Kingdom of Lesotho

Lesotho



National Trade Policy Framework

2021 - 2025

Kingdom of LESOTHO

NATIONAL TRADE POLICY FRAMEWORK 2021-2025

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ABBREVIATIONS AND ACRONYMS

AfCFTA	African Continental Free Trade Area
AfDB	African Development Bank
AGOA	African Growth and Opportunity Act
ARIPO	African Regional Intellectual Property Organization
ASYCUDA	Automated System for Customs Data
ATU	African Telecommunications Union
BELN	Botswana, Eswatini, Lesotho, and Namibia (previously BLNS)
CBL	Central Bank of Lesotho
CCA	Common Customs Area
CET	Common External Tariff
CMA	Common Monetary Area
CMO	Collective Management Society
COMESA	Common Market of East and Southern Africa
CPC	Common Product Classification
CRASA	Common Regulators Association of Southern Africa
DFID	Department for International Development
DFQF	Duty Free Quota Free
DSQA	Department of Standards and Quality Assurance
EAC	East African Community
EFTA	European Free Trade Association
ENT	Economic Needs Test
EPA	Economic Partnership Agreement
ETSI	European Telecommunications Standards Institute
FDI	Foreign Direct Investment
HACCP	Hazard Analysis and Critical Control Points
ICT	Information and Communication Technology
IIP	Infant Industry Protection
ITAC	International Trade Administration Commission (South Africa)
GDP	Gross Domestic Product
GI	Geographical Indications
GIZ	German Corporation for International Cooperation
GOL	Government of Lesotho

GSP	Generalized System of Preferences
IPR	Intellectual Property Rights
ISO	International Organisation for Standardization
ITU	International Telecommunications Union
LHWP	Lesotho Highlands Water Project
LRA	Lesotho Revenue Authority
LSI	Lesotho Standards Institution
MCC	Millennium Challenge Corporation
MFN	Most Favoured Nation
MRL	Maximum Residue Level
MOA	Ministry of Agriculture and Food Security
MSBCM	Ministry of Small Business, Cooperatives and Marketing
MSE	Medium and Small Enterprises
MSME	Medium, Small and Micro Enterprises
MTEC	Ministry of Tourism, Environment and Culture
MTI	Ministry of Trade and Industry
MVA	Manufacturing Value Added
NIFS	National Inclusive Financial Strategy
NQI	National Quality Infrastructure
NQP	National Quality Policy
NSDP	National Strategic Development Plan
NSPR	National Services Policy Review
NTPF	National Trade Policy Framework
OBFC	One-Stop Business Facilitation Centre
OIE	International Organisation for Animal Health
PCT	Patent Cooperation Treaty
PIESA	Power Institutes of Southern Africa
PPP	Public Private Partnership
PRSP	Poverty Reduction Strategy Paper
RERA	Regional Electricity Regulators Association
SACU	Southern African Customs Union
SACUA	Southern African Customs Union Agreement (followed by 1910, 1969 or 2002)
SADC	Southern African Development Community
SADCAS	SADC Accreditation Service
SANAS	South African Accreditation Service

SARS	South African Revenue Service
SPS	Sanitary and Phyto-Sanitary (measures)
TBT	Technical Barriers to Trade
TFA	Trade Facilitation Agreement
TIDCA	SACU Trade and Investment Development Co-operative Agreement with the United States
TFTA	Tripartite Free Trade Area
TRIPS	Trade Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference for Trade and Development
UNIDO	United Nations Industrial Development Organisation
USAID	United States Agency for International Development
VAT	Value Added Tax
WB	World Bank
WHO	World Health Organisation
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

FOREWORD BY MINISTER OF TRADE AND INDUSTRY

The development and implementation of trade policy requires continuous efforts by the Government of Lesotho for shaping her economic development in order to effectively participate in domestic, regional and global trade. The Kingdom of Lesotho, like many developing countries, found it prudent to develop a comprehensive National Trade Policy Framework to enable her to participate meaningfully in the cross-border trade particularly to promote product and market diversification. The ultimate goal for Lesotho is to produce high value products to tap into high end markets and boost her export earnings. There is proven evidence that trade provides a catalytic effect on sustainable economic growth resulting in job creation and poverty alleviation.

The National Trade Policy Framework is aligned with the NSDP II strategic goals which aim to transform Lesotho from a consumer-based economy to a producer and export-driven economy. This framework provides transparent guidelines for implementation of Lesotho's trade agenda. It identifies specific policy and regulatory interventions designed to advance Lesotho's development aspirations and to create a conducive business environment for private sector including Micro, Small and Medium Enterprises (MSMEs). It also outlines actions required to transform Lesotho's economy and highlights activities that should be undertaken by various stakeholders for implementation of concrete policy actions.

The Government of Lesotho has initiated several strategic approaches to facilitate employment creation by private sector through a mix of socio-economic and structural policies. It is for this reason that Lesotho is vigorously engaged in attracting both domestic and foreign to investors to take part in these efforts. Increasing economic growth and diversification as well as improving Lesotho's competitiveness into the export markets, coupled with efforts to boost domestic and foreign private investment are of priority to the Government, hence the development of the policy frameworks that will guide policy makers, private sector and all role players in trade to fulfil their roles.

The National Trade Policy Framework will therefore serve as a tool that will enable Lesotho's private sector to take full advantage of the existing and potential market access dispensations. Given the small domestic market, this framework encourages an export-led growth. It focuses on the following thematic Areas: (i) Increasing Domestic Market Infrastructure and Trade; (ii) Trade Agreements, (iii) Regional Integration and Export Competitiveness; (iv) Trade in Services; (v)Trade Facilitation; (vi) National Quality Infrastructure; (vii) Intellectual Property; (viii) Competition and Consumer Protection; and (ix) Trade and Sustainable Development.

I implore all stakeholders to focus on thorough implementation of this policy framework and exert the same effort and dedication which they applied during the formulation stage. I therefore thank each and everyone who contributed to the success of this piece of work particularly the private sector whom I firmly believe will continue to cooperate and work with all stakeholders to attain the expected results of this policy framework. Most of all, I wish to express my sincere appreciation to the European Union and SADC Secretariat for the financial support under the Trade Related Facility to enlist technical expertise of the consultants who compiled this document.

I feel highly indebted to their resolute support to the Government of Lesotho on trade-related matters and for that reason, I guarantee full implementation of the National Trade Policy Framework.

Dr. Thabiso Molapo

Minister of Trade and Industry

NATIONAL TRADE POLICY FRAMEWORK

2021-2025

"Enhancing Trade for All"

EXECUTIVE SUMMARY

As a small landlocked economy, encircled by South Africa, Lesotho is committed to using trade as a key driver of economic growth and development. The Second National Strategic Development Plan commits the government to adopting a trade policy that will maximize private sector investment aimed at increasing Lesotho's regional and global competitiveness. Over the past two decades Lesotho has taken advantage of preferential market access dispensations (AGOA, Cotonou Agreement, and GSP) to attract foreign direct investment in labour intensive manufacturing for export outside the region, primarily to the US and the EU. Following the end of the Multi-Fibre Arrangement in 2005 and the Great Recession of 2008 the bulk of the new investment has focused on producing apparel, footwear and other labour-intensive products for the South African market.

Lesotho's existing trade policy is primarily determined by her membership of the Southern African Customs Union (SACU). The 2002 SACU Agreement provides for free movement for all domestic products within the common customs area while implementing a Common External Tariff (CET) on all goods imported from third countries. As a member of SACU; Lesotho cedes autonomy over external tariff policy, including the use of rebates, refunds and customs duty drawbacks. Prior to 2002 SACU Agreement, tariff policy was solely determined by South Africa. Under the new Agreement, provision is made for the joint determination of the common external tariff. All parties also committed to jointly negotiate trade agreements with third parties, to develop common industrial policies and to cooperate on agricultural policies.

Lesotho therefore, as a member of SACU, is party to the SADC Free Trade Area and is engaged in a series of ongoing regional trade negotiations. These include the Tripartite Free Trade Area (TFTA), and the African Continental Free Trade Area (AfCFTA). In addition, when the United Kingdom formally leaves the EU it will be necessary for SACU and Mozambique to have concluded an economic partnership with UK to ensure continued market access into the UK.

Within SACU Lesotho may propose changes to the Common External Tariff. As a small developing economy focusing on encouraging investment for exports Lesotho stands to benefit from further reductions in the CET, however, South African concerns over protecting import substituting industries to maintain jobs limits the opportunities for reforming the CET in the short term. Lesotho should continue to engage in an active dialogue through existing SACU mechanisms aimed at advancing regionally and internationally competitive value chains. To this end, Lesotho will have to effectively utilize the SACU Rebate and Duty Drawback facilities to benefit even the small and emerging businesses.

Lesotho will prioritize implementation of the 2002 SACU Agreement through preparation of the legislation and regulations for a National Tariff Board. She will also update the Import and Export Control Act and prepare guidelines for the operation of the Lesotho National Tariff Board. Consequently, the import permit procedures will be simplified, including introduction of automated permits. The Infant Industry Protection is one of the tools that Lesotho can implement but she recognizes that this must account for the impact on low income Basotho consumers while also committing to becoming regionally competitive.

Lesotho is an active member of the World Trade Organization (WTO). As a Least Developed Country she benefits from Special and Differential Treatment.[1] Furthermore, Lesotho participates in the ACP group, the African Group, G-90 and the Least Developed Countries Group in the WTO to secure improved market access and advocates for the removal of non-tariff barriers, and to lobby for 'adequate financial and technical assistance to address supply side constraints.'

Duty Free and Quota Free (DFQF) market access to the United States through AGOA is only guaranteed until 2025. The uncertainty over the future of AGOA duty free preferences require Lesotho to begin engaging in dialogue with the US. Lesotho needs to prepare to compete with other labour-intensive exporters without relying on substantial tariff preferences through increasing productivity and lowering trade costs.

Services serve as an important input to Lesotho's manufacturing sector and have a key role to play in increasing the economy's competitiveness. Given the size of her economy, Lesotho commits to implementing regulations that encourage competition, spur efficiency, and deliver quality services to businesses and private citizens. Following the National Services Policy Review (NSPR), the GOL endorses the development of a national services development strategy to maintain and enhance the performance of the targeted services sectors.

Lesotho ratified the Trade Facilitation Agreement in January 2016 and notified her commitments in June 2018. There are numerous areas in which Lesotho can improve the efficiency of cross border flows. While many of the reforms can be implemented by the Lesotho Revenue Authority (LRA) and the One Stop Business Facilitation Center, further reductions in trade costs could be realized with improved border agency cooperation and dialogue on both sides of the border. Specific administrative recommendations include establishing a hotline between the LRA and the South African Revenue Services (SARS), and setting

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[1] Provision for developing countries contained in several agreements administered by WTO.

up a dedicated unit for large exporters. It is for this reason that streamlining and simplifying trade within SACU should be a priority.

Lesotho has developed a draft National Quality Policy (NQP) which outlines the relationship between technical standards, metrology, certification and accreditation. The draft NQP recognizes that not all the functions have to be provided by the state and that services are available commercially in South Africa and other countries. The Lesotho Standards Law (2014) provides for the establishment of the Lesotho Standards Institution under the MTI and grants the mandate for the preparation and publication of Lesotho National Standards. Lesotho has also developed other quality related policies on Mineral and Mining, National Food Safety, National Plant Protection, National Animal Protection and Information Security and Data Security.

Lesotho will implement the Lesotho Standards Institute, develop effective legal instruments to cover measurement standards and the related metrology bodies. It will further establish the legal framework for implementing and enforcing SPS, ensure effective mandates for enforcement and market surveillance related to technical regulations, and provide support to ensure testing laboratories and other conformity assessment bodies are accredited.

Strengthening Intellectual Property Rights (IPR) will promote diversified growth through innovation, creativity and entrepreneurship. Encouraging and or empowering both local and foreign companies to protect their trademarks will improve their businesses and protect consumers from low-quality counterfeit goods. The trade policy should commit to strengthen IPR laws, enforcement and awareness. Specifically, the Government will update, finalize, and approve the Intellectual Property Plan for Lesotho as developed with WIPO in 2015.

The legislation should be updated to include Geographical Indications and trade secrets. Enforcement needs to be strengthened with the establishment of IPR courts, the provision of IPR legal training and the LRA should set up an IPR office. The trademark and patent registration process should be digitized to streamline the process and allow for public searches.

Lesotho has drafted a National Competition Bill which is ready for presentation to Parliament. Lesotho approved a Consumer Protection Policy in 2013 and the draft Consumer Protection Bill is now awaiting presentation to Parliament. In finalizing the Competition and Consumer Protection legislation Lesotho will, following best practice, need to ensure they address: the prohibition of anti-competitive business practices and conduct; the regulation of mergers and acquisitions; and the enforcement of consumer protection. It is recommended that the competition and consumer protection laws be implemented by one agency. As a member of SACU Lesotho will cooperate closely with other SACU

Member States` Competition and Consumer Authorities in addressing cross-border and SACU wide anti-competitive practices.

Trade policy has the potential to address environmental concerns by removing trade restrictions on environmentally sound goods and services. Reducing trade costs for environment-related goods and services (for example, solar panels and wind turbines) will increase demand. Lesotho stands to benefit from supporting initiatives within SACU to remove tariffs on environmental goods. The Government of Lesotho commits to strengthening environmental governance with a focus on the mining sector, the waste created by the textile sectors, and to developing a comprehensive climate change resilient economy. It remains committed to improving environmental governance and developing a strategy for building a more environmentally resilient economy.

1. Introduction

The National Trade Policy Framework (NTPF) has been developed in the context of Lesotho's 2020 Vision and the National Strategic Development Plan II (NSDP II). Both documents prioritize accelerating economic growth driven by the private sector and commit to increasing competitiveness in domestic, regional and global markets. The development of a broader based private sector is underpinned by the National Industrialization Policy that seeks to diversify the range of products and the destination markets. In line with NSDP II the fundamental principle underpinning Lesotho's trade policy is the Government's commitment to deliver more sustainable and inclusive growth.

The National Trade Policy Framework provides transparent guidelines for implementing the GOLs trade agenda and to that end identifies specific policy and regulatory goals aimed at advancing Lesotho's development for all investors, both domestic and foreign and citizens. Once adopted the trade policy will contribute towards a stable policy environment.

The NSDP II sets down the goal of transforming Lesotho to a producer-based economy led by the private sector. This requires Lesotho to substantially expand the value and range of products exported to existing and new markets. The National Trade Policy Framework outlines policies, regulations, institutions and actions required for transforming Lesotho's economy. The proposed actions will reduce Lesotho's trade costs.

Successful national trade policies are finalized through a comprehensive and inclusive process involving widespread consultations with in-country stakeholders. The stakeholder dialogue is underpinned by sound economic analysis, benchmarking the country's competitiveness against comparator countries and regional peers.

Lesotho is a small landlocked developing economy, consisting of 2.2 million people, completely encircled by South Africa. Given her size and geography Lesotho has committed to prioritizing outward oriented growth within the region and internationally. To this end Lesotho is a member of the Southern African Customs Union (SACU), the Southern African Development Community (SADC), the COMESA-EAC-SADC Tripartite Free Trade Area, the African Continental Free Trade Area and the World Trade Organization. Lesotho is also party to SACU Agreements with third parties including the EU-SADC Economic Partnership Agreement, UK-SACU plus Mozambique Economic Partnership Agreement, the SACU-EFTA Free Trade Agreement, and the SACU-MERCOSUR preferential trade agreement. As a developing country Lesotho also benefits from unilateral preferential trade agreements including the African Growth and Opportunities Act (AGOA) with the US, Everything but Arms with the EU and the multilateral Generalized System of Preferences (GSP). Lesotho's Trade Policies are geared towards maximizing exports through improving the domestic business enabling environment, implementing trade facilitation to reduce trade costs, maintaining and expanding market access regionally and internationally.

A comprehensive National Trade Policy Framework builds on existing Government policies and regulations, a rich literature of applied analysis carried out by international cooperating partners and national and international academics. Over the past decade Lesotho has benefited from substantial applied analysis.

Most recently two reports by the World Bank: i) Supporting Lesotho's Economic Diversification and Trade Integration - Structural transformation through greater export competitiveness (January 2018) and ii) Unlocking the potential of Lesotho's Private Sector: A Focus on Apparel, Horticulture, and ICT (September 2018) recommended a range of institutional, regulatory and policy issues for increasing trade competitiveness. Other recent background studies include Dahlberg, Lesotho Productive Sector Analysis-Final Report (May 2018) for the MCC, and the Diagnostic Trade Integration Study Update in 2012.

The Ministry of Trade and Industry also received technical support from the UK DFID Trade Negotiations Facility; support from the World Bank under the both the 1st and 2nd phases of the Lesotho Private Sector Development and Economic Competitiveness Project; and the Commonwealth Secretariat Hubs and Spokes projects. Lesotho further received trade related support from other multilateral donors under regional programs including the WB, UNCTAD, UNIDO and the AfDB as well as bilateral donors including USAID and GIZ.

Lesotho's National Trade Policy is organized across the following Thematic Areas:

- **Domestic Market Infrastructure and Trade**
- **Trade Agreements,**
- **Regional Integration and Export Competitiveness**
- **Trade in Services**
- **Trade Facilitation**
- **National Quality Infrastructure**
- **Intellectual Property**
- **Competition and Consumer Protection**
- **Trade and Sustainable Development**

Each policy component within the thematic areas outlines the context for the policy, the objectives and the desired policy. This provides a rationale for the recommendations in each of the thematic areas. The policy recommendations provide guidance for specific interventions that will be developed over the coming decade.

Prior to presenting each of the subject areas the NTPF presents a summary of Lesotho's recent trade performance.

2. LESOTHO'S RECENT TRADE PERFORMANCE

2.1 Overview

Lesotho's economy is closely inter-linked with South Africa through trade, labour migration, a customs union, and a common monetary area that influences her fiscal and monetary policies. Lesotho is highly dependent on South Africa, for imports, remittance income, revenue from SACU and employment. Lesotho's domestic economy is primarily based on subsistence agriculture, an emerging diamond mining industry, labour-intensive manufacturing, and a large services sector. It has a narrow export basket concentrated on a small number of products and trading partners.

