jurisdiction are under discussion. It may also be appropriate for SACU to negotiate as a unit in negotiations with other integration groups within and outside of Africa, and in establishing trade and commercial relations with third countries.

There is an infinite number of models since they usually emanating from last minute compromises during long-drawn out negotiations. We suggest the following model which fits Botswana's political requirements with a realistic chance of being adopted.

A. The member states control major SACU decisions including changes in the basic provisions, accession and negotiation with third countries.

B. The heads of state hold an annual or semiannual meeting. In addition, Ministers concerned with specific issues (agriculture, commerce, transportation, etc.) hold periodic meetings modeling the European Union's Council of Ministers.

C. Each government appoints a Permanent Secretary level representative to a SACU administrative board. This group deals with proposed modifications to SACU provisions and practices beyond the competence of the director general.

D. The preferred decision making procedure is by consensus. Nevertheless, a weighted voting system is constructed to deal with situations where a consensus cannot be reached. Although one vote, one country has appeal and might be the opening position of Botswana, we do not believe that this is feasible. A more realistic system is based on the following weighted voting system:

South Africa	Five votes
Botswana	Two votes
Namibia	Two votes
Lesotho	One vote
Swaziland	One Vote

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Routine decisions require a simple majority of votes which means that South Africa and the support of one other member could prevent action. More important decisions require a qualified majority of two thirds or at least eight votes which would allow South Africa or a combination of Botswana and Namibia to block decisions. Decisions such as accession require either consensual or unanimous approval. A decision declared to be of significant national interest to a country requires its positive vote.

This is the method used by the European Union. We understand that small countries with veto rights have not abused the system by declaring lesser issues as priority issues.

E. The five governments establish an executive secretariat consisting of a director general and a small staff. The director general alternates between a South African national and a national from each of the developing countries.

F. National authorities remain responsible for the main burden of day to day administration of SACU. This responsibility includes tariff collections and enforcement of non-tariff measures.

G. SACU members and third countries choose a permanent group of panelists to settle disputes over the interpretation of SACU provisions. Any party to a dispute chooses a member of the panel. Third country panelists are selected from a list of panelists. Initially, the WTO might voluntarily supply experts while SACU develops local expertise in trade dispute settlement.

H. SACU sets up a fact finding organization modeled after the United States International Trade Commission to make determinations in such matters as injury and unfair trade practices. It is invoked in cases of disagreement over the impact of drawback schemes. It also gathers information required for third country negotiations. While the organization is being established, the member states agree to utilize a democratized southern Africa BTT with experience in such areas. SACU revenues pay for this USITC-like commission.

I. Preliminary and final national decisions are communicated to member states by modern communications links. This allows time for consultations and notification to concerned government officials and private sector organizations.

V. A PRIVATE SECTOR-GOVERNMENT CONSULTATION MECHANISM

Private sector bodies, consisting of representatives from each of the private sectors, should be eventually established to parallel SACU decision making. A working group established once SACU is revised should determine whether this should be a single SACU-wide private sector organization dealing directly with the agreement or whether each country's private sector should interact through its own government. The agreement includes language allowing such consultations once the working group establishes the specific mode of operation.

In the interim, however, the Botswana government and the private sector should develop their own advisory system. The system should allow for private sector officials to discuss confidential government negotiating positions subject to requirements of secrecy and sanctions for violating such secrecy. BOCCIM itself or interested businessmen should provide for appropriate research and back up facilities as well as a willingness to accompany Botswana negotiators to their discussions. Special facilities should be developed to deal with the unique problem in Botswana that a large number of business people are expatriates and normally do not have access to government's commercial secrets.

One might wish to utilize the current or an expanded NEMIC (National Employment, Manpower and Incomes Council) to seek public sector advice on trade policy. The group is currently composed of permanent secretary levels from government agencies as well as representatives from BOCCIM and a labor union representative.

BOCCIM suggests that the group operate in a collegial way without excessive bureaucratization. After all, too formal an organization would quickly gets bogged down in administrative paperwork and protection of perks and privileges. Business-government relations currently operate effectively through personal contact and telephones.

A small but nevertheless significant suggestion revolves around publication of government notices. Since the private sector does not have access to the government gazette, official notices on tariff and other trade changes should be published in the Daily News as well.

ANNEX A
NEGOTIATING ENVIRONMENT

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NEGOTIATING ENVIRONMENT

A word about the negotiating environment. Both the government and the private sector share the view that it is better to revise SACUA to better reflect the diversification and development goals of Botswana than to scrap it completely and explore other arrangements. No member of the union would gain from the resulting disruption in normal trading relations, since it would involve two or three years to resolve this disruption as well as necessitating the establishment of new customs procedures and controls. Thus the option chosen is to pursue negotiations rather than consider alternative arrangements to the SACUA.

Although negotiations are in too early a stage to make a definitive judgement as to how cordial they will be and the tougher issues have not been joined as of yet, it is clear that the atmosphere has been cordial and constructive. All Botswana concerns are on the table and are receiving attention in the agreed upon terms of reference. Negotiations among African countries may not be as confrontational as negotiations in other parts of the world. African negotiators often work in a harmonious mode as each side understands that the final agreement must encompass the needs of all parties. Revolutionary changes within South Africa have changed political relationships among the countries of southern Africa and may augur well for the renegotiations.

Despite the best of intentions, "the accommodating nature of African negotiations," and the momentous improvements in relationships among all SACU members, **unfortunately** most trade negotiations come down to hard bargaining positions. Often the most successful negotiating team is the one willing to face failure if demands are not met. In this case, this means a credible Botswana threat to withdraw from SACU, at least temporarily, if all parties cannot agree on a sufficient reconstitution and democratization of the SACUA.

An effort must be made by Botswana to mobilize support within South Africa for modification of the SACUA. South African exporters, service providers, and investors must be informed about how they will benefit from a successful revision of SACUA and politely warned of the consequences of failure. A growing and diversifying Botswana will provide new opportunities for South African goods, services, and investment. This situation will only come about if SACU better reflects the economic needs of the country. More to the point, a weakened or dissolved SACU will result in the displacement of South African products, services, and investment by those of third countries in the short to medium term.

The most influential groups with which Botswana can make common cause are those favoring liberal trade within South Africa itself. Although a little later than in other areas of the world, South Africa now appears to be realizing the advantage of trade liberalization. Proposals contained in this document such as more extensive use of drawbacks for Botswana industry and accelerated duty reductions will put pressure on South Africa to liberalize its regime. Thus, liberal trading interests in the RSA should support Botswana's efforts to gain these rights in the revised SACUA.

Below, we have outlined some of the basic components of a negotiating strategy.

1. The major challenge facing Botswana is to develop a SACU trade regime without dissolving the union that provides for full democratization of the decision making process and takes into account major differences--in the size, development level, and diversification--between South Africa and Botswana, as well as Botswana's land-locked nature.

2. South Africa's trade regime will still be too restrictive for the needs of the Botswana economy, even after its Uruguay Round commitments are implemented and its provisions are brought into conformity with WTO rules. Notwithstanding that there may be fewer cases where Botswana may wish to raise specific duties to protect infant industries, the overall regime is too protectionist for Botswana as it attempts to become internationally competitive and diversify its economy. Even after the Round is fully implemented, the South African regime will still have average duties of about 15 percent and many duties on individual products in the range of 20 to 30 percent.

3. In seeking changes to the SACUA, Botswana negotiators must take into account new trade disciplines contained in the recent start up of the WTO. The most pronounced commitments will derive from South African tariff bindings and will make it more difficult to increase duties to foster Botswana infant industries.

   Other challenges emanate from increased disciplines on all developing countries under the WTO, including their ability to impose import protection. Botswana membership in the WTO, combined with its possible loss of status as a least developed country for trade policy purposes, will require negotiators to be fully conversant not only with WTO rules but with how other developing countries maintain flexibility for development purposes.

4. BOCCIM fully supports government efforts to reduce average SACU duties to a single digit with a maximum duty ceiling of no more than fifteen percent. However, it would be difficult for the South African government to agree to even lower duties than those agreed to in the Uruguay Round without unravelling its internal consensus, especially given the new found power of South African labor unions. Also, as in any trade negotiation, South Africa may hesitate to unilaterally reduce duties without gaining concessions from its trading partners.

5. The leverage available to South Africa should not be underestimated. Internal resistance to substantial change within SACU can be anticipated in view of the major significance of the SACU market for South Africa's exports of both primary and manufactured goods. Traditional South African interests remain virtually intact and continue to exert a major influence on policy formulation. It would be difficult to convince the leaders of South African industry that the country should surrender its exclusive right to determine customs policy and should share it with much smaller neighboring countries. These countries' interest in obtaining cheaper imported inputs is antithetical to the aims of less efficient South African producers.

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At the same time, South Africa is becoming less dependent politically and economically on the present SACU relationship than in the past. The new political posture of South Africa has increased the country's international possibilities, particularly within Africa where South African influence is expected to increase substantially. This also comes at a time when the implementation of Uruguay Round commitments will lead to reduced protection that SACU affords South African exports. Thus, South Africa may feel it has other options if SACU renegotiations fail.

Finally, South Africa is no doubt aware that, notwithstanding important SACU reform objectives shared by the BLNS countries, they are vulnerable to eventual South African divide-and-rule tactics. This susceptibility is due to their shared lack of diversification, weak ongoing coordination of their positions and different circumstances. This may already be occurring since Botswana and Namibia are willing to surrendering revenue in order to gain more autonomy, whereas Lesotho and Swaziland remain reliant on the revenue enhancing provisions of the current agreement.

From a commercial viewpoint, land-locked Botswana is completely reliant on South Africa for most of its imports whether produced in South Africa or in third countries that transit through the RSA. A lack of infrastructure and the fact that Botswana may be too small, at least in the short run, for multinational corporations other than through South Africa gives South Africa significant leverage in the negotiations.

6. Botswana is not without cards in such a negotiation. It is South Africa's most important trading partner within Africa. It provides a very significant market for South Africa, particularly for goods which would not be internationally competitive otherwise. The SACU market taken as a whole is South Africa's largest. Botswana can point to a highly skewed trade imbalance, with 1992 imports from South Africa at 8.6 times the value of its exports to South Africa, as reasonable grounds for requiring redress. The Republic has maintained a consistently high trade surplus with all the developing country members of SACU, with exports outpacing imports by up to 5 to 1. As much as forty percent of South African manufactured exports are sent to Botswana and the other BLNS states. South African companies dominate many of the manufacturing and service activities in Botswana.

An important source of leverage available to Botswana will be South Africa's need to increase its disproportionately low share of revenue from the union's excise and customs duties. Botswana's highly favorable financial reserve situation with over four billion dollars and strong export sector allows it to forego revenue advantages within SACU, in favor of a better trade deal and a modification in the decision-making setup.

Although Botswana may be reliant on South Africa in the short term, this does not mean that new third country business contacts cannot develop in the future. Its dependence on the RSA as an outlet for its goods could be reduced as access to Walvis Bay in Namibia is opened up.

7. Considerations of relative leverage may be overridden by the apparent good will of all parties, particularly that of South Africa, to come to a more balanced agreement. Policy statements issued by leading members of the new South African government point to the need for SACU reform and democratization, the outcome of which can help in shaping of South Africa's new external image.

The challenge to Botswana negotiators will be tapping this convivial atmosphere to gain significant concessions in the trade policy area. As discussed above, this will involve a skillful blend of tough negotiating tactics and taking advantage of the good-will engendered by Botswana's support of ANC's objectives when Botswana was vulnerable front-line state, as well as the desire of all southern African countries to make economic integration work as a precondition for deepening relations initially with Malawi, Zimbabwe and Mozambique and eventually with all members of SADC, PTA and the OAU.

8. The most challenging aspect of the negotiations will be to make the union truly democratic in the renegotiation of both the substantive and administrative provisions of SACU. South Africa has been the dominant economy since 1910. Having made unilateral decisions without consultations for more than eighty years, South Africa may find it difficult to change.

9. In the substantive area, the most challenging effort will be to allow Botswana to apply lower duties than those applied in South Africa against third country imports. Initially this would appear to go against one of the basic tenets of a customs union. Botswana negotiators would have to demonstrate that a carefully constructed system would actually contribute to strengthening the union.

10. The major development tool in the trade policy area should be the ability of Botswana to grant partial or complete duty exemptions for inputs ranging from raw materials to semi-finished components used by local manufacturers. The current position of the South African government is that any such deviation from the CET for production destined for sales within the union should be reconsidered and that new requests should not be granted since they provide an administrative burden and erode the protection and encouragement afforded by customs duties. In fact two of the major trade disputes between the RSA and Botswana concern duty rebates in the motor vehicle and apparel area.

11. A related challenge could be to develop a system allowing Botswana distributors and retailers exemption from customs duties to offset competitive disadvantages.

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12. Although perhaps secondary, an ability to temporarily increase protection is still an important development tool. Botswana negotiators should not have great difficulty in gaining more flexibility to increase duties against imports from the RSA and third countries for infant industries located within its borders. However, in view of South African domestic pressure and new WTO commitments, it will be a serious negotiating challenge to gain the right to temporarily increase SACU-wide protection. The challenge will involve careful analysis of WTO commitments.

13. The revised SACU must include clear Botswana rights to invoke or to have invoked such trade remedies as safeguards, antidumping and countervailing against imports into either all of SACU or only into Botswana as well as to be exempted from such measures when imports into Botswana are not causing injury to SACU producers.

14. Botswana negotiators should gain a section in SACUA allowing for greater coordination among the four lesser developed country members including the right for them as a group to temporarily increase duties against imports from South Africa.

15. In the administrative area, it appears accepted that SACU will have to become a more democratic organization responsive to the needs of all its members. This will include the expansion of SACU's Customs Union Commission into a permanent secretariat to administer the agreement collegially instead of through unilateral South African decisions, democratization in SACU's decision-making structure and institution of an impartial dispute settlement mechanism. The challenge may well lie in preventing cosmetic changes which do not modify the present dominant position of the South African BTT and Government in decision making.

16. Botswana negotiators must be pragmatic as well, taking into account limitations in Botswana experience and expertise by not establishing oversophisticated institutions until education and training catches up with demand.

17. Botswana negotiators must bear in mind that there is an expectation that once the current revisions of SACU are negotiated and implemented there will be efforts to expand the customs union to new countries. Although the major efforts in the short term should be to maximize benefits within SACU as currently constituted, it must be noted that a number of SACU provisions may apply to new members as well with consequence to Botswana competitive advantage. Botswana negotiators should carefully craft the new SACUA to take into account the possibility of new members and to avoid automatic application of SACU provisions to new members, possibly through a tiered approach to membership.

ANNEX B
SACU BACKGROUND

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ANNEX B
SACU BACKGROUND AND PROVISIONS

SACU has been functioning since 1910. There have been periodic modifications in the specific provisions of the agreement, the most recent in 1969 and 1977. (Namibia's formal accession in 1990 did not change the specific provisions.) Almost all modifications have increased the BLNS share of the Customs Union's pool of customs duties and excise taxes. Botswana had done very well in these negotiations since it increased its share of this revenue from one percent in 1971/72 to as much as 24 percent in 1992/93.

South Africa, however, has been the principal beneficiary of this relationship when the effects on production, diversification and employment are considered. The ability within SACU to impose its own import regime on all the countries in the region and to prevent BLNS from erecting trade barriers against its own imports has allowed South Africa to gain an almost completely captive market in these countries.

The protectionist regime which South Africa imposes on all SACU members will only be moderately modified after the Uruguay Round is fully implemented. SACU's average 21 percent Most Favored Nation (MFN) duties on industrial products will be reduced to about 14 percent by the year 2000, although many products will have protection in the 20 to 30 percent range. (There will be significant non-tariff liberalization including termination of the highly protective discriminatory origin rules excise tax system and many subsidization systems.)

Even if South African commitments to the WTO are fully implemented, Botswana will continue to be forced to buy more expensive South African products. South African manufacturers will continue to track international prices so as to charge prices just below the cost of duty-paid imports. This means that Botswana's residents have to pay high prices for products whether destined for further manufacturing or direct consumption, which erodes Botswana's competitiveness and holds down living standards.

Botswana was, until recently, willing to accept these disadvantages since South Africa allowed them a larger share of SACU's revenue than they would be entitled to on a trade weighted basis. However, now that Botswana has a strong revenue base, increased revenue is no longer the priority objective. The major problems confronting Botswana are unemployment and underemployment. In fact, the success of the renegotiation will be measured by how successful Botswana is in leveraging its SACU membership into an effective mechanism for creating jobs at all levels, from entry to managerial and high skilled.

Thus correctly, the current Botswana position is that revenue, although important, is secondary to industrial diversification. Increasing employment requires the development of large and small scale manufacturing. Two major initiatives have been undertaken: a soda ash manufacturing facility in Sun Pan and processing and assembling industries in Selebi-Phikwe. Unfortunately, some of these gains have been lost as South African policy undermines some trade policy initiatives, particularly the ability to import components duty-free for transformation into final products.

WEAKNESSES OF CURRENT SACU FROM BOTSWANA'S PERSPECTIVES

The excessive control exercised by South Africa under the SACUA is evident from reviewing a number of its provisions.

Article 4 provides that the South African customs tariffs are also the Common External Tariff (CET) for the union and its schedule of excise taxes applies throughout the union. Although there are some platitudes in the agreement requiring South Africa to consult and even to give sympathetic consideration to other members' requests, there is no requirement for South Africa to take any of their views into account before making its decisions.

Article 5 as amended allows South Africa to modify MFN duties after SACU contracting parties are given opportunities for consultations before the action is taken. The opportunity for consultations is not even required before imposition of interim measures to protect a local industry or of measures designed primarily for fiscal purposes. South Africa also does not publish requests for the imposition of dumping duties. Although other parties to the agreement are free to make representations on the incidence and effect of any measures, the decisions of South African authorities are final and cannot be appealed.

The major body in modifying MFN duties in South Africa is its Board on Tariffs and Trade (BTT). The Board consists of at least four members appointed by the South African President and does not have members from BLNS. The Board receives requests for changes in MFN duties from the private companies and individuals. The Board investigates requests, holds public hearings and if it decides the request has merit, recommends modification of the duty. If the Minister of Industry concurs, the modification takes effect.

Interested members of the private sector from any SACU member may request the Board to recommend tariff adjustments. They also may support or oppose request of others. Requests for such modifications are distributed throughout the union by publication in the South African Government Gazette and by being sent to the Governments of Botswana, Lesotho, Namibia and Swaziland for them to disseminate to their own nationals. The governments of these four countries may discuss issues with the South African government and request its support. However, BLNS nationals do not sit on the Board and their governments cannot veto or otherwise prevent a tariff modification with which they disagree.

Article 6 as amended allows Botswana to levy duties on imports from other SACU members and third countries to enable new industries to meet competition. It is probably the only provision which allows Botswana to levy any duties without the approval of South Africa. However, the conditions under which such new duties can be levied are very restrictive.

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The duties cannot be levied for a period of more than eight years running from the date on which the product was first produced in the country. Thus a new company cannot gain this protection if more than eight years had elapsed since the first production occurred in Botswana even if the initial company had long gone out of business. Such protection, even if granted, must cease once the eight year period has elapsed. Botswana has received protection for wheat milling, beer brewing and soap production.

There is no possibility that the four less developed members can jointly promote industries since any duty levied under this provision must be levied against imports from all SACU members.

Article 7 as amended is the only provision which requires South Africa to heed requests from any of the four lesser developed SACU members not to decrease nor eliminate the CET. BLNS can insist against reducing or abrogating a duty against third countries which could harm the prospects of their industries specified to be or likely to be of major importance to their economies. However, even in this case, South Africa has a de facto veto since its objection limits what industries can be designated and the length of time during which South Africa cannot reduce or abrogate the duties.

The same Article 7 does not require South Africa to raise duties against third country imports so as to provide protection for the selected industry. South Africa is only required to give due regard to the interests of Botswana and to apply the same criteria as its applies to similar requests from local industry within South Africa. There is no body which adjudicates South Africa's decisions.

Higher duties are not to be considered on specific products unless industries within the customs union are in a position to supply at least 60 percent of the customs union's requirements for the products. Unfortunately, there are few products where Botswana can supply 60 percent of the union's requirements without combining their production with South African production. Even in these cases, South Africa is not required to raise duties.

If South African imports are being introduced into Botswana in such increased quantities and at such low prices as to cause or threaten serious injury, Botswana cannot take unilateral action to limit such imports unless the specific conditions of Article 6 are fulfilled. In other cases, South Africa is only required to consult with Botswana and to cooperate in finding as soon as possible a mutually acceptable solution.

Article 19 as amended allows South Africa to engage in multilateral and bilateral trade negotiations. Although South Africa must consult with the other members prior to the commencement of the negotiations, and shall consider any request by the four other countries to be represented on the delegation, it is free to agree without the assent of the other SACU members. This appears to be what happened during the Uruguay Round in Geneva. South Africa agreed to implement a new tariff schedule and phase out non-tariff barriers without seeking the approval of Botswana.

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Not only does South Africa need only consult with Botswana on a whole host of issues of importance to the latter, while taking whatever action it pleases, the consultation requirement itself is very weak. In fact, there are no penalties or sanctions which can be levied on South Africa for failing to engage in consultations in a timely manner.

Often the notification of an action is received by the appropriate authorities in Botswana only after the action has been taken or too late to allow for meaningful consultations. There may be insufficient time to carry out the necessary research or to consult with the private sector. Part of the problem arises from the formal way in which notification is made. The Customs authority may inform the Foreign Ministry in Pretoria who may post a letter to the Botswana Foreign Ministry. Other times notification is delayed in order to maintain commercial secrecy or to prevent complaints about the action until after it is implemented.

A frequent complaint in Botswana is that large conglomerates in South Africa stifle competition throughout the union. The current SACUA recognizes that agreements between enterprises, decisions by associations of enterprises, concerted practices between enterprises, and actions by which one or more enterprises to take unfair advantage of a dominant position within the common customs area may be incompatible with the Agreement. They may limit the interchange of goods between the common customs area.

The provision only provides the possibility of entering into consultations in an effort to resolve any difficulties which may be attributable to such practices. It does not guarantee BLNS nationals the right to gain access to South African courts, does not provide for Botswana officials to be part of the decision making process in antitrust matters or for SACU wide decisions to be made.

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ANNEX C
TRADE POLICY MECHANISMS IN OTHER REGIONAL AGREEMENTS

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ANNEX C
TRADE POLICY MECHANISMS IN OTHER REGIONAL AGREEMENTS

INTRODUCTION

This paper examines specified questions that could be of relevance to Botswana in any re-negotiation of the SACU agreement. In essence it distills from other integration experiences, primarily in Latin America and the Caribbean, provisions and experiences that could be beneficial to Botswana in a new integration dispensation, bearing in mind the treatment accorded to relatively disadvantaged integration partners, however these may be defined.

The main integration arrangements considered herein are as follows: The Caribbean Community (CARICOM); the Andean Pact; the Common Market of the South (Mercosur); the Central American Common Market (CACM), and the Latin American Integration Association (ALADI), which are briefly introduced.

The Treaty of Chaguaramas establishing the Caribbean Community and Common Market was signed in Trinidad in July 1973, became the successor to the Caribbean Free Trade Area (CARIFTA). CARICOM aimed to establish a common market regime, coordinate foreign policies of Member States and promote functional cooperation in wide-ranging areas. The arrangement currently embraces 13 English-speaking countries Antigua, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent and Trinidad and Tobago. The Treaty divides members into More Developed (MDCs) and Less Developed Countries (LDCs), establishing a special regime for the latter.

