

imani development



**2007 UPDATE SURVEY OF NON
TARIFF BARRIERS TO TRADE:
LESOTHO**

FINAL REPORT

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ABBREVIATIONS

AGOA	African Growth and Opportunity Act
BLNS	Botswana Lesotho Namibia and Swaziland
CBL	Central Bank of Lesotho
EU	European Union.
FDI	Foreign Direct Investment.
GDP	Gross Domestic Product
GoL	Government of Lesotho
IMF	International Monetary Fund
LRA	Lesotho Revenue Authority
MITCM	Ministry of Trade, Industry, Cooperatives and Marketing
NTB	Non Tariff Barriers
RSA	Republic of South Africa
TDCA	Trade Development and Cooperation Agreement
TIFC	Trade and Investment Facilitation Committee
TRP	Trade Policy Review
SACU	Southern African Customs Union
SADC	Southern African Development Community
SARS	South African Revenue Services
VAT	Value Added Tax
WB	World Bank
WTO	World Trade Organization

CHAPTER 1: EXECUTIVE SUMMARY

1. Due to its geographical position and industrial base, the majority of Lesotho's intra-SADC trade is with the Republic of South Africa. It is therefore difficult to differentiate goods as really originating from South Africa as opposed to being routed through South Africa in determining trade direction.
2. Current Trade Legislation outside of that in the SACU Agreement is not favourable for intra-SADC trade.
3. The private sector in Lesotho is still to be capacitated through an enabling environment and relevant incentives to fully participate in trade related activities to build up the economy of Lesotho. Through the SMART Partnership Initiatives, a number of forums have been set up to jointly discuss with all stakeholders, an analysis of the best practices to be adopted in boosting the trade related activities in the country and attracting FDI.
4. Lesotho does not have export capacity for capital equipment, incentives and a natural resources manufacturing base to fully participate in intra-SADC trade. Because of the low and inadequate production and infrastructure base, exports from Lesotho are still concentrated in the manufacturing sector with a significant increase in mining (diamonds).
5. Lesotho is still applying trade related and harmonised policy measures under the 1969 SACU Agreement.
6. In recognition that an efficient regulatory and administrative environment is an essential component for developing a competitive business sector, the Ministry of Trade, Industry, Marketing and Cooperatives (MTICM), has commissioned a number of studies to address the matter. These studies have identified regulatory and administrative bottlenecks as critical barriers to setting up business in Lesotho.
7. An earlier study "Sharpening Lesotho's Competitive Edge" had recommended a number of changes currently being reviewed through the newly formed "Trade and Investment Facilitation Committee" (TIFC) unit comprising of the ministries of Trade, Finance, and Home Affairs and related utility service agencies to put the services of the above under one roof in a "One – Stop – Shop".
8. A review of the main administrative procedures together with the documentation to be filled has been undertaken to identify their relevance, duplication and ways to shorten their processing by the relevant ministerial departments.
9. Data collection and analysis will also be addressed and will include computerisation and customising of all information in a harmonised system.

10. The implementation of the reviewed recommended programmes will be administered in phases. Phase 1 of the recommendations, which comprises of the LRA officials moving within the MTICM company registration, renewal and other facilities hall is already in place. Other phases once discussed with all stakeholders will be implemented as required.

CHAPTER 2: OVERVIEW OF INTRA-SADC TRADE

Aside from trade with South Africa, official intra-SADC trade is largely insignificant to Lesotho. This is mainly because of the geographical position of Lesotho, being completely surrounded by the Republic of South Africa. It is therefore difficult to differentiate goods originating from other SADC countries as it is all routed through South Africa. Because of the low and inadequate production and infrastructure base, exports in Lesotho are still concentrated in the manufacturing sector with a significant increase in mining (diamonds). Collection and analysis of data still remains one of the main constraints in all major institutions.

The current Export and Import Control Act No.16 of 1984, amended by Order No.17 of 1988 relates only to trade related matters with SACU. All trade issues from outside SACU are regulated directly by the Minister of MTICM, who has the power to "... prescribe the quantity or value of goods which may imported or exported hereunder, the price at which, the period within which, the port through or from which, the country or territory from or to and such other conditions..". The Import Restriction Regulations (Legal Notice No.192 of 1966) restricts the importation of goods for commercial purposes from outside SACU by foreign firms in the interim until fully registered as permanent traders.