2.2 Review of Economic Performance and Trade

2.2.1 Macroeconomic Performance

Between 2014-2017 Lesotho's economy realized an average growth rate of 1.0% per annum which resulted in an annual decline in per capita income of 0.6%. National savings also declined from 26.7% in 2015 to 18.7% in 2017. During the same period government expenditure continued to increase and the budget deficit widened. Against the background of increased government expenditure, national savings is forecast to remain subdued until 2020. With reduced national savings and increased consumption, there is growing pressure to reduce public investment in the absence of reducing the growth in recurrent expenditure. Gross investment has declined from 10.3% of GDP in 2015 to 8% in 2017 and is expected to drop to 7% in 2020 in the absence of significant adjustment measures. Table 1 below provides selected macroeconomic indicators for Lesotho.

Against the general environment of weak economic growth inflation has remained relatively under control. Although it increased from 3.2% in 2015 to 6.6% in 2016 it has since receded to 5.2% in 2017. With food prices expected to remain stable it is projected to be maintained at 5% up to 2020 although rising fuel prices and the depreciating currency pose major risks.

After deteriorating by 8.6% in 2016 the current account deficit narrowed to 6.2% of GDP in 2017 due to improvements in the primary and secondary income account balances. Conversely in 2016 the financial account improved to 10.6% of GDP reflecting mainly FDI inflows to the mining industry but then declined in 2017 to 2.2% of GDP. The capital account is projected to improve in early 2019 when construction commences under the second phase of the Lesotho Highlands Water Project (LHWP). On the other hand, official reserve assets, measured in months of imports, declined from 5.1 months in 2016 to 4.1 months in 2017 largely due to increasing domestic absorption. In the medium-term reserves are expected to continue to be under pressure, unless the growth in government consumption is capped.

On budgetary operations, the fiscal space is expected to contract over the medium term in line with deterioration in revenue and decline in government deposits. The SACU receipts have been falling while at the same time there was a shortfall in the collection of domestic revenues. Although the fiscal deficit dropped to 5.7% in 2017 compared with 8.8% in 2016 there is still risk it might rise again. Subject to the risks being well managed, the fiscal deficit is expected to narrow to 3% in the medium term.

Table 1: Lesotho - Selected Macroeconomic Indicators

	2015	2016	2017	2018*	2019*	2020*
GDP Growth Rate	2.5	3.3	-2.7	1.2	1.1	0.9
Sector Growth rates (%)						
Agriculture	-31.2	161.1	-16.2	-10.2	7.3	4.4
Mining	0.8	-2.4	4.1	7.8	3.6	3.1
Manufacturing	12.3	21.6	-6.0	0.8	1.2	1.2
Construction	4.8	-13.5	-7.9	9.3	2.1	-0.1
Services	3.6	1.2	-1.6	0.5	0.7	0.6
As % of GDP						
National Savings	30.0	23.4	21.1	18.4	15.9	17.8
Total Investment	33.1	32.0	27.3	25.0	25.0	24.8
Current Account	-3.1	-8.6	-6.2	-6.6	-9.1	-7.0
Financial Account	4.5	10.6	2.2	1.9	3.5	2.1
Capital Account	1.6	2.1	1.7	4.6	5.6	4.9
Budget Balance	2.1	-8.0	-5.7	-5.2	-3.8	-3.5
Inflation (%)	3.2	6.6	5.2	5.0	5.3	5.3
Official Reserves (months of imports)	6.3	5.1	4.1	3.7	3.4	3.4

Note: *Projected. Source: Central Bank of Lesotho Economic Outlook June 2018

2.2.2 Industrial Performance

Industrial performance in Lesotho revolves around the following sectors: agriculture; mining; water; manufacturing; and building and construction.

Broad based industrial activity in Lesotho, including agriculture, mining, construction and manufacturing accounted for 25 percent of GDP in 2016. Prior to the 2008 financial crisis industrial activity represented close to 40 percent of GDP and was dominated by manufacturing and agriculture.

As shown in Table 2 agricultural value added had the highest share until the 1990s when is started declining and was surpassed by manufacturing value added. Despite the fall in the share of agriculture value added the sector remains the main source of income and livelihood for almost 60 per cent of the population.

Fortuitously, the decline in the share of agricultural value added has been offset by the growth of manufacturing due mainly to the apparel industry. The construction industry recorded its strongest growth in the late 1990's and peaked in 2000 driven by infrastructure investments in the Lesotho Highlands Water Project (LHWP). Although it subsequently tapered off following the completion of Phase 1B it is expected to increase again, in 2019, with the commencement Phase 2 of the LHWP.

Since 2005 there has been renewed investment in mining, primarily diamond and quarrying. The largest industry in Lesotho is manufacturing, dominated by garments, footwear and leather sectors which accounts for about 60 percent of the sector. The rapid growth of the manufacturing industry during the early nineties was stimulated by Lesotho having duty free and quota free access to the United States market through the Africa Growth and Opportunity Act (AGOA). Since 2000, when AGOA entered into effect, manufacturing value added (MVA) grew from 9% in 1980 to 13% until it peaked at 22% in 2005. The decline in MVA after 2005 was mainly attributed to the expiry of Multi-Fibre Arrangement (MFA) at the end of 2004. The expiry of MFA eliminated the quotas on Asian countries exporting apparel to the US and led to the entry of more competitive apparel products into that market. Although the manufacturing industry continues to be the dominant industry in Lesotho its contribution to national output has declined. Since 2009 new investment in apparel production in Lesotho has been aimed at supplying the South African market.

Table 2 below shows that the share of total industrial value added declined from 38% in 1980 to 25% in 2016.

Table 2: Industrial Structure of Lesotho (Sectoral Value-added as % of GDP)

	1980	1990	2000	2005	2010	2013	2014	2015	2016
Agriculture	27	17	12	9	8	7	6	5	5
Mining	1	0	0	2	4	5	4	4	4
Construction	5	7	10	5	6	8	6	6	7
Manufacturing	5	9	13	22	16	12	9	9	9
Total	**38**	**33**	**35**	**38**	**34**	**32**	**25**	**24**	**25**

Source: Bureau of Statistics & Central Bank of Lesotho (CBL)

2.2.3 Enhancing Domestic Production Capacity and Trade

The industrial base of Lesotho determines its production capacity. As shown in Table 2 above the country's industrial base is quite narrow and is declining. Its contribution to GDP has contracted to 25% in 2016 from its peak of 38% in 2005. In the National Strategic Development Plan (NSDP) 2012/13 – 2016/2017 which is currently undergoing revision, GOL has articulated its growth strategy which mainly revolves around the primary objectives of export diversification and employment creation. To expand production capacity, the NSDP II proposes high levels of investment and donor funding, economic diversification and exploration of export market opportunities. The existing Industrial Policy which is also being reviewed explicitly states that to expand its industrial base Lesotho must increase the competitiveness of investment projects relative to its neighbouring countries.

The Industrial Policy identifies key intervention areas as:

- Improving industrial governance mechanisms;
- Promoting the Basotho entrepreneurial sector and SME linkages;
- Promoting diversification in export products;
- Increasing the value-added production;
- Promoting export market diversification; and
- Improving physical infrastructure.

2.2.3.1 Industrial Governance

Improvement of industrial governance mechanisms entails establishment of institutional structures and mechanisms to maintain a continuous industrial policy cycle involving not only industrial policy formulation, but also implementation, monitoring, evaluation and subsequent policy reformulation and adaptation. Industrial governance is a dynamic process that involves all stakeholders to vertically and horizontally share information, collaborate and cooperate in all spheres of formulation and implementation of the policy. Lesotho's industrial governance system is not strong enough to avoid duplication of activities. There is also a need for improved coordination, consultation, information sharing, and monitoring and evaluation.

The Ministry of Trade and Industry, is the main custodian of industrialization policy and its implementation, is expected to be providing leadership. However, other Ministries tend to have similar policy objectives. These include the Ministry of Finance and its Private Sector Development Division and the Ministry of Small Business, Marketing and Cooperatives (MSMC) and the parastatal Basotho Enterprise Development Corporation (BEDCO). Based on the foregoing, coordinated implementation process for industrial-related policies is critical.

The MTI is also responsible for facilitating trade with the rest of the world through its Trade Promotion Unit (TPU) within the Department of Trade and implements the trade promotion function through the LNDC's Trade and Investment Promotion Division.

In 2015, promotion of indigenous enterprises was assigned to a newly created Ministry, when the then Ministry of Trade and Industry, Cooperatives and Marketing (MTICM) was split into two ministries. While the MTI is responsible for promoting large domestic and foreign investment, the MSCM is expected to focus on MSMEs.

2.2.3.2 Diversification

Since the textiles and clothing became the dominant export product in the 1990s, the GOL committed to promoting economic diversification to reduce the dependence on a narrow range of export products. Several economic diversification initiatives are currently being implemented through assistance from donor agencies, including the World Bank and the African Development Bank (AfDB). In 2007 GOL with the assistance of World Bank, established the Private Sector Competitiveness and Economic Diversification Project (PSCEDP) which is aimed at addressing the micro and macro constraints to growth and job creation. The project supports MSMEs and further assists in broadening the export basket through encouraging commercial horticulture; tourism and creative industries (handicrafts); and supporting trade and investment promotion; and increasing value chain linkages.

In 2018 GOL with the support from AfDB launched the Economic Diversification and Support Project (EDSP) which aims to stimulate broad based growth, improve access to finance, augment entrepreneurial skills for MSMEs. The project is also meant to strengthen capacity in industrial policy planning, implementation and monitoring, enhance the capacity for standards and certification of products, and deepen the quality of the public/private sector dialogue and partnerships. These projects have the potential to expand and diversify Lesotho's production capabilities.

The NSDP II identifies four priority sectors as potential growth paths for increasing production capacity and contributing to export diversification diversify exports. These include agriculture, mining, manufacturing and tourism.

a) **Agriculture**–Agricultural value added has declined from 27% of GDP in 1980 to 5% in 2016. The GOL is committed to expanding high value agri-business. According to the SADC Industrialization Strategy and Roadmap report, increased agricultural productivity and higher quality products are central to the development of agro-industry and agriculture-based value chains. Given that about 70% of Lesotho's population lives in rural areas where unemployment, under-employment and poverty are very high. GOL is committed to encouraging rural based industrialisation aimed at expanding agro-processing in the rural areas.

Expanding the rural economy requires rapid and sustained productivity growth to ensure competitiveness of agro-industries in the regional economy. The current strategy of block farming where government expends large sums of money without commensurate output may not be the strategic approach for efficient and sustainable agri-business. In line with the SADC Industrialization Strategy and Roadmap the following are recommended to expand agricultural sector output:

- *Productivity growth in agriculture should be vigorously promoted across the product range, including inputs. The range of products identified should only be those in which Lesotho has both comparative and competitive advantage.*
- *Value addition in agriculture and participation in agro-industry value chains is often held back through lack of skills, lack of standardised products, post-harvest losses, inadequate marketing and infrastructure facilities, and insufficient market information. To promote the growth of agro-industrial operations, GOL should address these supply side constraints.*
- *Agro-industrial production processes and capacities require upgrading in terms of both quality and the modernization of production systems to bring them in line with international standards.*
- *GOL must ensure the availability of the most essential prerequisites for agri-business growth and development which are quality, and phytosanitary and sanitary assurance*.

b) **Mining**–Lesotho has a growing diamond mining industry and exploration in other minerals is on-going. The country's mining policy is aimed at advancing domestic empowerment, artisanal and small-scale mining, as well as increasing economic linkages. However, presently the mining sector is an enclave and diamonds are mostly exported in their raw form. In order to effectively and efficiently expand the production capacity of her mining industry, Lesotho must fully exploit her comparative advantage. This can be achieved through supporting policies aimed at increasing beneficiation and local value addition while remaining internationally competitive. To this end Lesotho should:

- *Negotiate with investors upfront to maximize the linkages from the mining investment. This will include backward and forward linkages.*
- *Address the key constraints limiting backward and forward linkages. These include technical and human resource skills and physical infrastructure.*
- *Promote linkages through encouraging cross-border regional collaboration, between firms, industries and sectors along the primary commodity processing value chain, including backward linkages for the supply of inputs*
- *Evaluate the viability of establishing a special capacity building fund financed from mineral rents to finance training, and capacity building*.

c) **Manufacturing –** The manufacturing sector in Lesotho is dominated by textiles and clothing industry which accounted for 82% of total MVA in 2017. It is followed by food and beverages with 7%. The contribution of other manufacturing activities like chemicals, pharmaceuticals, and mineral processing is insignificant. Lesotho has taken a correct decision to diversify her economy and reduce dependence on textiles and clothing.as a long-term goal. To this end the textiles and clothing industry needs to be supported and its capacities strengthened not only to leverage the growth of other industries but to reduce the risk of a sudden drop in economic output. The Lesotho Response Strategy to AGOA, attests to the fact that Lesotho has a high comparative advantage in apparel production. Within the AGOA framework, preference margins for Lesotho apparel exports are high but as compared to global US apparel export, the share of Lesotho is low. Lesotho has the potential to further grow her exports under AGOA.

The following measures are recommended to improve competitiveness of the industry:

- *Increase labour productivity through acquisition of sophisticated sector technical skills;*
- *Encourage the diversification towards higher value apparel products;*
- *Reduce cost of doing business and utility costs;*
- *Simplify cross-border administrative procedures through implementing the Trade Facilitation Agreement;*
- *Improve cross-border infrastructure to further reduce trade costs;*
- *Through negotiations with South Africa assess the possibility of establishing a railway transport corridor between Lesotho and South African seaports. Through various studies it has been proven that railway*

transport is by far the most cost effective form of transport for landlocked countries like Lesotho;

- *Encourage further vertical integration within the textile and apparel sector.*

d) Tourism– In 2017 the tourism sector contributed only 1.4% of total output. Despite being identified as one of the priority sectors tourism remains small. The NSDP II 2018/19-2022/23 identified the **binding constraints** of the sector:

- Inadequate infrastructure, transport and tourism facilities;
- Confusion in the respective roles of tourism support institutions;

Recommendations for increasing the growth of the tourism sector include:

- *GOL will identify tourism designated areas and then support the development of the necessary public infrastructure;*
- *Create enabling environment conducive for MSME growth as well as development of local supply chains in tourism areas;*
- *Expand and improve facilities and activities at cultural and heritage attractions and package related and complementary products to create unique and special cultural product offering;*
- *Develop a joint development agenda with South Africa on a formal basis to improve investment climate.*

2.2.4 Trade Performance

In 2017 Lesotho exported US$1.03 billion and imported US$2.12 billion meaning its exports could only afford to purchase 48% of her imports, the remaining deficit being covered by SACU receipts, remittance, loans and grants. Lesotho's narrow industrial base limits the number of products exported while agriculture, which employs more than half the population, is largely producing for subsistence and the domestic market. Figure 1, shown below, highlights how the trade imbalance has doubled since the 2012. The coalition governments since 2012 have presided over a rapid increase in government spending which increased the demand for imports.

Figure 1: Trade Balance

Source: CBL

2.2.4.1 Trade in Services

Services are the largest sector in terms of contribution to the economy and, over the past decade, have also been the fastest growing. In the 10 years ending in 2017 services grew by 5% while aggregate GDP increased, on average, by 3.1%. It is also a vital source of income and employment in Lesotho as the majority of MSMEs, especially informal ones, operate in this sector due to ease of entry and low capital requirements. In terms of its contribution to total output, in the past decade the sector grew from 54.4% in 2008 to 65.3% in 2017, as shown in Table 3 below.

Table 3: Growth in Services 2008 – 2017

Description	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Wholesale and retail trade; repair of motor vehicles	1 982	1 987	2 129	2 296	2 585	2 901	2 910	2 788	2 833	2 735
Transportation and storage	490	489	509	536	568	612	621	602	611	599
Accommodation and food service activities	286	270	281	297	326	339	341	300	314	330
Information and communication	384	451	544	613	647	744	919	1 059	1 198	1 062
Financial and insurance activities	602	653	769	855	985	1 193	1 465	1 497	1 431	1 705
Financial service activities, except insurance	478	503	586	665	743	922	1 212	1 260	1 163	1 430
Insurance and pension funding	86	106	132	136	179	200	181	164	190	195
Activities auxiliary to financial services	38	44	51	55	63	71	71	73	78	81
Real estate activities	1 198	1 210	1 212	1 226	1 251	1 278	1 295	1 321	1 343	1 367
Professional, scientific and technical activities	129	145	168	181	204	255	258	254	248	244
Administrative and support service activities	283	289	311	397	425	419	502	680	672	643
Public administration and defense; compulsory	2 032	2 305	2 354	2 583	2 709	2 495	2 541	2 736	2 778	2 877
Education	1 406	1 613	1 783	1 840	1 808	1 815	1 815	1 732	1 739	1 729
Human health and social work activities	281	317	317	465	590	633	752	783	831	867
Other service activities	217	216	227	224	239	243	256	247	268	271
Financial services indirectly measured	-142	-133	-162	-181	-185	-211	-223	-244	-246	-249
Total	**9750**	**10465**	**11211**	**12188**	**13137**	**13909**	**14916**	**15252**	**15451**	**15886**
Gross Domestic Product	**17 910**	**18 296**	**19 407**	**20 746**	**21 990**	**22 396**	**23 095**	**23 475**	**24 312**	**24 347**
% of GDP	**54.4**	**57.2**	**57.8**	**58.7**	**59.7**	**64.6**	**64.6**	**65.0**	**63.6**	**65.3**

This growth has not been correlated with the growth of the manufacturing. This highlights the limited linkages between the labour-intensive manufacturing sector for export and the rest of the economy.

Public administration and social development services represent the backbone of the services sector contributing 34.4% of the sector's output in 2017. Public administration and social services, including education and health, are mainly provided by GOL. After government provided services, wholesale and retail are the second largest accounting for 17.2% of services sector output. In value terms, the wholesale and retail sector are dominated by foreign investors who own large facilities and serve the more profitable urban consumer market. However, in terms of the number of enterprises and the numbers employed this sector is dominated by MSMEs, who primarily serve lower income and mostly rural consumers.