The Cartagena Agreement establishing the Andean Pact was signed initially by Bolivia, Chile, Colombia, Ecuador, and Peru. The Agreement entered into force on October 16, 1969. Venezuela adhered to the Agreement in 1974 and Chile withdrew from it in 1976. The integration experience of nearly two decades led to a number of amendments to adapt the Agreement to the region's evolving needs. Member states pledge to undertake a process of industrial development of the region through joint programming, to implement an automatic trade liberalization program, adopt a common external tariff and coordinate national development plans. In recognition of differences in comparative levels of development among the signatories, Bolivia and Ecuador receive special treatment designed to permit them to overcome certain structural deficiencies. A protocol of modification, known as the "Quito Protocol," entered into force in May 1987.

The Treaty of Asuncion, signed in March 1991, committed Argentina, Brazil, Paraguay and Uruguay to take the steps necessary for integrating their economies within the Southern Common Market, or Mercosur. It envisions not only a free-trade zone but a true common market, with free circulation of goods, services, and factors of production within the expanded market, adoption by the four signatories of a common external tariff and common trade policy, as well as the coordination among them of macroeconomic policies and the harmonization of their legislation on matters relating to economic integration. The common market, established on December 31, 1994 after rapid intra-group tariff reduction, will embrace nearly 200 million consumers in the four member states.

The General Treaty on Central American Economic Integration, signed in Managua on December 13, 1960 by Guatemala, Honduras, El Salvador and Nicaragua, provides for the establishment of a Central American Common Market (CACM). Costa Rica adhered to the General Treaty in 1963. The General Treaty establishes a trade regime under which member states must grant reciprocal free-trade treatment to all products originating in their respective territories, subject to certain limitations to adopt and implement a common Central
American external tariff within five years of its ratification, a goal currently still being pursued. Other obligations include the requirement for the central banks of member states to cooperate closely to prevent currency speculation that would adversely affect the rates of exchange or the convertibility of regional currencies.

The Treaty of Montevideo of 1980, which created ALADI, envisages the establishment of a Latin American common market to be created gradually and progressively over the long term. ALADI signatories are Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela. Region-wide free trade is to be accompanied and hastened by mutual economic cooperation, including complementarity programs. Member states are free to grant tariff concessions to some trading partners but not to all, with negotiations taking place along bilateral as well as multilateral lines. In this manner, it was felt, the varying levels of development of member states and their individual needs were better accommodated to the integration process.

Brief reference is also made to the Organization of Eastern Caribbean States (OECS), which constitutes a sub-grouping of CARICOM's LDCs, to the North American Free Trade Agreement (NAFTA) and to the ASEAN Free Trade Agreement.

I. SPECIAL PROVISIONS FOR LDCS

This section is intended to provide an overview of provisions contained in our sample of integration agreements, insofar as they relate to relatively disadvantaged countries, with a focus that is at this stage not merely trade-related but much broader in scope. Before doing so brief initial notes will be made with respect to country categories, stated rationales for such provisions and guiding principles.

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With regard to the categories that have been earmarked for special treatment, the integration compacts examined provide special provisions for Member States that are not merely "relatively less economically developed" (as specified in Chapt. 3 of the ALADI agreement), or for smaller states (defined in terms of economic and/or demographic size, and sometimes by geographic size), but also for landlocked states.

With respect to rationale, the Cartagena Agreement states with respect to Bolivia and Ecuador that special treatment is a ".. recognition of differences in comparative levels of development among the signatories.." and consequently special treatment under the Agreement is "designed to permit them to overcome certain structural deficiencies". Article 15 of ALADI states that, "The member countries shall establish favorable conditions for the participation of the relatively less economically developed countries in the economic integration process, based on the principles of non-reciprocity and communitarian cooperation", and Article 18 commits members to "endeavor to establish efficacious compensation mechanisms for the negative effects arising from the intra-regional trade of the *landlocked relatively less economically developed countries* ".

The CARICOM special regime for LDCs encompasses, for example:

- special arrangements concerning import duties, revenue duties and internal taxation;

- common market origin rules in accordance with which the determination and operation of the criterion of substantial transformation take into account special LDC needs;

- special provisions in the CARICOM Scheme for Harmonisation of Fiscal Incentives to Industry;

- differential CET phasing;

- special provisions for the promotion of industrial development, including allowing the <u>temporary</u> imposition of quantitative restrictions on like imports from the other Member States. It is to be noted that, in contrast to the general CARICOM voting rule (examined below), only a majority decision is required here, meaning a decision supported by the affirmative votes of all the LDCs and at least two of the More Developed Countries;

- the promotion of investment capital to the LDCs, for which purpose the MDCs agree *inter alia*, to facilitating joint ventures with those states and the flow of loan capital;

- provision by the MDCs of opportunities for the use by the LDCs of their technological and research facilities;

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- an annual Council review of the need for strengthening existing mechanisms or introducing new ones to provide greater benefits to the LDCs, as well as

- special Caribbean Development Bank financing.

The ALADI agreement stipulates in Article 21 the establishment of:
"programs and cooperation measures in the areas of preinvestment, financing and technology primarily intended to provide support for the relatively less economically developed countries and, among them, especially for the landlocked countries, to facilitate their benefiting from the tariff reductions".

Article 23 also commits the member countries to:
"endeavor to grant facilities for the establishing in their territories of free zones, deposit areas or ports, and other international transit administrative facilities, in favor of the landlocked countries".

Chapter XIII of the Andean Common Market addresses the subject of "Special Norms for Bolivia and Ecuador" under the following headings:

- Harmonization of Economic Policies and Coordination of Development Plans;

- Industrial Policy;

- Commercial Policy;

- General Provisions; and,

- Financial Cooperation and Technical Assistance.

Moreover, the question of the duration of these special norms is addressed in Article 112, which states that, "These mechanisms must contemplate special treatment in favor of Bolivia and Ecuador for as long as the presently existing differences in levels of development persist."

With respect to provisions under the specific headings, mention could be made of the Section dealing with Financial Cooperation and Technical Assistance. Article 106 states: The Member Countries agree to act jointly with the Andean Development Corporation and any other subregional, national or international organizations in obtaining technical assistance and financing for the development requirements of Bolivia and Ecuador, and particularly for the projects related to the integration process.

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The allocation of resources intended for such projects shall be in function of the basic objective of reducing the existing differences in development among the countries, with an effort to particularly favor Bolivia and Ecuador.

In addition, the Member Countries shall jointly act with the Andean Development Corporation in the allocation of its ordinary and extraordinary resources such that Bolivia and Ecuador receive a substantially higher proportion than would result from a distribution of said resources in a manner proportional to their capital contributions to the Corporation.

Article 18 of ALADI states that:
The member countries shall each approve negotiated lists of products, preferably industrial, that originate in each of the relatively less economically developed countries for which all of the remaining countries of the Association shall agree to, without reciprocity, the complete elimination of customs duties and other restrictions. The member countries shall establish the procedures necessary to achieve the progressive expansion of the respective free trade lists, undertaking the corresponding negotiations when it is deemed appropriate. Likewise, they shall endeavor to establish efficacious compensation mechanisms for the negative effects arising from the intraregional trade of the <u>landlocked relatively less economically developed countries</u>.

Mercosur's provisions in respect of its smaller members are quite limited. Article 6 recognizes certain differentials in the rate of trade liberalization at which Paraguay and Uruguay will make the transition. The benefits derived by both countries are, first, that they are allowed an additional year, beyond the deadline of 31 December, 1994 for eliminating "any duties, charges and other restrictions applied in their reciprocal trade" (Annex I, Art.1), in order to eliminate their schedules of exceptions and, second, they were allowed far longer lists of exclusions from the internal tariff-cutting program than the two larger members Argentina and Brazil.

Within Central America, notwithstanding recognition at the time the CACM agreement was signed that Honduras was a less developed country, no special provisions in its favor can be identified from the said agreement.

II. TRADE RULES

II.1. Common External Tariff (CET)

Provisions related to the CET, apart from defining the approach adopted, generally refer to the levels of duty, date of application, transition period, as well as exceptions applicable to the general membership or a specific member country, or a particular sector or product/category. Brief notes address the subjects of level and exceptions.

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II.1.1 Level

Most customs unions among developing countries have aimed at a ceiling of 20 percent and a 0-5 percent floor, based on the philosophy that the CET mechanism, in the language of the Andean Presidents, "should reflect a reasonable margin of preference for subregional production, compatible with free trade policies and that contributes to a competitive position in the world economy". There are of course important differences in implementation schedules (the target date for CARICOM is January 1998, for example, whereas the Andean Pact target was yearend 1993), but most CET structures have been simplified to four or five levels.

It should be noted that the existence of a CET did not obligate members of a customs union to negotiate jointly within the Uruguay Round, as did the European Union, which is the single exception. The fact that separate negotiations result in different tariff bindings by members of a customs union is in no way inconsistent with the adoption or maintenance of a CET, since bindings are normally at much higher levels than current tariffs.

II.1.2 Exceptions (drawbacks, rebates, retailing,etc)

(a)General membership

The agreements examined allow exceptions applicable to the membership as a whole, as well as to individual countries. An example of the latter is that, within Mercosur, Brazil's list of exceptions includes capital goods (industrial equipment and machinery) and informatics and telecommunications products.

It can also happen that certain products are altogether excluded from the CET regime. At the Mercosur Summit of December 1994, which determined the CET levels to be applied from 1st January 1995, it was not possible to reach an agreement in the areas of car manufacturing (spare parts, components and vehicles) and sugar, so national tariffs continue to be applied; however all partners committed themselves to defining a common policy in these areas by December 1997, to become effective in January 2000.

Drawbacks and rebates are not covered in most of the Latin American and Caribbean regional agreements examined, these being normally subject to national legislation. The CARICOM agreement, in addressing the subject, merely ratifies this fact. Art. 16(1) states the following:

"Each Member State may refuse to treat as a Common Market origin goods which benefit from export drawback allowed by Member States in which the goods have undergone the processes of production which form the basis of the claim to Common Market origin. In applying this paragraph, each Member State shall accord the same treatment to imports consigned from all other Member States."

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(b)LDCs

Exceptions favoring LDC members, collectively or even on an individual basis, are not uncommon. CARICOM employs a trade tool whereby the Council can "authorise by majority decision such States to suspend Common Market tariff treatment of any description of imports eligible therefor on grounds of production in the other MDCs" (Art. 56).

An example of an exception for a single LDC is found in Andean Decision 324 (Art. 3) allowing Bolivia, notwithstanding the four-tier CET rule outlined, to maintain merely two CET levels of 5% and 10%. Exceptions also apply to specific industries of interest to particular LDCs. For a list of tariff items in the petrochemical and steel sectors, Ecuador was allowed to have tariffs up to five points below normal Andean CET levels.

II.2. Trade Remedies

II.2.1 Action against Member Countries

Infant Industries

The CARICOM agreement allows the Council to respond to an application from an LDC to, "if necessary, as a temporary measure in order to promote the development of an industry in any of those States, authorise by majority decision such States to impose quantitative restrictions on like imports from the other Member States" (Art. 56 of the Annex).

Dumping and Subsidization

The agreements examined generally outlaw the use of intra-group dumping and subsidies (which are often treated jointly), and provide for action in some form, either at the national or regional level, in the event of violations against this norm.

The CARICOM treaty is insufficiently specific in this area. Article 19.3 merely makes provision that if any industry in a Member State is suffering or is threatened with material injury as a result of the import of dumped or subsidised products into another Member State, the latter shall, at the request of the former, examine the possibility of taking, in conformity with any other international obligations, action to remedy the injury or prevent the threatened injury. Article 42 of the Common Market Annex to the CARICOM Treaty recognizes "the desirability to harmonise as soon as practicable such provisions imposed by law or administrative practices as affect the establishment and operation of the Common Market" in *inter alia* the dumping and subsidization of imports.

Similarly the CACM provides in Article XII that:
"...each of the signatory states shall employ all legal means at its disposal to prevent the exportation of goods from its territory to other states at prices lower than normal, if such exports prejudice or threaten to prejudice the production of the other countries or delay the establishment of a national or Central American Industry".

The Andean Group, on the other hand, is guided by Decision 283 referring to "Norms to Prevent or Correct Competitive Distortions Caused by Dumping or Subsidies", which provides a procedure for regional investigation and action. Once the Board determines the existence of a threat of prejudice or a prejudice, it is authorized to issue a "reasoned" Resolution indicating "the levels of duties established, the imports subject to the practices on which the duties shall be applied, the period for adopting them and their duration" (Articles 17 & 18), and to remove them if the prejudicial action ceases. Relevant articles relating to the measures that could be taken are reproduced in the Addendum to this paper.

A region-wide mechanism is advantageous since it establishes uniform, transparent rules, applies them impartially and can shield a country from retaliatory action that certain nationally-made determinations might invite, especially where much larger states are involved.

Safeguards

Fairly extensive treatment is given to this subject in most of the agreements. Together they provide for safeguard action under four main circumstances: material injury, unfair trade practices, devaluation, and for balance-of-payments purposes (treated separately in the section below).

The most usual circumstance is, to quote Art.2, Annex IV of Mercosur, "if imports of a given product damage or threaten serious damage to its market as a result of a significant increase in imports of that product from the other States Parties *over a short period of time*" (my emphasis). Within Mercosur the determination of such damage is left to the individual member, which must take into account a number of specified considerations (see Addendum), but significantly "factors such as technological changes or shifts in consumer preferences towards similar and/or directly competitive products in the same sector shall not be taken into account". The Annex also limits the application of safeguard clauses to only once for any product, for one year extendible to a second on terms that are specified in the Annex, and it outlines the procedure to be followed. It should be noted finally that the intention is to avoid or limit any disruption of trade flows as a result of safeguard action and to prevent unilateral recourse to same.

The CACM agreement provides that in the event a Party considers itself affected by unfair trade practices, it should not unilaterally impede trade, but present the matter to the Executive Council for its determination as to whether protective measures are to be adopted to safeguard against such practices (Articles XIII and XIV).

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The subject of devaluation is addressed in some detail in Article 80 of the Andean agreement, also reproduced in the Addendum. If the Board verifies that a country is prejudiced by a monetary devaluation undertaken by another Member, the prejudiced country may adopt "corrective measures of a temporary nature for as long as the variation persists, within the recommendations of the Board". The agreement says little as to what is permissible but it is specific on the point that the measures taken "may not signify a reduction of import levels existing prior to the devaluation". The CACM agreement also addresses the issue and requires the Central Banks to cooperate in order to avoid currency speculation.

Balance-of-payments

Article 28 of CARICOM's Common Market Annex allows for import restrictions arising from balance-of-payments difficulties and allows the imposition of quantitative restrictions. A Member State taking such measures is required to notify them to the Council, if possible, before they come into force. The Council is then required to examine the situation and keep it under review and may at any time by majority vote make recommendations designed to moderate any damaging effect.

If the balance-of-payments difficulties persist for more than 18 months and the measures applied seriously disturb the operation of the Common Market, the Council is required to examine the situation and may, "taking into account the interests of all Member States, by majority vote, devise special procedures to attenuate or compensate for the effect of such measures". As soon as its balance-of-payments situation improves, the Member State may make proposals to the Council on the way in which this should be done. These provisions were used not infrequently within CARICOM in its earlier years of foreign exchange restrictions. Since trade and exchange rate liberalization, however, little recourse was necessary to this remedy.

The CACM agreement also provides in Article X that:
"In the event of serious balance-of-payments difficulties which affect or are apt to affect monetary relations of payments among the signatory states, the Executive Council, at its own initiative or at the request of one of the parties, shall immediately study the problem in collaboration with the Central Banks in order to recommend to the signatory governments a satisfactory solution compatible with the maintenance of the multilateral free-trade system.

II.2.2 Action against Third Countries

The issue of unfair trade practices as it relates to third parties ought to be tackled on a regional group basis, particularly in the sense that national legislation should derive from a group consultation/coordination process, in order to adopt uniform rules, which should be GATT-consistent. A regional mechanism ought to be set up as well adhering to the principles of independent review, public scrutiny, material injury, national welfare criteria and use of temporary trade restrictions, preferably ad valorem duties. Care should also be taken to prevent national firms/industries using the mechanism for protectionist ends.

Infant Industries

Infant industry protection against third parties in the context of integration arrangements are normally catered to through the Common External Tariff. Quotas were also used in the past but these are no longer GATT-consistent.

Dumping

The issue of dumping by third countries is normally tackled through the GATT. If, however, a country's exports are affected in the territory of an integration partner owing to dumped imports from a third country, this would have to be tackled through the adoption of provisions at the regional level. Mercosur countries have catered to this eventuality by the adoption of Article 4 which states:
"The States Parties shall ensure equitable trade terms in their relations with third countries. To that end, they shall apply their domestic legislation to restrict imports whose prices are influenced by subsidies, dumping or any other unfair practice. At the same time, States Parties shall coordinate their respective domestic policies with a view to drafting common rules for trade competition".

Subsidies

As in the case of dumping, GATT provisions apply against third countries where subsidies are used, with affected parties being allowed to countervail against subsidized imports.

With respect to export subsidies and unfair trade practices, the CACM agreement prohibits the governments of the signatory states from granting customs exemptions or reductions on imports from outside Central America on articles produced in the contracting states under adequate conditions (Article IX). Provision is made for affected states to submit the matter to the Executive Council for consideration and ruling in this regard. Similar provisions obtain in other integration agreements.

CARICOM countries have been reluctant to use CVDs, particularly where industrialized countries are concerned. An ongoing case refers to the sale of US. subsidized rice to Jamaica, which can harm rice exports from Guyana to that country. CARICOM has set the CET for rice at 30%, which the U.S. government has been protesting as too high. However, the utility of maintaining this level is that it can be said to contain *de facto* a countervailing element.

Safeguards and BOP

GATT rules cater to both situations where third countries are concerned.

II.3. Origin Rules

Origin rules define the criteria for determining whether a product is eligible for preferential treatment as an originating product within a trade integration grouping. Their purpose is to ensure that the benefits of integration accrue to regional production and not to goods from third countries. Origin rules are required in the absence of a unified system of external protection and particularly where there is high tariff dispersion among the integration partners, in order to prevent trans-shipment of third country goods through the country with the lowest tariff to the country with the highest tariff. They are used also to help to equilibrate existing imbalances among integration partners with more favorable requirements for the more disadvantaged partners.

In general origin rules define origin criteria by providing a classification of qualifying products and indicating the requirements for "substantial transformation" where inputs from third countries are used; they make provision for a review of such rules, and they specify certain administrative requirements (declaration of origin, certification, verification, period of validity of forms, etc.).

With respect to the definition of originating products, most agreements consider as qualifying all goods wholly produced in a country (such as minerals, agricultural products or products derived from the sea); products which meet certain local or regional value-added requirements; products which meet certain process requirements (the CARICOM agreement contains a process list); as well as products for which specific origin rules are established.

Value-added requirements vary somewhat with the different agreements and different rules apply in most cases to regional LDCs. Andean rules require that the CIF value of the materials imported from third countries must not exceed 50 percent of the FOB value of the product or 60 percent in the cases of Bolivia and Ecuador. Similarly CARICOM requires that materials imported from outside the Common Market or of undetermined origin should not exceed 50 per cent of the export price of the goods, or 60 percent for the LDCs.

However, this general rule apart, the complexity of employing the criterion of substantial transformation is obvious in CARICOM's case, since it takes various forms for different product groups. A first group of 187 commodities (mostly food and chemicals) are deemed to be originating if they meet one of the following requirements: they are produced from specified regional materials or from materials specified by tariff heading; they are produced using a specified production method or process, or the value of extra-regional materials used must be below a specified percentage of the export price of the finished product. The second group of 142 commodities (mostly assembly industries) are deemed to be originating if they meet either of the following criteria: the value of extra-regional

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materials used in production is below 65% for the MDCs or below 70% for the LDCs, or they perform a "tariff jump" or change from one classification to another. All other commodities must meet the "tariff jump" criterion to qualify for common market treatment. However, several exceptions are used by most countries which undermine the intent of the system.

Apart from the concessions indicated above to CARICOM LDCs, for eight product groups which figure fairly importantly in the LDC production structure (processed fruits, confectionery, plastic materials, and galvanized sheet), they are granted common market treatment on concessionary terms. LDCS, upon common market approval, are also permitted to suspend common market treatment on specific MDC imports if major revenue losses would be involved. Between 1988 and 1991 rum, cigarettes and automobiles were granted this provision, which, apart from the revenue consideration, also protects LDC production of these items.

The Mercosur agreement makes no exception for Uruguay and Paraguay and merely stipulates in Art. 1(d) of Annex II dealing with General Rules of Origin that:
"Until 31 December 1994, products resulting from assembly operations carried out in the territory of a State Party using materials originating in the States Parties and third countries, when the value of those materials is not less than 40 per cent of the f.o.b. export value of the final product...".

Mercosur goods resulting from a process which causes a change in nomenclature also qualify for origin treatment, Article 2 states that if the "process carried out does not involve a change in nomenclature heading, it shall suffice that the c.i.f. value of the third country materials at the port of destination or the maritime port does not exceed 50 per cent of the f.o.b. export value of the goods in question.

In considering materials originating in third countries for States Parties with no outlet to the sea, warehouses and free zones granted by the other States Parties when the materials arrive by sea shall be treated as the port of destination."

A noteworthy feature of the CARICOM agreement that caters to the limitations of small size and consequently of narrowness of the resource base is a provision concerning a Basic Materials List (Art. 14.2), whereby "materials listed in the Basic Materials List ....which have been used in the state described in that List in a process of production within the Common Market shall be deemed to contain no element from outside the Common Market."

It should be noted however that this provision has led to major concerns because of its widespread use and recent reforms have sought to limit its application in an effort to stimulate greater use of raw materials, although this too has aroused concerns about distortions that might be caused. A final feature of the agreements that deserves mention is the provision that products coming from free zones within the integration grouping will be required to meet the general rules of origin to gain preferential treatment.

III.TRADE-RELATED PROVISIONS

III.1. Services

The services sector is by no means a new inclusion in regional integration agreements. However, the focus of provisions in this sphere has tended to be on the development of the service infrastructure linking the integration membership, for example telecommunications or transportation.

Indeed, within CARICOM and Central America common services and functional integration in these and other areas constitute a major part of the grouping's success story. Apart from this emphasis, the CARICOM agreement pays some attention to services understood in a very limited framework as "activities of an industrial or commercial character, artisan activities and activities of the professions, excluding activities of employed persons" (Article 36). The definition specifically excludes "services for remuneration provided that they are not governed by provisions relating to trade, the right of establishment or movement of capital".

Thus, while the subject of trade in services has gained recent prominence, particularly in the light of the Uruguay Round negotiations and outcome and, within Latin America and the Caribbean, in the light of the NAFTA undertakings on international services trade, regional agreements among developing countries are lagging in this important area. Mercosur is an exception, but only partially so, in that it covers the "free circulation of services" (and factors of production, as well as the coordination of macroeconomic and sectoral policies) between the States Parties in the services area, *inter alia*, in order to ensure proper competition. However, practically nothing else is said on the subject. Given this dearth of regional precedent, the Uruguay Round undertaking on services would have to be relied on as a basis for developing regional rules.

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III.1.1 Transportation

The subject of transportation is not treated at any length in the majority of agreements examined. Within Mercosur transport is serviced by two working groups (maritime and inland), and within CARICOM meetings of a Standing Committee of Ministers responsible for Transport are held, but the respective agreements say little else. The Central American agreement probably devotes the most attention to the subject, in view of the vital importance of land transportation for intra-regional trade, in an area where port development has woefully lagged. The basic rules are freedom of transit, prohibition of discrimination or quantitative restriction, a requirement to follow specified routes, and exemption from duties and equivalent charges apart from service fees. The relevant provisions in the CACM and OECS agreements are reproduced in the Addendum to this Annex.