Given Lesotho is part of a customs union with South Africa (SACU), without strict border it is difficult to determine the origin of products imported into Lesotho. Problems have also arisen due to the bilateral trade agreement between South Africa and the EU (TDCA) which brings goods into the customs union at preferential rates.

South Africa represented a minimum of 99% of SADC imports to Lesotho over the review period, hence imports from other SADC countries tend to be fairly insignificant and volatile. However, as noted earlier some of these goods may have originated from other SACU or SADC countries, but since they are transited through South Africa they are recorded as originating in South Africa. In terms of trends, there is a noticeable gradual drop in the value of imports from South Africa since 2004.

Table 1: Lesotho Intra-SADC Trade Imports. (USD Million)

	Value of Imports	Value of Imports	Value of Imports	Value of Imports
Year	2003	2004	2005+	2006*
USD/LSL exchange rate	7.6	6.4	6.4	6.8
SACU				
Botswana	0.0	0.0	0.0	0.0
Namibia	0.0	0.0	0.0	0.0
South Africa	963.2	1,029.0	974.2	851.8
Swaziland	0.0	0.0	0.0	0.0
Total SACU	963.2	1,029.0	974.2	851.8
SADC				
Angola	0.0	0.0	0.0	0.0
DRC	0.0	0.0	0.0	0.0

Malawi	0.0	0.3	0.3	0.4
Mauritius	0.0	0.4	0.5	0.0
Mozambique	0.0	0.0	0.2	0.4
Tanzania	0.0	0.0	0.0	0.2
Seychelles	0.0	0.0	0.0	0.0
Zambia	0.0	0.0	0.3	2.2
Zimbabwe	0.4	5.3	1.0	0.0
Total Non-SACU	0.6	5.9	2.4	3.3
TOTAL SADC	963.8	1,034.90	976.6	855.1

Source: Central Bank of Lesotho, Research Department, 2006.

Note: Totals may be larger than sum due to rounding

+ Revised Estimates.

* Preliminary Estimates

As with imports, almost all of Lesotho's exports are destined for South Africa (although they may well then be transited onto other SACU or SADC countries). Although at a small level, exports to Botswana and Mauritius appear to be gaining traction. Although the trade balance is still heavily skewed towards South Africa, strongly increasing exports and falling imports have reduced the scale of the negative trade balance. In 2004 imports outweighed exports by a factor of 9.4, which fell significantly to a factor of 5 in 2006.

Table2: Lesotho Intra-SADC Trade Exports. (USD Million)

	2003	2004	2005	2006
1.SACU				
Botswana	0.1	0.5	0.9	0.7
Namibia	0.0	0.0	0.0	0.0
South Africa	91.2	108.9	111.3	168.5
Swaziland	0.0	0.0	0.0	0.0
Total SACU	91.3	109.4	112.2	169.2
SADC	0.0	0	0.0	0.0
Angola	0.0	0	0.0	0.0
DRC	0.0	0	0.0	0.0
Malawi	0.0	0	0.0	0.0
Mauritius	0.0	0	0.7	2.0
Mozambique	0.0	0	0.0	0.0
Tanzania	0.0	0.3	0.0	0.0
Seychelles	0.0	0	0.0	0.0
Zambia	0.0	0	0.0	0.0
Zimbabwe	0.0	0	0.0	0.0
Total Non-SACU	0.0	0.3	0.7	2.0
TOTAL SADC	91.3	109.7	112.9	171.2

Source: Central Bank of Lesotho, Research Department, 2006

+ Revised Estimates.

* Preliminary Estimates.

Product specific data is difficult to obtain, with the latest year available being 2003. Lesotho's main exports to the region include beverages, footwear, electrical equipment and apparel.