There are few linkages between the Basotho wholesale and retail sector and the domestic manufacturing sector reflecting limited domestic supply chains and relatively low local value added. Almost all merchandise traded through the wholesale and retail sector is imported from South Africa. The NSDP II states that "Lesotho has the opportunity to strengthen trade in services in tourism and exporting services in mining, agriculture, education and other professional business services.'' GOL recognizes that realizing these potential opportunities requires addressing supply side constraints. These supply side constraints include limited infrastructure, the absence of scale economies for companies solely serving the domestic market, skill shortages, and weaknesses in the business environment.

The finance and insurance services sub-sector has shown a strong potential for growth in the service sector. During the review period it has grown by 11% and contributed 10.7% of total sector output. The growth of the sub-sector has been in response to recent reforms aimed at modernizing the financial sector and expanding financial inclusion. While the reforms have contributed to the sector's growth, limited access to financial services mainly by MSMEs and rural population remains a challenge in Lesotho. The real estate sub-sector is the fourth largest activity in the service sector accounting in 2017 for 8.6% of total sector output. The growth in real estate largely stems from growing urbanization as Basotho migrate from the rural areas owing to the relative slower growth in agriculture and the reduced opportunities to work in the South African mining sector.

Information and communication services accounts for 6.7% of total sector output. This subsector has posted double digit growth rate of 10.7% over the past decade as mobile telephone access spread rapidly across the country.

Lesotho is a net importer of commercial services. In 2017 commercial services exports were valued at US$23 million and imports of the same were US$331 million. Travel accounts for the largest share of total commercial services exports at 61.9%. It is followed by other commercial services at 35.3%, with transport accounting for only 2.8%. In 2017 travel services exports amounted to US$14 million compared with US$209 million in imports. On the imported commercial services side travel takes the biggest share of 63.2% followed by other commercial services with 19.3%. Import of transport services accounts for 17.5%.

For the period 2010 to 2017 Lesotho's transport services exports fell by an annual average of 22%. Compared with world transport services exports which have been growing steadily, transport services exports in Lesotho have been declining. Travel exports have been steadily deteriorating since 2010 but started recovering in 2014 until 2016 before significantly declining in 2017.

Services have the potential to contribute to transforming Lesotho's economy, as a competitive service sector contributes to increasing productivity in manufacturing as well as in other sectors of the economy. Tourism; infrastructure; financial services; and information and communication technology (ICT) have been identified by the GOL as sectors with high growth potential. Countries with access to internationally competitive service sectors have also increased their competitiveness across the economy, including in manufacturing. Further, based on the comparative experience, multiple cross-country economies with lower per capita income had a larger scope for increasing productivity in the services sector. Lesotho has considerable further potential for increasing services productivity.

2.2.4.2 SACU Trade

In the financial year 2014/15 intra-SACU trade totalled M173.2 billion. Table 4 below illustrates that (except for trade with South Africa) Lesotho has very limited trade with the other SACU members. The other smaller economies also trade primarily with South Africa rather than with each other. Consequently, South Africa has a large trade surplus within SACU. This situation reflects the regional hegemony of South Africa and the economic and political history of the trading relationships within the SACU region. Following the democratic transition in South Africa SACU adopted a relatively more open trade policy however the common external tariff continues to provide protection to sensitive import substituting sectors in South Africa.

Table 4: Intra-SACU Trade 2014/15 (Imports and Exports - Billions of Maloti)

		Importing Countries					Total Exports
		Botswana	Lesotho	Namibia	South Africa	Swaziland	
Exporting Countries	Botswana	-	13	2.156	5.385	17	**7.571**
	Lesotho	4	-	8	2.862	105	**2.979**
	Namibia	11.202	3	-	6.526	323	**18.054**
	South Africa	50.915	13.860	50.004	-	15.988	**130.767**
	Swaziland	163	45	250	13.367	-	**13.826**
Total Imports		**62.284**	**13.921**	**52.418**	**28.140**	**16.434**	**173.197**

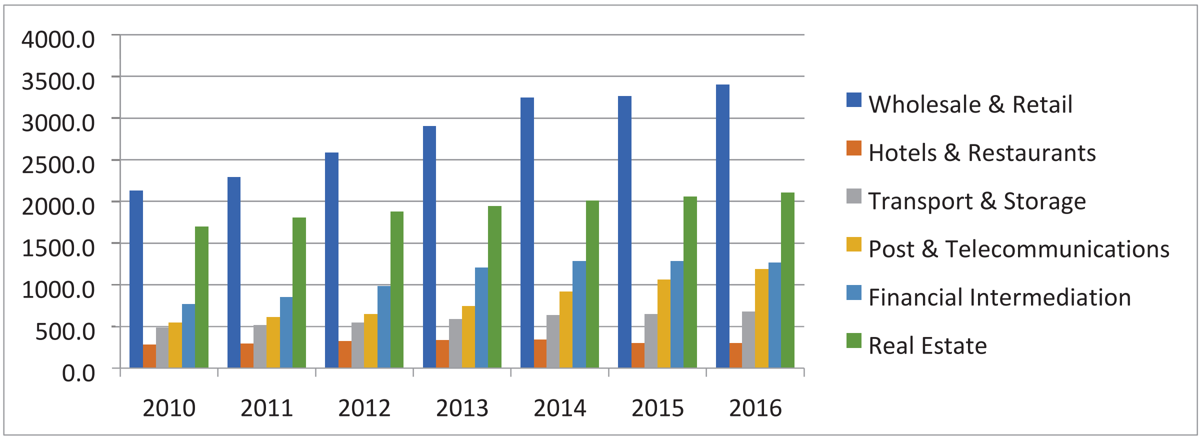
Source: SACU Annual Report 2017

2.2.4.3 Domestic Trade and Distribution

Lesotho's internal trade is relatively small due mainly to the limited size of domestic demand. The Government of Lesotho has identified five sectors as significant for improving the efficiency and growth of internal trade: wholesale and retailing; transport and storage; hotels and restaurants; post and telecommunications; and financial intermediation.

Figure 2 below highlights the importance of wholesale and retail trade. This is by far the largest internal trading activity in Lesotho. Over the past seven years to 2016 the wholesale and retail sector has grown by 8.1% per annum. Real estate is the second largest sub-sector. Between 2010 and 2016 it has recorded a steady growth of 3.6% even though in the last two years that growth decelerated to 2%. Real estate activity is mainly driven by industrial and housing demand.

Figure 2: Domestic Trade by Sub-Sector

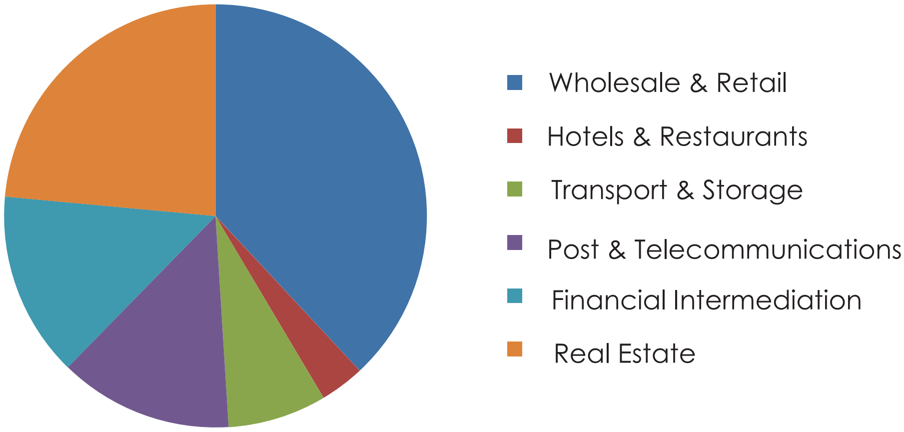


Source: Central Bank of Lesotho

Financial intermediation is the third largest sub-sector. Since 2008 to 2013 this has been the second highest growing sub-sector in the country. During that period the sub-sector grew by a robust 14%. However, in 2014 that growth tapered off to 6% before declining through to 2016. This reflected the overall poor growth of domestic economy. Post and telecommunications are the fourth biggest sector within the domestic trading space. Since 2009 post and telecommunications has been the strongest sub-sector in the country increasing by 16 percent in the eight-years ending in 2016. This period witnessed the rapid expansion of communication, computing, and information technologies in Lesotho, especially in voice, text and data. The impact of this sub-sector is transforming the way business is conducted in Lesotho, particularly with respect to small and micro enterprises.

Figure 3 below shows the internal trade sub-sectors in terms of their relative size. At 38% the wholesale and retail sub-sector account for the largest share of domestic trade. This subsector is mainly dominated by Medium and Small Enterprises (MSEs) which constitute 85% of Lesotho's private sector. Real estate is the next largest at 24% followed by financial intermediation and post and telecommunications respectively. Transport services and hotels and restaurants follow at 8% and 3% respectively. The transport and storage sub-sector is dependent on the performance of other sectors, especially manufacturing and construction. Owing to subdued domestic economic activity and a loss of market share to South African truckers this sub-sector has not grown in line with the increased trade.

Figure 3: Domestic Trade by Sector Size - 2016



Source: Central Bank of Lesotho

Figure 4 below shows domestic trade by sector contribution to total output (GDP) in 2016. Wholesale and retail are the largest sector accounting for 14% of GDP. What is more interesting is that besides having the largest contribution compared to other sub-sectors in domestic trade, wholesale and retail also has the highest contribution compared to all subsectors of the economy including agriculture, mining, manufacturing, and building and construction. The only other sub-sector coming close to wholesale and retail sub-sector in terms of its contribution to GDP is public administration sub-sector at 11.8%. The other subsectors contributions range between 8.7% and 1.3% as shown below.

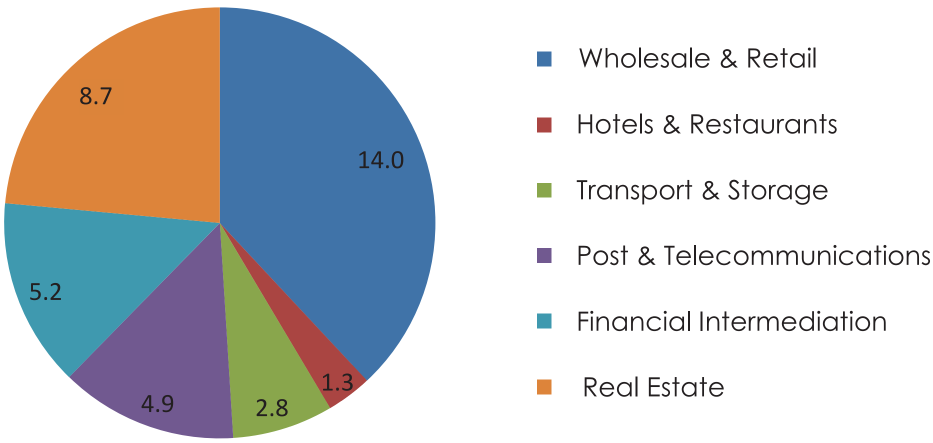


Figure 4: Domestic Trade as % of GDP – 2016

Source: Central Bank of Lesotho

"The GOL will mainstream the advancement of Basotho owned enterprises into the trade policy through a series of recommendations aimed at addressing existing supply side constraints."

3. DOMESTIC MARKET INFRASTRUCTURE AND TRADE

The GOL National Investment Policy and Industrial Policy[2] both promote Basotho entrepreneurship and MSME linkages, and value-addition. The GOL National Investment Policy (2015) encourages Lesotho's citizens to invest in businesses while also actively encouraging foreign investment throughout the economy, except for a negative list of small-scale businesses which are reserved for Basotho citizens[3]. Once registered; foreign investors enjoy the same rights and protections as national investors.

Lesotho's domestic trade faces multiple challenges; some are legal and regulatory, while others are related to poor physical infrastructure. Lesotho domestic trade is concentrated in wholesale, distribution, and the retail sub-sectors, and collectively this represent 17% of GDP which is larger than manufacturing (9%).

Businesses that produce for the domestic market are much smaller in size, largely Basotho owned, and primarily concentrated in sectors with high transport costs (for example, construction materials), or linked to agricultural production (vegetables, chickens, eggs, beef, leather products). The majority of Basotho owned businesses are in the service sector, with construction accounting for 30 percent of all the companies registered in Lesotho in March 2018.

Table 5: Ten Largest Industries: Number of Companies Registered in Lesotho

Sector	Number
Construction	9,946
Real Estate/Property Management	1,634
Mining	1,267
Catering	1,191
Cleaning Services	1,033
Consultancy	1,010
Security Services	516
Printing	344
Sewerage	103

Source: OBFC Lesotho

[2]Lesotho Industrial Policy, 2015-2017 is focusing on manufacturing with separate detailed policy documents for agriculture and tourism.

[3] This is limited to the following services: Agent of a foreign firm; Broker; Mini-Market; General Café; Basotho Beer Shop; General Café; Butchery; Snack Bar; Dairy Shop; Hair and Beauty Salon, Barber Shop; Petrol Dealer; Domestic Fuel; Hawker; Street Photographer; and Tentage Dealer (from Trading Enterprises Regulations 1999 and Trading Enterprises (Amendment) Regulations 2011.

Policies that reduce Lesotho's trade costs will encourage investment in Lesotho, however, weaknesses in infrastructure, capacity issues and structural imperfections in the capital market will continue to act as supply side constraints. Addressing these issues requires GOL to support a range of complementary policies and programmes targeted at directly addressing specific supply side constraints. This includes industrial policy, small business development policy, procurement policy, competition policy which prevents predatory pricing by foreign competitors, proactive business linkage programs, financing support mechanisms for business, market intelligence services, business support services for transferring business skills, and public procurement policies. Public Procurement policies have a trade dimension and are referenced below.

3.1 Increasing Production Capacity for Domestic and Export Markets

The Business Register prepared by the Bureau of Statistics (2015) attempted to survey all the firms engaged in economic activities located in fixed premises and employing a minimum of one person. According to the Business Register micro and small enterprises accounted for 97 percent of all firms in Lesotho, although over 50 percent of employment is in large firms. The economic activities are concentrated in a small number of sectors with low value added, with wholesale and retail and apparel accounted for 84 percent of the jobs. The large enterprises are mostly foreign owned and operate retail and manufacturing activities. Those in the manufacturing industry have weak links with the domestic economy, especially textiles and clothing firms. The Finscope survey of 2016 identified the main constraints facing Basotho business as:

- Access to finance – Access to finance is a major issue with MSMEs. Only 41% of MSMEs have access to bank finance.
- Cost of finance – Both large and small businesses complain about high cost of borrowing in Lesotho and absence of specialised trade finance facilities
- Small domestic market –MSMEs primarily sell to domestic consumers. High trade costs, the inability to benefit from economies of scale and quality issues all constrain access to external markets.
- Rental space – Both small and large enterprises are concerned about shortage of fully serviced rental facilities.
- Security – The high incidence of violence and crime is a common problem across all segments of the private sector.

Policy Objective

The GOL will mainstream the advancement of Basotho owned enterprises into the trade policy through a series of recommendations aimed at addressing existing supply side constraints.

The GOL commits to develop a range of complementary industrial and business development policies aimed at increasing Basotho engagement in competitive manufacturing or services for the domestic market. Policies targeted at encouraging increased citizen investment should be consistent with all the existing trade agreements and will not be based on restricting competition in the domestic market or requiring Basotho producers to sell their product in the domestic market.

Government procurement will be used in a transparent manner to encourage the purchase of domestically produced goods and services. Lesotho is not a signatory to the WTO plurilateral agreement on government procurement. Lesotho will ensure that the Public Procurement guidelines establish clear procedures for procuring goods, works and services while ensuring value for money, affordability, risk management, open and effective competition and transparent and ethical behaviour.

Policy Recommendations

The GOL reserves the right to encourage local production through providing a preference to local producers in government procurement. In addition, the GOL will seek to:

- *Encourage private banks and business development agencies to increase credit facilities for MSMEs for production and trade finance.*
- *Facilitate access to external markets for MSMEs by encouraging business linkages and supplier development programs through mentor schemes and building capacity to increase efficiency and enhance quality.*
- *Evaluate the existing training incentives, and the capacity of Lesotho technical and vocational training institutions to develop curricula that meet the human resource (HR) skill requirements for the private sector, with a specific focus on deepening existing value chains.*
- *Improve the efficiency of the utilities required for competitive business activities. This includes, access to power, water, waste-water processing, sewerage, industrial waste, telecommunications, and access to broadband.*

3.2 Wholesale and Distribution Trade

The International Standards Commercial Identifier (ISCI) defines wholesale trade as the sale of goods or merchandise to retailers, industrial, commercial institutional or other professional business users or to other wholesalers and related subordinate services. The yardstick commonly used to determine the sale is wholesale or not is the type of customer to whom the sale is made and not the size or volume of sales. Distribution trade refers to the trade of goods and services undertaken by a company or an individual on behalf of the company that produces the goods or services that are subject of sale through a distribution agreement. The distribution trade services also include agents' services and franchising services. Agents' services consist of sales on a fee or contract basis by an agent, broker, etc. Product or trade name franchising involves use of trade names in exchange for fees or royalties.

Wholesale and distribution trade play a significant role in Lesotho's economy. The sub-sector is fully liberalized and is dominated by few large foreign-owned companies mainly from South Africa, except in the distribution where some of the local companies have made significant in-roads. These companies have strong sophisticated supply chains in South Africa where they source most of their merchandise. There are few linkages with the local suppliers owing to domestic supply-side constraints, including quantity and quality challenges, and a lack of information on domestic suppliers. Most of these companies are located in the major urban areas in the lowlands.

Wholesale and distribution prices are largely based on the import price plus the trade and transport costs of bringing the goods from South Africa. The liberalized market encourages competition between the wholesalers, and the ability of retailers to also import from South Africa limits the opportunities for serious price disparities. In Lesotho it is now common practice for wholesalers and distributors to also sell to consumers based on the size or volume of sale.

The small size of the commercial agricultural sector has limited the emergence of aggregators and commercial buyers. Most agricultural products are traded through individual agreements, although the Ministry of Agriculture sets minimum prices for cereals. Lesotho does not have formal trading markets for its agricultural produce. Most agricultural products are traded through informal agreements even though in some cases, especially cereals, government sets minimum prices.