III.2. IPRs

The subject of intellectual property rights is an even more pressing one than services at present because of its relative newness in international negotiations, its complexity and owing to increasing demands by industrial countries for agreements in this area as a condition for investment and other types of relations. Yet the record of integration groupings examined herein indicates that scant attention has been placed on the subject from the perspective of elaborating a common position, even as individual countries have proceeded to sign bilateral IPRs with far more powerful countries.[1]

The Andean Pact countries have been unique in terms of their attempts to achieve a coordinated approach, albeit in certain aspects of this important field and after a lengthy period of inaction. Article 27 of the Cartagena Agreement constituted a commitment for the Commission to approve and submit, prior to December 31, 1970, a common code for the treatment of foreign investment and, among others, on trademarks, patents, licenses and royalties.

This noble intention was partially fulfilled many years later with the adoption of a Common Code on Intellectual Property (Decision 313) in February 1992, covering essentially patents and marks, and involving a commitment to reciprocally inform each other and to inform the Board of the Cartagena Agreement with respect to patents granted and denied by the respective competent national offices. Member Countries remained free, however, "to extend the intellectual rights established by this Decision, when deemed appropriate, in their respective national legislation or through commitments made in the context of bilateral agreements or those entered into with international organizations" (Article 118).

A noteworthy feature of the Decision is the aspect of preferential IPR registration

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[1] **Ecuador, Jamaica and Trinidad and Tobago have signed bilteral IPRs with the United States.**

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outlined in Chapter VI in the following terms:
"The intellectual property rights validly granted in any Member Country prior to the entry into effect of this Decision, with respect to marks registered more than ten years previously, shall have a preferential right of registration in the other Member Countries for the period of one year from the date of the entry into effect of this Decision, provided that an identical mark, covering the same products or services or similar products or services such that could induce the public to err, had not been previously registered in the Member Country where the registration is filed."

Finally, Article 37 of the Andean Foreign Investment Code (Decision 220) provides for the creation of a Subregional Industrial Property Office, whose functions include liaison among the national industrial property offices, gathering and disseminating information on industrial property to the national offices, preparation of model license contracts for the use of trademarks or for the use of patents in the Subregion, advising national offices on all matters related to the application of the common dispositions on industrial property, and developing studies and presenting recommendations to the Member Countries on invention patents.

III.3. Labor

The subjects of labor and trade have become increasingly intertwined, particularly in the light of the North American Free Trade Agreement (NAFTA), a supplemental agreement of which is called the North American Agreement on Labor Cooperation (NAALC). This agreement can serve as a useful guideline in a context in which the labor/trade issue is expected to be a subject of increasing attention within the new World Trade Organization (WTO), as well as in other trade agreements. Earlier accords paid little attention to the labor issue. Of the main ones listed here, only the Andean Pact and CARICOM agreements specifically addressed it.

One of the institutions of the Caribbean Community is the Standing Committee of Ministers responsible for Labor, which is charged with formulating such policies and performing such functions "as are necessary for the achievement of the objectives of the Community within their respective spheres of competence." The issue of freedom of movement was resolved with the decision to grant this privilege only to media and cultural workers, as well as to graduates of the University of the West Indies and the University of Guyana. However, this decision was never implemented, owing to concerns within some LDCs that this might lead to a huge labor influx, as well as to complaints that the decision was elitist and ought to apply to all worker categories.

As indicated, the Andean Pact provides for the functioning of a Labor Consultative Council, with similar responsibilities to the Business Consultative Council already mentioned. In addition Article 40A (d) provides that "In applying the different schemes of industrial integration the Commission and the Board shall take into account the situation and requirements of small and medium industries", particularly those regarding *inter alia* labor training.

The new emphasis on labor derives from concerns about "structural unemployment" and the way in which lower labor standards elsewhere could further aggravate this situation through imports from such countries providing unfair competition, as well as the investment-diverting effect caused by countries with low labor standards and wages.

The NAALC specifies "guiding principles" that the Parties are committed to promote, subject to each Party's domestic law, but that do *not* establish common minimum standards for their domestic law. They indicate instead *broad areas of concern*. These principles are: freedom of association and protection of the right to organize; the right to bargain collectively; the right to strike; prohibition of forced labor; labor protections for children and young persons; minimum employment standards; elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds; equal pay for women and men for equal work in the same establishment; standards for the prevention of occupational injuries and illnesses; establishment of a system providing benefits and compensation in cases of occupational injuries and illnesses, and protection of migrant workers.

The objectives of the Agreement are to: (a) improve working conditions and living standards in each Party's territory; (b) promote, to the maximum extent possible, the labor principles; (c) encourage cooperation to promote innovation and rising levels of productivity and quality; (d) encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labor in each Party's territory; (e) pursue cooperative labor-related activities on the basis of mutual benefit; (f) promote compliance with, and effective enforcement by each Party of, its labor law; and (g) foster transparency in the administration of labor law. Its essential goal is to promote compliance with and effectively enforce its labor law. In this respect the core obligation devolves on countries, not companies. In other words, the only thing that is actionable is the extent to which a government is enforcing labor law.

The obligations of the Parties fall under five broad headings: levels of protection, government enforcement action, private action, procedural guarantees and publication. In essence the Parties have committed themselves to ensuring that their competent authorities give due consideration "to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labor law"; to ensuring that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labor law. The Parties also guarantee that their labor tribunal proceedings are fair, equitable and transparent and agree to giving in writing final decisions on the merits of a case, and to upholding the right to seek review. Each undertakes to ensure that its laws, regulations, procedures and administrative rulings of general application, respecting any NAFTA matter, are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them, as well as to promote public awareness of its labor law.

IV.INSTITUTIONAL ISSUES

IV.1. Decision-making

Our comments in this section are limited to the subject of decision-making in respect of the relevant main authority(ies), but only where these need to be explained in order to provide a clear understanding of what in fact is our primary concern   the method by which determinations are made.

Before examining the different models employed, it must be pointed out that meetings of Heads of State/Government have, in recent years, been very instrumental to accelerating progress within various integration groups, including reaching final agreement and, in particular, securing the implementation of decisions, for example within the context of the Andean Presidential Council. Such meetings have tended to become more frequent and even routinized even in the absence of treaty provisions in this regard. Much of this activity is based on consensus. Similarly, informal groupings in Latin America and the Caribbean have also been making significant strides in liberalizing trade.

With respect to the decision-making method, the formal groupings examined provide evidence of very varied approaches - from unanimity to majority decision to consensus, as well as variations within each grouping depending on the subject or forum considered.

The Andean decision-making structure and approach is instructive, particularly since the current membership numbers only five. The Cartagena Agreement established two governing bodies, the Commission and the Junta (or Board) to preside over the Andean Pact. The Commission is the highest organ of the Agreement and its legislative body, and is composed of one representative and one alternate appointed by each member government. The first president was chosen by lot, and each successor after him has been the representative of the country next in alphabetical order. Presidents serve a term of one year. The Commission meets three times a year in regular sessions and in special sessions as summoned by its president upon the request of a member state or of the Junta.[2]

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[2]At least two-thirds of the Commission members must be present to form a quorum.

The Junta acts as a permanent body, studying and preparing recommendations on policy. In general, the Junta performs preparatory work on matters for which the Commission makes the final decision, supervises the implementation of the Agreement and of Commission Decisions, and performs other technical and administrative duties.

In the Andean Pact, different provisions apply to voting within the Commission and the Board. The former adopts Decisions (as determinations are referred to) with the affirmative vote of two-thirds of the Member States, except in certain cases stipulated in the Cartagena Agreement for which it is stated that, in addition to an affirmative two-thirds vote, there should be no negative vote. A noteworthy feature is that in respect of those matters related to the special norms for Bolivia and Ecuador (listed in Annex III of the agreement), the Decisions of the Commission require in order to be adopted a two-thirds affirmative vote, provided that at least one of the states voting in favor is Bolivia or Ecuador. With respect to the Board of the Cartagena Agreement, the designation of its members requires a unanimous vote, and all decisions of the Board must be unanimous.

The CARICOM approach favors unanimity ("the affirmative vote of all its members"). This means that even if one member abstains or votes negatively, the vote is not carried. While this ensures that a collective decision is not taken that is prejudicial to the interests of a particular Member State, the disadvantage of such an approach is that the organization's progress can be held to ransom by the least enthused or the slowest mover, and this is not unknown within CARICOM. Indeed, it is recognized by many governments and CARICOM cognoscenti that the organization must modify its decision-making approach, but this would be a difficult political proposition, for obvious reasons.

In ALADI the general norm for both the ministerial-level Conference and the Committee is an affirmative vote of two-thirds of the member countries (Article 43). Excepted from this general norm are certain decisions which can only be approved by a two-thirds affirmative vote without their being a negative vote - which caters to the concerns of an objecting member, but is a considerably less exacting requirement than that of CARICOM.

A further variation is provided in the CACM case. Resolutions of the Central American Council are adopted by majority vote of all Council members. However, in the event of non-agreement, the matter shall be referred to the Central American Economic Council, the supreme body, for final resolution in this regard. Before ruling on any matter, the Economic Council shall determine unanimously whether the matter is to be decided by a concurrent vote of all its members or by simple majority.

The administration and execution of the Treaty of Asuncion are entrusted to two governing bodies, the Common Market Council, composed of the foreign ministers and the economic ministers of the member states, (the highest organ of Mercosur) and the Common Market Group, the executive organ of Mercosur, composed of four members per country (representing the foreign ministry, the economic ministry, and the central bank of each signatory), charged with monitoring compliance with the Treaty. In Mercosur decisions of both the Council and the Group must be taken by "consensus" and with all parties present. Approval of applications for accession shall require, however, the unanimous decision of the States Parties (Article 20).

The goal of democratizing SACU means in practice diminishing South Africa's fiat. Unanimity, as a general rule, is not a recommended goal because realistically this would not be obtainable, and for practical reasons already mentioned it is to be avoided. At the same time unanimity could be required for certain significant steps such as allowing new members or amending the provisions of the agreement. It seems unlikely that South Africa would agree to any approach which would allow the other SACU members to force South Africa to act in a large number of areas. Examples of such instances include also provisions, as indicated, on particular matters requiring a majority or two-thirds vote without there being a negative vote.

A useful option that may be available is the consensus approach adopted by Mercosur. This is significant in that two very large countries (Argentina and Brazil) and two small ones (Paraguay and Uruguay) are involved. Consensus tends to avoid, though not exclude altogether, a non-decision by placing major emphasis on a negotiated outcome, even though it may on occasion lead to a watered-down decision. It would clearly commit South Africa to sharing decision-making power in a broad sense, even though South Africa may press, in respect of certain matters, for sole veto power. A second-best option would be to seek approval for a model along the lines of the Central American approach, which combines unanimity with a majority vote pursuant to a determination, almost on a case by case basis, as to which of these methods is to be applied.

IV.2. Dispute Settlement

Procedures for dispute settlement show considerable variation, ranging from permanent bodies to *ad hoc* formal arrangements and the use of political bargaining.

The Common Market Annex to the Treaty of Chaguaramas provides in Article 11.1 that if a Member State considers that any benefit conferred upon it or any objective of the Common Market is being or may be frustrated, and if no satisfactory settlement is reached between the Member States concerned, any of those Member States may refer the matter to the Common Market Council.

Article 11.2 states that the Council shall promptly make arrangements for examining the matter, which may include referring it to a Tribunal constituted from a list of arbitrators drawn up and maintained by the Secretary General of CARICOM, for which end each Member State is invited to submit the names of two eminent jurists. The term of an arbitrator is normally five years and renewable. Each party to the dispute is entitled to appoint from the list an arbitrator to an *ad hoc* tribunal. A third arbitrator is appointed as chairman by the previously appointed arbitrators.

It should be noted that although these steps have been taken by the Secretary General of CARICOM, the tribunal mechanism has never got off the ground, with regional governments seemingly preferring recourse to political horse-trading rather than a more objective arrangement. It is likely that developments have taken this course owing to the close personal relationships that have existed among the CARICOM leadership. However, a more transparent system would be less arbitrary and clearly preferable, especially since the less formalized approach leaves many complaints unattended for long periods and constitutes an uncertain basis for satisfactory dispute resolution.

Central American countries "agree to settle amicably, in the spirit of this Treaty, and through the Executive Council or the Central American Economic Council, as appropriate, any differences which might arise in the interpretation or application of any of its clauses" (Art. XXVI). If agreement cannot be reached the matter is resolved by arbitration in accordance with a procedure set out in the agreement.

Within the Andean Pact, by contrast, dispute settlement is catered to by a permanent body known as the Andean Tribunal, first constituted in 1979, with its seat in Quito, Ecuador. Five justices sit on the Tribunal, each designated by his member state. The Tribunal is the supreme judicial authority with respect to all Andean Pact legal matters, and in these matters enjoys authority superior to the respective supreme courts of the member countries. For many years not a single case was brought to the Tribunal and to date only few cases have been taken to the Tribunal, which is indicative of the reluctance of Member States to take such a step even where the appropriate mechanism is in place and being financed. Yet it should be stressed that once the mechanism began to be employed, the number of perennial violations was automatically reduced as violators wished to avoid legal process, demonstrating the utility of such a mechanism.

The Mercosur agreement provides for a three-stage approach is employed, but no tribunal or court is provided for. Annex 3 to the Treaty of Asuncion states that "Any disputes arising between the States Parties as a result of the application of the Treaty shall be settled by means of direct negotiations". If no solution can be found, the dispute is referred to the Common Market Group (the executive organ of Mercosur), which shall within a period of 60 days make the relevant recommendations to the Parties for settling the dispute. To that end, the Group may establish or convene panels of experts or groups of specialists in order to obtain the necessary technical advice. If the Common Market Group also fails to find a solution, the dispute shall be referred to the Common Market Council (the highest organ of Mercosur) to adopt the relevant recommendations. Notwithstanding its temporary nature, mention is made here of Mercosur's dispute settlement approach purely for comparative purposes, but little can be said about its functioning, particularly in view of the relative newness of Mercosur.

The Member States committed themselves to the establishment of a permanent system for the settlement of disputes from January 1st, 1995 when a customs union was to be ushered in. The members rejected Uruguay's proposal of a court, which would issue legally binding rulings, and settled for an arbitration tribunal based in Asunción, the Paraguayan capital.

A functioning permanent dispute settlement structure is the most desirable arrangement, since it provides an objective (non-political) approach, establishes clear precedents and affords continuity, thereby injecting reliability and stability into the functioning of the organization. These characteristics are especially desirous for the smaller members of any integration body, owing to their inability to employ political or economic pressures in order to ensure compliance with treaty obligations. Such a structure could follow the Andean model, physically located at a particular center, or the CARICOM model, which provides essentially for a standing core of arbitrators. The latter may be more cost-effective but afford less flexibility than the former.

IV.3. Group Negotiation

Group negotiation, particularly though not exclusively on trade and economic matters, is a stated objective of the agreements governing a number of the integration arrangements discussed. Apart from CARICOM's case and perhaps Central America more recently, the record of achievement in this area is quite limited. Moreover group negotiations tend to be restricted to bilateral (i.e., group/single country) and plurilateral (group/group) negotiations, rather than to cover the multilateral area in respect of trade. Interestingly, while some groups organized consultations on Uruguay Round issues, their members negotiated on an individual basis within the Round, unlike the European Union, which spoke with a single voice.

Within CARICOM, where the coordination process is most advanced, the Member States "aim at the fullest possible coordination of foreign policies ... and seek to adopt as far as possible common positions in major international issues.." (Article 17.1), to which end a Standing Committee of Ministers responsible for Foreign Affairs was established, with the power to make recommendations to the Governments of Member States.

CARICOM has developed over the years a very significant record of group negotiations with individual countries and groups of countries, on economic and trade matters, as well as on political, security and other issue areas. It also coordinates positions within particular forums and takes joint action concerning international candidatures, although blatant exceptions to this practice are to be found. With respect to negotiations with individual countries and groups of countries, apart from the more generally known

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achievements through joint negotiations within the Lomé context and with Canada, CARICOM more recently negotiated a Trade and Investment Framework Agreement with the United States; a Trade and Investment Agreement with Venezuela (whereby CARICOM countries as a group were granted non-reciprocal access to Venezuela's market for a range of exports, subject to review after five years); and a Trade and Economic Assistance Treaty with Colombia, which is instructive in that it differentiates the obligations to Colombia of CARICOM MDCs and LDCs the former grants reciprocity to Colombia three years after the agreement enters into force, whereas the latter will not have to grant any reciprocity. Finally, an important area in which group positions have been developed refers to candidacies for high-level international posts.

The MERCOSUR agreement also provides for the adoption of a common trade policy in relation to third states or groups of states, and the coordination of positions in regional and international economic and commercial forums. Article 8 obligates Member States "to coordinate their positions in any external trade negotiations they may undertake...". They undertake also, *inter alia*, to avoid affecting the interests of the other States Parties or the aims of the common market in any agreements they may conclude with other ALADI countries, and to consult among themselves whenever negotiating comprehensive tariff reduction schemes for the formation of free trade areas with such countries.

While it is anticipated that the commitment to adopting coordinated positions will not always be easily heeded for political reasons, it is significant that Mercosur countries, at a meeting of economy and foreign ministers held in Buenos Aires on March 10, 1994, ratified that they would negotiate as a bloc the possible joining of the North American Free Trade Agreement (NAFTA). The group could provide an important test case concerning the chances of developing a unified position in relation to NAFTA and also of the likelihood of group negotiations within the NAFTA context, which currently is unknown. Dialogue has also taken place between foreign ministers of Mercosur and the European Union and is expected to continue.

The Andean Pact is less specific with regard to group negotiations but it does commit the membership to strengthen subregional solidarity (Article 1) and, in this context, to advance external efforts in the economic field in areas of mutual interest.

In the case of the Central American countries, the practice has also developed, particularly in more recent years as the prolonged politico-ideological struggles in the sub-region abated, of forging joint positions on certain external economic and trade questions. The CACM countries have, for example, jointly negotiated agreements with the European Union and elaborated joint position statements in regard to various trade-related policy issues, particularly in regard to the United States.

In conclusion, the clear trend is toward the elaboration of group positions on important trade and economic matters, and also of increasing willingness to adopt a unified approach to certain types of negotiations. However, no hard-and-fast rule exists, since certain surprising breaches in this growing practice and even of treaty commitments in this regard are also evidenced. A unified approach can obviously assist in the intellectual preparation of negotiating positions and strategies, can assist lobbying efforts and is often indispensable for buttressing bargaining power, especially where small states are involved in negotiations with larger entities. This approach would clearly be recommended to Botswana, bearing in mind that policy consultation and coordination do not involve binding sovereign obligations.

IV.4. Secretariat organization and functions

One important difference between formal and informal integration groupings is that the former are normally administered through a permanent secretariat, whereas the latter rely on less stable secretariat arrangements, such as *ad hoc* or *ad interim* secretariats, or some type of networking between or among existing bodies. We are unaware of any formal grouping, apart from SACU, which is not administered through some form of secretariat.

The role of *ad hoc* or *ad interim* secretariat is normally performed on a rotating basis by the member country chairing the body in question at any point in time. Consequently, while such arrangements are economical, they lack fixity and often institutional memory, cannot lay claim to impartiality or objectivity, and their fortunes are closely tied to the degree of interest shown by the government holding the chairmanship. The networking function can be performed through collaboration among ministries in various member countries, but they too encounter the difficulties already identified. Unlike fixed secretariats, none of these arrangements can count on a cadre of workers exclusively or even primarily devoted to the cause at hand, nor can they undertake the same range of functions, examples of which are detailed in the Addendum.

IV.5. Private Sector Involvement

With changing economic philosophies which now concede the leading economic role to the private sector, governments in developing countries have increasingly involved business groups in the formulation of national and regional policy orientations and negotiating positions. The recent adoption of this approach has obviously occurred amidst an institutional vacuum since treaty provisions are generally silent with respect to their role, or ascribe them a minimal function.

The Andean group, which is relatively more advanced than similar agreements, makes provision for a business consultative council (as well as a labor council) directly elected by representative business organizations of each of the Member Countries. Their role is stated in the following terms in Article 20: "Upon the request of the Commission or the Board, or on their own initiative, the Consultative Councils shall issue an opinion on the programs or activities of the process that are of interest to the entrepreneurial and labor sectors".

An exception to this rule is to be found within Mercosur, which institutionalizes a private sector role in the integration process by providing for the creation of the Mercosur

Industrial Council, comprising industrial umbrella groups (confederations or chambers or unions, as the case may be) of the four Member States. The aim of this Council, which began to function in December 1993 is to evaluate, at private sector level, the agreements being reached at governmental level, to negotiate sectoral agreements and to hold consultations on other subjects of the integration process. It is to be noted that the business groups considered most suitable for this purpose within Mercosur are industrial producers, rather than some other producer category (for example, farmers, traders or other service providers.

IV.6. Accession

Where accession is provided for in the agreements examined, the relevant clauses generally comprise a limited number of elements. These refer to the following: the categories of countries to which accession is open (for example, of a particular region) or a listing thereof (as in the case of CARICOM); the procedure for gaining accession (for example, through negotiation, or on certain "terms and conditions"); as well as the method to be followed for approving new members.

With respect to the latter, both CARICOM and Mercosur require unanimity, but the Andean Pact is silent on this point. Mercosur also stipulates that applications for accessions may be considered once the agreement should have been in force for five years.
An additional noteworthy feature of the latter is also the stipulation that no reservations are allowable, a provision also included in the ASEAN Free Trade Area agreement, Article 10.2 of which states that: "Any amendment to this Agreement shall be made by consensus and shall become effective upon acceptance by all Member States."

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ADDENDUM: ANNEX C

II.1. CET

II.1.2 Exceptions (drawbacks, rebates, retailing,etc)

CARICOM

Article 16: Export Drawback

1. Each Member State may refuse to treat as a Common Market origin goods which benefit from export drawback allowed by Member States in which the goods have undergone the processes of production which form the basis of the claim to Common Market origin. In applying this paragraph, each Member State shall accord the same treatment to imports consigned from all other Member States.

II.2. Trade Remedies

II.2.1 Action against Third Countries

CACM

Article XI

None of the signatory states shall grant direct or indirect subsidies on the export of goods to the territory of the other states, or establish or maintain any system the result of which would be the sale of such goods, for export to another contracting state, at prices lower than those established for the sale of said goods on the national market, due allowance being made for differences in conditions and terms of sale and taxation and for any other factors affecting price comparability.

Any measure involving the fixing of prices or discrimination regarding prices in one of the signatory states which is reflected in the establishment of sales prices for specific goods in the other contracting states at levels lower than those which would result from normal market operations in the exporter country, shall be considered as an indirect export subsidy.

If the importation of goods manufactured in one of the contracting states, with raw materials purchased under conditions of monopsony (buyer's monopoly) at artificially low prices should threaten existing production in another signatory state, the party considering itself affected shall submit the matter for consideration of the Executive Council for ruling as to whether unfair trade practice is, in fact, involved. The Executive Council shall, within five days after receipt of request, rule in this regard or authorize temporary suspension of free trade while permitting trade by means of bond covering amount of customs duties. This suspension shall be authorized for a period of thirty days, within which time the Council shall make its final decision. If ruling is not forthcoming within the five days stipulated above, the party concerned may demand payment of bond pending final decision of the Executive Council.

However, tax exemptions of a general nature granted by one of the signatory states to promote production shall not be considered as export subsidies.