Table 3: Major Merchandise Exports to SADC (USD Million)

	2002	2003
H22: Beverages, spirits and vinegar	15,604,599	27,090,977
H64: Footwear, gaiters and the like, parts thereof	23,604,310	15,128,489
H85: Electrical, electronic equipment	17,865,257	9,887,480
H61: Articles of apparel, accessories, knit or crochet	39,708,585	8,047,387
H15: Animal, vegetable fats and oils, cleavage products, etc	79,890	6,509,768
H11: Milling products, malt, starches, wheat gluten	5,962,557	3,127,604
H10: Cereals	2,159,110	2,637,676
H94: Furniture, lighting, signs, prefabricated buildings	1,210,262	2,515,689
H52: Cotton	3,948,878	2,455,530
H69: Ceramic products	8,494,546	1,854,021

Source: TIPS SADC Trade Database

The largest import categories from the region tend to be dominated by mineral fuels, vehicles, electrical equipment and machinery. However, after these categories a wide variety of consumer goods are also imported.

Table 4: Major Merchandise Imports from SADC (USD Million)

	2002	2003
H99: Commodities not elsewhere specified	19,817,048	81,823,969
H27: Mineral fuels, oils, distillation products, etc	60,703,250	71,098,908
H87: Vehicles other than railway, tramway	26,394,087	46,580,766
H85: Electrical, electronic equipment	39,457,659	40,332,767
H84: Nuclear reactors, boilers, machinery, etc	18,882,227	38,477,912
H94: Furniture, lighting, signs, prefabricated buildings	13,458,350	38,410,302
H02: Meat and edible meat offal	21,574,508	37,157,067
H64: Footwear, gaiters and the like, parts thereof	19,270,704	32,994,437
H10: Cereals	31,258,868	29,549,151
H00: Other	20,395,463	26,467,259

Source: TIPS SADC Trade Database

CHAPTER 3: NTB MEASURES DIRECTLY AFFECTING EXPORTS

Table 5: WTO NTB Categorisation Codes

INVENTORY CATEGORY	DESCRIPTION				
Part I	Government Participation in Trade and Restrictive Practices Tolerated by Governments				
	WTO Inventory Code A, C, E	Problem Area Government participation in tourism activities through a parastatal	Description of the most severe NTBs Setting up tourism activities and facilities.	Impact of NTB to businesses and trade: Envisaged competition, pricing and standards settings.	Responsibility/Source of NTB Ministry of Tourism, Environment and Culture.
	A, C	Subsidies and related Government support Procurement of facilities through parastatal.	Participation in a competitive capacity	Competition is pricing, subsidies and standards	Ministries of Tourism, Environment and Culture and Finance / Institutional implementation capacity and awareness.
	D	Investment restrictions			
	E	Competition related restrictions			
Part II	Customs and Administrative Entry Procedures				
	WTO Inventory Code D	Problem Area Visa, work or residents permits acquisition for free movement of foreign traders.	Description of the most severe NTBs Restriction of qualified manpower not available locally.	Impact of NTB to businesses and trade: Low output, quality and high training costs.	Responsibility/Source of NTB Ministry of Home Affairs/ Cumbersome, long procedures.
	G	Un-harmonised custom clearing procedures.	Procedures open to bribery.	Delays in acquisition of legal papers.	MTICM and LRA/ Licensing and Custom Clearance procedures.
H	Registration and Administration procedures	Cumbersome procedures especially when setting up a business.	Delays in acquisition of legal trading documentation	MTICM, LRA, Immigration and related utility providers.	

INVENTORY CATEGORY	DESCRIPTION				
Part III NONE	Technical Barriers to Trade				
	WTO Inventory Code	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses and trade	Responsibility/Source of NTB
Part IV NONE	Sanitary and Phytosanitary Measures				
	WTO Inventory Code	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses and trade	Responsibility/Source of NTB
Part V	Specific Limitations				
	WTO Inventory Code D	Problem Area Foreign Exchange Limitations	Description of the most severe NTBs Restrictive and time wasting	Impact of NTB to businesses and trade: Delays in making transactions	Responsibility/Source of NTB Ministry of Finance/ Central Bank of Lesotho
Part VI NONE	Charges on Imports				
	WTO Inventory Code	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses and trade	Responsibility/Source of NTB
Part VII	Other				
	WTO Inventory Code B D	Problem Area Trading in Diamonds Transport Regulations and costs	Description of the most severe NTBs Expensive licence and restrictive outdated regulatory laws Expensive and risky freight transportation	Impact of NTB to businesses and trade: Delays in acquisition of legal trading documentation Goods in transit risk, expensive insurance costs, inspection and clearance delay costs.	Responsibility/Source of NTB Department of Mines and Geology/ High costs of trading licence and restrictive verification controls. Ministry of Transport and LRA