The domestic trade infrastructure in Lesotho requires upgrading in order to facilitate the transit of goods to and from South Africa. Some of the infrastructural improvements include the Maseru container terminal (MASCON) which needs to be upgraded and establishment of warehouses and distribution hubs. The access roads in the Maseru West industrial and commercial zone also need to be upgraded.

Lesotho suppliers are required to meet international quality, and SPS requirements. The absence of accredited laboratories increases the costs of compliance for local producers.

Policy Objective

The policy objective of the Government of Lesotho is to support the development of the wholesale and distribution trade sub-sector by providing a reliable, effective and efficient infrastructure.

Policy Recommendations

- *Improve cross-border movement of goods through trade facilitation and upgrading the physical infrastructure.*
- *Improve MASCON infrastructure and strengthen management*
- *Promote distribution services as classified in the Common Product Classification by providing requisite infrastructure through LNDC and BEDCO in the form of PPPs including development and maintenance of existing wholesale hubs, markets and commercial infrastructure*
- *Increase information on the importance of meeting quantity and quality requirements in the domestic, SACU and other markets by encouraging linkages and mentoring arrangements with international buyers.*

3.3 Retail Trade

The ISCI defines the retail trade as the resale of (sale without transformation) of new and used goods to the general public, for personal and household consumption. Domestic trade in Lesotho is dominated by retail trade and comprises large, medium, and small enterprises as well as a very big pool of informal microenterprises. Indeed, most of the businesses are informal microenterprises, employing two persons or less, and are primarily survivalist activities. Formal enterprises in the Lesotho retail trade are dominated by big South African retail shops and supermarkets located mainly in major district towns. Most of these shops and supermarkets use South African distribution networks and supply chains.

Most of the microenterprise businesses are unable to afford to pay rent for formal business premises as is a requirement to be licensed. Consequently, they largely sell their merchandise along the main busy streets in the country's major towns and villages or operate from private residences. While this practice contravenes local government regulations it also exposes their goods, especially food, to various health hazards. The retail premises where many microenterprises sell their goods lack waste management facilities and may also lack other utilities (water and power).

Increasing the availability of serviced infrastructure, with access to running water and electricity throughout the country will encourage investment in more efficient retails and service sector activities.

Over the past two decades Chinese migrants have entered the small and medium sized retail sector. In the four-year period ending January 2101 80 percent of the 3,300 work permits were allocated to Chinese citizens (Hanisch, 2013). The Chinese traders compete in the retail sector through their willingness to locate in more remote areas, and their ability to purchase stock in bulk and offer competitive prices. A recent report by Hanisch (2013) concluded that Chinese entry into the domestic trading sector has improved the supply of goods and created employment opportunities for Basotho.

The domestic trade sector faces a series of challenges, including legal and regulatory, capacity issues and financial constraints as well as soft and hard infrastructure challenges reviewed below.

The cost of doing business in Lesotho remains high even after rationalizing and streamlining the legal and regulatory environment. Lack of decentralization of services, especially those provided by OBFC is considered a major obstacle to promoting ease-of-doing business in Lesotho as most services are available only from the capital, Maseru. With the establishment of the new Ministry of Small Business, Cooperatives and Marketing (MSCM) there is a need for a strong collaboration and coordination of activities between MSCM and Ministry of Trade and Industry (MTI) as well for harmonizing the legal instruments aimed at promoting enterprise development.

Trading within Lesotho is governed by the Trading Enterprises Order of 1993 and its Regulations of 1999 and then further amended in 2011[4]. The Trading Enterprises Order of 1993 and its regulations established the Trading Enterprises Board[5] which would review applications and were tasked with promoting "citizens' participation in trading, investment, ownership, management and control of enterprises'. The Board is composed of public officers and one member from the Lesotho Chamber of Commerce and Industry. The Regulations identified 43 different types of trading services out of which 17 were

[4] Trading Enterprises (Amendment) Regulations 2011 (Legal Notice 158 of 2011) which amends the Trading Enterprises Regulations of 1999 (Legal Notice No. 107 published in the Gazette on 29 December 1999).

[5] The Act also provided for the Board to delegate any or all of its functions to a local licensing Board (under section 11).

reserved for Lesotho nationals. The 2011 Amendment to the regulations requires a wholesale business to have a minimum floor space of 1000 square meters and be located on premises with sufficient parking for customers. A trading license is issued for one year and is renewable.

Applications for trading licenses may be submitted through the One Stop Business Facilitation Centre in Maseru (www.lesotho.elicenses.org) or at the local offices of the Ministry of Trade and Industry.[6] The OBFC outlines all the information requirements and procedural steps for businesses located in Maseru District. The OBFC does not clarify if the same information or procedural steps are applicable in all the other Districts. An applicant is notified of the outcome of their application within 5 days of a Board meeting. For successful applicants the license is issued automatically once the license fee[7] has been paid.

The trade licensing system serves to regulate and control trading activities with the stated intent of protecting consumers (health and safety). Second, it registers individual traders (sole proprietors and partnerships) that are not required to register with the Registrar of Companies. The licensing system is used for data collection purposes, generates some revenue and as noted above reserves some business activities for Basotho citizens. The commitment of the OBFC to continue streamlining and simplifying the procedures for licensing trading activities will assist with improving the business enabling environment. However, while reducing red tape is necessary it will not address all the supply side constraints affecting the establishment and growth of Basotho owned value added activities.

Many of the local producers and service providers experience considerable challenges in being able to compete with imported products and services, primarily from South Africa. Some of the challenges include:

- *Difficulty accessing finance*. Businesses are required to finance the purchase of raw materials and other inputs, and only receive payment following the sale of the products or the provision of the service. Further, in many cases payments if made well after delivery. Private sector buyers generally pay within 30 days, however, contracts with government agencies often result in long delays which effectively discriminates against small businesses.

[6] In Mafeteng, Quthing,Qacha's Nek, Mokhotlong, Botha Bothe, Leribe, Berea, Thaba-Tseka, and Mohale's Hoek. The OBFC advises businesses in these districts to contact the local MTI office and lists a phone number.

[7] The license fee varies by service category with individual (sole traders) paying half the fee for partnerships and companies. The license fee for a Wholesaler (company) is M1,400 (approximately $102) and a supermarket M1,000 ($72.50)

- *Lack of market knowledge*. In many markets producers and buyers may not be aware of the potential buyers for their product, and even if they know the company the procurement office may be in South Africa. The additional costs involved in searching for buyers in South Africa raises the capital threshold for business and would discourage new entrants.
- *Insufficient information on Product Quality and Standards*. Many South African retailers will not purchase Lesotho products unless they have been tested and graded for quality. Some Lesotho producers of mushrooms and bottled water are unable to

their product via South African owned supermarkets in Lesotho as their production facilities have not be tested by an accredited agency. These are private market driven standards rather than mandatory technical regulations. Further, often goods will not be purchased by regional neighbours without the correct packaging and price bar-code.

Addressing these concerns require specific support that is largely outside trade policy. In addition to the examples provided above Basotho owned small businesses also require targeted interventions that directly address, *inter alia*, skill shortages, the difficulty of accessing finance for most small businesses with limited collateral, the dearth of readily available infrastructure (factory shells, small business units), limited access to broad band internet outside the major cities and towns, access to information on business opportunities. These interventions are more appropriately addressed through an industrial policy that complements the trade policy.

Policy Objective

The policy of the Government of Lesotho is committed to supporting the development of a strong and vibrant domestic retail sector by providing enabling and efficient legal and regulatory environment and improving the physical infrastructure, including increasing access to water and electricity throughout the economy.

Policy Recommendations

- *Encourage competitive and fair-trade practices (through passing the competition and consumer legislation).*
- *Improve effectiveness and efficiency of services provided by OBFC.*
- *Further streamline and rationalize the legal and regulatory system and reduce trade costs through trade facilitation and improving physical infrastructure and access to water and electricity.*
- *Harmonize legal instruments between MTI and MSCM and ensure strong collaboration and coordination between MTI and MSCM.*
- *Encourage local councils to establish retail business zones to accommodate and support growth and development of small and microenterprises retail markets. These facilities should be established within easy reach of residential areas in the main urban and rural towns complete with all the necessary infrastructure and utilities.*

4. Trade Agreements, Regional Integration and Export Competitiveness

4.1 Trade Agreements

Lesotho is a founding member of the World Trade Organizations (WTO), and grants at least MFN treatment to all its trading partners. WTO issues in Lesotho are coordinated by the Ministry of Trade and Industry. Lesotho participates in the WTO in Geneva through its Permanent Mission which is part of the Ministry of Foreign Affairs. The most recent Trade Policy Review Mechanism (TPRM) for Lesotho, which is carried out jointly with other SACU members was in 2015. The TPRM noted that Lesotho faced challenges in fully implementing WTO agreements in SPS, Technical Barriers to Trade (TBT) and Intellectual Property. Lesotho is not party to the Plurilateral Agreements on Government Procurement, Trade in Civil Aircraft and in Information Technology. Further, Lesotho did not participate in the negotiations on basic telecommunications and financial services.

Lesotho participates in the ACP group (for agricultural issues), the African Group, the Group of G-90, and the Least Developed Country (LDC) groups. It has lobbied for 'adequate financial and technical assistance to address supply side constraints in specific sectors. Lesotho remains committed to concluding the Doha Agenda and maintains that development should be central to the WTO work program.

Lesotho also participates as a member of SACU in trade negotiations with Third Parties involving concessions from the SACU Common External Tariff. This includes SACU negotiations with India, the Tripartite, and the African Continental Free Trade Agreement.

4.2 Trade and Industrial Policy

Industrial policy must be complementary with Lesotho's trade policy and coordinated with existing development plans and strategies to succeed. The Lesotho industrial policy (2015) is currently under review. With a population of 2 million encircled by South Africa Lesotho's industrial policy needs to be export-oriented. The small manufacturing base and limited agricultural production (with less than 8 percent of land suitable for arable farming) imply that Lesotho is dependent on imports as inputs for manufacturing and consumption. This highlights the necessity of reducing the cost and time required for goods to move across the border with South Africa.

4.3 Agriculture and Trade Policy

Crop farming in Lesotho is dominated by small farmers growing cereals for subsistence. High levels of poverty in the rural areas and the absence of access to credit encourage farmers to be risk averse. The decline in the migrant labor economy in the 1990's has encouraged Basotho in the rural areas to expand the production of wool, mohair and mutton production.

Encouraging farmers with access to arable land to transition from subsistence production to the cultivation of higher value cash crops such as fruits and vegetables, has the potential to significantly increase incomes. The high altitude in Lesotho relative to South Africa's Western Cape results in fruit being harvested two to three weeks earlier than in South Africa. The World Bank (2018) notes that this creates an opportunity for Lesotho to sell its production at a price premium. Further, Lesotho's proximity to South Africa, which is a major fruit exporter to international markets, could be leveraged to benefit Lesotho. The constraints facing Basotho farmers stem from a combination of missing markets, information gaps, and inadequate infrastructure.

Within SACU, agricultural trade policy permits Member States to restrict market access to protect their domestic market. Lesotho requires import permits for a wide range of agricultural imports. However domestic production of fruit and vegetables, livestock, dairy and chicken cannot satisfy domestic demand. With a total of only 300 fruit and vegetable farmers producing for the market (World Bank, 2018) domestic production is equivalent to approximately 20 percent of total demand. Equally domestic livestock production represents a very small proportion of total demand.

The small size of the market has discouraged the entry of aggregators. There is a lack of commercial packaging and processing facilities. The absence of commercial linkages with internationally competitive supply chains has limited the transfer of knowledge to farmers on the importance of meeting private quality standards.

Historically, Basotho farmers sold their wool and mohair to South African buyers who then exported it outside the region. The wool was washed and cleaned in South Africa, which adds value prior to being exported. In 2018 the Government of Lesotho passed the Wool and Mohair Regulations which required any person or company trading in wool and mohair to obtain a license from the Ministry of Small Business, Cooperative and Marketing. The regulations also require all transactions to be carried out in Lesotho.

The agricultural sector faces multiple supply side constraints that need government intervention., however, these interventions are best directed at addressing the specific constraints rather than through trade policies. The Government interventions may include supporting initiatives aimed at improving the business environment, promoting improvement in rural infrastructure, encouraging linkages between large internationally competitive aggregators and agribusinesses and local farmers. However, directly intervening in trade policy to restrict imports result in increased consumer prices and discourages foreign investment. Analogously, requiring domestic producers to sell their production in the domestic market to one buyer will constrain growth while also, reducing farmers' incomes.

Policy Objectives

- To improve market access for Lesotho made components or products through supporting multilateral tariff reductions and the elimination of non-tariff barriers.
- To encourage Lesotho enterprises in all sectors to improve their competitiveness.
- To maintain the preferential market access to the US market post 2025 (when AGOA is scheduled to expire).
- To seek financial and technical assistance for directly addressing supply side constraints in specific sectors that constrain Lesotho, as a LDC, from realizing the benefits from the commitments made under both multilateral and regional trading agreements.

Policy Recommendations

- *Lesotho will actively campaign for improved market access to existing and potential export markets prioritizing those sectors in which it has an existing or potential comparative advantage.*
- *Lesotho retains the right to provide incentives to encourage investment in export competing businesses. This includes the provision of sector specific support, for agriculture and industry.*
- *Lesotho will initiate a dialogue, through the TIDCA and Bilaterally, with the United States on the post-AGOA trade arrangements aimed at maintaining market access.*
- *Lesotho support liberalizing and simplifying the SACU Common External Tariff.*
- *It is recommended that the Ministry of Small Business, Cooperatives and Marketing grant multiple trading licenses for all products requiring a trading license in order to encourage competition.*
- *It is recommended that Lesotho remove the requirement for agricultural products to obtain an import permit except for those products that continue to require permits for health, safety, security, or moral requirements, and eliminate all export restrictions.*

4.1.1 Lesotho & the Southern African Customs Union

Lesotho has been a Member of the Southern African Customs Union (SACU), since

1910. The SACU Agreement was substantially renegotiated in 1969 following the independence of Botswana, Lesotho and Swaziland, and again in 2002 following South Africa's democratic transition. Namibia joined SACU upon becoming independent in 1990.[8]

The core trade related aspects of the Southern African Customs Union Agreement of 2002 (SACUA-2002) provides that all SACU Member States[9]:

- must accept that goods grown, produced or manufactured in the Common Customs Area (CCA) shall be allowed (with a few exceptions) to be exported into any other

  Member State free of customs duties and quantitative restrictions (SACUA-2002, *Article 18.1*).[10]
- should implement the same agreed upon rates of specific customs and *ad valorem* customs duties applied to goods grown, produced or manufactured in or imported into the Common Customs Area (SACUA-2002, *Article 21.1*).
- should apply identical rebates, refunds or drawbacks of specific customs and *ad valorem* customs duties on imported goods (SACUA-2002, *Article 21.2*).

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[8] In 1910 Lesotho was known as "Basutoland."

[9] The SACU Agreement also includes a revenue sharing arrangement for allocating the total tariff revenue and excise duties collected by all five members. The allocation of revenues includes also includes a development component for allocating a proportion of the excise revenue. Members have agreed to renegotiate the revenue sharing arrangement subject to several key principles. These include, reducing the volatility. From a trade policy perspective, the key principle should focus on reducing friction at the internal SACU borders.

[10] The SACUA-2002 does allow, in limited instances, for some derogations. For example:

- *Article 18*gives a Member State the right to impose restrictions on imports or exports in accordance with national laws and regulations for the protection of health of humans, animals or plants; the environment; treasures of artistic, historic or archaeological value; public morals; intellectual property rights; national security; and, exhaustible natural resources.
- *Article 20* allows a Member State to grant a rebate of the customs duties in respect of goods imported into its area where such rebates are for the relief of the distress of persons in cases of famine and other national disasters; under a technical assistance agreement; and, in compliance with an obligation under any multilateral agreement to which such a Member State is a party.
- *Article 25* recognizes the right of each Member State to prohibit or restrict the importation into or exportation from its area of any goods for economic, social, cultural or other reasons as may be agreed upon by the Council of Ministers.

Importantly the SACUA-2002 also states that while Member States are able to maintain preferential trade and other related arrangements existing at the time of entry into force of the SACUA-2002, that no Member State will be able to negotiate and enter into new preferential trade agreements with third parties, or amend existing agreements, without the consent of other Member States (see: SACUA-2002, *Article 31*).

a) SACU Membership– Advantages & Disadvantages

From a trade perspective, Lesotho's membership -to the Customs Union provides it with both advantages and disadvantages.

By being a member of SACU Lesotho producers are provided with virtually duty-free access to all other SACU Member States' marketplaces – the four other Member States have a combined population of approximately 61.3 million people. The fact that Lesotho is also a member of the Common Monetary Area (CMA) [11] arrangement further facilitates trade with South Africa; as does Lesotho's geographic proximity to the South African economy, one of Africa's richest economies with 57.7 million consumers. Membership also means that Lesotho manufacturers, and other consumers, are also able to access goods produced in other parts of the Customs Union without the payment of any customs duties.

Many South African origin manufacturing firms making clothing, footwear, electrical and electronic devices have established themselves in Lesotho to take advantage of some of these benefits. These firms directly employ thousands of people; and indirectly many thousands of more. Without Lesotho having duty free access to the South African economy it is unlikely that any of these businesses would have chosen to establish themselves in Lesotho.

The duty and quota free market access that Lesotho exports have to the economies of other SACU Member States is premised on all members agreeing to a common external tariff. Owing to the large economic disparities within SACU, notably the economic dominance of South Africa, the common external tariff is largely determined by South Africa's industrial and trade policies. Consequently, as part of her SACU membership obligations Lesotho (and Botswana, eSwatini and Namibia) cedes substantial autonomy over her trade policy, including the determination of customs tariffs. Through her SACU

[11] Common Monetary Area members – Lesotho, Namibia, South Africa and Swaziland. Of course, it could be argued, that if Lesotho had its own currency that its highly likely that it would not be valued (vis a vis the US$) as much as it is being tied with South Africa's Rand and that therefore it could make its exports even more competitive

commitments Lesotho cannot independently conclude free trade agreements with third parties. Lesotho is therefore unable to reduce her own Most Favoured Nation (MFN) customs tariffs which apply to finished goods that are not produced within her own borders; nor to reduce the duties on goods which are intermediate manufacturing inputs. Individual Basotho owned companies are also unable to take advantage of cheaper products produced elsewhere in the world.