Similarly, any exemption from internal taxes on production, sale or consumption of goods exported to another state shall not be considered an export subsidy. Differentials resulting from the sale of foreign currency on the free market at a higher rate of exchange than the official rate shall not normally be considered export subsidies. However, if one of the contracting states should be in doubt, the matter shall be submitted to the Executive Council for consideration and ruling.

Article XIII

If any of the contracting parties considers that unfair trade practices not included in Article XI exist, it shall not impede trade by unilateral decision, but shall present matter for consideration of the Executive Council and decision as to whether, in fact, such practices are being incurred. The Council shall make its ruling within a maximum period of 60 days after date of receipt of the respective communication.

If any of the parties considers that there is evidence of unfair trade, it shall request the Executive Council to authorize payment of bond in the amount of import duties.

Should the Executive Council fail to give a ruling within eight days, the party concerned may demand payment of bond pending final decision of the Executive Council.

Article XIV

Once the Executive Council has given its ruling on unfair trade practices, it shall inform the contracting parties whether or not, in accordance with this Treaty, protective measures should be adopted to safeguard against such practices.

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II.2.2 Action against Member Countries

Dumping

Andean Pact:

Decision 283: Norms To Prevent or Correct Competitive Distortions Caused By Dumping Or Subsidies (Extracts)

V. MEASURES

Article 20. In the cases of dumping, antidumping duties shall be applied to the imports subject to the practice that are equivalent to the margin of dumping that was determined, or less than said margin when such duties are sufficient to counter the threat of prejudice or the prejudice that had been proven.

Article 21. In the cases of subsidies, compensatory duties shall be applied to the imports subject to the practice that are equivalent to the amount of the subsidy, or that are less than the subsidy when such duties are sufficient to counter the threat of prejudice or the prejudice that had been proven.

Article 22. The corrective measures intended to prevent or correct distortions deriving from practices of dumping and of subsidization shall not be simultaneously applied to the same imported products.

Article 23. When the threat of prejudice or the prejudice is evident the Member Country or the companies with a legitimate interest may request of the Board authorization or permission to immediately apply corrective measures.

If said request is considered to be justified, the Board may authorize or permit the establishing of provisional measures, which may take the form of antidumping or compensatory duties, or the constitution of guarantees, in the form of cash deposits or bonds, equivalent to said duties, for which purpose it shall have a period of twenty working days as of the date of the filing of the request referred to in the preceding paragraph. The suspension of the customs valuation shall be an adequate provisional measure, provided that the normal duty and the estimated amount of the antidumping duty is indicated.

In the course of its investigation the Board may suspend the application of any provisional measures and in its definitive decision it shall stipulate the continuation, modification or elimination of the measures established.

When the definitive duties are higher than the provisional duties that were paid or for which guarantees were established, no excess amount above the sum paid or the guarantee, which shall be collected, may be charged. In the contrary case, any excess paid or that was subject to a guarantee shall be returned or reduced.

In the event that the definitive duties are not established, the whole of the amound paid in the form of provisional duties shall be returned and any guarantee shall be released.

Article 24. The Board may likewise establish the application of definitive antidumping or compensatory duties on products released for consumption within a period of ninety days prior to the date of establishing provisional duties.

The referred to definitive duties may be applied for the purpose of preventing a new instance of the prejudice in those cases when the Board determines the existence of a prejudice that would be difficult to compensate by virtue of massive imports at dumping or subsidized prices occurring within a short period of time. In cases of dumping, it shall additionally be required to determine that there have been previous cases of dumping causing prejudice or that the importer knew or should have known that the exporter was incurring in dumping.

Central America

Article XII

In order to preclude a practice inconsistent with the objectives of this Treaty, each of the signatory states shall employ all legal means at its disposal to prevent the exportation of goods from its territory to other states at prices lower than normal, if such exports prejudice or threaten to prejudice the production of the other countries or delay the establishment of a national or Central American Industry.

Goods shall be considered as exported at prices lower than normal if the price of said goods is less than:

(a) comparable price under normal trade conditions of similar goods intended for domestic consumption in the exporter country; or

(b) highest comparable price of similar goods exported to a third country under normal trade conditions; or

(c) production cost of such goods in the country of origin, plus a reasonable markup to cover sales expenses and profit margin.

Due allowance shall be made in each instance for existing differences related to conditions and terms of sale and taxation and other factors affecting price comparability.

Subsidies

Central America

Article XI

None of the signatory states shall grant direct or indirect subsidies on the export of goods to the territory of the other states, or establish or maintain any system the result of which would be the sale of such goods, for export to another contracting state, at prices lower than those established for the sale of said goods on the national market, due allowance being made for differences in conditions and terms of sale and taxation and for any other factors affecting price comparability.

Any measure involving the fixing of prices or discrimination regarding prices in one of the signatory states which is reflected in the establishment of sales prices for specific goods in the other contracting states at levels lower than those which would result from normal market operations in the exporter country, shall be considered as an indirect export subsidy.

If the importation of goods manufactured in one of the contracting states, with raw materials purchased under conditions of monopsony (buyer's monopoly) at artificially low prices should threaten existing production in another signatory state, the party considering itself affected shall submit the matter for consideration of the Executive Council for ruling as to whether unfair trade practice is, in fact, involved. The Executive Council shall, within five days after receipt of request, rule in this regard or authorize temporary suspension of free trade while permitting trade by means of bond covering amount of customs duties. This suspension shall be authorized for a period of thirty days, within which time the Council shall make its final decision. If ruling is not forthcoming within the five days stipulated above, the party concerned may demand payment of bond pending final decision of the Executive Council.

However, tax exemptions of a general nature granted by one of the signatory states to promote production shall not be considered as export subsidies.

Similarly, any exemption from internal taxes on production, sale or consumption of goods exported to another state shall not be considered an export subsidy. Differentials resulting from the sale of foreign currency on the free market at a higher rate of exchange than the official rate shall not normally be considered export subsidies. However, if one of the contracting states should be in doubt, the matter shall be submitted to the Executive Council for consideration and ruling.

Safeguards

Mercosur

ANNEX IV: SAFEGUARD CLAUSES

Article 1

Each State Party may, up to 31 December 1994, apply safeguard clauses to imports of products benefiting from the trade liberalization programme established under the Treaty.

The States Parties hereby agree that they shall use these rules only in exceptional cases.

Article 2

If imports of a given product damage or threaten serious damage to its market as a result of a significant increase in imports of that product from the other States Parties over a short period of time, the importing country shall request the Common Market Group to hold consultations with a view to ending such a situation.

The importing country shall accompany its request with a detailed statement of the supporting facts, reasons and justifications.

The Common Market Group shall begin consultations within a maximum of 10 calendar days from the submission of the request by the importing country and shall conclude them, having taken a decision thereon, within 20 calendar days from the start of consultations.

Article 3

The existence or otherwise of damage or the threat of serious damage within the meaning of these rules shall be determined by each country, taking into account trends, inter alia, in the following aspects related to the product in question.

(a) Production level and capacity used;
(b) Employment level;
(c) Share of the market;
(d) Level of trade between the parties concerned or participating in the consultations;
(e) Performance of imports and exports in relation to third countries.

None of the above-mentioned factors shall, on its own, be decisive for determining the existence of damage or the threat of serious damage.

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In determining the existence of damage or the threat of serious damage, factors such as technological changes or shifts in consumer preferences towards similar and/or directly competitive products in the same sector shall not be taken into account.

Application of the safeguard clause shall be subject, in each country, to the final approval of the national section of the Common Market Group.

Article 4

In order not to interrupt any trade flows which may have been generated, the importing country shall negotiate a quota for imports of the product in respect of which the safeguard clause has been invoked. This quota shall be governed by the same preferences and other conditions established in the trade liberalization programme.

The above-mentioned quota shall be negotiated with the State Party in which the imports originate, during the period of consultation referred to in article

If the period of consultation ends without an agreement being reached, the importing country which considers itself affected may fix a quota which shall be maintained for one year.

In no event may a quota fixed unilaterally by the importing country be less than the average physical volume imported in the last three calendar years.

Article 5

Safeguard clauses shall apply for a year and may be extended for a further consecutive year on the terms established in this annex. Such measures may be adopted only once for each product.

In no event may the application of safeguard clauses extend beyond 31 December 1994.

Article 6

The application of safeguard clauses shall not affect goods already loaded for shipment on the date of their adoption. Such goods shall be computed into the quota provided for in article 4.

Article 7

During the transition period, any State Party which considers itself affected by serious difficulties in its economic activities shall request the Common Market Group to hold consultations so that the necessary corrective measures can be taken.

Within the periods established in article 2 of this annex, the Common Market Group shall evaluate the situation and decide on the measures to be taken, according to the circumstances.

Andean Pact

Article 80 devaluation

If a monetary devaluation undertaken by one of the Member Countries alters the normal conditions of competition, the country that considers itself prejudiced may present its case to the board, which shall decide promptly and summarily. If the harm is verified by the Board, the prejudiced country may adopt corrective measures of a temporary nature for as long as the variation persists, within the recommendations of the Board. In any event, said measures may not signify a reduction of import levels existing prior to the devaluation.

Without prejudice to the application of the referred to temporary measures, any of the Member Countries may request the Commission to definitively decide on the matter.

The Member Country that devalued may request the Board, at any time, to review the situation in order to relax or suppress the referred to corrective measures. The ruling of the Board may be amended by the Commission.

In the situations contemplated in this article the country that considers that it is being prejudiced, at the time of presenting its case to the Board, may propose protective measures proportionate to the magnitude of the alleged variation, accompanying its request with the technical data on which it is based. The Board may request such complementary information as it deems appropriate.

The brief and summary decision of the Board must be issued within the term of one month from the date of receipt of the request. If the Board does not decidein this period and the requesting country considers that the delay in the decision may cause it harm, it may adopt the initial measures proposed by it, immediately communicating this fact to the Board, which in its subsequent ruling must decide about maintaining, modifying or suspending the measures applied.

In its ruling the Board shall take into account, among other factors, the economic indicators related to the conditions of commercial competition in the Subregion that the Commission has adopted of a general nature, upon the proposal of the Board, the particular characteristics of the exchange systems of the Member Countries and the studies that in this respect are undertaken by the Monetary and Foreign Exchange Council.

Until the adoption of the system of economic indicators by the Commission, the Board shall proceed based on its own criteria.

Notwithstanding that provided in the preceding paragraphs, if during the period between the referred to presentation and the ruling of the Board in the judgment of the requesting Member Country there exist precedents that justify fears that as a consequence of the devaluation immediate harm will be caused of the indicated gravity for its economy, thereby requiring on an emergency basis the adoption of protective measures, it may present this situation to the Board which, if it considers the request well founded, may authorize the applicationof adequate measures, for which it shall have a period of seven continuous days. The definitive ruling of the Board on the variation of normal conditions of competition shall determine, in any case, the continuation, modification or suspension of the authorized emergency measures.

The measures adopted in accordance with this article may not signify a reduction of trade flows existing prior to the devaluation.

With respect to all of these measures the provisions of the second and third paragraphs of this article shall be fully applicable.

II.3. Origin Rules

Andean Group

Decision 293, SPECIAL NORMS FOR DETERMINING THE ORIGIN OF GOODS

CHAPTER I

NORMS FOR DETERMINING ORIGIN

Article 1. For the purposes of the Liberation Program contemplated in the Cartagena Agreement and in accordance with that provided in this Decision the following shall be considered to have originated in the territory of any Member Country;

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a) Products totally produced in the territory of any Member Country, except those included in Annex I of this Decision;

b) Products included in the chapters, items and subitems of the Common Tariff Nomenclature contained in Annex I of this Decision solely by virtue of being produced in the territory of any Member Country;

c) Products that comply with the specific rules of origin established by the Board;

d) Products for which specific rules of origin have not been established and in the production of which imported materials from outside of the Subregion are utilized when they fulfill the following conditions:

i) They are the result of a process of production or transformation undertaken in the territory of a Member Country; and

ii) That said process causes such products to be transformed such that they are classified in a different item of the Common Tariff Nomenclature of the Member Countries from that of the imported materials;

e) Products for which specific rules of origin have not been established and that do not fulfill that contemplated in the preceding subclause, and when they are derived from an assembly or installation process, provided that in their manufacture materials originating in the territory of the Member Countries are utilized and the CIF value of the materials imported from third countries does not exceed 50 percent of the FOB value of the product. In the cases of Bolivia and Ecuador this percentage shall be 60 percent.

For the purposes of the application of this subclause, the CIF value of the imported materials may correspond to the port of destination or the maritime port at the election of the exporting country.

In addition to that established in the preceding subclauses, in order to be considered as originating in the territory of any Member Country products must be dispatched directly, in accordance with that contemplated in Article 6.

Article 2. The Commission and the Board, when modifying these norms for determining origin or establishing specific rules of origin, as the case may be, shall provide that Bolivia is to comply with said norms and requirements on a deferred and progressive basis in accordance with Article 6 of Decision 222.

Upon the request of an interested party, the Board may establish specific rules of origin in the case of products produced in countries outside of the Subregion incorporating materials that originate in the Member Countries in a fixed percentage.

Article 3. In determining the origin of products, imported materials that originate in the other Member Countries shall be considered as originating in the territory of said Member Country.

Article 4. Products originating in the Subregion that are reexported by a Member Country shall be entitled, in the importing Member Country, to the Liberation Program treatment that would have been applied if they had been directly exported by the producer Member Country.

Reexportation shall be deemed to have occurred when a product of subregional origin has been imported by a Member Country and is then exported by it to another Member Country without said product having undergone in the territory of the former a production or transformation process.

Article 5. In the event that a product originating in the Subregion and imported by a Member Country is subsequently exported to another country of the Subregion after having undergone in the territory of the former a production or transformation process it shall be entitled to the Liberation Program treatment that corresponds to exports originating in the territory of the country in which said process was undertaken.

Article 6. For the purposes of this Decision the following shall be considered to have been dispatched directly from the territory of a Member Country to the territory of another Member Country:

a) Transported products that did not cross the territory of any country outside of the Subregion;

b) Transported products that were in transit in one or more countries outside of the Subregion whether or not with transhipment or temporary warehousing under the supervision of the competent customs authorities in said countries, provided that:

i) The transit is justified by geographic reasons or due to considerations related to the requirements of said transportation;

ii) Such products are not intended for commercialization, utilization or application in the transit countries;

iii) During their transportation and storage such products are not subject to any operation other than loading and unloading or handling in order to maintain them in good condition or assure their preservation.

Article 7. Products that are wholly produced in the territory of a Member Country are deemed to be the following:

a) Mineral, vegetable and animal (including those hunted or fished) products that are extracted, harvested or gathered, born in their national territory or in their territorial waters and exclusive economic zones;

b) Products from the oceans gathered outside of their territorial or national waters or of their exclusive economic zones by ships of their registry or that are leased by companies legally established in their territory; and

c) Products deriving from operations or processes undertaken in their territory by which said products are given final form for commercialization, except in the case of such operations or processes contemplated in Article 9.

Article 8. For the purposes of this Decision materials shall be understood to include raw materials, intermediate products and parts and pieces incorporated in the manufacture of products.

Article 9. For the purposes of this Decision a process of production or transformation shall not be considered to include the following operations or processes:

a) Simple handling intended to assure the preservation of products during their transportation or storage, such as aeration, refrigeration, the adddition of substances, the removal of damaged parts and similar operations;

b) Operations such as simple dusting, sifting, threshing, maceration, drying, sorting, classifying, selecting, dividing, washing, painting and trimming;

c) The simple formation of sets of products;

d) The simple packing, packaging or repackaging;

e) The simple separation and repackaging of parcels:

f) The simple application of trademarks, labels and similar distinguishing signs;

g) The mixing of products in which the nature of the resulting product is not essentially different from the nature of the products that were mixed;

h) The simple joining, assembly or installation of parts and pieces entirely imported from outside of the Subregion in order to form a complete product;

i) The simple slaughter of animals; and

j) The sequencing of two or more of these operations.

CHAPTER II

ADMINISTRATION

Section A

Declaration and Certification

Article 10. Compliance with the norms and specific rules of origin shall be proven by a declaration on the origin of the product certified by a governmental authority specially designated for this purpose by the exporting Member Country or by an export association designated by a governmental authority and under its supervision and responsibility.

If by virtue of the way in which a product is exported it is not possible for the producer to obtain a declaration of origin, this may be done by the exporter.

In the case of the products in Annex I referred to in clause b)of Article 1, a declaration provided by the producer or by a person authorized to sign on its behalf or by the exporter shall suffice.

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Article 11. When products originating in the territory of a Member Country are reexported from the territory of any Member Country to the territory of another Member Country and those products have been outside of the control of the respective customs authorities the declaration of origin must be signed by the exporter of the products in the country of reexportation.

This declaration is to be certified by the governmental authority or by the export association authorized by the Member Country of reexportation with the condition that the declaration of the exporter be presented together with a duplicate of the certificate of origin issued by the country of production. The new certificate of origin must include the indication of "reexportation" and must be presented together with the duplicate of the certificate of exportation.

Article 12. For the declaration and certificate of origin of products the form adopted by the Latin American Integration Association shall be utilized. The certificate of origin shall be valid for 180 days from the date of its issuance.

Section B

Control of Certificates

Article 13. The customs authorities of the importing Member Country may not impede the customs clearance of products in cases of doubt as to the authenticity of the certification, a presumption of noncompliance with the norms established in this Decision or when the certificate of origin is not presented or is incomplete. In such cases the constitution of a guarantee for the value of the tariffs applicable to third countries may be required.

When the certificate of origin is not presented or is incomplete the customs authority of the importing Member Country shall grant a period of ninety days as of the date of arrival of the products in which to duly present said document.

Article 14. When the customs authorities of the importing Member Country have required the constitution of guarantees or have retained products based on the preceding article the governmental authority or export association authorized by the exporting Member Country responsible for the certification shall proceed to provide the necessary information in order to clarify the matter.

Within ninety days following receipt of the information the customs authority of the importing Member Country must authorize the release of the guarantees unless, based on the deemed insufficiency of the evidence presented, the case is presented to the Board together with the background information on which the denial is grounded.

The Board shall immediately notify the exporting Member Country and shall proceed to undertake the investigations and procedures necessary to resolve the complaint within a period of not more than forty-five days.

Section C

Functions and Obligations of the Entities Responsible for the Certificates of Origin and of the Board

Article 15. The Member Countries shall send to the Board not later than sixty days following the entry into effect of this Decision the names, signatures and seals of the governmental authorities and export associations responsible for issuing the certificates referred to in Article 10.

The Board shall maintain a current registry of the responsible governmental agencies and export associations of the Member Countries that are to issue certificates of origin.

Article 16. The governmental authorities of each Member Country responsible for the certification stipulated in Article 10 shall have, among others, the following functions and obligations:

a) Prove the veracity of the declarations presented by the producer or exporter. For this purpose they shall undertake such inspections at industrial plants as are necessary;
b) Supervise the export associations authorized to issue certificates; and
c) Provide to the Member Countries and to the Board the information and cooperation related to the subject matters of this Decision.

Article 17. The governmental authority must require of the export associations authorized to certify declarations of origin

i) The filing of annual reports on the fulfillment of their functions as stipulated in Article 10;
ii) Providing all necessary means for the fulfillment of that provided in clause b) of Article 16.

Article 18. The Board, in accordance with Article 85 of the Cartagena Agreement, shall supervise the fulfillment of this Decision. For this purpose it shall annually evaluate the results obtained from its application following the timely receipt of the national evaluations undertaken by the Member Countries on the implementation of this mechanism, and when deemed appropriate it shall propose to the Commission such modifications as it deems necessary.

CHAPTER III

FINAL AND TRANSITORY PROVISIONS

Article 19. The norms of this Decision shall govern the determination of origin for all of the products included in the Liberation Program.

Article 20. The certificates of origin issued prior to the date of the entry into effect of this Decision shall be valid for a period of up to one hundred eighty days as of said date.

III.1.Services

III.1.1 Transportation

The Organization of Eastern Caribbean States

ARTICLE 16 Transport

1. The objectives of this Agreement shall be pursued by Member States within the framework of a common transport policy.
2. With a view to the implementation of this Article, and having regard to the special aspects of transport, Member States shall within three years of the coming into force of this Agreement, lay down common rules governing the operation and development of inter-territorial transport within the Market Area. These rules shall be reviewed by the Council of Ministers from time to time.
3. In the setting of common rules Member States shall ensure that such rules do not discriminate on the basis of origin or destination of goods carried within the Market Area.
4. In setting and reviewing the common rules due account shall be taken of the economic situation of the carriers, and the improvement and expansion of the transport service.

Central America

Chapter IV: Transit and Transport

Article XV

Each of the contracting states shall insure full freedom of transit through its territory for goods to or from the other signatory states, as well as for vehicles transporting said goods.

Such transit shall not be subject to any deduction, discrimination or quantitative restriction. In the event of cargo congestion or other instances of force majeure, each of the signatory states shall mobilize, on an equitable basis, all consignments of goods for its own population and those in transit to the other states.

Transit operations shall be carried out by routes prescribed by law for that purpose and shall be subject to customs and transit laws and regulations applicable in the territory of transit.

In-transit goods shall be exempt from all nature of duties, taxes and contributions of a fiscal, municipal or other order resulting from transit operations, regardless of destination, but may be subject to payment of charges normally applicable for services rendered, which in no case shall exceed the cost of same and thus constitute de facto import duties or taxes.

IV.4.Secretariat organization and functions

CARICOM

Article 16 Functions of the Secretariat
The functions of the Secretariat shall be as follows:

(a) to service meetings of the Community and any of its Institutions or Committees as may from time to time be determined by the Conference;
(b) to take appropriate follow-up action on decisions made at such meetings;
(c) to initiate, arrange and carry out studies on questions of economic and functional cooperation relating to the region as a whole;
(d) to provide services to Member States at their request in respect of matters relating to the achievement of the objectives of the Community;
(e) to undertake any other duties which may be assigned to it by the Conference or any of the Institutions of the Community.

ALADI

Article 38

The Secretariat shall be directed by a Secretary General and shall be composed of technical and administrative personnel.

The Secretary General shall hold office for a period of three years and may be reelected for a like period.

The Secretary General shall serve in this capacity with relation to all the policy bodies of the Association.

The Secretariat shall have the following functions and powers:
(a) Formulate proposals, through the Committee, for the corresponding bodies of the Association, oriented toward the maximum achievement of the objectives and fulfillment of the functions of the Association;

(b) Undertake the studies necessary to fulfill its technical functions and which are requested by the Council, the Conference and the Committee, and develop the other activities contemplated in the annual work program;

(c) Undertake studies and measures oriented toward proposing to the member countries, through their permanent representatives, the approval of the agreements contemplated by this Treaty within the guidelines established by the Council and the Conference;

(d) Represent the Association before international bodies and entities of an economic nature for the purpose of dealing with matters of common interest;

(e) Administer the assets of the Association and represent it, for this purpose, in acts and contracts of public and private law;

(f) Request the technical advice and collaboration of individuals and of national and international entities;

(g) Propose to the Committee the creation of auxiliary bodies;

(h) Process and provide, systematically and currently, to the member countries the statistical and other information about the norms for the regulation of foreign trade of the member countries which facilitates the preparation and undertaking of negotiations under the diverse mechanisms of the Association and the subsequent benefiting from the respective concessions;

(i) Analyze at its own initiative, for all the countries, or at the request of the Committee, the fulfillment of the commitments agreed upon, and evaluate the legal provisions of the member countries which directly or indirectly alter the concessions adopted;

(j) Convoke the meetings of the nongovernmental auxiliary bodies and coordinate their functions;

(k) Undertake periodic evaluations of the progress of the integration process and permanently monitor the activities undertaken by the Association and the commitments of the agreements reached in this context;

(l) Organize and initiate an Economic Promotion Division for the relatively less economically developed countries and undertake efforts to obtain technical and financial resources, as well as studies and projects, for the fulfillment of the promotion program. Likewise, prepare an annual report on the effective benefit of the system of assistance for the relatively less economically developed countries;

(m) Prepare the expense budget of the Association for the approval of the Committee, as well as any subsequent modifications as may be necessary;

(n) Prepare and present to the Committee the proposals for the annual work program;

(o) Contract, admit and relieve technical and administrative personnel, in accordance with the norms regulating its structure;

(p) Fulfill all the requests by any of the policy bodies of the Association; and

(q) Annually present to the Committee a report of the results of the application of this Treaty and of the legal provisions deriving from it.