Table 6: Specific Official Regulations Affecting Exports

WTO Inventory Category	Product Group	Government Controlling Agency	Regulatory Procedure
II (J)	Minerals (diamonds)	Department of Mines and Geology	Mining Rights Act 43 (1967), Precious Stones Order 24 (1970).
II (G)	Manufactured Goods	Department of Trade and Lesotho Revenue Authority	Examination and Movement Certificate
V (D)	Foreign Exchange	Central Bank of Lesotho	Exchange Control Regulations No. 175 of 1989
II (H)	Goods	Export and Import Control Act 1984	For all imported goods from outside SACU

CHAPTER 4: NTB MEASURES DIRECTLY AFFECTING IMPORTS

Table 7: WTO NTB categorisation codes

INVENTORY CATEGORY	DESCRIPTION				
Part I	Government Participation in Trade and Restrictive Practices Tolerated by Governments				
	WTO Inventory Code C	Problem Area No transparent Public Procurement Practices	Description of the most severe NTBs Openness to corruption	Impact of NTB to businesses and trade: Local participation skills development constrained	Responsibility/Source of NTB Ministry of Finance/Tender Board.
Part II	Customs and Administrative Entry Procedures				
	WTO Inventory Code H	Problem Area Import licence procedure, different departments for different goods	Description of the most severe NTBs Repetitive application of import licence of product. Openness to corruption.	Impact of NTB to businesses and trade: Delays in acquisition of legal documentation	Responsibility/Source of NTB MTICM, LRA, Ministry of Agriculture
	B, C, D H,I	Multi – departmental authorisation, cumbersome and long procedures.	Openness to corruption. Centralised to Maseru	Delays in acquisition of legal trading documentation	MTICM, LRA
Part III NONE	Technical Barriers to Trade				
	WTO Inventory Code	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses and trade	Responsibility/Source of NTB
Part IV NONE	Sanitary and Phytosanitary Measures				
	WTO Inventory Code	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses and trade	Responsibility/Source of NTB

INVENTORY CATEGORY	DESCRIPTION				
Part V	Specific Limitations				
	WTO Inventory Code A	Problem Area Quota's per trader	Description of the most severe NTBs Limit of 10 litres of milk per day Limit of 5 loaves per day	Impact of NTB to businesses and trade: Can't achieve economies of scale	Responsibility/Source of NTB Ministry of Agriculture Ministry of Trade
	A	Import ban	No beer importation allowed	Restriction of access to domestic beer market	MTICM
Part VI	Charges on Imports				
	WTO Inventory Code E	Problem Area VAT clearance procedures at border posts Import fees	Description of the most severe NTBs Openness to corruption Import fees to levied on M0.25/kg on all meat, M0.20/kg on poultry	Impact of NTB to businesses and trade: Delays in acquisition of legal documentation Increased cost of importation	Responsibility/Source of NTB LRA Ministry of Agriculture
Part VII	Other				
	WTO Inventory Code B	Problem Area Trade defence measures (Anti-Dumping, and Safeguard measures)	Description of the most severe NTBs Lack of controls for verification of originating goods	Impact of NTB to businesses and trade: Competition imbalances	Responsibility/Source of NTB MTICM / Verification controls