Furthermore, Lesotho has few trade instruments that she can use to prevent her market from being flooded with goods produced in other SACU Member States - especially South African based producers. SACU members are not permitted to utilize World Trade Organization (WTO) type trade defensive instruments (e.g. anti-dumping; countervailing; safeguards) against other members of the customs union.

b) The SACU Tariff Board & Lesotho's National Body

Lesotho's ability to participate in co-determining SACU's customs tariffs is inhibited by the fact that the SACU Tariff Board[12] has not yet been established.

The SACUA-2002 envisages that the management of SACU's common external tariff (CET) will be administered on a consensus basis by all Member States. To this end all Member States are required to establish National Bodies (SACUA-2002 - *Article 14*) to process local customs tariff applications; thereafter the main agreement stipulates that these applications would be submitted to the SACU Tariff Board (SACUA-2002 - *Article 11*) which would be required to forward a recommendation to the SACU Council of Ministers who should take the final decision on a consensus basis.

In September 2006 the SACU Council of Ministers directed that a model National Body law be developed, that was based on South Africa's International Trade Administration Act. The Model was to be used as the basis for National Body legislation in the BELN SACU (Botswana, eSwatini, Lesotho, and Namibia) Member States[13].

The issue of establishing the SACU Tariff Board and allowing the Council of Ministers to consensually determine SACU's customs tariffs has been a sticking point since 2006 when South Africa's International Trade Administration Commission (ITAC) was given the mandate, by the SACU Council of Ministers,

[12] Members States have already ratified two annexures to SACUA-2002: Annex "B" concerning the Tariff Board; and Annex "C" concerning National Bodies.

[13] It is important to note that South Africa's International Trade Administration Commission legislation also includes considerable, unrelated, provisions relating to South Africa's management of "import and export" controls. This element, for reasons unknown, was provided to the BLNS as the package of "model" legislation.

to function as the "Interim Tariff Board" until the Tariff Board was established[14]. Since then, South Africa has publicly maintained that all the bureaucratic instruments related to the establishment of the Tariff Board, and a common SACU Industrial Policy, must be finalized prior to the National Body–Tariff Board–Council of Minister framework being implemented[15].

To date, only South Africa (with ITAC) and Botswana (the Botswana Trade Commission (BTC)) have primary and secondary legislation in place; and have already established functioning National Bodies. Lesotho is still required to pass its own primary legislation (and then still later adopt associated regulations). Currently, Lesotho' is in the process of developing Lesotho's draft National Body bill –the Lesotho "Trade & Tariff" bill[16].

Notwithstanding the fact that Lesotho does not have its own functioning National Body the MTI has already allocated personnel, within the One Stop Business Facilitation Centre (OBFC), to work exclusively on National Body-Tariff Board issues.

Lesotho should establish (via the SACU Secretariat) whether South Africa (and Botswana) intend to amend their ITAC legislation in the foreseeable future. There would, from a policy perspective, be no point in Lesotho developing its own national body legislation based on the South African laws only to find out that South Africa may bring about substantial changes to its own legislation.[17]

It is possible that even when all SACU Member States have their own National Body legislation and regulation in place, the SACU Tariff Board will not be established. In this context Lesotho would need to consider how it could remain closely involved in the SACU tariff adjustment processes led by ITAC. In this

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[14] South Africa continues to set SACU's customs tariffs and determine trade remedies without having to consult with any BLNS Member State. It is reluctant to surrender any decision-making powers without having reassurance that all parties share a common industrial and trade policy. However, all SACU Member States have managed to successfully co-determine customs tariff adjustments when they participate in SACU caucuses which negotiate bi/multi-lateral trade deals. Since the establishment of South Africa's International Trade Administration Commission (ITAC) in 2003 only one SACU producer outside of South Africa has been successful in putting in place a SACU wide trade remedy measure. This happened in 2014 after Botswana's Botash had alleged that United States' firms were dumping soda ash into the area of the customs union. The government of Botswana had to use ITAC to conduct the anti-dumping investigation; and it was the South African Trade & Industry Minister that agreed that dumping was taking place; and it was a South African Finance Minister that effected the anti-dumping duties; only after this were the customs authorities in all Member States enabled to implement the anti-dumping duties.

[15] At one stage (circa 2014/5) South Africa effectively suspended the majority of operations within most SACU structures when the Botswana, Lesotho, Namibia and Swaziland (the "BLNS") pushed that the Tariff Board be established.

[16] No indication was given as to when this legislation could be formally introduced into the Lesotho parliamentary processes. Even if the legislation is passed soon it is known that it could take considerable time for the MTI to develop the necessary secondary legislation (i.e. regulations) and associated bureaucratic tariff adjustment and trade remedy application forms.

[17] It is known that South Africa has previously mooted some amendments to its ITAC legislation.

regard she must define a role for existing OBFC personnel to operate as the established National Body. If retained in their current portfolios these officials may be able to play an active role in: a) ensuring that the structured views of Lesotho's private sector (and government) are forwarded to South Africa's ITAC when this structure is carrying out customs tariff investigations; b) educating the Lesotho private sector on the use of customs tariff rebates; and c) assisting the Lesotho private sector to make applications to ITAC related to customs tariff adjustments.

In order to achieve a speedier passing of their proposed National Body Law, Lesotho may wish to consider separating out the National Body component of the legislation from the Import and Export control element of her proposed legislation. Given the possibility that South Africa may delay the establishment of the SACU Tariff Board pending finalization and consensus on a comprehensive trade and industrial strategy, Lesotho may consider prioritizing the update of their Import and Export Control legislation.

Policy Objectives

- Lesotho will prepare and approve legislation and regulations for a National Tariff Board, as envisaged in the 2002 SACU Agreement.
- To ensure the National Tariff Board when established is directed to advice on tariffs that promote regionally and globally competitive sectors.

Policy Recommendations

- *Lesotho will prioritize updating her Import and Export Control legislation.*
- *Lesotho will develop policy guidelines for the Lesotho National Tariff Board.*

4.1.2 Trade Provisions of the 2002 SACU Agreement

The fact that Lesotho abrogates much of its trade policy space, as a consequence of its membership to SACU, does not mean that she is unable to use the advantage of the trade orientated provisions of SACUA-2002 in order to facilitate the expansion and diversification of her exports and promote foreign investment.

a) SACU's Infant Industry Protection[18]

The SACUA-2002 (*Article 26*) allows SACU's BLNS Member States to, as a temporary measure (for up to eight years), levy additional duties on goods imported into its borders to enable "infant industries" to meet competition from other producers or manufacturers in other parts of the Common Customs Area (CCA). SACUA-2002 provides that such Infant Industry Protection (IIP) duties

[18] While the SACUA-2002 only refers to IIP in an "industry" its clear that IIP would also apply to "agriculture."

must be levied equally on goods grown, produced or manufactured in other parts of the CCA and like products imported from outside that area, irrespective of whether the latter goods are imported directly or from the area of another Member State. To date Lesotho has not used infant industry.[19]

There are no formal SACU guidelines on how the BELN Member States may implement IIP. In 2006 SACU Member States, sought to get SACU to adopt IIP implementation guidelines. However, this work was never finalized. In practice some SACU Member States (notably Botswana and Namibia) are implementing their own IIP measures.

While it may appear that MTI could implement IIP, in accordance with the SACUA 2002, and simply notify other members, this would not rule out a formal challenge from a private sector importer who would be negatively affected by the imposition of IIP. To avoid a conflict between private importers and the government, GOL should consider preparing regulations setting down clearly defined criteria (and publicly available) that must be satisfied before IIP can be considered.

Policy Objectives

From a policy point of view, Lesotho is cautioned to be judicious in her approach towards using IIP. The need to develop jobs and/or key strategic elements of any value chain must be counterbalanced by other policy considerations. For example: the cost of IIP to consumers; ensuring the beneficiaries of IIP do not disappear once the protection is finished; will the beneficiaries of IIP be allowed to export the goods they make (which are covered by IIP) to South Africa; etc.).

Lesotho must develop a domestic policy framework relating to it implementing IIP measures.

Otherwise there would be little benefit for Lesotho agreeing SACU-wide IIP rules (or even guidelines). The SACUA-2002 provides Lesotho with considerable policy space which may be constrained with an additional SACU Annex/protocol.

Policy Recommendations

- *Lesotho will only recommend using IIP if the level of protection does not have an adverse impact on low income consumers, and subject to an economic impact assessment.*

[19] It is known that in 2016/17 the MTI was considering implementing IIP on cement products.

- *Lesotho will prepare regulations setting down clearly defined and publicly available criteria for IIP eligibility.*

b) SACU's Customs Tariff Rebates & Duty Drawbacks

The SACUA-2002 provides (*Article 21.2*) that all SACU Member States should apply identical rebates, refunds or drawbacks of specific customs and *ad valorem* customs duties on imported goods. There are over one thousand SACU industrial and agricultural customs tariff rebates and duty drawbacks that Lesotho based firms could use in order to make products for the international, regional (other SACU Member States), and domestic marketplaces. There are some rebates that the government could access.

Using these rebates and duty drawbacks has the potential to assist many Lesotho made end products to become more competitive in the regional market such as SACU and the SADC. For example, Lesotho-based manufacturers could access the following SACU customs tariff rebates to import fabrics free of any customs duties (thereby saving 22% *ad valorem* duties) in order to make a select category of clothing or home textiles which could then be sold in the SACU marketplace free of any customs duties (see Table 4 below for examples).

Table 6: SACU Customs Tariff Rebates

SACU Rebate #	Product to be Imported	End Product to be Made
311.40 / 5210.4 / 01.05 **Extent of Rebate**: Zero duties paid	Woven fabrics of cotton, containing less than 85% by mass of cotton, mixed mainly or solely with manmade fibres, of a mass not exceeding 200g/m2, of yarns of different colours.	Men's or boys' shirts classifiable in heading HS62.05; and women's or girls' blouses, shirts and shirtblouses classifiable in heading HS62.06.
311.40 / 5513.21 / 01.06 **Extent of Rebate**: Zero duties paid	Woven fabrics of polyester staple fibres, containing 60% or more by mass of such fibres but not exceeding 70%, mixed mainly or solely with cotton, containing yarns with a dtex of 115 but not exceeding 145, of a mass exceeding 100g/m2 but not exceeding 119g/m2, dyed, plain weave.	For the manufacture of shirts classifiable in tariff headings HS62.05 and HS62.06.

311.42 / 52.08 / 01.04[20] **Extent of Rebate**: Zero duties paid	Woven fabrics of cotton, containing 85 per cent or more by mass of cotton, of a mass exceeding 100 g/m2 but not exceeding 200 g/m2 in rolls of a width of 200 cm or more.	For the manufacture of goods classifiable in tariff headings HS63.02, HS63.03, HS63.04 and HS63.07 (i.e. home textiles in the form of bed linen, table linen, curtains, etc.).

Most customs tariff rebates and drawbacks do not require registered importers to apply for permission to use them – importers are required to indicate that they are using a specified (using the applicable rebate code) rebate when clearing the goods. However, there are specific rebates and drawback that require pre-approval by the Government of Lesotho in order to be accessed. As a sovereign territory Lesotho has a considerable degree of autonomy over the specific administrative processes related to issuing rebate and duty drawback permits[21]. It has the autonomy to introduce a degree of flexibility into the issuing of permits. Simplifying and streamlining permits, without undermining the intent of the SACU policy, has the potential to increase Lesotho's competitiveness and may result in firms investing in Lesotho to serve the regional market.

From interviews it appears that some staff in the OBFC are unaware of the wide array of rebates and duty drawbacks (the 470.03 rebate[22] is more widely known but there are many others) that exist in the SACU customs tariff book and are available to be accessed by Lesotho registered firms. Consequently, they would not be capable of administering those rebates and drawbacks for which approval to use had to be sought from government.

Few of the OBFC staff understood the process whereby a customs tariff rebate or a duty drawback could be applied for using an ITAC as the investigating body.

Staff in the Lesotho National Development Corporation (LNDC), an institution responsible for attracting investments into Lesotho; and for promoting exports,

[20] Since the introduction of this customs tariff rebate South African home textile producers has created approximately 2,000 new jobs.

[21] For example, in South Africa in order to utilize certain rebates and drawbacks firms not only have to prove that they are compliant with their tax obligations, but they also have to prove that they are fully compliant with South African labor laws and have to commit to supplying volume usage statistics. The firms also have to go through cumbersome administrative processes in order to be given the authority to use select rebates. Lesotho can dispense with most of the preconditions (although not all) and can grant permit much more easily.

[22] The 470.03 rebate is the one most commonly used by African Growth & Opportunity Act (AGOA) garment exporters. This rebate allows firms to bring in the raw material inputs (e.g. fabrics, garment trims, packing materials, etc) which are used to make garments which are then exported to outside of SACU.

also had limited understanding of the array of the customs tariff rebates or drawbacks in operation under current SACU policies[23].

At a policy level the MTI needs to lead a process to publicize the benefits of using existing customs tariff rebates and duty drawbacks as this could lead to increasing employment; and improving competitiveness.

Policy Objectives

- Lesotho will effectively use the SACU Rebate and Duty Drawback facilities available within SACU to promote regionally and internationally competitive industries.
- Lesotho will publicize the availability of rebates and drawbacks through an information campaign. This should include the opening up access to rebates for indirect exporters, many of whom are small and emerging businesses.

Policy Recommendations

- *The MTI will request creation of additional customs tariff rebates in order to support private sector[24]; or to support the manufacturing operation.*

  The MTI will direct a process (involving other government Ministries and parastatals, e.g. food security, agriculture, health, the LNDC, etc.) that will research what SACU rebates currently exist that could reasonably be used by government, and existing (and potential) investors.

- *The MTI will liaise with the Lesotho Revenue Authority (LRA) to ensure that appropriate administration systems are put in place. However, care must however be taken to ensure that no illegal activities take place.*

[23] They requested that a seminar be held in order to educate their investment promotion staff about the array of available rebates that could be accessed by potential investors. In addition, given that it is likely that the LNDC's mandate will be formally expanded to include export promotion activities, it will be vital that they are appraised on the customs tariff rebates and duty drawbacks that are available and how they may be accessed

[24] At this point in time many of Lesotho's apparel manufacturers making garments for export to the United States use imported fabrics that are not made anywhere in SACU – this will mainly apply to fabrics made (principally) with man-made fibers. These fabrics if imported into SACU in order to make garments for the SACU market place would attract a customs duty of 22% *ad valorem*. Should these fabrics' duties be made fully rebate-able (or their duties are reduced to 0%) these garments could then be sold into the SACU marketplace free of any duties. This may assist local Lesotho firms to be able to competitively dispose of garments that may not have been delivered to their US buyers; or enable them to get rid of end of order fabrics; or diversify their markets by taking on additional orders for South African retailers.

- *Ensure that LRA staff are trained to assist private sector operators who may wish to apply for the creation of new rebate facilities.* [25]
- *The MTI, in cooperation with LRA, LNDC and other relevant agencies will roll-out an information campaign that will advise the private sector (manufacturers and clearing agents) on how to access and apply for rebates and drawbacks.*

4.2 Lesotho's System of Import & Export Controls[26]

Lesotho prohibits or restricts importation of some goods based on health, moral, security or and economic considerations[27]. This is managed through multiple Acts and their related regulations. The Acts used to regulate most traditionally commercial products include: Export & Import Control Order/Act (No. 16 of 1984, as amended; and its regulations); and the Agricultural Marketing Act (No. 26 of 1967, as amended; and its regulations).

The Export & Import Control Act and Import Restrictions Regulations of 2009 contain a consolidated list of all the goods which may not be imported unless an import permit has been applied for and obtained (in advance). The Regulations prescribe 21 types of goods for which permits are needed; they generally apply to products imported from all countries, except in the case of used tires, automobiles and fuel where permits only apply to goods imported from outside of South Africa.

Relevant Government Ministries, Departments or agencies are authorised to issue import or export permits - hence the import permits for livestock and livestock products is the responsibility of the Ministry of Agriculture & Food Security; explosives, arms and ammunition by Police; petroleum and fuel by Ministry of Energy , etc.[28]

Multiple Ministries are involved in issuing permits. In spite of OBFC being a single facility where applicants could obtain import permits), applicants are still required to visit a number of different processing centers to submit their

[26] While Lesotho has a broad system of import controls the analysis hereunder will only really apply to goods subject to "real" commercial trade. Goods subject to other import/export controls such as: rough diamonds; pharmaceuticals; firearms/ ammunition/explosives; fuel; currency is often regulated for other means (i.e. to control the illegal economy; for moral reasons; for taxation purposes; etc.)

[27] Items on which complete prohibitions exist include: calcium carbide (health), "illegal" drugs (health), counterfeit money and goods (security and economic reasons), hazardous waste and certain chemicals (environment), indecent or obscene material (morality), military clothing for sale (security).

[28] See Annex 1 for full listing of the goods, and the institutions responsible for managing the issuance of permits.

applications for permits, and in some cases are required to return to the same premise to collect an import permit.

The permits issued vary in their validity - some permits only allow the import of a single consignment of specified goods (e.g. milk, dairy products and livestock); while other permits allow for the importation of a multiple number of consignments over a period of time (e.g. sugar, bread, fresh fruit and vegetables permits last a month; while petroleum fuel, precious stones and alcoholic beverages permits last a year; and permits to import bank notes, gold securities or foreign currency last for three months). No unused portions of an import permit can be carried forward to the next period – meaning that applicants are required to undergo burdensome procedures to obtain permits. Many of the processes related to the issuance of import permits and rebates are still carried out manually. Manual systems are often slow, cumbersome and unpredictable; are more easily corruptible; and do not allow for the rapid generation of statistical usage reports.

Permits to import milk, bread, fresh fruit, fresh vegetables, pulses, beans, peas, red meat, poultry and eggs are issued subject to whether the product is available locally in sufficient quantities.[29] Applications to import red meat, processed red meat products, poultry meat, and poultry meat products must be accompanied by a declaration which specifies where they originate from. The Lesotho permit issuing authority then cross references this certificate with a list (generally from South Africa) which specifies if the slaughterhouse or processing facility is subject to veterinary health controls.