IV.6. Accession

Andean Pact

Chapter XV: Article 109

This Agreement may not be subscribed with reservations and it shall remain open for the adherence of the other Latin American countries.

The countries of relatively lesser economic development that adhere to it shall have the right to a treatment similar to that provided in Chapter XIII for Bolivia and Ecuador. The conditions for adherence shall be defined by the Commission, for which it shall take into account that the incorporation of new members must be in accordance with the objectives of the Agreement.

CARICOM

Article 29 Accession to the Treaty

1. Any State or Territory of the Caribbean Region may apply to the Conference to become a member of the Community and may, if the Conference so decides, be admitted to membership in accordance with paragraph 2 of this article.
2. Admission to membership shall be upon such terms and conditions as the Conference may decide and shall take effect from the date on which an appropriate instrument of accession is deposited with the Secretariat.

Mercosur

CHAPTER IV: ACCESSION (Article 20)

This Treaty shall be open to accession, through negotiation, by other countries members of the Latin American Integration Association; their applications may be considered by the States Parties once this Treaty has been in force for five years.

Notwithstanding the above, applications made by countries members of the Latin American Integration Association who do not belong to subregional integration schemes or an extraregional association may be considered before the date specified.
Approval of applications shall require the unanimous decision of the States Parties.

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ANNEX D
INDUSTRIAL PROVISIONS IN OTHER REGIONAL AGREEMENTS

ANNEX D
INDUSTRIAL PROVISIONS IN OTHER REGIONAL AGREEMENTS

A: Introduction

The purpose of this paper is to first outline the nature of industrial policy in integration schemes and attempt an evaluation of the success of its instruments. In this context it will examine the special treatment for less developed and undiversified countries, paying attention to how these measures have worked. The two latter inputs will serve to study the applicability of these various policies to SACU and particularly to Botswana. Some policy conclusions and recommendations will be drawn in the end.

The rationale for a common industrial policy is to foster the integration of production in the region through complementary activity and specialization. By increasing market size and competition, regional integration can improve resource allocation, increase firm size, facilitate the achievement of economies of scale and shorten the learning curve. In this way integration can serve as a training ground for local producers seeking to eventually move out on the international market.

Industrial policy is particularly used when there is the perceived need to restructure patterns of trade and industrialization in the integrated area. Its depth is usually associated with the degree of integration and cooperation. In general, industrial policy is strong in common markets and economic unions, the idea being to benefit from greater factor movement and policy harmonization. In such a context, industrial policy is accompanied by common stable macro-policies and other economic policies.

Success in a common industrial policy depends in part on a consensus on the development strategy being followed, i. e export orientation or import substitution. When there is a large divergence in development strategies, with some members following export orientation and others import substitution, a common industrial policy is more difficult to attain and implement. Differences in the degree of government activism or passivity also produce a weak common industrial policy even under similiar development strategies. In addition,even with common agreement on a state-sponsored active industrial policy, greater problems seem to result from the excessive nature of political bargaining as compared to a situation characterized by a private sector-oriented industrial policy. Evidence from the experience with regional programming of industry serves to underscore this observation.

A regional industrial policy is geared to complement a national industrial policy by emphasizing what could be done best by pooling regional resources. Generally,the smaller the national market size and the greater the degree of technological complexity being pursued(longer learning periods, large scale economies, sophisticated technology) the greater would be the assistance that can be obtained from economic integration.

The trend in most developing regions today is towards export orientation and consequently open regionalism[1]. Less protection is the order of the day as well as greater emphasis on industrial competitiveness. Adaptation to a globalized world also means greater openness to foreign investment and technology transfer.

B: Nature of industrial policy in integration schemes

1. Trade Protection

The most common form of regional support for industrial development is to provide a common external tariff and reduce and/or eliminate internal tariff and non-tariff barriers to trade. The objective is to guarantee the regional market for regional producers. In cases where the common external tariff is not uniform,appropriate rules of origin are elaborated to ensure that only producers that satisfy the value-added and/or process criteria would enjoy the duty concessions. The degree of protection given usually varies with the type of industrial strategy and the size of the union. Caricom, as a small common market, had a lower level of protection than the Andean Common Market(ACM) when both emphasized import substitution in the 1970's and 1980's. Today with a shift to export orientation in both schemes, levels of protection have been falling faster in the Andean Pact than Caricom.

Obviously, the degree of protection at the micro-level depends on the technological complexity of the operation. If the production of basic standardized consumer goods is being pursued such as garments, agro-industrial processed items and other light manufacturing items, the degree of common protection is less as in Caricom than if more sophisticated consumer, capital and intermediate industries are being developed like the automotive industry in the ACM or the computer industry in MERCOSUR. Factors which generally determine the degree of protection are the ability of the industry to withstand competition, the complexity of the technology, economies of scale, the learning period and the contribution of the industry to employment and externalities.

In most cases internal trade liberalization is not complete and there are difficulties in making the common external tariff(CET) truly common. Caricom operated under four different external tariffs until recently when there was an effort to revise the CET and make it uniform for all countries. This effort has not met with complete success since some countries still have not accepted the revised CET and some have been given a longer time frame to implement it. This episode in Caricom is indicative of the broader question of the degree of acceptable effective tariff protection for each or particular groups of countries. In Caricom a broad division is noticeable between economies dependent on tourism and services and seeking lower tariffs, and economies more dependent on industry and interested in higher protection.

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[1]Open regionalism refers to integration under less common protection and emphasing export development.

In a similar way, even in the context of export orientation, where trade liberalization is the new wave, differences emerge. Huge reductions of the CET are often regarded by some as detrimental to a strongly protected domestic industrial sector while others believe that shock treatment rather than gradualism is what is decisive. This issue is generally resolved by setting an annual minimum CET and allowing each country the freedom to add to it unilaterally until the target CET is reached. The Central American Common Market(CACM) and the ACM adopted such an approach and had fixed target dates for reaching a CET of 20%. In this approach,all countries commit themselves to ceiling bindings and actual bindings not lower than the agreed phased minimum. Countries that remain with higher interim external tariffs are usually concerned with production shifts to lower tariff areas. As a result they keep or establish some limitation on duty free entry from the member states with lower interim tariffs. Due to the short timeframe for reaching the target rate(3-5 years),production shifts are not encouraged. In Caricom, however, agreement was possible on a phased reduction programme to bring the CET to 20% by the start of 1998.

In reality, with a few exceptions, internal trade barriers have persisted and continue to make the whole regional market unavailable to producers. Stamp duties and other import surcharges, suspension of CET, licensing arrangements, foreign exchange problems and quantitative controls have all limited access in practice. In a small market such as Caricom, such fragmentation frustrates the achievement of competition and specialization leaving small uncompetitive firms operating at sub-optimal level and clamoring for permanent protection.

In the ACM a method of progressive liberalization was followed to introduce internal free trade. Initially, a small set of products was completely liberalized. Products reserved under the sectoral programme of industrial development experienced long phase-in periods as compared to products not regarded to be of basic significance where tariffs were reduced at a faster rate. A fully protected regional market was never attained as countries re-introduced protective measures and sought the postponement of the phased reductions. These acts comprised both legal and extra-legal steps. In the current mood of trade liberalization some countries as Venezuela and Columbia have gone ahead and signed a free trade pact on a bilateral level that eliminates most of the remaining restrictions on trade. Obviously such a move reflects the faster pace of trade liberalization of these countries with the rest of the world.

At the outset the ACM granted temporary protection that allowed members to exclude certain products from the list of scheduled internal liberalization and from the common external tariff. Protection of national production activities which are just starting or which can be undermined from competition in other member countries was given under this provision. A date was set for the removal of such exceptions.

Integration schemes that have moved towards an export- oriented approach have been seeking in a context of national trade reform to reduce trade protection in an effort to stimulate efficiency and exports. In most schemes where no provision exists for common quantitative protection, the first stage of the reform process is to tarifficate quantitative controls at the national level and then set target dates for tariff reduction. The CET is then tackled in terms of reducing dispersion, establishing lower uniform rates and simplifying the tariff system. This process generally involves several stages with exceptions to the general pattern. The final target rate for the CET is a maximum of 20%.

Considerable trade liberalization has taken place in Central and South America. Most integration schemes are now down or almost down to 20%, the reduction of anti-export bias being the main objective. As a result of these reforms, intra-regional trade has considerably increased in these integration schemes as exporters have been given more incentives and have become more efficient.

2: Regional Industrial Programming(RIP)

The purpose of RIP is to achieve the following:

- faster industrial growth, specialization and diversification;
- to promote the maximum utilization of the raw materials in the integrated area;
- to stimulate the creation of industrial linkages within and between member states;
- to facilitate the achievement of scale economies;
- to equitably distribute the benefits of industrialization with special attention being paid to the needs of the less developed undiversified economies;
- to encourage a more efficient allocation of resources by avoiding duplication and sub-optimal plants.

Under the industrial allocation schemes, countries are invited to submit lists of desired industries on the basis of which a common list of regional industries, existing or potential, is identified. Industrial feasibility studies are undertaken to facilitate the selection of industries. Depending on the objectives,the policy could be production integration as was the case in Caricom with efforts to combine natural resources to produce certain "industrializing" industries. As an example, bauxite in Guyana and Jamaica with energy in Trinidad and Tobago to produce aluminum;or sectorial complementary production as was the case with the automobile industry in the ACM; or just simply the distribution of stand-alone light consumer good factories in the OECS.

These schemes are usually associated with import substitution strategies and can vary in intensity. For instance, in Caricom under its Caricom Industrial Programming Scheme(CIPS), while possibilities were identified in certain product groups, no effective allocation has been made due to lack of private sector interest and the deficiencies of government involvement at this level. (Under CIPS, 18 products on a preliminary list were "informally" distributed).

Special incentives are promised to regional enterprises established to produce these products. These are fiscal incentives (as set out in the regional harmonization of fiscal incentives),special access to capital,foreign exchange and labour(work permits), permission for investors from other Caricom states to remit dividends and repatriate capital to their own states, and protection through tariffs and quotas from competing extra-regional products(up to five years with the possibility of an extension) and from new production in the region which violates the allocation decision (enterprises established in violation of the scheme are denied common market treatment for three years).

In the new context of export orientation and trade liberalization, the protection offered is now regarded as excessive and the provision is becoming redundant with the reduction of the CET and the elimination of quotas. In addition, with exchange rate liberalization,the provision for profit remmittances is not effective since there are no restrictions or special privileges in this regard based on the nationality of firms. Trends towards granting national treatment to foreign firms and even discriminating positively in favor of foreign firms when they bring scarce resourecs have also undermined whatever little concession the special incentives can actually confer in practice to firms with regional majority ownership. More transparency and less discretionary administration in the implementaion of incentive legislation have also transformed the system from its rigid case-by-case application and arbitrary decision-making. The need for more competition and specifically to improve entry and exit from the industry has also led in practice to a relaxation of the rules governing new investors in products on the list already being produced.

In the OECS, which is a sub-regional grouping of Caricom, some formal allocation was done without success. This is discussed in the next section on special measures for LDCs.

The ACM elaborated under its Sectoral Industrial Programme(SIP) a sophisticated programme for distributing industry. This scheme sought to designate one industry for the market and obtain guaranteed regional protection for its development. Each sectoral programme has its own CET. Members cannot alter the common tariff duty unilaterally and have to consult others before committing themselves to a new tariff deal with non-members. Other policies important for the development of the regional industry could be harmonized. In some cases a common programme of technological support is also attached.

SIP is not supposed to allow more plants than the market can take from a scale economies point of view. Under these conditions, products under SIP thus receive a special CET, internal trade liberalization and policy harmonization. Member states are required not to unilaterally depart from these measures.

The success of the SIP fell far short of expectations. Only three sectors were tackled (petrochemicals, metal fabrication and automobiles) with varying degrees of success. It was also geared to promoting large capital-intensive industries with little attention to small scale industry.

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While SIP was the core of RIP, an industrial rationalization programme (IRP) focussing on traditional industries which were excluded from trade liberalization and up for restructuring and streamlining was also instituted. IPD involves take-overs, mergers and multi-plant streamlining of product lines. The long- term strategy of firms is linked to IPD and under the programme incentives and assistance are provided to firms. Local technical, financial and training institutions are used to provide assistance to firms. ACM missions are sent to study the manufacturing problems and the programme covers large, small and medium-size industries. IPD was particularly important for LDCs whose traditional industries are not efficient. Less efficient industries are upgraded to be brought out of the exceptions list.

These are products not reserved for SID or automatic tariff reduction. Industry allocation deprives the market of the decision to invest. The process of allocation becomes political and a serious misallocation of resources takes place. In the ACM, OECS, Caricom, UDEAC and CACM the experience has been the same. Today, as a result, trade liberalization is perceived as one of the best rationalization programmes as it forces the efficient use of resources.

3: Free Trade Zones -(Customs-free Zones(Export Processing Zones,etc) and Temporary Admission Systems (Rebates, drawbacks, bonded warehousing))

In Caricom and the CACM, customs-free zones generally or Export Processing zones(EPZs) particularly have been created mainly to boost non-traditional exports to third country preferential markets in North America and Europe. Firms receive duty-free inputs,buy inputs world-wide,manage their accounts in the currencies of their choice, are exempt from income tax and are exonerated from regulations that apply to industry. In certain cases these firms even receive a drawback (for indirect taxes on local purchases) on the value added once products are exported outside the region.

EPZs have been largely responsible for the growth of non-traditional exports. Employment and worker training have been the main benefits. The costs are generally high. Investments in infrastructure are huge as well as operating costs. Large import content also severely limits the value added benefits. Many of these EPZs are plagued with labor problems, inadequate infrastructure and poor state management. Location is also not ideal for many of them. Private sector developers are showing greater interest in establishing and running these zones. While it is not clear as yet, (the evidence is still lacking), there is a growing belief that private sector-run EPZs are more likely to be successful.

Firms that set up in EPZs do so because they can be more competitive by operating outside the customs jurisdiction and buying inputs from the most commpetitive sources. Only Costa Rica in the CACM allows local firms to register complaints against EPZ firms which do not buy inputs from them if they can match such imports in terms of price,quality and delivery. The law is redundant in the sense that an EPZ company will purchase a local input if it is competitive. In any case, Costa Rica does not enforce the law so as not to discourage foreign investors.

Some countries prevent plants operating under Temporary Admission Systems(TAS) from selling their product in the local market. Others allow limited sales once the corresponding duties on the final product are paid. The available administrative capacity seems to be the determining factor in the decision to permit local sales.

Laws do not clearly set out the system's eligibility requirements. Some countries attempt to lay down a value added criterion for entitlement to these incentives but the criterion is superflous since any company can make use of temporary admission systems.

FTZ firms export mainly to extra-regional markets due to preferential terms of entry in those markets. Because of the low level of processing, the products do not meet the processing criteria to satisfy the rules of origin to qualify for duty-free entry in the common market. Output from EPZs and TAS is therefore generally not allowed within the national territory and the common market. A trend is developing to sell some of the output within the national economy, particularly in the higher valued-added areas. Products are treated as imports from third countries subject to the CET and existing rules of origin. This is done in an effort to encourage more EPZ investment. Laws are amended to allow EPZ firms to sell within the national boundaries provided that all corresponding duties paid by firms abroad are paid by the EPZ firms. The practice varies from country to country. Some countries set a maximum from 20-40% while others operate on a case-by-case basis with no pre-determined limit.

Incentives(duty-free importation of inputs and machinery,tax exemptions,tax credit certificates,cash drawbacks,etc) apply to sales of local firms going to companies in the customs-free zones (e. g 8% FOB value to offset import duties and other indirect taxes). It is administratively simple but not necessarily balanced in terms of effective protection in so far as tariff rates on inputs vary considerably.

The laws governing the sales of FTZ firms within a common market are quite clear and restrictive. Such products cannot enjoy duty-free entry since they do not meet the criteria. In addition, since non-FTZ local firms do not receive the generous incentives (described above) when they export to other countries of the common market,then other members of the common market would not allow such products to enter and compete unfairly with national firms unless they meet the third country requirements in terms of value-added and border taxes. The differences in tariff rates and origin rules that exist in these common markets would also make such a concession administratively complex and practically non-implementable in most cases. Dec No. 8/94 of Mercsur represents an effort to harmonize treatment of products coming from FTZs at the regional level. It commits member states to apply the CET (or national tariff in cases where there are exceptions to the CET) as well as the GATT subsidy code where special incentives are given to these firms. Exceptions are given for cetain free zones which now sell under special conditions part or their whole output within the entire or some section of the national territory to operate under existing laws up to the year of 2013.

4: Double Taxation Agreements and Corporate Taxes

Since investors tend to move to areas where taxes are lower, the harmonization of corporate tax rates avoids distortions in investment. Some of the advantages of harmonizing fiscal incentives could be undermined if different tax policies are followed in the member states. Double taxation agreements ensure that an investor is taxed to the same degree if he invests at home or in another member state. Double taxation arrangements with third parties should also be coordinated since the advantages of cooperation in fiscal incentives could be reduced by different policies to third party firms. Caricom has a double taxation agreement that applies among member states. Its application is too recent to assess its effectiveness.

5: Preference for Regional Enterprises

Firms owned and controlled by nationals of the integration scheme and which operate with a regional perspective are encouraged to use their firm-specific advantages across the region to develop integrated production and marketing[2] by being granted special treatment in terms of access to credit in the host country, permission to remit dividends and capital, protection from imports and special fiscal incentives in certain areas of industry and agriculture. The Common Enterprise Regime(CER) in Caricom was created for this purpose. It provided a legal framework for establishing regional enterprises. National treatment is accorded and special incentives in certain sectors. While the intention of the CER is good in so far as it seeks to promote joint ventures and regional mobility of capital and labor, the discrimination in favour of national and regional investment could discourage extra-regional investment in terms of special incentives and preference for regional as against extra- regional investment. Many governments by accepting either de jure or de facto national treatment for firms from third countries, in particular developed countries, have already taken steps to eliminate this bias.

The response by firms to the CER has been negative. Less than half of the member states have actually passed legislation to implement it on the national level. No firms have applied for these concessions in the 15 years of its existence and they generally seem to ignore it. The main reason appears to be the reluctance of the existing firms,particularly the dominant ones, to join forces and share their markets.

6: Conditional Duty Exemptions

The exemption of certain products, mainly industrial inputs, from import duties was incorporated in Caricom to reflect the national practice of the member states before integration. A consolidated list of all exempted activities on a national level is adopted. Each member state decides which of the exempted activities to include in its own national tariff schedule and can determine the degree of duty exemption that should be granted. Almost all eligible activities are included and full duty relief is usually granted.

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[2]**Integrated production and marketing refer to the fact that they can go backward or forward across the region in the stages of sourcing, fabrication, assemblying and distribution.**

The exemptions generally are end-user defined(for instance, machinery or equipment for food processing) and indefinite free entry subject to a change in policy is permitted for inputs which are not clearly specified. These are nearly all agricultural, industrial and mining inputs required.

By allowing members to give any concession at their discretion and putting no limits on the coverage and scope of duty concessions,no selectivity among products was exercised by Caricom and no common rules existed among members. This led to most inputs entering duty free, irrespective of the CET rates. The CET was therefore extensively undermined and local development of inputs discouraged. It also meant that the same product depending on the purpose for which it was imported paid different duties.

Such widespread duty-free concessions also encouraged a misallocation of resources since it increased effective protection for those producing mainly for the local and regional protected market. Sizeable revenue losses also were incurred as actual collections fell below statutory levels.

Measures have since been taken to restrict the use of conditional duty exemptions. In the present context of tariff reforms aimed at reducing the effective rate of protection, duty- free inputs to producers for the protected local and regional markets are being eliminated. Firms exporting to extra-regional markets are being assured of access to duty-free inputs either through temporary admission and/or a duty draw-back scheme or export processing zones.

The ACM and CACM were less indulgent in so far as conditional duty exemptions were concerned but,similar to Caricom in the new phase of trade liberalization,in order to reduce effective protection and achieve revenue neutrality, such incentives were withdrawn or modified for firms producing for the local and regional market. Such firms now pay duties on imported inputs used in products for local and regional consumption.

7: Origin Rules

In the absence of a common tariff schedule and common quantitative protection against third parties, a clear definition of the origin of traded goods is needed. Otherwise, third party goods can be transhipped through countries with lower tariffs and/or lesser quantitative protection on extra-regional import items. These rules establish that a product is of common market origin if it is "wholly produced", that is, if it is a mineral or agricultural raw material, or if it is "substantially transformed" using materials which qualify for common market origin. The criteria for substantial transformation vary according to the product group.

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There are several exemptions in Caricom. Countries can apply for a temporary derogation to use extra-regional materials that would count in the local value added for common market origin status. The period is usually for two-years and extensions are granted based on an assessment of the industry. The Secretariat can provisionally grant this concession but it must be formally approved on a unamimous basis at the next Common Market Council(CMC).

The CMC can also amend the rules of origin on a case-by-case basis. The LDCs are given special exceptions as discussed below. Applications for derogations are based on a materials list. Concern was expressed about its widespread use and recent reforms sought to confine its use in an effort to stimulate greater use of local raw materials. These reforms have gone in the direction of prescribing the use of inputs and the production processes that would qualify for common market treatment. Some concern has been expressed as to the extent to which these changes would introduce distortions in interregional trade. Rather a preference is expressed for regulations that minimize the use of local content and operate with less specific rules. It is felt that in Caricom light manufacturing is typically import-intensive and requires minimal processing. If the minimum domestic content is made high,then intraregional trade would be restricted. Such a requirement can also cause low quality and high-priced products to be produced. Furthermore, the specification of manufacturing processes could frustrate technological upgrading which can cause inefficiency.

8: Competition Policy

The idea of permitting easy entry and exit of companies from an industry and curbing restrictive business practices has gained increasing attention in regional integration schemes in the context on market-oriented reforms. First practiced by the EU, such competition policy sought to control mergers, harmonize company laws , remove national restrictions and discriminatory subsidies. Such policies are geared to enhance the role of market forces. They try to strike a balance in each industry in terms of the required size of firms in terms of economies of scale, R&D capability, the dominance of the firm in the industry and its position in terms of international competition.

9: Regional Industrial Support Programmes.

These usually take the form of technical assistance support to national industries through production and marketing assistance. In the EU, priority is given to regional R&D activities under a five-year multi-annual framework programme. Strategic choices are made regarding new technologies in the future and collaboration with national research institutes is undertaken. In developing countries, the assistance to industry is more direct. It takes the form of experts diagnosing firms and implementing solutions. Under the Caribbean Export Development Programme(CEDP) in Caricom, regional firms in sectors as furniture, garments, etc are encouraged to upgrade technology and skills in production and marketing through technical assistance programmes.

With the shift to export orientation in regional schemes, the new emphasis is on building competitiveness for extra-regional exporting through technical assistance in technology acquisition and upgrading, human resource development, international marketing and the provision of industrial infrastructure.