Table 8: Specific Official Regulations Affecting Imports

WTO Inventory Category	Product Group	Government Controlling Agency	Regulatory Procedure /
II (H)	Goods	Export and Import Control Act 1984	For all imported goods from outside SACU
V(A)	Dairy–Raw milk	Agricultural Marketing Act (L/N No. 241 of 1992) / Single entry Consignments	Not exceeding 10 litres a day, 2.5% of invoice value for distribution. Permit from National Dairy Board, no fee
V(A)	Bread	Agricultural Marketing Act (L/N No. 5 of 2005) / max calendar month	Not more than 5 loaves a day. Permit from MTICM, no fee
V(A)	Eggs	Agricultural Marketing Act (L/N No. 35 of 1969)	Import permit on any quantity, no fee
V(A)	Meat	Agricultural Marketing Act (L/N No. 141 of 1992)	Import fees to levied on M0.25/kg on all meat, M0.20/kg on poultry
V(A)	Sugar	Agricultural Marketing Act (L/N No. 176 of 1989)	Permit from MTICM for bulk imports except for Lesotho Flour Mills, no fee
V(A)	Pulses (beans and peas)	Agricultural Marketing Act (L/N No. 5 of 1977)	Permit from MTICM, no fee
V(A)	Fruits and Vegetables	Agricultural Marketing Act (L/N No. 28 of 1992)	Permit from MTICM, no fee
V(A)	Livestock and livestock products	Importation and Exportation of Livestock and Livestock Products. Proclamation No. 57 Of 1952	Permit from Livestock Division, no fee
V(A)	Wines and Spirits	Liquor Commission Order No. 12of 1986	Permit from Ministry of Finance
V(A)	Beer	Liquor Licensing Act No.8 of 1998	Prohibits importation
VI(E)	All goods	Value Added Tax Act 2001	Harmonisation of taxes at border posts

CHAPTER 5: KEY ISSUES FROM INTERVIEWS AND DESK RESEARCH

5.1 Issues from the Private sector and other related Institutions.

Lesotho's trade base is very small compared to other SADC countries and movement is only apparent with a South Africa, and other non-SADC countries. Private sector discussions and observations centred on issues emanating from procedures with South Africa. Most of their concerns therefore were of the bureaucratic and administrative type. Private sector representatives of major companies were reluctant to be interviewed because of the prevailing political environment in the country (after elections euphoria), but were clear that changes in the administrative procedures had to be addressed.

A forum for retail businesses to table their complaints has recently been set up. However, businesses are concerned about the attitude of officials in this forum who still remain somewhat aloof. A number of complaints that business have are administrative and centred on:-

- ✎ Having to appease the LRA/Customs official when clearing their imported goods.
- ✎ The lack of a computerised harmonised Custom system for invoice clearance.
- ✎ The lack of the necessary equipment (photocopier) by the border post offices. Traders are required to submit four (4) photocopies of their invoices for Custom clearance procedures. (If the consignment arrives after hours and private photo copying facilities are closed, traders are expected to come the next day thus increasing transport costs.)
- ✎ Renewal procedures of Trading and Import Licences too cumbersome. Established traders should be given longer periods before renewal.
- ✎ The LRA and the Department of Trade or Industry should harmonise their activities. (If LRA is in dispute over VAT payments by the trader, the Department of Trade will not renew the trading licence.)
- ✎ Lack of regulatory and legislative frameworks (including relevant courts) to protect their businesses against corruptive tendencies by officials.
- ✎ No incentives, financial and otherwise to expand their businesses.

5.2 Issues from Government and Implementing Institutions.

The delegates who had attended the SADC Workshop on the Action Plan for the Elimination of Non-Tariff Barriers on Trade had not met to pave the way forward. It also seemed individually, they had not discussed the issues within their areas of involvement. In the meantime government officials from the relevant ministries, especially from Ministry of Trade, Industry, Cooperatives and Marketing (MTICM), stated that there were no Non-Tariff Measures practised in Lesotho, except when the need arises i.e. protection for health matters and local produce consumption for a stated period of time.