It is important to note that import permits for clothing, bread, meat, milk, fresh fruit and vegetables are not required if the quantities imported are for "domestic" consumption purposes, and lower than specified amounts. The controls on the importation of livestock is mainly related to veterinary animal health regulations. Surprisingly quantitative import restrictions apply to raw sugar even though sugar cane / beet is not grown in Lesotho – this restriction apparently exists in order to protect jobs in Lesotho's sugar packing industry.

Permit applicants must generally hold a trading license in order to apply for one of these import permits – importers of clothing, tyres, vehicles, milk, dairy products and bank notes, gold securities or foreign currency are excluded.

[29]Some importers in the catering industry noted that the general application of permits applied for is sometimes insensitive to their specific requirements. For example, they have their permits for fillet steak turned down on the basis that other beef products are available. The same importer noted that he was of the view that the Lesotho abattoir was itself an importer of carcasses.

Lesotho applies a levy of 2.5% (applied to the invoice value) of imported dairy products[30]

Policy Objectives

Lesotho should commit to reviewing the list of products requiring import permits and streamline the process of issuance of the import permits. The number of products subjected to import permit system will considerably be reduced, while also streamlining (preferably moving to automating the approval process through introducing an online facility) for those products that continue to require permits for health, safety, or moral requirements[31].

Furthermore, some permits are granted automatically then there may be no need to require applicants to apply for a permit. Detailed product data could be collected by customs officers at ports of entry. Further, it is onerous for applicants to visit a number of facilities to apply for permits; and, in some cases, return to those facilities in order to collect permits, and frequently permits are issued for a very limited period of time.

There is ongoing work related to the possible amendments to Import and Export Control legislation. It is recommended that the Government commits to reducing and streamlining import permit requirements.

Policy Recommendations

- *Lesotho will simplify and streamline the issuing of permits and where possible develop automated systems.*

4.3 Transparency & Efficiency

Lesotho's manufacturing and services sector could flourish if exporters, as well as potential investors, are aware of laws and regulations that are applicable to their activities. To this effect, the government with technical support from World Bank developed an online trade portal to support the growth of Lesotho's private sector.

Policy Objectives

- Lesotho remains committed to ensuring the online trade information portal is kept up to date as the accurate and true source for all trade related information.

[30] Article 3 of the Agricultural Marketing (Distribution of Dairy Products) Regulations 1992 (Legal Notice No. 241 of 1992).

[31] The argument was advanced that the import of sugar creates jobs in the packing industry. However, no one knew how many fully time jobs it created / sustained and there was no assessment of the cost-benefit of such a restriction on the economy. Repacking operations often create few jobs; little (if any value add); and unnecessarily raise costs for consumers.

- Lesotho will facilitate online access for traders to apply and receive import and export permits electronically.

Policy Recommendations

- *Lesotho with the MTI and the LRA taking the lead, perhaps via the Lesotho Coordinating Committee on Trade (LCCT), will ensure the online trade information portals are reorganised and populated with the most recent accurate information so that it becomes a meaningful resource for users*
- *Lesotho to migrate from manual application to an automated system for import and export permits.*

"Expand and improve facilities and activities at cultural and heritage attractions and package related and complementary products to create unique and special cultural product offering."

5. Trade in Services

Lesotho is committed to enhancing the size and efficiency of the services sub-sectors supplying the domestic market. Competitive services represent a key input to virtually all other businesses including agriculture, mining, manufacturing, construction and energy. The quality and efficiency of services are a key element in the efficiency of other sectors.

Lesotho produces a very limited number of commercial services and is also a net importer of commercial services. Trade in services has the potential to create opportunities for Lesotho to expand outputs in sectors where it has comparative and competitive advantage thus creating jobs and generating foreign exchange. GOL is committed to creating an appropriate business and regulatory environment to encourage investment in regionally competitive service activities.

There is now widespread evidence on the important role of service sectors contribution to economic growth. The Accra Accord (at UNCTAD XII 2008) referred to the service economy as the new frontier for the expansion of trade, productivity and competitiveness. Improving the competitiveness of Lesotho's service sectors (for example, tourism, transport, health and education) will contribute to increased growth. Efficient services contribute to increasing the efficiency of both labour and capital throughout the economy. Transport and communication services facilitate the physical movement of goods and people, and the exchange of knowledge and information respectively. Opening services markets can have a substantial positive impact on economic welfare.

Competitive manufacturing requires many service activities. Promoting growth in trade in services requires regionally competitive markets. Liberalizing the market for specific service sectors does not mean removing regulations. Indeed, liberalized markets are not equivalent to unregulated markets. It is necessary for all countries, including Lesotho to ensure that appropriate regulations are in place to protect both the service provider as well as the consumer. Lesotho is a small market and in some instances, the market will only be able to accommodate a single service provider, so the market cannot be regulated through competition. However, the regulations should still encourage and allow for a free market and encourage competition to take place where practical.

Developing a national strategy for trade in services is complicated due to a number of government Ministries, regulatory agencies and other key stakeholders involved in the regulation of Trade in Services. At the multilateral level, Lesotho made commitments to the General Agreement on Trade in

Services (GATS). At the regional level, the Southern African Customs Union Agreement (2002) does not explicitly address Trade in Services. As a member of SADC, Lesotho agreed to negotiate a GATS+ Regional Agreement on six priority service sectors (communications, construction, energy-related, financial, transport and tourism). More recently, the Tripartite and the African Continental Free Trade Agreement provide for the inclusion of services, as do the non-regional Agreements with EFTA[32] and the EPA with the EU. It may also be anticipated that a post AGOA Agreement with the United States of America would also include Trade in Services.

The following paragraphs summarize Lesotho's commitments under the multilateral General Agreement on Trade in Services, and the ongoing negotiations within SADC and with the EU under the Economic Partnership Agreement.

5.1 Lesotho and the General Agreement on Trade in Services (GATS)

During the Uruguay Round, Lesotho submitted a more detailed set of service schedules (GATS/SC/114 of 30 August 1995) relative to most other Least Developing Countries. However, it is important to note that very few LDC's submitted schedules and commitments were based on existing policies, so no further liberalization was required. Subsequently, Lesotho has not submitted any new service sector commitments to the GATS.

Many limitations and restrictions remain in place. These restrictions include both specific limitations and those sectors where Lesotho has chosen to keep the service unbound. When a sector is 'unbound' this means Lesotho retains the right to introduce or maintain measures inconsistent with Most Favoured Nation (GATS Article II), Market Access (GATS Article XVI) or National Treatment (GATS Article XVII), in the future.

Given that the commitments under the GATS did not require any significant policy or regulatory reforms the impact has been negligible. Research on the economic impact of the GATS at the global level has identified a link between the quality of economic governance defined as control of corruption, the quality of regulation and strength of the rule of law, and the ability to benefit from services trade liberalization. To date virtually all the economic benefits from liberalizing Trade in Services have resulted from unilateral policy changes introduced by countries rather than from Multilateral or Preferential Trade Agreements.

[32] Article 27 'Parties confirm they will endeavor to extend the scope of this agreement with a view to further liberalizing trade in services.'

The WTO Eighth Ministerial Meeting (Geneva, 2011) granted a waiver to permit WTO Members to grant Preferential Treatment to services and service suppliers from LDCs. This has the potential to benefit Lesotho in sectors where she is internationally competitive.

5.2 Lesotho and SADC Trade in Services Negotiations

Lesotho, as a member of the WTO as well as SADC, is required to comply with GATS and, specifically, in this case, with Article V of GATS. In summary, Article V of GATS, stipulates that Regional Preferential Trade Agreements, such as the SADC Protocol on Trade in Services, should have substantial sectoral coverage and be non-discriminatory. In addition, it should not raise the overall level of barriers to trade in services originating in other GATS members within the respective sectors or sub-sectors compared to the level applicable prior to such an agreement. This means that when SADC concludes a Trade in Services Agreement, it should impose less restrictions under the SADC Trade in Services Agreement than under GATS.

However, even without a legal interpretation of Article V it is apparent that a regional preferential trade agreement should be more liberal than GATS. If this was not the case, there would be no rationale for agreeing to a Regional Preferential Trade Agreement.

The final offer by Lesotho (SADC/FO/LSO/05.06.18) of specific commitments under the SADC Protocol on Trade in Services, covering the communication, financial, tourism and transport services sectors is shown in Annex 1 (in volume II).

From the SADC Final Offer it is apparent that Lesotho has kept its offer on Horizontal Services the same as the GATS Schedule except for Mode 3 and Mode 4. Under Mode 3 the GATS Schedule requires a minimum equity capital outlay of US$200,000 for wholly foreign-owned companies and US$50,000 for joint-venture companies. This was amended to a national treatment requirement (rather than the GATS market access requirement) in the SADC Final Offer. Under SADC, Lesotho has put a limitation on Mode 4 under National Treatment as unbound except as indicated under Market Access. Voice Telecommunication Services (CPC 7521) are not addressed under the Lesotho GATS Schedule (meaning that all modes of supply are unbound) whereas under the SADC offer there are no limitations for modes 1 and 2 and unbound for Mode 4. There are no limitations under Mode 3 Natural Treatment but under Mode 3 Market Access the number of licenses for voice telephone services (CPC 7521) is to be determined on the basis of an economic needs test (ENT) by the regulator.

The SADC trade in services negotiations on tourism, addressed some pro-competitive regulatory principles including competitive safeguards, consumer protection, access to and use of information, access to tourism-related infrastructure and services, sustainable tourism trade, standards and quality assurance, education and training and mutual recognition among other issues. The tourism market in SADC countries is largely dependent upon the supply of services from foreign markets that are "handled" by foreign tour operators.

5.3 Lesotho and SADC EPA Trade in Services Negotiations

Lesotho is a part of the EPA negotiations on the EU-SADC EPA. As such, Lesotho is expected to express her offensive and defensive interests. So far, there has been little progress made in the SADC EPA negotiations on Trade in Services, this is partly because of sequencing issues. Specifically, the SADC EPA needs to make sure that it does not undermine the SADC regional integration process, as a result SADC EPA States should first ensure that they conclude a SADC Trade in Services Agreement before an EPA Trade in Services Agreement, even if the SADC Agreement is confided to the six SADC priority services sectors of telecommunications; financial services; transportation; tourism; construction; and energy-related services. This is to ensure that the SADC EPA member states do not liberalize their services sectors with the EU faster than they do with SADC Member States.

Service Sector Priorities with potential for rapid growth

Tourism – In many developing countries tourism is the largest export sector stemming from usually unique locational and climatic comparative advantages. It benefits the poor through employment opportunities. It offers labour intensive and small-scale opportunities compared with other non-agricultural activities. It employs a high proportion of women and provides many other opportunities for self-employment.

Developing an internationally competitive tourism sector requires an economy to create an enabling business environment. Specific supply side issues enabling the growth of tourism include: efficient road transport infrastructure to tourism areas; easy immigration regulations; health and safety regulations; safety and security; cost efficient and ground and air/land transport; quality and reliable ICT and utilities infrastructure; and human, cultural and natural resources preservation.

- **ICT Sector** –A well-functioning ICT sector contributes directly to economic development through enhancing efficiency across the economy which increases export competitiveness for goods and services. ICT enables firms to access knowledge and information, reduces transaction costs, improves decision making across the value chain through better and easier communication, and improves the flexibility of firms to respond to demands of consumers.

  Lesotho stands to benefit from developing and adopting an ICT strategy that encourages the growth of a knowledge-driven economy. Building an internationally competitive ICT sector requires a sound telecommunications system. In addition to supporting growth in the domestic economy Lesotho may wish to use ICT to provide offshore services. Opportunities for off shoring exist in a wide range of activities and sectors such as: on-line programmers; software developers; financial services; legal services; health and care services; and retail services

  All of these require relatively well educated and trained personnel. The delivery of technical and vocational tertiary education must be more closely linked to provide sector demand.

- **Infrastructure Services** – Infrastructure services are considered to represent the essential backbone of economic activity and social development. Infrastructure services like transport, telecommunications, water, energy and financial services are of critical importance to address Lesotho's physical infrastructure deficit, inclusive growth and better social welfare. The competitiveness of the country's industrial and MSME sectors all rely on efficient provision of infrastructure services.

  As part of improving infrastructure services in Lesotho it is recommended that the institutional and regulatory environment be reviewed and improved. The main institutions responsible for infrastructure services in Lesotho are Lesotho Electricity Corporation, Water and Sewage Corporation (WASCO), Maseru City Council, the Ministry of Local Government and Chieftainship and local authorities, and the Ministry of Communications, Science and Technology.

Policy Objectives

Lesotho aims to promote internationally efficient service sectors that will provide consumers and Lesotho based businesses with higher quality, more varied and cheaper services.

Lesotho will advocate for a harmonized and coordinated approach to trade in services within SACU for negotiations with third parties.

Lesotho will build technical capacity across service sectors.

Policy Recommendations

- *Lesotho will, as a priority, develop a national services development strategy or plan. The plan will focus on identifying ways to maintain and enhance the performance of targeted service sectors within the economy. An effective national services development strategy must address mechanisms for the development and/or expansion of new service sectors, while also assessing those sectors already showing signs of success and identify ways to maintain and enhance their performance and competitiveness.*
- *It should also examine services sectors that are needed to ensure the successes of new economic opportunities, including the diamond mining sector. The strategy/plan should ensure coordination between all key actors, including parastatal institutions, the private sector, labour groups, potential foreign and domestic investors, and academia. This is aimed at ensuring buy-in from all stakeholders as well as creating multipliers between economic sectors.*

The proposed National Services Plan or strategy will include the following:

- *Continue to liberalize, and update regulatory regimes related to the service sectors, specifically telecommunications, transport and logistics services with the aim of promoting increased competitiveness and protecting consumers from restrictive practices and poor service.*
- *Create a conducive environment in which investment is attracted into tourism and entertainment services, with additional incentives provided for investment in infrastructure and skills training related to the tourism sector.*
- *Ensure a balance between encouraging local service providers but, at the same time, creating a conductive environment to attract Foreign Direct Investment in the services sectors.*
- *Examine the regulatory framework in the priority sectors already identified by the GOL (tourism, financial services, ICT and infrastructure services), SADC, and professional medical services, which has no limitations under GATS. For each of these sectors Lesotho will identify opportunities to develop cooperation in the form of regional initiatives for the supply of services as part of broader SADC regional integration efforts.*

"…Trade Facilitation (TF) is vitally important to Lesotho. Reducing trade transaction costs through efficient trade facilitation is essential for consumer welfare and firm competitiveness in regional and international markets."

6. TRADE FACILITATION

As a small landlocked economy, encircled by South Africa Trade Facilitation (TF) is vitally important to Lesotho. Reducing trade transaction costs through efficient trade facilitation is essential for consumer welfare and firm competitiveness in regional and international markets. Lowering trade costs will reduce the cost of doing business; facilitate access to both consumer and intermediate products (inputs) while also augmenting exports. Trade Facilitation involves the development of appropriate infrastructure at all strategic border crossing points into the country, as well as the streamlining and simplification of processes and procedures for the imports and exports of goods including the movement of persons. Trade Facilitation initiatives are important for Developing and Least Developed countries like Lesotho where infrastructure weaknesses and cumbersome cross-border procedures limit the potential of trade to create jobs and promote economic growth.

Being landlocked, all Lesotho's trade transits through South Africa before proceeding to third countries. Although Lesotho is a member of the Southern African Customs Union (SACU) there are internal borders between each of the Member States. All goods entering Lesotho from South Africa are stopped and checked twice on leaving South Africa and on entering Lesotho. This process is outlined in the text box below.

> Goods coming into Lesotho will usually have had duties and VAT applied in South Africa. The duties will go into the revenue pool and be shared amongst the members of SACU according to a revenue formula. If the importer can show that he has paid VAT to SARS, then he will not need to pay VAT into Lesotho as the LRA will use proof of payment of VAT to SARS to claim back the VAT and so the VAT that was originally paid to SARS will be transferred as revenue to Lesotho. However, if an importer cannot prove that he has paid VAT to SARS then he will have to pay VAT to LRA. There are valid reasons why an importer will not have paid VAT to SARS. For example, an importer may have credit terms with a South Africa supplier, such as 30 days to pay. In this instance the importer will not have paid VAT to SARS yet. When they import the goods into Lesotho, they will have to pay VAT to LRA on the full invoice value. However, when the trader pays for the goods in South Africa, they will also have to pay VAT in South Africa. They will then need to apply for a VAT refund from LRA. This involves the registered Lesotho taxpayer applying for a tax refund in writing to the Commissioner of Domestic Taxes. Upon receipt of the application letter by LRA, a tax audit will be conducted to verify the tax refund claim before it is processed. The LRA specifies that it will complete the tax audit within three (3) months depending on the complexity and merits of each case. Upon completion of a tax audit, the LRA shall process a tax refund within twelve (12) working days. However, it is not unheard of that LRA will take longer than these specified times to refund a VAT claim.

The trade facilitation processes outlined above seeks to limit smuggling; however, these contribute to delays and increase the trade costs for Lesotho importers. There are also opportunities for the Lesotho Revenue Authority to facilitate trade through taking full advantage of the recently installed and commissioned ASYCUDA World. Currently the LRA is making limited use of the risk assessment module.

Policy Objective:

To reduce the cost of doing business across borders through:

i. Simplification and harmonization of documents

ii. Automation and streamlining of procedures

iii. Governance and,

iv. Impartiality and information availability.

Policy Recommendations:

- *Lesotho to collaborate closely with South Africa through SACU and bilateral channels to reduce trade and transaction costs at the internal borders in order to increase competitiveness.*
- *Lesotho to fully implement the risk assessment module along with introducing advance rulings, pre-arrival clearance and post clearance audits, speed up the import and export processes to lower trade costs at the borders between Lesotho and South Africa.*
- *LRA to prioritize establishing a deeper and more proactive dialogue with SARS, including establishing a hotline for fast tracking and resolving cross-border tax issues.*
- *In addition to improving and streamlining systems, procedures, increasing the availability of information and strengthening capacity the Trade Policy also recognizes the importance of upgrading the physical cross border infrastructure.*

6.1 Trade Facilitation Agreement

Lesotho ratified the Trade Facilitation Agreement on 4th January 2016. In doing so, Lesotho notified under the following categories:

- Category A: Provisions that the Member will implement by the time the Agreement enters into force (or in the case of a least-developed country Member within one year after entry into force);
- Category B: Provisions that the Member will implement after a transitional period following the entry into force of the Agreement; and

- Category C: Provisions that the Member will implement on a date after a transitional period following the entry into force of the Agreement and requiring the acquisition of assistance and support for capacity building.