10: Harmonization of fiscal incentives

In order to avoid undue competition among countries to attract investors some schemes elaborate regulations and guidelines on investment. The intention is to give uniform treatment to investors in the area and prevent excessive fiscal concessions to investors. These incentives usually cover tax holidays, depreciation allowances, duty free concessions, a loss carry-forward provision and tax exemptions on dividends. Harmonization of fiscal incentives in Caricom came into force in 1976. The goals of the scheme are to promote investment, to reduce competition by capping benefits to firms, to reduce imbalances in development by permitting more generous incentives for the LDCs and to rationalize the criteria for granting incentives by emphasizing value added.

New and expanding industries qualify for benefits. A duration is set on the length of the benefits. Duty-free status for imports is the main benefit as firms depend heavily on imported inputs which can be granted for 6-15 years. In Caricom the LDCs have extensively used fiscal incentives.

To some extent as incentives were selectively applied, restrictions on firm entry developed since there is a tendency to limit the number of firms receiving these incentives. This has led to some collusion among the few oligopolistic firms in the industry. Another defect of the Caricom scheme is that although the scheme is harmonized regionally, it is not administered regionally since each country implements it with its own discretion. This has led to distortions, one of which is that unreasonable extensions have been given. Poor administrative practices have also led to delays in approving new applications.

Debate has focussed on reforming the scheme in the direction of performance-based requirements particularly export performance and extending it mainly to investments that improve competitiveness.

Other integration schemes have also experimented with an incentive system. UDEAC has a uniform investment code to promote a level playing field for investors. Member countries do offer supplementary incentives but little distortion is observed. The code has not been effective in attracting investment due to low profitability in manufacturing.

In the ACM a foreign investment code was created in 1970 and amended in 1976. Its purpose was to strengthen the negotiating position of the region vis-a-vis TNCs that were expected to descend on the market. Decision 24 of that code provided for differentiated treatment of activities closely linked to integration and other activities.

In the latter part of the 1980s, the Code was seen as inhibiting the flow of foreign investment and was modified to accept more liberal rules in consonance with the new trade and investment liberalization thrust. (See discussion on the CACM in the next section)

C: EXPERIENCE OF OTHER INTEGRATION SCHEMES WITH SPECIAL MEASURES FOR LDCs[3]

ALADI

In the Treaty of Montevideo (Chapter 111 and Resolutions 7, 8 and 13 of the Council of Ministers of the Association) Bolivia, Ecuador and Paraguay are considered the three LDCs that need special treatment. Three sets of measures were employed. They are as follows:

1. Special tariff rates
2. Special cooperation programmes
3. An Action plan.

Re. 1, some of the more developed ALADI members gave lower tariffs on products from these three countries but not all MDCs gave access on the same products. Furthermore, through Partial Scope Agreements with non-ALADI countries, these same concessions were given and the margins to the LDCs were eroded.

Re. 2, only for Bolivia was a special cooperation programme negotiated. It is not clear how much of it was actually implemented. The Special Project Fund for these countries was never established.

Re 3, this plan sought to incorporate exportable products from these countries in the trade liberalization programmes of the more developed countries, economic complementarity agreements, joint ventures, training, financing and technical assistance. Not much has been actually implemented. In some cases bilateral action plans replaced the announced regional one.

As a result of the ineffectiveness and the inaction associated with the above special schemes,new initiatives were needed. Rigidity and the non-existence of supply led ALADI to put emphasis on technical assistance either bilaterally or collectively to these countries in order to raise production and productivity in different sectors. Firms and sectors were targeted for production and marketing assistance.

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[3]The term LDCs covers not only countries with lower per capita income as compared to MDCs but also those as in Caricom and SACU whose per capita income is higher but are not industrially diversified and suffer from small market size.

Recently, the special trade preferences were suppressed with the intention of stimulating export-oriented productive activities. The ALADI Secretariat created a special economic promotion unit to provide this technical assistance to industry. This Unit has since proposed additional measures beyond its original mandate. Essentially they involve a special joint venture programme aimed at firms in the LDCs and those in the MDCs as well as credit lines to finance imports from LDCs.

CARICOM

The original measures in Caricom Treaty of Chaguaramas(1973) to assist the LDC's were as follows:

- Maintenance or re-imposition of tariffs by the LDCs or temporary suspension of the CET by them to start an industry even though imports are actually coming from MDCs;
- Changing the qualifying conditions-lower local value-added requirement (20%) in many cases as compared to the average of 30% for MDCs to obtain duty free entry. In recognition of the narrow industrial base and small scope for adding value in the LDCs,this was given as an industrial incentive even though the CET applied by the LDCs was lower than that applied by the MDCs. The assumption,of course,was that almost all maufacturers in Caricom both for the local or international market obtained conditional duty free exemptions on imported inputs;
- Special financing of infrastuctural development for the LDCs through the Caribbean Development Bank (CDB);
- a longer period to grant incentives to firms;
- a slower liberalization schedule for a comprehensive reserve list of products. Ten years were given within which to eliminate import duties as compared to 5 for the MDCs. The LDCs never met the deadline for phasing-out this protection and up to today some LDCs have not met it.

Caricom is an exception to most if not all integration schemes in terms of the use of rules of origin to promote indusry in the LDCs. LDCs were given two concessions under the rules of origin. Product groups of importance to them were granted common market treatment on concessionary terms. In addition,another category of products mainly comprising assembly-type products qualified for common market origin even if they used more imported products(duty-free or otherwise) than similar products made in MDCs.

Under more stringent rules of origin access to the markets of the MDCs would have been more limited and there would have been less incentive to create industry in the LDCs. Over the years, however,there were complaints by many MDCs that the LDCs were used as conduits to assemble goods for export to their markets in order to circumvent high tariffs or the banned importation of such extra-regional goods even in areas where concessions were not given. The LDCs used this origin rule to export mainly garments and appliances. These products were generally produced by footloose industries that brought little long-term development and so defeated the purpose of the scheme in terms of deepening the industrial fabric in these states.

In the revision of the system, a list of basic third country imported materials which were regarded as originating wholly within the LDCs when used in the state described in this list in the process of production in the LDCs was amended to ensure greater local content. The original maximum 80% foreign value added concession was also reduced to 70% since 1985.

The re-imposition of tariffs against MDCs still exists and has been used largely in the context of the Industrial Allocation Scheme(IAS) of the OECS. LDCs can impose quantitative restrictions, tariffs and suspend duty-free treatment as a temporary measure on similar goods imported from MDCs. Any imports of similar goods require a license. This concession was temporary and its extension or termination depended on the firm's cost competitiveness and market share in the LDCs. Frequent extensions have led to some abuse.

The IAS scheme designates industries to OECS countries and assigns the necessary level of protection. It has not worked well as duplication continues to exist and countries which do not accept the designation of an industry still go ahead and establish their own. No political will to enforce the scheme is visible. Only three designated cases have occurred so far and there has been less and less recourse to this mechanism. The industries allocated were also generally non-viable.

It should be noted that effective protection was also given to industry in the OECS through duty-free concessions on industrial inputs and certain other basic imports. Furthermore, in the context of foreign investment, the LDCs could grant longer tax holiday periods(15 years instead of 10) to investors under the Harmonized Regional Incentive Scheme. In addition, a list of products , most of them established goods produced in the MDCs were exempted from qualification in the MDCs in order to encourage their production in the LDCs. This concession cannot also be granted to a firm to produce a product in an MDC where another local firm has already 60% of the market. Some evidence has shown that LDC firms have used the incentives more to offset the disadvantages vis a vis the MDCs and the preferences of investors for the MDCs.

By and large, these measures have not allowed these countries to benefit from intra-regional trade since they continue to be net importers and little manufactures are produced. Caribbean Development Bank(CDB) soft financing of industrial infrastructure has been useful in quantity and quality. CDB as well as CARICOM/CEDP has also developed special programmes of technical assistance support similar to ALADI for industry in these countries as well as support for investment promotion.

In Caricom, LDCs were given preferential access to the markets of the MDCs as well as protection from competition from MDCs. They were also allowed to maintain lower tariffs with third countries and as such not incur a heavy net welfare loss from importing higher priced consumer goods.

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CENTRAL AMERICAN COMMON MARKET

In the 1962 Treaty of Managua, the CACM was established. Honduras was a LDC(it is not yet clear whether Honduras was defined as such in the Agreement and special provisions were made for this country) by the per capita income criterion and level of industrialization. Honduras was not able to take advantage of the scheme and suffered persistent negative trade balances with other members. This led to its withdrawal in the late 1970's. Honduras then established its own tariffs and negotiated its own bilateral treaties. In the mid 1980's, the other four countries jettisoned the CET and embarked on a unilateral tariff-reduction scheme. Recently, they agreed to re-establish a CET starting in early 1995. The new tariff will be between 5-20% and will be less protectionist.

An integration industry regime was established to allocate industries but was undermined by the incentives to investment created by freer trade. Only three industries were allocated. A harmonized scheme of incentives was attempted in 1969, 7 years after it was elaborated and after several industries were established under national laws. It was discontinued after 1985 when a new tariff and customs agreement came into force. Widespread differences prevail in the conditions governing investment in each country.

With the current shift to export orientation, globalization and trade liberalization, excessive protection in small domestic markets is not considered conducive to efficient industry. Instead, countries have laid greater stress on investment liberalization, export processing zones, investment incentives, in particular tax exemptions, devaluation, low wages, low cost infrastructure and export incentives. At the regional level(in line with national development) the private sector is now considered the engine of growth and it has elaborated together with governments a new industrial program for promoting regional competitiveness. The emphasis is now on technology acquisition and development, infrastructure development and human resource development that could be better achieved to boost regional firms and make them more competitive internationally.

ANDEAN COMMON MARKET(ACM)

In its special programme to assist industrial development in Bolivia and Ecuador, the ACM relied on the following provisions.

Tariff advantages were provided for these countries. This took the form mainly of the maintenance of their tariffs in the event that they wanted a new or existing industry to develop. Also on products subject to automatic tariff reduction which had no significance for industrial programming, a slower liberalization schedule was allowed. Special preferences in terms of a longer time frame were given on products not produced in the ACM but reserved for the sectoral programme as well as products reserved for the sectoral programme but produced in the region. A 20 year special consideration was given to these countries.

Certain products not produced in the region were reserved for the LDCs under SID. MDCs did not encourage production of these items in their economies. Once the LDCs started producing these products, the other memberswould automatically set up the CET for their protection. A period was however set within which LDCs must go in the production of these items or lose them. The Junta(Governing Board) could add new products. The mechanism of product reservation provided the LDCs with ample opportunity to initiate new industries or to upgrade existing facilities.

Special production facilities and plants were assigned to Ecuador and Bolivia under the special sectoral programmes for industrial development(SPID). These programmes were not limited to geographical allocation of industries but developed marketing and technology within some multi-national Andean corporation. Not all opportunities were used by the LDCs due to their own institutional and economic problems. SPID has not been effective for the LDCs since the mechanism did not match the capacity of these countries. Integration projects were ambitiously high and have been biased towards large scale activity so that the small LDCs were not in a position to benefit from these activities.

Special preferential margins were provided for products from Bolivia and Ecuador to facilitate the access of these products to more competitive markets of the more advanced countries. The MDCs opened up their markets to all exports from LDCs for a specified period, ten years in some cases. A list of exportable products from LDCs on which tariff concessions were given(generally complete exemptions from duties and quantitative restrictions)was created. This list is usually updated. The LDCs would open their markets at a slower pace for products on this reserved list.

Industrial programming and allocation of new industries to these countries was undertaken. Under SPID existing industries in these countries would not be touched. Under SID as discussed above IPD pays special attention to LDCs.

Special financing through the Andean Development Corporation(CAF) for these countries mainly in the form of trade credit and concessionary lending for industrial infrastructure was also provided.

Finally a special programme to assist land-locked Bolivia to develop adequate infrastructure, capital and human resources was implemented. The development of regional trade suggests that these concessions were not enough to prevent Bolivia and Ecuador from becoming net importers and remaining specialized in the export of primary products.

D: The applicability of the above instruments to SACU

Given Botswana's interest in export orientation and the current trends towards liberalization and market-based reforms, several of the measures discussed above tend to loose their suitability.

State-centered industrial programming is more suited to import substitution and generally an interventionist approach. The new emphasis on the role of the private sector also precludes such a statist approach. Approaches that emphasize industrial allocation and future production reservation for LDCs through regional programming are thus no longer feasible. Instead,greater focus on incentives to compensate for market failure and induce export industry in the BLNS seems the best way to go. Relaxation of origin rules and local content regulations inevitably allow global predators to enter the market through the back door with footloose industries that have little or no long- term development impact. Infant origin rules,however should not be discarded simply because of this experience.

Allowing basic imported materials in some list to count as originating local materials to satisfy rules of origin is a measure that can be effectively used within limits to allow non-industrial BLNS countries to diversify. This list has to be agreed upon up front and some time frame set for its use. It must be effectively policed and should not go too far in terms of undermining the use of local CU materials. The practice of short-term derogations (two or three years) to allow an industry to get off the ground and then gradually replace the foreign content with regional content is viable only if the administrative machinery exists to monitor the enterprises benefitting. Also to be effective such a system requires some discretionary control to be in the hands of the implementing agency. SACU does not have this present capability but could develop it if reformed.

Reforming the rules of origin as contained in section 46(1) of the Customs and Excise Act would have to be a detailled and cautious exercise as was done in Caricom. The flexible controls needed both to facilitate infant production as well as prevent unforseen material injury would largely determine its success as an industrial policy instrument.

Insofar as there is a single set of origin rules and a common CET embodied in the Customs and Excise Act,it is also administratively possible to consider origin concessions to some deserving LDC output from FTZs(EPZs and TAS) being sold within the customs territory. Care would have to be taken not to over-discriminate against non-FTZ firms wishing to sell or already selling within the customs union. But the concession can be given as an industrial incentive for firms to locate at such great distances from centres of industrial agglomeration. It would have to be determined on a case-by- case basis in terms of the amount of the CET to be paid,the percentage of output allowable and the degree of countervailing duty action needed to offset special incentives given to these firms. It could also be given as an incentive to export a larger share of increased production to extra-regional markets.

The harmonization of incentives seems important particularly due to the huge "centre-periphery" relationship existing in SACU. Such harmonization would require a certain flexibility to take care of special incentives and different needs. It should also have some variation across sectors and regions.

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Greater openness to foreign investment should also be one of its characteristics in recognition of the dependence of the region on foreign capital and technology and the world-wide trends towards investment liberalization. In this regard preference for nationally or regionally owned firms would not be suitable. It would be discriminatory and discourage foreign investment. At times,given the need for foreign investment that brings scarce resources in the form of extra-regional markets and technology, positive discrimination in favour of these companies would even be needed in cases where local firms cannot provide such scarce resources. In the context of globalization,export orientation and loss of firm nationality, a case for positve discrimination in favour of local firms can only be justified in exceptional cases relating to small enterprises and strategic industries in terms of security,cultural heritage,etc.

Trade protection to stimulate the growth of an industry would now have limited appeal under a policy of export promotion. Such protection would have to be moderate given the need to stimulate competition from outside and the limits of tariff bindings in GATT. It would also have to be time-bound and phased-down. More emphasis will therefore be needed on other incentives to promote exports.

The use of regional integration and cooperation in SACU to promote international competitiveness and exports from the BLNS countries would suggest more emphasis on special incentives for export such as duty-free status for manufacturing,rebates, drawbacks possibly even for FTZ firms as described earlier for one case in Central America, attractive income tax holydays,specific origin and local content criteria for some portion of output to be sold in the CU and other additional incentives. In this way,export oriented firms would be more encouraged to locate in these countries.

E. Elements of an Industrial Policy Framework in SACU.

The basic industrial policy instrument in SACU is in ART VI which allows the BLNS countries to impose additional tariffs on new (eight years or less)industries. This tariff is non- discriminatory and other countries must be consulted. By the end of 1989 Botswana was the only country to make use of this provision to produce beer, soap and wheat flour.

Art VI protection has not been too successful in facilitating the efficient growth of industry for, in general, the markets of the BLNS countries are small and do not encourage the achievement of learning-by-doing and economies of scale. Most industries, unless they are established up-front with world scale plants and targeted to external markets or are forced to look beyond the initial Botswana market as they grow to adults could only continue to exist with heavy government and consumer subsidies. Furthermore, it is not clear whether this temporary protection to assist start-up and growth can be given before an industry is actually established. If it cannot be given in advance then this would be a disincentive to industrialization.

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Producers in the BLNS are discouraged from the South African(SA) market by a variety of non-tariff barriers deriving from regulations in force, restrictive business practices by SA firms and certain articles in SACU. The regional market in practice is also not available to BLNS producers due to:

- Art 7 is limited by the secret memorandum attached to the 1969 agreement which requires that before tariff protection can be considered, 60% of the total demand of the total market must be satisfied and the quality must be high;

- Art 17 provides for the right to consultation if competition poses a threat. Yet SA has effectively and arbitrarily used it to block competition from the BLNS;

- SA imposes restrictions and controls on industries investing in the BLNS;

- The CET is structured to meet SA industrial needs.

In the above circumstances,SACU is perceived as being very constraining on industrial development in the Botswana. SACU is a small market and optimal trade policy in such conditions suggests that industry should be export oriented with greater emphasis on extra-regional exports. In any case, a policy of open regionalism is desirable since in the long-run SACU will have to adjust to global trade liberalization(GATT),demands for reciprocity and corporate pressure to expand markets by joining other regional groupings and trade blocks. In this context the trade policy regime should emphasize industrial efficiency with lower, less dispersed and uniform tariffs that are transparent and predictable. A phased programme of trade liberalization with appropriate schedules for industries in each country and generally slower rates for BLNS would be appropriate.

The objective of this trade policy reform should be to develop acommon regional policy towards export-led development. Such a framework should be flexible to take account of the particular situation of each country and its capacity to undertake the reforms. Also provision should be made for complimentary action between national trade reform and regional policy. At the national level, QRs should be eliminated with allowance for import surcharges to be phased down to the CET level over an agreed number of years. Excise duties with discounts for local content should be stopped as a protective tool and be only used at the national level.

Provisions for duty free status are in need of review. An adequate system for exporters is desirable to create a level playing field with world exporters. Schedule 3 of the Customs and Excise Act allows for duty rebate to a specified extent. Schedules 4 and 5 provide for the duty free importation of goods required for the manufacturing,processing,finishing,equipping or packaging of goods exclusively for export. Rebates are automatic for imported intermediate inputs for specified industries. A permit is required in other cases and goods are admitted for 6 months.

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There are also provisions for duty rebates on selected materials, not available locally,used for specified products as long as finished goods are exported within 12 months. Permanent provision for drawback of duty is used where exportation takes place on a fairly regular basis if exporters enjoy established export markets and SA inputs are either not available or are not competitive with external supplies. Exporters requring a permanent drawback assistance can apply for it.

SA decides duties on inputs and takes account of the needs of its industry. It grants rebates if the duty represents an important share of production cost; if the tariff relief would increase price competitiveness of the final product and the loss of revenue can be offset by increased economic activity.

The above criteria do not fully meet the industrial development needs of Botswana especially the concessions needed to launch industry as discussed above. Due to its narrow industrial base,imported inputs can account for about 70 % of the final product. Any taxes on these inputs along with the high handling and transport costs associated with distance and being landlocked tend to undermine the competitiveness of Botswana. As a rule therefore it is important for Botswana to establish that all inputs should be purchased at international prices. The present system allows this where there is no competitive local supplier. The firm is allowed to import its inputs at zero tariff on an unlimited basis for production sold on foreign markets.

The difficulty really arises where there is a local supplier that is not competitive. Even though some allowance is made for this case, the policy of encouraging local content generally favours the import-competing producer in supplying inputs. As a rule for extra-regional exports,a drawback calculated on the difference between the local and international price of these inputs is one way to ensue competitive inputs. Another is to subsidize the local producer of higher cost inputs to the tune of the differnce in local and foreign prices and thus assure the exporter the purchase of these inputs at international prices. The practice seems more to favour the granting of export certificates to pay taxes or direct cash drawbacks for exports using more costly local inputs. This approach would deal adequately with the goods being sold simultaneously in the extra-regional and regional markets as the drawback would be given on the portion sold on the extra-regional market.

Any delays or uncertaintities in the approval of rebates and drawbacks act like taxes to discourage exports. Rebates established for this purpose should be automatic to provide easy access to such imported inputs. The system however could be administratively complex. Furthermore as mentioned earlier,even for certain products produced by Botswana and sold on the regional market some concession on the use of high cost local inputs seems necessary to enhance competitiveness. The drawback or subsidy approach could be considered for such deserving infant industry cases.

The present Schedules 3,4 and 5 appear limited,general and discretionary. Conditional duty exemptions on imported inputs even where local substitutes are available could be practiced once exports are being targeted in the long run and effective protection is being scaled down. They would be given for infant industry purposes for a limited time period to some deserving cases and on the expectation that they would not be renewed. If the list is sufficiently selective, it would identify not only inputs where there are no substitutes but also needed imports where the cost of local inputs is high,quality low and delivery times below international norms.

These provisions could strike a balance between the need to encourage exports, the importance of promoting industry in the LDCs and the significance of maximum utilization of regional inputs. There is obviously some advantage to common regulations governing the granting of rebates and the entitlement of duty- free concessions. Art 7, however, is too restrictive. It allows tariff and duty changes on inputs and outputs for specific industries but does not stop SA from imposing discretionary restrictions on or exceptions from such industries. Art 4 also severely restricts the granting of rebates by BLNS countries. It does not stop SA from offering rebates on raw materials and components. The present system of granting exemptions is thus too discretionary and weighted heavily in SA favour.

Furthermore, more efficient systems of granting rebates must be set in place to reduce the current anti-export bias. Some improved coordination and decision-making in SACU is necesary since the current system in SACU is an administrative nightmare. In examining the current rebate and drawback system, Botswana should give consideration to EPZs that would get around any problems associated with temporary admission systems. They would facilitate duty-free status for manufacturers as well as possibly resolve infrastructure and exterality priblems for producers. Provided special incentives are received as discussed above, the EPZs along with other FTZs could become attractive. As noted earlier,there could be some advantage if these FTZ companies are allowed to sell a part of their output on the regional market without having to fully pay the corresponding duties on the final product(border taxes and countervailing duties for special subsidies and incentives received).

The key element in the success of an EPZ is the granting of duty-free imported inputs and the assurance that they are used in export products. Good administration of EPZs is therefore the critical factor. Other possibilities should ,however, be carefully examined. Temporary admission systems(TAS),such as bonded manufacturing, allow plants to locate in any part of the country without the burden of additional heavy infrastructure investment. Usually a time frame of one year is placed on the use of the duty-free imported inputs.

The above should complement a long-term policy of reform towards lower tariffs and a more unified and non-discretionary system. A long-term target should be set for moving the CET to a range that is lower than the current one. If a coordinated approach is not possible, then agreement should be reached for eventually reaching the common CET target with each country in the interim following its own pace with a commitment to reach the target at a certain date. In the interim the target rate or other agreed minimal rates could act as a baseline. In practice the CET would be suspended except for the agreed baseline during this period of adjustment. BlNS currently have no protection for industry since they have surrendered tariff, fiscal and monetary(except Botswana) to SA. Due to the wide disparity between SA and Botswana, agglomeration takes place in SA where production cost will be lower. There is little incentive to set up industry in Botswana if market forces dictate. Given all the industrial constraints in Botswana in terms of power costs , land, water,etc, a mix of incentives must be found that would encourage industrial output for exports. Due account has to be taken of the fact that these incentives must be at least competitive if not more favorable with what SA is offering to its peripheral regions.