On the other hand, the ministry (MTICM) with the support of Department for International Development UK (DFID), commissioned a study under the Priority Support Programme (PSP) to evaluate the progress on the integration of services under the Trade and Investment Facilitation Committee (TIFC). The TIFC had been set up earlier to address the bottlenecks

arising from the numerous procedures followed when forming, registering and trading in and outside Lesotho. The study was mandated in brief to:-

- Review the setting up of a “One-Stop-Shop” to promote an efficient regulatory and administrative environment, with a recommendation that the four major institutions the Department of Trade, the Lesotho Revenue Authority (LRA), the Department of Immigration, the Department of Company Registration and other utility service providers, to be housed under one roof to promote business competitiveness.
- Identify gaps and redundancies and propose changes to the TIFC after consultations with other stakeholders.
- Carry out a client survey to identify bottlenecks and establish performance measures.
- Review forms and, after consultation with the stakeholders, design a rationalised system of documentation and identify synergies with existing data sources elsewhere in government.
- Develop a draft Client User Guide for each trade related process as well as a draft Operations Manual as a template for staff development plans.
- Develop a work plan and budget for the duration of phase 1 to implement proposed changes and manage future reforms.

In response to the brief, the draft report contains the following recommendations:-

- That the TIFC be reconstituted as an independent office with full operational responsibility.
- That TIFC produce simple to follow brochures clearly spelling out the clients’ rights and obligations.
- That the front desk officials in the One-Stop-Shop be empowered to authorise permits/certificates subject to system-based checking.
- That the data from all process be captured at the start of the process by clients/agents on dedicated terminals for this purpose.

Ten representatives from the manufacturing and freight agencies were interviewed and invited to review the findings. This in part relates to the reluctance by the major firms and manufacturing companies to be interviewed on the basis that they have already given their concerns to the relevant authorities. It can be deduced from the above that all stakeholders are awaiting the final outcome of the TIFC, and are expecting that their concerns will be addressed. Members from the SADC office were not available to comment on the envisaged National SADC Committee that would act and handle the expected private sector concerns.

The final report of the findings and reports of the study was still being finalised and not for public consumption as yet, but in line with phase 1 of the TIFC programme, the LRA officials had moved to the ministry’s licensing hall, a senior official from the trade department mandated to sign the relevant application, renewal etc forms permanently assigned to deal only with such.

A possible new Non-Tariff Barrier identified is within the Ministry of Tourism, Environment and Culture (MTEC), where the ministry through its parastatal is perceived to be competing with the private sector. Currently, the Lesotho Tourism Development Corporation has been mandated to run accommodation and historical places of interest facilities, boating and other related activities despite the Tourism Policy that states “... tourism will be private sector driven, government facilitated and community based.”

CHAPTER 6: ASSESSMENT OF PROCEDURES FOR HARMONIZATION OF TRANSIT TRAFFIC BETWEEN COUNTRIES IN THE REGION

As discussed before, trade movement in Lesotho is within SACU under the Harmonised SACU agreement. Transportation of goods is still restricted to road freight as negotiations to upgrade the railway facilities are still underway. Freighters complained of time taken to declare goods at the border posts and wished for more effective harmonised customs clearing procedures.

CHAPTER 7: RECOMMENDED ACTIONS ON NOTIFICATION, MONITORING & ELIMINATION of NTBs

There does not appear to have been any domestic discussion with regard to the proposed national structure for a National Focal Point for Notifications, Monitoring and Elimination of NTBs. However, it is recommended that discussion on this matter takes place in conjunction with the following initiatives and organisations: The forum for retail firms and domestic authorities, the TIFC, and the Lesotho Chamber of Commerce and Industry. In terms of an action plan for dismantling NTBs, this should also be coordinated with the existing processes of the TIFC.

APPENDIX 1: LIST OF PEOPLE INTERVIEWED.

Name	Institution	Department
Ms M. Lehohla	MITCM	Legal Officer
Mrs Lekuetsse		Chief Trade Development Officer
Mr. A. Tlohelang		Principal Trade Development Officer
Mr. Khatala	Ministry of Finance	Senior Statistician
Mr Thobei		Chief Statistician
Ms Masia		Trade Relations
Mr. Mokhorro		Chief Standards
Mr. K. Letjama	Ministry of Finance	Commissioner Customs and Excise
Mr. Makhesi		Import/Export Clearance
Mr. S.K. Phafane	Lesotho Chamber of Commerce & Industry.	Management
Street Vendors	Informal Sector	
Shop Keepers	Retail Outlets	
Mr Nelson	Lesotho Express	Forwarders
Mr. M.Mophete	Phillips Clearing	Custom Clearing Agent