In June 2018, Lesotho submitted, through the WTO (reference G/TFA/N/LSO/1), its notification of category commitments in accordance with Articles 15 and 16 of the Trade Facilitation Agreement (WT/L/931). Lesotho notified 11.8% of its implementation commitments under Category A; 28.2% under Category B; and 60.1% under Category C. Under Category B Lesotho submitted a series of definitive dates in February 2020. The definitive dates range from 31 December 2021, through to 31 December 2025. The technical assistance required under Category C have also been notified.

The current status, challenges and specific recommendations for implementing the various Articles of the TFA are outlined below.

6.1.1 Article 1 (Publication and Availability of Information)

In order to meet the specific requirements of Article 1 Lesotho developed the Trade Portal which would allow Lesotho to meet the notification requirement that information should be available on the internet. It also has information on: SPS/TBT Enquiry points; a section on market analysis tools- though these are Market Access Map; Investment Map; and Standards Map. However, there is no systematic method for ensuring routine updating. To ensure efficient functioning of the portal, the mandate to maintain and update information has been given to LNDC.

Policy recommendation

The requirement to make up-to-date and relevant trade information available on the internet is not only a requirement of the Trade Facilitation Agreement but also a fundamental component of the successful development and implementation of a National Trade Policy. It is, therefore recommended that Lesotho create a dedicated team of trade experts with a dedicated budget, to maintain and update, on a regular basis, the Lesotho Trade Portal.

6.1.2 Article 3 (Advance Rulings)

In Developing and Least Developed countries importers and exporters are often faced with inconsistent classification and origin decisions. This creates uncertainty which discourages investment. Businesses integrated into regional and international supply chains will locate activities in economies with more predictable and certain delivery and clearance times.

In order to introduce a higher level of predictability and certainty, the TFA recommends, in Article 3, the use of Advance Rulings. Advance rulings are binding decisions by Customs made at the request of the importer or exporter on 'specific particulars.' These 'specific particulars' usually relate to the classification; the origin; or the Customs value of the goods being imported or exported. As the name suggests, these rulings should be made by Customs in advance of the export or import process.

Advance rulings facilitate the declaration and consequently the release and clearance process. This is because critical decisions have been made by Customs before the goods are imported (or exported) and advance rulings are binding throughout the Customs territory at all Customs offices and valid for a specific period of time, which would usually not exceed 12 months, often less.

Requests for advance rulings need to be made in writing; and Customs is required to issue the advance ruling in writing, including providing a right of appeal. The written request has to include a full description of the goods, brochures or samples to allow the proper classification. Ideally, Customs should establish a specialised unit at the regional or central level to ensure uniform and consistent operation of the advance ruling system.

Policy recommendation

According to Lesotho's TFA notification, Lesotho has classified implementation of Advanced Ruling as Category B, with an indicative implementation date of end-2019.The OECD has rated an advance rulings system as the most impactful single trade facilitation measure[33]*. Given the potentially positive impact the implementation of an advance ruling system would have on trade in Lesotho, it is recommended that Lesotho designs and implements an advance ruling system in advance of the indicative implementation date.*

6.1.3 Article 7 (Release and Clearance of Goods)

Pre-arrival Processing: Pre-arrival processing involves the (electronic) submission of the relevant goods and/or cargo declaration data to the relevant authorities prior to the arrival (for import) or prior to departure (for export) of goods. LRA should be able to conduct risk assessment and to process the declaration so that they can prepare the release decision prior to the goods arriving at the port of entry/port of exit, thus enabling the release of the goods immediately upon arrival. This may include communicating the release decision to the persons concerned so that they can continue their supply chain and logistics planning.

This is a Category C notification for Lesotho with an indicative date of implementation of end-2023.

[33] Moïsé, E. and S. Sorescu (2013), "Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries' Trade", OECD Trade Policy Papers, No. 144, OECD Publishing, Paris. https://doi.org/10.1787/5k4bw6kg6ws2-en

a) Electronic Payment

The TFA states that each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.

This is a Category B notification for Lesotho, with an indicative implementation date of end 2023.

b) Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

According to the TFA, each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

This is a Category C notification for Lesotho with an indicative date of implementation of end-2023.

c) Risk Management

The TFA stipulates that each Member shall:

- To the extent possible, adopt or maintain a risk management system for customs control;
- design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade;
- concentrate customs control and, to the extent possible, other relevant border controls, on high-risk consignments and expedite the release of low-risk consignments; and
- base risk management on an assessment of risk through appropriate selectivity criteria.

This is a Category C notification for Lesotho with an indicative date of implementation of end-2023.

d) Post-clearance Audit

The TFA states that each Member shall adopt or maintain a post-clearance audit to ensure compliance with customs and other related laws and regulations. This should be done using risk assessment criteria.

This is a Category C notification for Lesotho with an indicative date of implementation of end-2023.

e) Authorised Economic Operators

The term Authorised Economic Operator (AEO) is defined in the WCO SAFE Framework of Standards. AEOs need to comply with a range of (mostly physical) security standards as laid out in the WCO SAFE Framework of Standards to ensure supply chain security. AEOs receive additional benefits from their voluntary participation in an AEO programme, such as reduced physical inspections, lower risk scoring and participation in mutual recognition programmes (PTP).

SACU is in the process of developing and rolling out SACU Preferred Trader Programme (PTP). As part of building sustainable national preferred trader programmes, the WCO-SACU Connect Project is actively supporting the region in building tools and enhancing skills that will ensure a common approach in the accreditation programmes. The approach used by the project will enable replication of the regional instruments at national level.

Implementation of the SACU PTP should have a strong impact on bringing down the costs of imports and exports into and out of Lesotho. Economic Operators who are able to comply with the provisions of the SACU PTP will be categorized as low risk such that they should be given preferential access to the port and they stand to enjoy the following benefits:

- low documentary and data requirements, as appropriate;
- low rate of physical inspections and examinations, as appropriate;
- rapid release time, as appropriate;
- deferred payment of duties, taxes, fees, and charges;
- use of comprehensive guarantees or reduced guarantees;
- a single customs declaration for all imports or exports in a given period; and
- clearance of goods at the premises of the authorized operator or another place authorised by customs.

This is a Category C notification for Lesotho with an indicative date of implementation of end-2023.

Policy Recommendation

It is recommended that Lesotho fast track implementation of pre-arrival processing; electronic payments; separation of release from final determination of Customs Duties, Taxes, Fees, and Charges; Risk Management; Post Clearance audits; and the design and implementation of an Authorised Economic Operators (AEO) system that has mutual recognition status with South Africa. All of these instruments, if implemented in support of each other and simultaneously, would have a strong positive impact on trade facilitation and reduce the time and cost of trading for Lesotho.

6.1.4 Article 8 (Border Agency Cooperation)

Border Agency Cooperation has two components:

1. Cooperation between border agencies based in Lesotho
2. Cooperation between Lesotho and South African border agencies.

The TFA specifies that each Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

It also specifies that each Member shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom it shares a common border Such cooperation and coordination may include but not limited to:

- alignment of working days and hours;
- alignment of procedures and formalities;
- development and sharing of common facilities;
- joint controls; and
- establishment of one-stop border post control facility.

This is a Category C notification for Lesotho with an indicative date of end-2023. There has been some progress made in coordination of border agencies in Lesotho as well as progress made in cooperation and coordination with South Africa.

Regarding coordination between border agencies in Lesotho, the Coordinated Border management (CBM) is in place and the LRA has been appointed as a coordinator for CBM. agency. A follow-on decision needs to be made as to how many, and which, border agencies need to be physically present at the border, as not all border agencies need to be physically present.

Policy Recommendations

The recommendation, for the purposes of the National Trade Policy, is that this should be a Category A notification and should be implemented immediately. As regards the steps to take to coordinate between border agencies in Lesotho, it is recommended that:

- *A maximum of 6 border agencies should be present at the border for Lesotho; and*
- *Agency Agreements be drawn up between the agencies that will allow an agency at the border to act as an agent for agencies not physically at the border. If the agent at the border encounters a situation which it cannot address, then it will notify the responsible border agency and they will be required to come to the border to address the situation.*

6.1.5 Article 10 (Formalities Connected with importation, Exportation and Transit)

Under TFA Articles 10.1 to 10.3 the TFA recommends that:

- Formalities and documentation requirements are designed for the rapid release and clearance of goods, particularly perishable goods and to reduce the time and cost of compliance for traders and operators;
- Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export, or transit formalities.
- Members should use relevant international standards as a basis for their import, export, or transit formalities and procedures.

Single Window

The most commonly accepted definition of a Single Window is the one provided by UNECE Recommendation No. 33. It describes the Single Window as "*a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single-entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once.*"

A Single Window facilitates the exchange of trade relevant information between traders and government agencies, and amongst government agencies, to facilitate issuance of permits and licences, certificates and necessary approvals. It does so by allowing traders, or their agents, to submit trade documents and data, in electronic or paper form, through a single-entry point.

A Single Window can be an important facilitation tool. If implemented effectively, it can simplify procedures and formalities for document submission and data collection and can save time and money. The following are the main benefits that key stakeholders of a Single Window project can achieve:

- Government: increase in government revenue, enhanced compliance with rules, improved efficiency in resource allocation, better trade statistics;
- Traders: faster clearance times, a more transparent and predictable process and less bureaucracy;
- Customs: improved staff productivity through the upgraded infrastructure, increase in customs revenue, a more structured and controlled working environment, and enhanced professionalism; and
- Economy as a whole: improved transparency and governance and reduced corruption, due to fewer opportunities for physical interaction.

Under Article 10.4 the TFA recommends that Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single-entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

Lesotho is working on an Electronic Single Window (ESW), but it is a category C notification with an indicative date of implementation of December 2028.

Import or Export waiting for approval: This is not a Single Window, but it would be a useful exercise to carry out in preparation for the Electronic Single Window and will also assist to facilitate trade. The approval could be sent back to the database and once all approvals have been obtained the trader can then import or export.

Policy Recommendations

Articles 10.1 to 10.3 are classified as either Category B or Category C notifications for Lesotho with an indicative date of implementation of end-2023. Although these are Category B and C notifications it is recommended that these be reclassified as Category A notifications and implemented immediately.

In preparation for an Electronic Single Window it is recommended that a business process analysis be carried out to map all clearance processes used by all Lesotho's border agencies. Once this is done it is recommended that a *list of all data required by all agencies is compiled. From this a single data entry form can be developed so that importers and exporters need only enter data once. The data would be entered into a database which would then notify each border agency that there is an import or export waiting for approval. The approval could be sent back to the database and once all approvals have been obtained the trader can then import or export.*

6.1.6 Article 11 (Freedom of Transit)

Article 16 of the SACU Agreement addresses freedom of transit in the SACU customs territory. It stipulates that a contracting party shall afford freedom of transit without discrimination to goods consigned to and from the areas of the other contracting parties. However, a SACU Member State may impose restrictions to protect its legitimate interests on grounds of security, public morals, public health, or as a precaution against animal or plant diseases, parasites and insects, or in pursuance of the provisions of international conventions to which it is a party.

A challenge for Lesotho is that it is becoming increasingly reliant on South African truckers to bring in and take out goods. Lesotho trucking companies buy their trucks in South Africa, register them in Lesotho and move between the two countries, including South African ports. However, Lesotho trucking companies feel that this places them at a disadvantage as they are not allowed to sell their trucks in South Africa and the market in Lesotho is too small to buy the second hand trucks. The law in South Africa is that second hand vehicles cannot be imported into South Africa and registered as a South African vehicle. The intention is to protect South Africa from cheap second-hand imports from places such as Japan and Singapore, but this also affects trucks registered in Lesotho. To overcome this challenge Lesotho trucking companies, register their trucks in South Africa, so Lesotho experiences a movement of capital out of the country and no tax or other revenue from the operation of these trucks.

Truckers interviewed were also of the opinion that South African registered trucks are given preference when transporting goods to Lesotho. This is especially true for transport of material from the South African ports to Lesotho. One may have thought that the garment and apparel manufacturers would have transport contracts with Lesotho trucking companies with an agreed price for a fixed period to transport textiles and garments from the factory gate to the port and then, as a backload, transport of imported material from the port to Lesotho. However, this appears not to be the case. It is reported that most managers of the textile and garment factories in Lesotho; mainly Asians live in the neighbouring towns across the border like Ficksburg and Ladybrand and they arrange transport deals with South African in those areas

A further reported challenge is that trucks registered in Lesotho are more prone to Police and Customs checks in South Africa than South African registered trucks. If this is the case, it would seem to be logical as trucks registered in Lesotho and moving between the ports and Lesotho are likely to be carrying goods for which duty has not been paid and so are, in the eyes of SARS and the Police, high risk and so more likely to be stopped and checked than trucks that are not obviously carrying cargo to and from Lesotho. These checks raise the time of the journey and the cost of the journey even if there is no need for informal payments to clear the roadside checks.

Policy Recommendation

The issue of transit traffic is covered in the SACU Agreement and the challenge for Lesotho would not seem to be one of regulations. However, it is recommended that:

- *Lesotho undertake a study to examine how it can resolve the structural imbalances of the road transport industry so that Lesotho can also benefit from a well-established transport and logistics industry; and*
- *LRA, working with SARS, introduces a cargo tracking system from the Lesotho factory gate to the South African port and from the South African port to the Lesotho factory gate. The cargo tracking system would be a smart container lock that can be tracked and its route mapped. If the lock is tampered with it will also send a signal to this effect to SARS and LRA. This would allow SARS and LRA to control goods in transit within the customs territory, trading under AGOA, that are neither bonded nor for which duty has been paid.*

6.1.7 Article 12 (Customs Cooperation)

The Trade Facilitation Agreement encourages Members to introduce measures that promote compliance and cooperation. In particular, Members are encouraged to ensure that traders are aware of their compliance obligations, encourage voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and apply compliance measures to initiate stronger measures for non-compliant traders.

The TFA also encourages Members to share information between themselves to verify an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

The LRA and SARS would appear to exchange information and cooperate on almost a daily basis. It is probably true to say that it is not an equal relationship, and this reflects the relative size and resources of the two Organizations. Increased cooperation between LRA and SARS, through establishing hotlines, and designating specific personnel as "problem solvers" would assist with confidence building and save time in resolving cross-border issues.

Organisational and Administrative Issues

The TFA stipulates that each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of the Trade Facilitation Agreement. Lesotho has established a National Trade Facilitation Committee (NTFC) in September 2017. In addition, Lesotho established the Heads of Border Agencies (HOBA) that was very active during the design and implementation of the Customs Modernisation Programme, this structure is a sub-committee of the NTFC.

Policy Recommendation

It is recommended that LRA strengthen their efforts to ensure that traders are aware of their compliance obligations, encourage voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and apply compliance measures to initiate stronger measures for non-compliant traders.

Improvement in Border Infrastructure

Lesotho has 15 ports (Air and land), however, only five are commercially operational. These five ports all have physical infrastructure challenges. The two largest border crossing points are at Maseru Bridge and Maputsoe. The existing facilities at Maseru Bridge require upgrading, however, consideration could be given to building an offsite search and inspection facility (for example in the station areas of Maseru West) and, also upgrade the LRA IT infrastructure to ensure more efficient border crossing for commercial traffic. The development of new industrial estates (for example, Ha Belo at Butha Buthe) should also assess whether it is necessary to upgrade existing border facilities.

7. NATIONAL QUALITY INFRASTRUCTURE

Historically, Lesotho has been very dependent on South Africa and has to a large degree relied on the regulatory regime in South Africa. Standards and regulations were used and products that were accepted in South Africa were deemed to be suitable for Lesotho. More recently however, investors and funders from other countries and regions have brought with them their own unique standards which have now been applied in Lesotho leading to some confusion. Whereas previously, Lesotho relied on the enforcement of regulations by the South African authorities at the border posts, changes in the control environment and increased trade volumes has meant that goods not meeting basic safety or quality standards are being found on the Lesotho market and have raised concerns among consumers and local suppliers. It is alleged that in many cases goods are released based on the supplier's claims of conformity. However, it is well known that there is very little infrastructure in place in the country to verify these claims and to act against transgressors, so allegations of infringements are increasing.

7.1 The Need for a National Quality Infrastructure

A National Quality Infrastructure (NQI) is an integral part of the trade infrastructure of an economy. The NQI should be developed in the context of international best practices, the needs of industry and other stakeholders in the country and the framework of regional obligations. In the context of increasing global trade and in order to take advantage of the opportunities offered under asymmetric trade deals such as the AGOA agreement and the EU-EPA agreements, Lesotho has to offer products of similar or better quality and at better prices than its competitors. While the quality of these products remains the responsibility of the manufacturer, access to quality services such as standards, calibration, testing and certification that are globally recognised, convenient and competitively priced, can assist in achieving their quality objectives and providing assurances that may be required to satisfy customers and access markets.

The NQI functions include technical Standards; Metrology, Certification and Accreditation. These functions work together to provide assurance that enables trade between contracting parties but also allows for the implementation of certain public policies as providers can provide evidence of conformity to the technical requirements and regulators can use the same standards, measurements and assessments to verify compliance.

The draft National Quality Policy (NQP) outlines the proposed interaction between the different functions and recognises that these are not required to be provided by the state, they can also be provided by the private sector. The

NQP notes that many of these services are available commercially in South Africa and other countries. Further, a detailed cost benefit assessment should be undertaken prior to the government investing in NQI to ensure that this is most effective way of providing the services.

The Department of Standards and Quality Assurance (DSQA) was established under MTI[34] in

2004 with the mandate to establish the NQI for Lesotho. The DSQA currently acts as the focal point for most quality related matters in the country and has been working on setting into motion the process of establishing the National institutions that are foreseen.