In addition to what Botswana can offer, SACU can contribute to making these incentives greater than what SA could offer. Special incentives for Botswana and other BLNS would make no sense unless SA actively participates in their elaboration, monitoring and implementation. The absence of this provision up to now may well be the reason why the generous programmes of industrial incentives, including the Financial Assistance Programme of 1982 had such a limited impact.

At present subsidies to SA manufacturers are given without much restraint. Under its General Export Incentive Scheme,export subsidies are granted to offset the cost-raising effects of protection. They can be as high as 20% of export value and generally comprise duty-free inputs for products exported, subsidized interest rates,favourable export credits and coverage of export promotion costs. Some of these concessions contravene the provisions of GATT. Even though SA is now pledged to respect GATT disciplines, the GATT codes would still not give enough protection to Botswana in terms of a desirable harmonized scheme that respects some special and differential treatment for Botswana(BLNS). They ae not easily implementable and do not cover all the possibilities for granting subsidies.

Harmonization of incentives to industry including common regulations on foreign investment in which additional incentives are granted to Botswana in the form of longer tax holidays, duty- free concessions on an acceptable list of inputs, etc, could be a viable proposition.

The basis for a new policy thrust lies in the creation of a collective decision-making body preferably at ministerial level where industrial policy is kept under constant review and under whose aegis it is implemented by a secretariat. This body should be ably supported by a strong private sector consultative body that actively works to refine and promote the policy.

While avoiding state-sponsored industrial programming, sectors identified by the private sector for industrial support and special privileges should be put under a sectoral industrial programme. The task is not to allocate industry but to create industry groups across the region to promote joint ventures and regional technical assistance programmes especially to firms in LDCs. Due to the existing high level of integration among these countries(labour mobility, currency convertibility, common fiscal and tariff policies)it is imperative that industrial strategy fit into the regional framework on some planned basis.

F: Concluding Remarks

Botswana has always shown a preference to negotiate with SA for the revenue benefits. Even though some doubt exists as to whether the fiscal transfers really represent a fair share to Botswana, the fact is that they are perceived by SA as containing an element of compensation for polarization. Due to the growth of other sources of revenue, Botswana has become much less dependent of these transfers than the other BLNS countries and more concerned with the burden that this protection imposes on its industrial development. The latter at this point could be higher than the revenue benefits. In any case, negotiating for more revenue benefits is a non-starter since in this post-apartheid era public finances in SA will come under strong pressure. In addition, given its commitment under GATT to reduce tariffs, the revenue pool will hardly increase. In the future, more emphasis will have to be placed on greater efficiency in raising revenue, other revenue sources and measures, reduction of expenditures and greater productivity of expenditure patterns.

Botswana's interest as a small economy is in export promotion and consequently it should be committed to reducing the excessive economic costs of protection to industry in SACU in order to eliminate or reduce anti-export bias of protection. Botswana therefore should have a strong interest in rationalizing the system of duties and incentives in an effort to promote efficiency and balanced development.

Reforming the trade regime should be a major starting point. In line with GATT, quantitative controls should be tarifficated, duties simplified and reduced with a preference for ad valorem duties.

Prospects for a radical shift in trade policy in SA have been enhanced with SA accepting the new GATT liberalization and the general trends in the world economy. Due to high unemployment and the need to correct the inequities of the legacy of apartheid, the pace of such reform may not be as fast as desired. In the long-term options for sustained development lead to a policy of liberalization. This would imply that SA has to eliminate anti-export bias in the present system and the new scheme would have to be in line with the provisions of GATT regarding dumping and subsidies. Such trade reform in so far as it establishes simple,non-discretionary and lower protection would be a necessary pre-condition for creating an adequate duty free system of rebates and drawback that promotes exports. In this shift to export promotion, SACU, in addition to reforming the trade regime could look at other joint measures in particular the harmonization of incentives to industry with special regard to the needs of BLNS and trade facilitating programmes in terms of efficient temporary importation systems and custom-free zones.

Addendum 1: Some Supplementary Notes on Specific Questions

1. Botswana's High Value Added Export Strategy

Note has been taken of the recommendations of the World Bank and the suggested modifications to this strategy in comments by a private sector body. Consideration has also been given to earlier suggestions of a labor-intensive strategy and private sector comments to the effect that it is not practical given high wages and a high exchange rate.

It is clear that like all mineral economies Botswana has "dutch disease' problems that make diversification very difficult. Proposing a strategy that will earn the same income and pay the same wages as the mineral sector is only feasible if large capital-intensive projects (similar to those in mining) can be found that the high incomes generated from mining will allow. To the extent that such large projects are limited, the idea of a high value strategy is a long-term one that will be dependent on a massive conversion of the labor force to levels of skill and technological learning. While government and the private sector must work towards this goal, in the interim, there is no need to be rigidly selective at the project and sub-sector level. The different views as you go across the public and private sector only indicate how problematic is the choice.

The experience of other countries elaborating an industrial strategy would seem to suggest that at the broad economy-wide or industrial level, some government targeting can be done in terms of the required education and training, information, etc. It is better to allow individual private sector people in some government/private sector framework to determine the precise activities. The task of government is to improve the enabling environment and encourage local and foreign investors to participate in this identification process. As locational conditions are enhanced through the correct incentives, infrastructure, better foreign investment laws, macro-economic policies, etc, project identification possibilities will increase. (As a side,it should be noted that the exchange rate is not sacred and its real rate should be constantly adjusted to facilitate the competitiveness of exports. High wages are therefore relative).

Usually in this process, local investors with international experience or exposure in exporting or importing are better placed to identify new opportunities which are not perceived by others(both government and other private sector people). In addition, greater emphasis on marketing the country abroad and selling it as open for business under a new investment climate, will encourage foreign investors to take a first or second look at investment possibilities. This would enhance the project identification exercise because these foreign investors know what their own and other international markets will take. In that sense, they are well, if not better, placed to identify export opportunities based on Botswana's conditions.

The above strategy is not laisser-faire. It does not prevent any individual or group from identifying projects which will be a continuous exercise involving a wide range of agencies both local and foreign. Government will remain active in the sense that along with the private sector it will be involved in investment promotion, training, incentive provision, infrastructure, private sector development, etc. Strong government/private sector collaboration will best facilitate the approach and encourage the emergence of activities not anticipated by government and self- appointed bodies which believe they have a monopoly on picking winners.

The broad conclusion from the above is that a priori no inherent superiority in a strategy of niche high value product differentiation to complement South African production is presently perceived.

2. Establishing and Modifying the CET

There is no alternative among sovereign states to a CET being collectively negotiated and implemented by a SACU ministerial body. The power disparity in SACU does not override this principle which is accepted in all integration schemes. The question of a veto does not pose any difficulty in practice since through consensus and recognition that enforcement is not possible, national demands are accommodated or otherwise countries would not stay in the union. The process has to be mutually beneficial and flexible to accommodate conflicting national demands. For instances exemptions must be allowed, slower liberalization rates, etc.

The experience of integration movements demonstrate that once that flexibility exists, establishing and modifying the CET through collective decision-making works. The value of this approach is that once the CET is agreed upon, it can be considered stable and predictable and not subject to unilateral change(as presently pertains) which is not good for investment as the present situation in SACU indicates.

The present arbitrary and unilateral power of the BTT will not make for proper functioning in the long run even if this system is modified for more consultation and participation.

3. Division of CU revenues

This method of revenue collection and distribution seems unique to SACU. To the extent that it covers compensation for polarization and thus is formally recognized, collectively or individually countries may use these revenues for any specific development purpose. In SACU, revenue distribution does not appear to entertain the criterion of eliminating imbalances in industrial development.

Compensation mechanisms in integration schemes usually entail direct fiscal transfers from the more advanced to the less fortunate. As in the EU through the regional funds, Caricom through the CDB and the ACM through CAF, the wealthier make a relatively larger contribution. Such compensation schemes are more typical of integration schemes among developed countries.

Among developing countries the role of multilateral financial agencies is critical. There are pros and cons to financing industrial development from the SACU common revenue pool. The key issue is whether it will mean additional funds for the BLNS or could it be used to attract additional funds. Recognition is usually given in schemes with land locked countries that a special fund is needed to assist these countries and/or such affected regions in the common market in financing the additional transportation infrastucture that is needed. UDEAC and ACM are examples. This support is additional to the normal assistance given to countries with lower levels of development to finance general infrastructure.

4. New Concept of Infant Industry Protection

In a context of export orientation, tariffs for infant industry that produces for the local market should be moderate and time-phased downwards to encourage efficiency and export growth. The criteria would have to be reviewed to pay special attention to the newness of the technology, the learning periods involved, economies of scale, value added, etc. In the context of countries with a long history of import substitution as in Latin America where externalities have been built up,initial effectve tariff rates of 20-30 percent are regarded as moderate. In the case of Botswana where externalities are still a problem along with other geographic and infrastructure disabilities,effective rates would have to be higher initially as suggested above in terms of the export incentives needed to push industries beyond import substitution. Such protection would have to be reduced over time.

5. Complementary Harmonized Policies

Other harmonized policies which facilitate the implementation of an industrial policy are briefly as follows:

- common regulations for the treatment of foreign capital, trade marks, patents, licensing and royalties;
- double taxation agreements;
- rules to prevent dumping and unfair competition;
- common policy on social security and labor migration;
- common industrial promotion efforts.

ANNEX E
IMPLICATIONS OF SACU EXPANSION

ANNEX E
IMPLICATIONS OF SACU EXPANSION

I. Introduction

The analysis contained in this Annex is intended as a brief speculative exercise, undertaken in view of recent overtures by neighboring states aimed at gauging the possibilities of becoming SACU members within an eventual expanded grouping. It makes no attempt at tackling the complex cost/benefit economic analysis that would ultimately be required, limiting itself instead to providing summary insights into certain other aspects.

Within this context SACU expansion could occur in two distinct ways: the present membership could provide a core relationship, limiting the benefits available to future members, offering others therefore what could be termed a second tier (if not second-class) membership entitlement; alternatively expansion could occur with new and old members sharing the same status. The latter is assumed here, for to do otherwise would be to engage in a far more complex exercise than envisaged.

II. Economic Implications

The main economic implications appear obvious and can be quickly stated. Additional membership would increase the size of the SACU market, stimulate further competition, allow for better scale economies, lead to greater efficiency in resource allocation, and consequently increase the overall competitiveness of SACU economies and firms, thereby benefiting consumers within the customs union.

New membership would serve to reduce somewhat South Africa's economic dominance within SACU and increase the economic options of BLNS countries. The impact on particular sectors and industries would depend on the specific country/countries included. An expanded SACU market would also be a more attractive investment proposition for both regional and extra-regional investors, which could also be beneficial to Botswana and the rest of the BLNS group.

III. Intra-Group Political Implications

From a political standpoint, new membership would improve the internal balance of the organization, currently weighted far too heavily in favor of South Africa, SACU's center of gravity. Any likelihood of SACU expansion would increase the challenge to the entire decision-making setup within SACU and improve the chances for its democratization.

At the same time it would provide new opportunities for political coalitions. This must not be interpreted as necessarily improving the lot of the BLNS countries for it is conceivable that South Africa could entice new members away from any alliance-building with these countries.

IV. Extra-Group Implications

Within the broader regional context, a significant expansion in SACU membership would increase the prominence and attractiveness of the southern African region, as well as the group's international bargaining power. This is important in the present context when group activity has increased significantly and is a more common method of international bargaining. It would consequently open up new possibilities for the conclusion of trade and investment agreements between an expanded SACU and third parties.

SACU's expansion would also bring to the forefront the need for rationalizing functions of the various regional bodies, for example SADC and the PTA/COMESA, on account of the increased incidence of overlapping membership. In this contest an expanded SACU would probably be better placed in relative terms.

V. Final Remarks

An important issue to be considered in the context of the present discussion is whether SACU members should simultaneously address the expansion of the body's responsibilities beyond the trade and customs revenue sphere. This would incorporate a broader developmental dimension with regard to such areas as development financing, human resource upgrading, technology development and so forth. Some of the implications of industrial policy are addressed in Annex D.

ANNEX F
SOME BOTSWANA PRIVATE SECTOR CONCERNS OVER THE ADMINISTRATION OF SACU

ANNEX F
SOME BOTSWANA PRIVATE SECTOR CONCERNS OVER THE ADMINISTRATION OF SACU

Our interviews revealed the following specific complaints by Botswana producers on the operation of SACU's trade provisions. Although these complaints vary by company, a common difficulty in all of them has been the South African ability to make unilateral decisions within SACU. The annex will also explain how these issues will be treated if the BOCCIM's recommendations are incorporated in the revised SACUA.

1. South Africa decided to withdraw the right to import textile mill products duty free for conversion into apparel and sale to SACU members, undermining the business plans of a number of new manufacturing facilities in Botswana. This has caused dislocation to apparel investors in Botswana assembling garments from third country components. These factories have either been forced to switch to less competi- tive RSA materials when they sell within SACU or to close.

   Under the suggested revisions to the SACUA, South Africa could not unilaterally withdraw such dispensations. They could ask Botswana to modify the drawbacks but could not require it. If Botswana and South Africa could not agree, an independent body would review their impact on South African manufacturers and could suggest modifications. However these modifications would not affect current production or committed investment unless Botswana agreed,

2. Botswana has three facilities (Scania, Volvo, Kamia) assembling shortened cab chassis from knocked down kits brought in duty-free. South Africa claimed that these cab chassis were subject to duties and that Botswana should be collecting duties on their importation. In any case, South Africa is changing the rules in an attempt to stop the production through a combination of unilaterally imposed excise taxes and local content requirements.

   This issue would be subject to impartial dispute settlement provisions. Any attempt to modify the duty drawbacks rules would be subject to procedures described in (1) above.

3. Hyundai assembles three or four different models of automobiles from imported kits. South Africa is objecting to the planned scope of exportation to South Africa which could harm its automobile industry and is attempting to reclassify these imported kits as a high tariff item.

   This dispute would be resolved in the same way as described in (2) above.

4. Since the South African tariff schedule is the basis for SACU's CET, the RSA unilaterally negotiated concessions in the Uruguay Round. One of its concessions was to agree to bind the duty treatment at 10 percent being phased down to 5.5 percent over a five year period. South Africa did agree to back end load the reduction meaning that most of the reduction would take place at the tail end of the period.

The Botswana producer objected to the reduction of the duty since his firm had recently opened a production plant in Botswana. To increased production to economical levels, the plant must distribute throughout SACU at acceptable price levels. The plant manager claimed that they could not compete with American imports sold in South Africa at low prices which he claimed could represent sales at dumping prices.

From an organizational point of view, South Africa maintained the right to negotiate duty reductions. Evidently, South Africa was under great pressure in the Uruguay Round to reduce the duty over the objection of Botswana. Botswana was not at the table and did not have the ability to prevent this reduction.

Under the revised rules, such trade concessions could not be offered in the future without the agreement of Botswana who could declare this an issue of priority of national interest. If the Botswana producer decided to bring a dumping complaint, it would be dealt with by an impartial SACU-based commission.

5. A number of Botswana producers complained that the appreciation of the Botswana Pula against the South African Rand had put them at a competitive disadvantage against their South African competitors. They pointed out that given the history of parity (1:1 ratio), the lower value of the rand gave a competitive advantage to South African producers both within Botswana and in South Africa.

This issue could be a subject of consultation between monetary authorities of both countries.

6. Botswana producers objected to what they claimed was subsidized exports to third countries which were being diverted to Botswana. Evidently, production destined for Zimbabwe particularly benefitted from transportation subsidies. These shipments were being diverted to low priced sales in Botswana. The result was that legitimate retailers were being put at a competitive disadvantage.

South Africa is doing away with its current subsidy program---the GEIS--as part of its Uruguay Round commitment. It is not clear what type of subsidy program is going to replace this scheme.

7. It was suggested that Botswana could become a duty-free zone within SACU.

Although we do not believe that a complete duty-free trade zone would be incompatible with continued membership in SACU, certain elements could be made part of a revised SACU. It would involve duty-free importation of consumer goods into Botswana with duties being levied on South African residents purchasing these products in Botswana when they return to the RSA.

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8. The current rules for applying infant industry protection to Botswana does not require a gradual phase out of duties. Instead protection was eliminated overnight after an eight year period with negative consequences. New industries are not given adequate time to adjust to competition.

BOCCIM has suggested a brand new mechanism for infant industry protection which will involve a phase out of such protection allowing industry to adjust to foreign competition.

9. The Botswana private sector argues that they are not informed about the details of the Botswana position in the SACU renegotiation and therefore cannot make educated inputs.

BOCCIM suggests a mechanism for closer private sector-government consultation.

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ANNEX G
THE AMERICAN SYSTEM FOR PRIVATE SECTOR CONSULTATIONS AND FOR FACT FINDING AND INJURY DETERMINATIONS

UNITED STATES INTERNATIONAL TRADE COMMISSION

United States International Trade Commission Annual Report

Fiscal Year 1993

THE COMMISSION

The United States International Trade Commission (ITC) is an independent, nonpartisan, quasi-judicial federal agency established by Congress with broad investigative powers on matters of trade. In its adjudicative role, the ITC determines whether certain imports injure or threaten to injure U.S. industry.

As the government's think tank on trade, the ITC is a national resource where trade data are gathered and analyzed. The data are provided to the President and Congress as part of the information on which U.S. trade policy is based.

ITC activities include —

- determining whether U.S. industries are materially injured by reason of imports that benefit from pricing at less than fair value or from subsidization;
- directing actions, subject to Presidential disapproval, against unfair trade practices such as patent infringement;
- making recommendations to the President regarding relief for industries seriously injured by increasing imports;
- advising the President whether agricultural imports interfere with price-support programs of the U.S. Department of Agriculture;
- conducting studies on trade and tariff issues and monitoring import levels; and,
- participating in the development of uniform statistical data on imports, exports, and domestic production and in the establishment of an international harmonized commodity code.

The six Commissioners are appointed by the President and confirmed by the Senate for terms of nine years, unless appointed to fill an unexpired term. The terms are set by statute and are staggered so that a different term expires every 18 months. A Commissioner who has served for more than five years is ineligible for reappointment. No more than three Commissioners may be members of the same political party. The Chairman and the Vice Chairman are designated by the President and serve for a statutory two-year term. The Chairman may not be of the same political party as the preceding Chairman, nor may the President designate two Commissioners of the same political party as the Chairman and Vice Chairman.

UNITED STATES

INTERNATIONAL TRADE COMMISSION

The United States International Trade Commission

- ❑ ***Objective assessments of the impact of imports on U.S. industry.***
- ❑ ***Professional analysis of the effects of trade-related policy proposals on U.S. competitiveness.***
- ❑ ***Dependable trade data and analytical expertise.***

The ITC is known for all of this and more.

The ITC is an independent, nonpartisan, quasi-judicial federal agency established by Congress with a wide range of trade-related mandates.

Under its factfinding authority, the ITC exercises broad investigative powers on matters of trade.

In its adjudicative role, the ITC makes determinations with respect to unfair import practices.

As the government's think tank on international trade, the ITC is a national resource where trade data are gathered and analyzed. Information and analysis are provided to the President and the Congress to assist them in developing U.S. trade policy.

For more than 75 years, the ITC has served both the executive and legislative branches of government, sharing its expert research and analysis with the media and the public as well. Its independence, expertise, and unique mission make the U.S. International Trade Commission a respected entity within the U.S. trade policy community.

The Commission

The Commission is made up of six Commissioners who are nominated by the President and confirmed by the Senate for terms of nine years, unless appointed to fill an unexpired term. The terms are set by statute and are staggered so that a different term expires every 18 months. A Commissioner who has served for more than five years is ineligible for reappointment.

No more than three Commissioners may be members of the same political party. The Chairman and Vice Chairman are designated by the President and serve for a statutory two-year term. The Chairman and the Vice Chairman may not be members of the same political party, and the Chairman may not be of the same political party as the preceding Chairman.

All Commissioners hold equal rank in the decisionmaking responsibilities of the Commission. However, the Chairman has the added duty of managing the day-to-day operations of the agency.

The Staff

The ITC staff is recognized throughout the federal government and U.S. industry for its knowledge of world trade. A variety of disciplines and academic backgrounds is found among the commodity analysts, economists, attorneys, investigators, nomenclature experts, information services specialists, and service support personnel at the ITC.

ITC analysts and economists investigate and publish reports on U.S. industries and the global trends that affect them. The ITC staff provides substantial technical assistance and information on current policy questions to members of Congress and the U.S. Trade Representative. The staff also works closely with the U.S. Customs Service, other government agencies, and international trade-related organizations. Its expertise is often called upon by the news media, the business community, trade lawyers, and the public.

The agency updates and publishes the Harmonized Tariff Schedule of the United States, which provides the applicable tariff rates and statistical categories for all merchandise imported into the United States. The HTS is based on the international Harmonized System, the global classification system that governs most world trade in goods.

ITC Services

The ITC maintains one of the most extensive libraries specializing in international trade matters in the United States. The National Library of International Trade houses over 100,000 volumes and approximately 2,000 periodical titles related to U.S. industry and international trade laws and practices as well as several CD-ROM and on-line information data bases. The library is open to the public during agency hours. In addition, the ITC houses a law library that is open to the public.

The Office of the Secretary also maintains a public reading room where anyone can review the public inspection files maintained in every ITC investigation. Recorded information regarding petitions and complaints can be obtained 24 hours a day at 202-205-2196.

The ITC's Trade Remedy Assistance Office assists the public and small businesses seeking benefits or relief under U.S. trade laws. The office offers general information concerning remedies and benefits available under the trade laws of the United States, and it provides technical and legal assistance and advice to eligible small businesses seeking those remedies and benefits. The Trade Remedy Assistance Office can be reached by calling 202-205-2200 or 1-800-343-9822 (toll free).

The ITC is located at 500 E Street, SW, Washington, DC 20436. It is open daily from 8:45 a.m. to 5:15 p.m. (eastern time). Requests for further information about the ITC or any of its services may be directed to the Office of Public Affairs at the above address or at 202-205-1819.

Commission Activities

Commission activities include:

- ❑ determining whether U.S. industries are materially injured by reason of imports that benefit from pricing at less than fair value or from subsidization;
- ❑ conducting studies on trade and tariff issues and monitoring import levels;
- ❑ directing actions, subject to Presidential disapproval, against unfair international trade practices such as patent infringement;
- ❑ making recommendations to the President regarding relief for industries seriously injured by increasing imports;
- ❑ participating in the development of uniform statistical data on imports, exports, and domestic production and in the establishment of an international harmonized commodity code.

Investigations concerning imports sold at less than fair value (dumped) or subsidized:

Under the Tariff Act of 1930, U.S. industries may petition the government for relief from imports that are sold in the United States at less than fair value ("dumped") or which benefit from subsidies provided through foreign government programs. Under the law, the U.S. Department of Commerce determines whether the dumping or subsidizing exists and, if so, the margin of dumping or amount of subsidy. The ITC determines whether the dumped or subsidized imports materially injure or threaten to materially injure the U.S. industry.

The ITC conducts preliminary and final injury investigations.

In its preliminary investigation the ITC determines, on the basis of the best information available to it at the time of the determination, (1) whether there is a "reasonable indication" that an industry is materially injured or is threatened with material injury, or (2) whether the establishment of an industry is materially retarded, by reason of the imports under investigation. If the preliminary ITC determination is affirmative (under the 1930 law, a tie vote is considered an affirmative determination), the Commerce Department continues its investigation of whether the alleged dumping or subsidizing exists. If the Commerce Department's final determination is affirmative, the ITC conducts a final injury investigation.

In its final investigation the ITC determines (1) whether an industry in the United States is materially injured or threatened with material injury, or (2) whether the establishment of an industry in the United States is materially retarded, by reason of imports that the Department of Commerce has determined to be subsidized or sold in the United States at less than fair value. If the final ITC determination is affirmative, the Secretary of Commerce issues a countervailing duty order (in a subsidy investigation) or an antidumping order (in a dumping investigation), which is enforced by the U.S. Customs Service.

Trade and competitiveness studies:

Under section 332 of the Tariff Act of 1930, the ITC investigates a wide variety of trade matters upon request by the President, the Senate Committee on Finance, the House Committee on Ways and Means, or the United States Trade Representative, or upon its own motion. These investigations can cover any matter involving tariffs or international trade, including conditions of competition between U.S. and foreign industries. In recent years, ITC investigations have ranged from studies of the global competitiveness of critical U.S. advanced-technology industries to in-depth sectoral analyses of the impact of U.S. trade agreements on U.S. industries. Unless the President or Congress direct otherwise, ITC final reports are made available to all interested parties, the general public, the President and executive departments, and Congress. Reports on matters relating to pending trade negotiations are often classified documents not subject to public view.

Investigations involving unfair import practices:

Under section 337 of the Tariff Act of 1930, the ITC determines whether, as defined by U.S. statutory and common law, there is unfair competition in the importation of products into, or their sale in, the United States. Section 337 declares unlawful unfair methods of competition and unfair acts in the import and sale of products in the United States, the threat or effect of which is to destroy or substantially injure a domestic industry, prevent the establishment of such an industry, or restrain or monopolize commerce in the United States. Section 337 also declares unlawful *per se* infringement of a valid and enforceable U.S. patent, copyright, registered trademark, or mask work; no resulting injury need be found. If the Commission finds an unlawful act exists, it may issue, subject to disapproval by the President, an order excluding the violating article from entry into the United States and/or an order directing the violating parties to cease and desist the unlawful practices.

Investigations concerning import relief for domestic industries:

Under section 201 of the Trade Act of 1974, domestic industries seriously injured or threatened with serious injury by increased imports may petition the ITC for import relief. The ITC determines whether an article is being imported in such increased quantities that it is a substantial cause of serious injury, or threat thereof, to the U.S. industry producing an article like or directly competitive with the imported article. Section 201 does not require a finding of dumping, subsidization, or any other unfair trade practice; however, the injury test under this section is considered to be more difficult than those under the unfair trade statutes. If the Commission makes an affirmative determination, it recommends to the President relief that would remedy the injury and facilitate industry adjustment to import competition. The President makes the final decision whether to provide relief and the amount of relief. Such relief may be in the form of a tariff increase, quantitative restrictions, or orderly marketing agreements.

The ITC is not...

A policymaking agency.

A court of law.

An agency that negotiates trade agreements.

The ITC's History

The ITC has a rich history and has changed significantly since its inception in 1916 as the U.S. Tariff Commission.

The Constitution of the United States vests Congress with the sole power to lay and collect taxes and to regulate commerce with foreign nations. From the 1790s into the 20th century, the tariff was a principal source of federal revenues as well as an important mechanism for protecting emerging manufacturing industries.

Periodically, Congress engaged in sweeping overhauls of the tariff schedules to adjust revenues, but the process proved unsatisfactory to many. Pressure to raise rates and protect individual industries led to tariff disputes, which in turn intensified partisan and regional friction. With the growth of trade and of the diversity of products traded, it gradually became clear that tariff issues were too complex to be legislated effectively without the technical assistance of an independent commission of experts.

Congress created the U.S. Tariff Commission on September 8, 1916. The agency's mission was to investigate the administrative, fiscal, and economic effects of U.S. customs laws as well as to study tariff relationships between the United States and other countries.

Over time, the Tariff Commission's functions expanded. In the early 1920s, Congress enacted laws that were the forerunners of the antidumping and unfair import practices laws that the Commission administers today. The Tariff Act of 1930 (the Smoot-Hawley tariff act), known historically for its high tariff rates, incorporated a whole new "scientific" tariff classification system based largely on Commission work. The 1930 classification system remained in place until 1963, when it was replaced by the Tariff Schedules of the United States, also largely developed by the Commission. This system was replaced in 1989 by the Harmonized Tariff Schedule.

Over the last 50 years, the Commission's role has expanded from one of primarily providing advice on tariff matters to one of making determinations concerning the impact of imports on domestic industries.

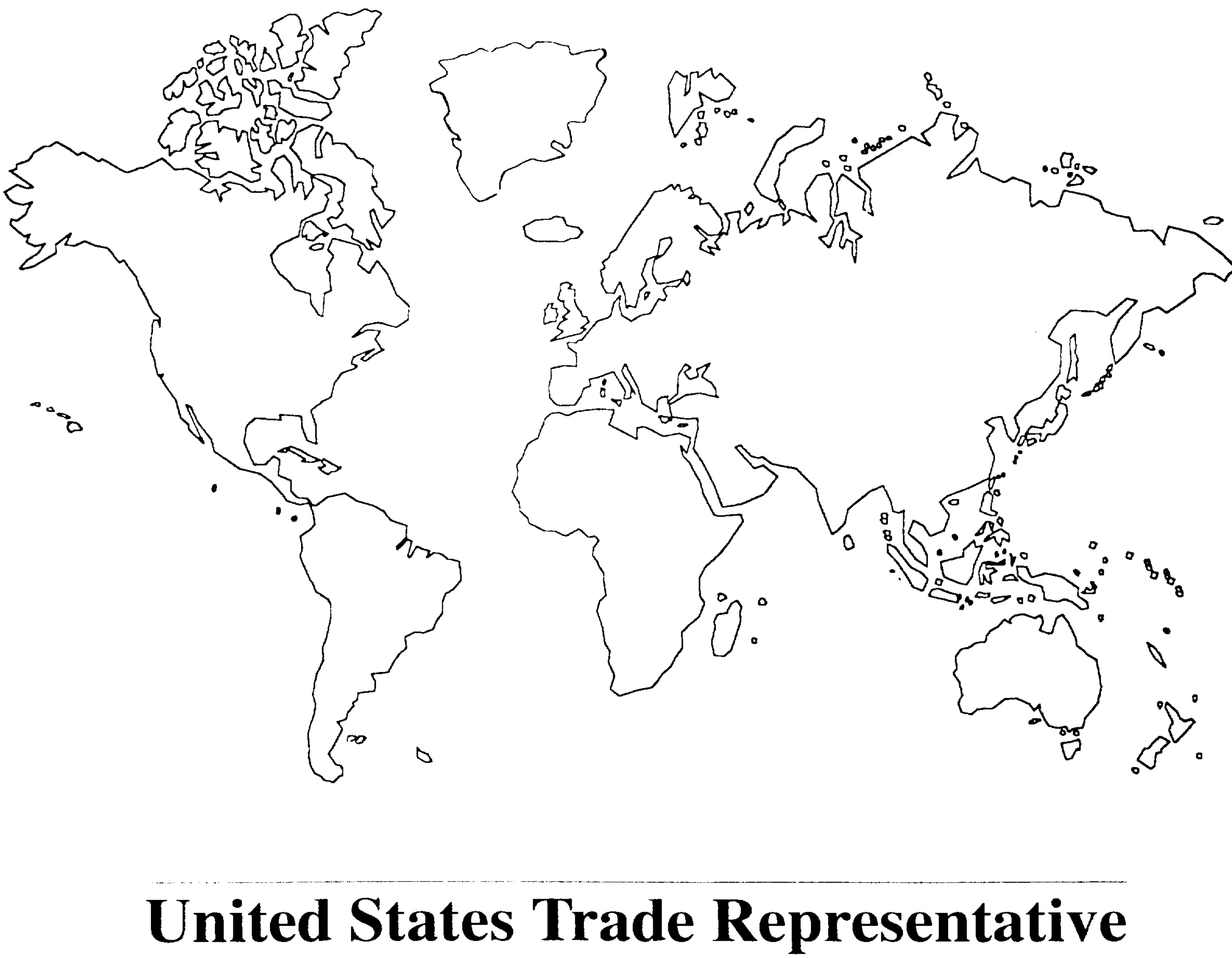
In the late 1940s, the Commission was assigned the task of making determinations under the U.S. safeguard laws (now section 201 of the Trade Act of 1974). In 1954, the Department of Treasury's responsibility for making injury determinations in antidumping investigations was transferred to the Commission.

The Trade Act of 1974 renamed the agency the U.S. International Trade Commission to reflect its changing role. The act also strengthened the Commission's independence and authorized the Commission to issue orders in unfair import practice investigations.

In the 1980s, Commission investigations under the antidumping and countervailing duty laws increased significantly following revisions of those laws by Congress.

The Commission	**The ITC is composed of six Commissioners nominated by the President and confirmed by the Senate.**
Office of the Secretary	Compiles and maintains the Commission's official records and receives petitions and briefs.
Office of the Administrative Law Judges	**Hears and decides unfair trade practice cases brought under section 337 of the Tariff Act of 1930.**
Office of Congressional Liaison	Coordinates activities between the Commission and Congress and promotes the agency to industry associations involved in international trade.
Office of Public Affairs	**Advises Commissioners and senior staff in public relations matters and plans and administers the media relations program.**
Office of Executive and International Liaison	Coordinates relations between the Commission and the United States Trade Representative and other executive branch offices.
Office of the General Counsel	**Serves as the Commission's principal legal advisor, responsible for litigation, input on investigations, and reports on proposed legislation.**
Office of Inspector General	Directs and carries out audits and investigations of Commission programs and operations.
Director of Operations	**Supervises all substantive work of the Offices of Investigations, Industries, Economics, Tariff Affairs and Trade Agreements, and Unfair Import Investigations, Information Services, and the Trade Remedy Assistance Office.**
Office of Investigations	Coordinates the Commission's countervailing duty, antidumping, and review investigations, escape clause and market disruption investigations, and investigations under section 22 of the Agricultural Adjustment Act.
Office of Industries	**Provides technical and economic information and assessments of U.S. industries and merchandise trade.**
Office of Economics	Provides economic analyses to help the Commission investigate the effects of U.S. foreign trade on domestic production, employment, and consumption and provides expert advice to Congress and the President on international economic issues.
Office of Tariff Affairs and Trade Agreements	**Prepares reports on tariff legislation, publishes U.S. tariff schedule, chairs import-export statistical committee, and participates in Harmonized System Committee.**
Office of Unfair Import Investigations	Participates in all investigations conducted under section 337 of the Tariff Act of 1930.
Office of Information Services	**Provides information services and resources through the ongoing activities of its divisions.**
Trade Remedy Assistance Office	Provides information to the public on remedies and benefits available under U.S. trade laws and offers technical assistance to eligible small businesses seeking relief under the trade remedy laws.
Director of Administration	**Supervises support services of the Commission, which include the Offices of Finance and Budget, Management Services, and Personnel.**
Office of Finance and Budget	Directs the budget, payroll, and accounting functions.
Office of Management Services	**Coordinates mail, supply, and building maintenance services and editorial, design, printing, and procurement functions.**
Office of Personnel	Recruits, places, and trains employees and administers position classification, benefits, employee relations, and labor relations programs.

1994 Trade Policy Agenda
and
1993 Annual Report
of the President of the United States
on the Trade Agreements Program



United States Trade Representative

Private Sector Advisory Committee System

The Clinton Administration created USTR's Office of Intergovernmental Affairs and Public Liaison to expand and enhance USTR's partnership with and outreach to state and local governments, the business community, labor, environmental, and special interest groups. The private sector advisory committee system also falls under the auspices of the Intergovernmental Affairs and Public Liaison office.

The United States Congress established the private sector advisory committee system in 1974 to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Congress expanded and enhanced the role of this system in three subsequent trade acts.

The committees provide information and advice on U.S. negotiating objectives and bargaining positions before entering into trade agreements, on the operation of any trade agreement once entered into, and on other matters arising in connection with the development, implementation, and administration of U.S. trade policy.

The private sector advisory committee system consists of 38 advisory committees, with a total membership of approximately 1,000 advisors. The system is arranged in three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); seven policy advisory committees; and 30 technical, sectoral, and functional advisory committees.

The President appoints 45 ACTPN members for two-year terms. The 1974 Trade Act requires that membership broadly represent key economic sectors affected by trade. The committee considers trade policy issues in the context of the overall national interest.

The seven policy advisory committees are appointed by the USTR alone or in conjunction with other Cabinet officers. Those managed solely by USTR are the Services (SPAC), Investment (INPAC), and Intergovernmental (IGPAC) Policy Advisory Committees. Those policy advisory committees managed jointly with the Departments of Commerce, Agriculture, Labor, and Defense are the Industry (IPAC), Agriculture (APAC), Labor (LAC),and Defense (DPACT) Policy Advisory Committees respectively. Each committee provides advice based upon the perspective of its specific sector or area.

The 30 sector, functional, and technical advisory committees are organized in two areas: industry and agriculture. Representatives are jointly appointed by the USTR and the Secretaries of Commerce and Agriculture respectively. Each sectoral or technical committee represents a specific sector or commodity group (such as textiles or dairy products) and provides specific sectoral and technical advice concerning the effect that trade policy decisions may have on its sector. The three functional advisory committees provide cross-sectoral advice on customs, standards, and intellectual property issues.

Private sector advice is both a critical and integral part of the trade policy process. USTR already maintains an ongoing dialogue with interested private sector

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parties on most trade agenda issues. The Congressionally established advisory committee system is unique, however, since the committees meet on a regular basis, receive sensitive information about ongoing trade negotiations and other trade policy issues and developments, and are required to report to the President on any trade agreement entered into under section 1102 of the 1988 Trade Act.

The Clinton Administration's 1993 trade agenda provided many opportunities for the USTR's Office of Intergovernmental Affairs and Public Liaison to conduct outreach to and consultations with the private sector advisory committees, state and local governments, and numerous public groups.

The North American Free Trade Agreement (NAFTA): On the inter-agency level, USTR's Intergovernmental Affairs and Public Liaison held weekly briefing sessions with its Intergovernmental and Public Liaison counterparts on the status of negotiations, the impact of NAFTA, and the Administration's strategy.

The office also held weekly briefings and consultations with the private sector advisory committees on the NAFTA side agreement negotiations, the implementing legislation, and the impact of NAFTA.

During the spring, summer, and fall of 1993, the office worked in coordination with the White House and other agencies to set an aggressive weekly schedule of briefings with representatives of industries, regions, and special interest groups. This provided an opportunity for the Administration to educate and respond to the concerns of the public. From high tech to church groups, USTR provided a forum for public discourse.

For the first time, the office held weekly briefings for governors, mayors, state legislators, and other elected officials. The office also provided state and sector-specific analyses on the impact of NAFTA. This outreach allowed USTR officials to consult with state and local officials during the side agreement negotiations and drafting of the implementing legislation. Upon passage of NAFTA, the office was appointed as the Administration's state and local government point of contact for NAFTA implementation.

The GATT Uruguay Round: Throughout 1993, the Intergovernmental Affairs and Public Liaison office maintained private sector consultations on the status of the GATT negotiations.

During the final weeks of negotiations, the office held daily confidential briefings for the private sector advisors in Geneva and Washington, D.C. Separate daily briefings were also held for business groups and the public in both Geneva and Washington, D.C.

In addition to briefings and strategy discussions, the office assisted in the preparation and finalization of the advisory committees' written reports to the Congress during the last seven months of 1993 on the Uruguay Round negotiations and objectives. In addition to Congress, copies were distribute to inter-agency counterparts, private sector advisors, governors, mayors, and state legislators.

The office developed and is in the process of implementing a public outreach strategy for the Uruguay Round, utilizing the resources and expertise of other agencies and the private sector.

GATT Government Procurement Code: USTR Intergovernmental Affairs and Public Liaison assisted USTR's GATT government procurement negotiators in securing government procurement commitments from approximately 40 states, several cities and one port for the GATT Sub-Central Government Procurement Code.

The Asia Pacific Economic Forum (APEC): The office briefed and consulted with all private sector advisors on the APEC agenda, issues and strategy. Briefings and information were also provided on APEC goals and objectives for inter-agency intergovernmental affairs and public liaison counterparts, the private sector and public.

USTR Intergovernmental Affairs and Public Liaison participated in the APEC Senior Officials meeting and the APEC ministerial and continues to secure counsel from the private sector and non-federal elected officials regarding the goals and strategies relating to the APEC.

Japan Framework: In January of 1993, the ACTPN issued a review on U.S.- Japan Trade Policy, based upon recommendations made in its 1988 report. The Intergovernmental Affairs and Public Liaison office worked with the ACTPN to ensure that their advice was shared with U.S. negotiators.

The office has developed and is implementing a strategy to educate the public regarding the objectives of the Framework. It incorporates inter-agency, private sector, state and local government, and public efforts and cooperation.

Public Education Campaign: In response to the NAFTA debate, the office developed a strategy in a cooperative effort with other agencies and the private sector to educate the public on trade issues in general.

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COMMITTEE ON WAYS AND MEANS
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OVERVIEW AND COMPILATION OF U.S. TRADE STATUTES

INCLUDING ECONOMIC DATA

1993 EDITION

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The Customs Service collects import duties and enforces more than 400 laws or regulations relating to international trade. Among the many responsibilities falling to Customs are assessing and collecting duties, excise taxes, penalties and other fees due on imported goods; interdicting and seizing illegally entered merchandise; processing persons, carriers, cargo and mail into and out of the United States; helping enforce U.S. laws against the transfer of certain technologies to Eastern European countries, laws on copyright, patent and trademark rights; and administering quotas and other import restrictions. The U.S. Customs Service maintains close ties with private business associations, international organizations, and foreign customs services.

The Commissioner of Customs is appointed by the President and subject to confirmation by the Senate.

U.S. International Trade Commission

The U.S. International Trade Commission (ITC) is an independent and quasi-judicial agency that conducts studies, reports, and investigations, and makes recommendations to the President and the Congress on a wide range of international trade issues. The agency was established on September 8, 1916 [26] as the U.S. Tariff Commission. In 1974 the name was changed to the United States International Trade Commission by section 171 of the Trade Act of 1974.[27]

Commissioners are appointed by the President for nine-year terms, unless they are appointed to fill an unexpired term. Any commissioner who has served for more than 5 years may not be reappointed. The Chairman and Vice Chairman are designated by the President for two-year terms, and successive Chairmen may not be of the same political party. Of the six commissioners, not more than three may be of the same political party.

The Commission has numerous responsibilities for advice, investigations, studies, and data collection and analysis which may be grouped into the following general areas: advice on trade negotiations; Generalized System of Preferences; import relief for domestic industries; East-West trade; investigations of injury caused by subsidized or dumped goods; import interference with agricultural programs; unfair practices in import trade; development of uniform statistical data; matters related to the U.S. tariff schedules; international trade studies; trade and tariff summaries.

Statutory authority for the Commission's responsibilities is provided primarily by the Tariff Act of 1930, the Agricultural Adjustment Act, the Trade Expansion Act of 1962, the Trade Act of 1974, the Trade Agreements Act of 1979, the Trade and Tariff Act of 1984, and the Omnibus Trade and Competitiveness Act of 1988.

The Tariff Act of 1930 gives the Commission broad authority to conduct studies and investigations relating to the impact of international trade on U.S. industries. Various sections under title VII of the Tariff Act authorize the Commission to determine whether U.S. industries are materially injured by imports which benefit from subsidies or are priced below fair value.[28] If the Secretary of

[26] 39 Stat. 795.
[27] 19 U.S.C. 2231.
[28] Sections 704, 734, and 751; 19 U.S.C. 1671c, 1673c, and 1675c.

Commerce decides to suspend an antidumping or countervailing duty investigation upon reaching an agreement to eliminate the injury caused by the subsidized or dumped imports, the Commission is authorized to study whether or not the injury in fact is being eliminated. Section 337 of the Tariff Act authorizes the ITC to investigate whether unfair methods of competition or unfair acts are being committed in the importation of goods into the United States.[29] The Commission is authorized to order actions to remedy any such violations, subject to Presidential disapproval.

Upon the request of the President, the House Committee on Ways and Means, the Senate Committee on Finance, or on its own motion, the ITC conducts studies and investigations under section 332 of the Tariff Act of 1930 on a wide range of trade-related issues.[30] Public reports generally are issued following such studies and investigations. The ITC also publishes summaries outlining the types of products entering the United States, their importance in U.S. consumption, production, and trade, and other relevant information. The ITC also is required to establish and maintain statistics on U.S. trade and to review the international commodity code for classifying products and reporting trade statistics among countries.[31]

The Trade Expansion Act of 1962 and the Trade Act of 1974 expanded the duties of the ITC. Both laws require the Commission to review developments within an industry receiving import protection and to advise the President on the probable impact of reducing or eliminating the protection.[32]

The Trade Act of 1974 gives the Commission a Presidential advisory role on the probable domestic economic effects of trade concessions proposed during trade negotiations.[33] The ITC performs a similar advisory role in relation to duty-free treatment under the Generalized System of Preferences.[34] Under section 201 of the 1974 Trade Act,[35] the Commission conducts investigations to determine whether increased imports are causing or threatening serious injury to the competing domestic industry and reports its findings and recommendations for relief to the President.

Sections 406 and 410 [36] of the 1974 Trade Act provide for ITC monitoring and investigation of various aspects of trade with nonmarket economics.

The Agricultural Adjustment Act [37] requires the ITC, upon the direction of the President, to investigate whether imports of agricultural products are interfering with programs of the Department of Agriculture and to present its findings and recommendations to the President.

Section 221 of the Trade and Tariff Act of 1984, amended by section 1614 of the Omnibus Trade and Competitiveness Act of 1988, established a separate Trade Remedy Assistance Office within the

[29] 19 U.S.C. 1337.
[30] 19 U.S.C. 1332.
[31] 19 U.S.C. 1484(e).
[32] 19 U.S.C. 1981, 2253.
[33] 19 U.S.C. 2151.
[34] 19 U.S.C. 2151, 2163.
[35] 19 U.S.C. 2251.
[36] 19 U.S.C. 2240, 2436.
[37] 7 U.S.C. 624.

ITC to provide information to the public on remedies and benefits available under U.S. trade laws and on the procedures and filing dates for relief petitions.

Private or Public Sector Advisory Committees

The first formal mechanism providing for ongoing advice from the private sector on international trade matters was authorized by section 135 of the Trade Act of 1974.[38] In view of the positive contribution of the advisory committees to the Tokyo Round of multilateral trade negotiations and to passage of the implementing legislation—the Trade Agreements Act of 1979—Congress provided for continuation of the advisory committee structure in section 1631 of the Omnibus Trade and Competitiveness Act of 1988. Congress also expanded the committees' responsibilities by authorizing them to provide advice on the priorities and direction of U.S. trade policy, in addition to their previous responsibilities.

The U.S. Trade Representative manages the advisory committees in cooperation with the Departments of Agriculture, Commerce, Labor, and other departments. The committee structure is three-tiered, with the most senior level represented by the Advisory Committee for Trade Policy and Negotiations (ACTPN). The ACTPN is a 45-member body composed of Presidential-appointed representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public. The group provides overall guidance on trade policy matters, including trade agreements and negotiations, and is chaired by a chairman elected by the committee. The group convenes at the call of the U.S. Trade Representative.

The second tier is made up of policy advisory committees representing overall sectors of the economy (e.g., industry, agriculture, labor, services) whose role is to advise the government of the impact of various trade measures on their respective sectors.

The third tier is composed of sector advisory committees consisting of experts from various fields. Their role is to provide specific, technical information and advice on trade issues involving their particular sector. Members of the second and third tier are appointed by the U.S. Trade Representative and the Secretary of the relevant department or agency.

[38] 19 U.S.C. 2155.

ANNEX H
SACU MATERIAL LIST

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ANNEX H
SACU MATERIALS

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