7.1.1 Standards

The Lesotho Standards Law was drafted and approved by the cabinet in 2014[35]. The Law provides for the establishment of the Lesotho Standards Institution under the MTI and gives it the mandate to prepare and publish Lesotho National Standards; to keep a repository of approved standards; to join relevant international forums for the purposes of widely harmonising standards; to make available and sell standards; to establish stakeholder forums to agree to the adopting of standards; and, provide information in accordance with international obligations related to published standards and standards under development (programme of work). The Act also provides that no other body may develop or claim to produce Lesotho National Standards, it also clearly states that all Lesotho National Standards are voluntary but may be referred to in any Law in Lesotho and in so doing will be promulgated into Law.

Having the legal mandate in place is a step forward in starting to develop an effective National Quality Infrastructure (NQI). However, while the Act was passed in 2014, in 2018 the MTI began the process of appointing a board which will be responsible oversight of the institution. Since it was established in 2004, the DSQA has been working to set up the NQI structures and the processes needed once these bodies are established and while the Standards Law establishes the LSI, the operationalization and transfer of responsibilities form the DSQA to the LSI has not yet taken place.

The work contemplated by DSQA leading up to the establishment of the LSI included work on establishing technical committees and developing text for publication as national standards but until such times that the LSI is operational; the formal approval of these documents cannot take place. It is envisaged that

[34] The Ministry of Trade and Industry (MTI) was named the Ministry of Trade, Industry, Cooperatives and Marketing until April 2015 when the new Government established a new Ministry of Small Business Cooperatives and Marketing. Throughout the text we will use the current title.

[35] Lesotho Standards Institution Act, 2014 (Act 8 of 2014)

once the LSI is established the committee processes and some of the DSQA staff responsible for the development of standards will move across and standards can be approved relatively smoothly and quickly.

The commitment to aligning standards with international requirements appears to be on track in Lesotho and progress is being made despite the delays in operationalizing the LSI:

- In recent interviews with the Telecommunications Regulatory Authority[36] has indicated that the body is members of both the International Telecommunications Union (ITU) and the European Telecommunications Standards Institute (ETSI) and are adopting the appropriate standards and guides necessary for effective operations of the telecommunications network in Lesotho. Lesotho is an importer of telecommunications equipment and other electronic devices that can impact on the radio spectrum, as such the regulator adopts the interoperability and other radio spectrum standards to control the entry of products into the market. Conformity assessment in this area remains problematic as inspection and verification act ivies are weak and enforcement is limited to pre-import approval and close cooperation with licensed operators. The Communications Authority cooperates well with similar bodies regionally in order to ensure an effective communications networks in support of an information economy and has membership of both the African Telecommunications Union (ATU) and the Communications Regulators Association of Southern Africa (CRASA). An important component of the information economy is sound information security and data protection legislation – a draft bill for which is currently under discussion.
- The National Electricity and Water Regulator in Lesotho is responsible for regulating the generation and distribution of electricity in Lesotho and includes aspects such as the security and quality of supply. As part of their mandate, they have the authority to develop suitable national standards to allow them to achieve their regulatory objective, but they are committed to working on developing National Standards under the DSQ / LSI process where possible or applicable. Lesotho's Electricity generation and supply network is closely integrated with that of South Africa and with the envisaged development of the next phases of the Lesotho Highlands Water projects Lesotho will be an important player in the regional energy (and water) mix. The regulator has adopted many South African standards developed by the National Regulatory

[36] Standards Stakeholder meeting convened at MTI of 14 August 2018

Standards (NRS)[37] team in ESKOM (South African Electricity Supply entity). The ERA has developed a national transmission grid code as well as guidelines for cross border trade in electricity and water in order to ensure trade can take place in these commodities. ERA is a member of the Regional Electricity Regulators Association (RERA) and the Power Institutes of Eastern and Southern Africa (PIESA) and adopts codes and guidelines to ensure integration and continuity of supply.

- Private industry, represented by water bottlers, have identified the need for standards and conformity assessment services to support their market ambitions; as an industry, they have adopted established South African Standards and supply bottled water in accordance with those codes. With no accredited testing facilities in Lesotho, a product is sent to the University of the Free State in Bloemfontein for testing. The test reports are required by South African owned supermarkets where the products compete against similar product, imported by the chains, from South Africa. Bottled water from Lesotho has made limited inroads into the South African market and as an association options are being explored to differentiate their product and are members of the International Mountain Water Bottlers association

a) Sanitary and Phyto Sanitary Standards

Food safety, Plant Protection and Animal Health responsibilities rest with the Ministry of Health and Ministry of Agriculture and Food Security in the departments of Agricultural

Research (Plant Protection and Quarantine) and Livestock Services (Animal Health) respectively. There is currently no comprehensive national SPS[38] policy in the country and because the ability of the different regulators to achieve their regulatory objectives relies heavily on the work of other regulators, it is important that coordination between these functions is encouraged and ensured. Work has begun in Lesotho on drafting a National Quality Policy[39], which is intended to address some of these coordination issues but is still in draft form.

[37] The NRS is recognized in South Africa by the SABS under the South African Standards Act (Act 8 of 2008) allowing some of the standards developed by the NRS to be declared National Standards.

[38] Separating out the two issues. There are regulations governing Sanitary issues, while phytosanitary (plant protection) policy remains a draft.

[39] Kellermann, M (2014) "Assessment of the national quality infrastructure and technical regulation regime of Lesotho with the aim to develop a National Quality Policy"; USAID Contract No. 674-C-00-10-00075-00

b) Food Safety

A draft Food Safety Policy was developed in April 2014 following an assessment of the current situation in Lesotho however, the recommendations were not accepted. The GOL is proceeding with the preparation of a new Food Safety policy.

The Ministries of Health, Agriculture and Food Security and Trade and Industry have agreed that food safety issues will be managed by the Ministry of Health. The three Ministries have established a technical committee to prepare the new Food Safety Policy. To date, the committee has drafted terms of reference to engage a Food Safety Expert to assist with the development of the new policy and is currently seeking funding from international cooperating partners.

c) Plant Protection

A draft plant protection policy was developed in 2015 with assistance of the UN Food and Agriculture Organisation (FAO) after assessment of the current situation in the Country.

There are two departments in the Ministry of Agriculture and Food Security mandated to address issues of plant protection in Lesotho. These are the Department of Research (DAR) and the Department of Crops Services (DOC). To undertake this mandate, the two departments collaborate with the Department of Field Services (DFS). However, there is limited staff and funds to undertake the attached responsibilities.

The responsibility of the implementation of Standards rests largely with the DAR and to this end the department aligns with several international standards setting bodies such as the IPPC (International Plant Protection Council) and for the purposes of regulating Pesticides and other agro-chemicals, participate and align with the Chemical Management Committee (CHEMAC) of the international committee on the coordination of chemicals. In accordance with international guidelines on the topic, the policy not only describes the need to control the entry of chemical into the market but also the use of Integrated Pest Management (IPM) codes of good practice to reduce the use of agro-chemicals while effectively addressing risks. Effective implementation of such practices requires close collaboration of several agencies.

The importation of plant material into Lesotho is managed in accordance with the international standards which are adopted by the Department of Agriculture and approval is confirmed with a Phytosanitary certificate of compliance issued in the country of origin. The process of importing plant material requires attention in terms of coordination as currently a single transaction will require a) an import permit – issued by Department of Trade (in MTI) b) Phytosanitary Certificate approved by the DAR, and c) release by the border control agencies, which are often not resourced with competent inspectors.

The export of plant material or processed food will often require Phytosanitary certificates which for the purposes of food processing will require Maximum Residue Level analysis (MRL) – there is no capacity to test MRLs in Lesotho.

Besides the two departments, there are other departments/institutions that deal with plants and plant products and their protection. However, there is no clear coordination between such stakeholders and the Ministry of Agriculture and Food Security.

d) Animal Health

Similar coordination issues are encountered with the control of movement of animal and animal products in Lesotho. The Ministry of Agriculture and the Department of Livestock are responsible in this regard; and their mandate is provided by the importation and exportation of livestock and livestock products Act of 1952.

Lesotho works closely with its compatriots in Southern Africa and internationally to manage the spread of contagious disease that can affect the different herds in the country. Early warning systems and the notification obligations are met by the Ministry of Agriculture and Food security - Department of Livestock Services, who fulfils all notification obligations, including notifying the SADC secretariat and the OIE on developments in these areas. The enquiry point functions to keep abreast of developments in terms of notifiable diseases.

The control of stock remedies falls under the department of agriculture and approval is based on international standards for these products.

The enabling legislation needs to be updated making provision for the formal adoption of suitable international standards as national standards. The new livestock policy was developed in 2017 and should inform new legislation once approved and implemented. The policy has been drafted in accordance with international guidelines of the OIE, WTO, WHO and the FAO.

The development of national technical standards based on international guides will facilitate effective measures to control the spread of disease which can affect the different herds in Lesotho. While the Ministry of Agriculture and Food security will have the mandate to develop these standards, it is also clear that the envisaged Lesotho Standards Institution (LSI) will also have a mandate to develop national standards. It is important therefore that the trade policy encourages cooperation between the bodies to ensure that the bodies do not develop conflicting standards. Testing capacity is needed to support the verification of compliance to standards in order to support the enforcement of regulations.

e) Mining Standards[40]

The Mining Sector is an increasingly important contributor to the economy of Lesotho and successful growth of the sector will rely significantly on an effective trade environment.

A Draft mining policy was developed in 2015 [41] following stakeholder consultation. This addresses the current situation and likely future trends. The policy identifies the need to revise the legal and technical environment in order to allow for the development of the industry at both the large scale as well as the Small and Artisanal Mining (ASM) level.

The ministry of Mining has adopted several standards that impact directly on trade and investment in the mining sector: The South African Mineral Resources Reporting Code (SAMREC) has been adopted directly and is used in the assessment of claims and granting of permits and forms the basis of trade and investment in these areas. A raft of South African Standards (SANS) related to the reporting of reserves are used for these purposes.

Explosives are a key input material into the mining process and there is currently no capacity for manufacture in Lesotho, consequently this material must be imported. Standards for the description and classification of dangerous goods are necessary for the approval and handling of these products – at this stage the department uses South African standards (which are adoptions of the UNECE codes). Clearance of these products at the border should for obvious reasons happen as quickly as possible and consignments should not be held up unnecessarily as they pose a safety and security risk. Formal clearance processes require an import permit from the department as the regulator responsible for the control of explosive material in the country. There are concerns that the border inspection staff have not been trained to verify consignments against the import permits and to identify un-permitted explosives entering without prior approval.

The Mining Policy makes a commitment to incorporate several important national objectives into this growing sector in order to ensure sustainability of the industry and to protect the interests of the people of Lesotho, these include a commitment to occupational health and safety, effective management of the impact on the environment and a commitment equitable participation of the communities in the operations of the mines. The adoption and mandating of national standards can be an effective way to achieve these operations

[40] Meeting with Commissioner of Mines 16 August 2018
[41] The Minerals and mining Policy (2015) Government of Lesotho

making use of international standards and conformity assessment bodies that are independent and competent.

f) Notifications and Enquiries

The international obligations in terms of notifications related to standards and technical regulations are currently assigned to responsible departments; adequately resourced and operational. The WTO TBT enquiry point obligations are housed with DSQA; the WTO TBT notification obligations are dealt with by the department of Trade in the MTI. The National Notification Authority (NNA) and National Enquiry Point (NEP) obligations under the WTO SPS Agreement are currently housed in the ministries responsible for these regulations: The National Department of Health hosts the Food Safety NNA and NEP; the Directorate of Plant Protection under the national Ministry of Agriculture, complies with the NNA and NEP obligations in terms of plant protection measures and the Directorate of Livestock and Animal Health fulfils the obligations in terms of animal health measures.

7.1.2 Metrology

Metrology services are divided into scientific metrology and legal metrology. Scientific metrology is concerned with the development of the highest measurement standards for the country and maintaining the required measurement traceability to support industrial activity. Legal metrology involves assuring the correctness of measurement in the market place usually through the approval of measuring instruments and inspections of trade practices involving measurements.

In Lesotho some very limited provision has been made to provide facilities for the enforcement of legal metrology in the country and is supported by a somewhat outdated weights and measures legislation[42] however the agency described in the act is not functional and needs to be established. Once in place, the board of the metrology institute can set about drafting new legal instruments in line with modern economic and technical realities. A revised weights and measures act will make provision for the use of measurements in trade. The DSQA has maintained membership of the SADCMEL cooperation on legal metrology and is in a position to facilitate the adoption of model regulations for the enforcement of the different regulations related trade and legal metrology in the region to ensure alignment of practices between the neighbouring countries while at the same time being able to enforce basic consumer protection surveillance in the country.

[42] National Metrication orders (1972) of the government of Lesotho. [43]SADCAS website – www.sadcas.org

The size of the economy does not justify a full primary metrology institute that can realize measurements in all areas like NMISA in South Africa however a focal point that can assist industry to access common measurement traceability is needed and at least for the short term this is best housed as part of the functions of the metrology lab. Most of the calibration requirements of industry can be obtained from South Africa.

7.1.3 Accreditation

Accreditation is the process whereby an independent body confirms the competence of providers of testing and conformity assessment services in the country - In laymen's terms it can be referred to the process of "checking the checkers".

At this stage, the market is too small and there is no need to support a stand-alone national accreditation body. In the Southern African Development Community (SADC) region, SADC Accreditation Services (SADCAS[43]) has been set up as a regional accreditation body. The DSQA is appointed as the national focal point for accreditation in the country and interfaces directly with SADCAS; it is recommended that this relationship continues. The mutual recognition afforded by the SADCAS agreement and the relationship with SANAS will allow for recognition by Basotho CBs and test labs and will ensure the accountability of foreign registered bodies operating in the country.

7.1.4 Conformity Assessment

The definition of conformity assessment as listed in ISO Guide 2 or ISO 17000 is as follows:

Conformity Assessment: the demonstration that specifies requirements relating to a product, process, system, person or body are fulfilled.

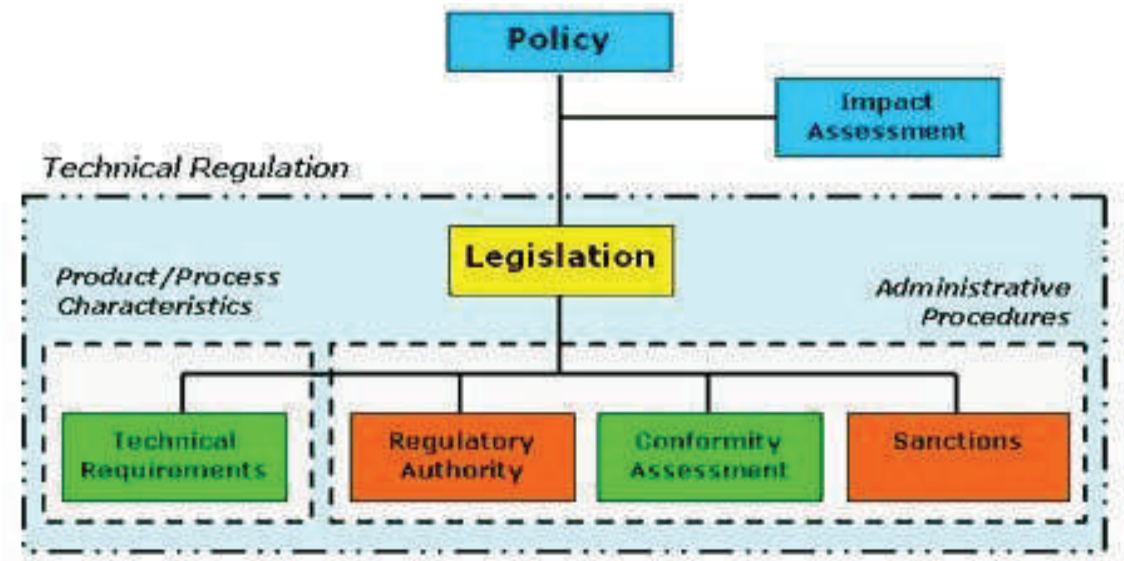
Several bodies typically operate in this space as part of the NQI and can be in the private or public sector and may even be based outside the country. For the most part conformity assessment services can be provided by the market either in Lesotho or from companies operating from South Africa or further afield. It is however important that whoever provides these services are held accountable for their claims of conformity in the country and the accreditation mechanism should work with network of accreditors to ensure that the users of certificates of conformity offered by bodies accredited outside of Lesotho have full recourse in Lesotho.

The policy should make provision to support laboratories to become accredited and should support certification activities in the country encouraging suppliers in the Lesotho market to become certified to either product or management system certification depending on where the greatest benefit is in relation to the markets they serve.

7.1.5 Technical Regulations

The draft national quality policy proposes a framework for the development of technical regulations in line with international best practice. The development and implementation of technical regulations is heavily dependent on the services of the quality infrastructure mentioned above. The technical requirements should be based on standards. The conformity assessment should come from any number of service providers that are technically competent, i.e. accredited, giving manufacturers a choice. The main responsibilities of the regulatory authorities are to conduct market surveillance and apply sanctions when products on offer do not meet technical regulation requirements.

Figure 5: Schematic Outline of the Structure of Technical Regulations Following Best Practice Guidelines as Proposed by the WTO TBT Agreement[43]



Policy Objective

To be fully compliant with the WTO SPS and TBT Agreements, the SADC Trade Protocol Annexes on SPS and TBT, and to implement the National Quality Policy.

Policy Recommendations

The foundations for the development of national standards have been completed. Several policies have been developed which, in all cases, remedy

[43] Source: EAC Quality infrastructure (http://www.eac-quality.net/better-business-with-quality/technicalregulations.html

the identified deficiencies in the existing enabling legislation to allow key regulators to realize their policy objectives. Most of these policy objectives will have an impact on the movement of goods into and out of the country as well as on trade in goods and services domestically and across borders.

The Polices that have been developed include:

- *National Quality Policy*
- *National Minerals and Mining Policy*
- *National Food safety Policy*
- *National Plant Protection Policy*
- *National Animal Protection policy*
- *Information Security and Data Security Bill*

The National Trade Policy commits to implementing the policy recommendations related to establishing and strengthening the Quality infrastructure made in the draft NQP. These are listed below. The investment of resources in the quality infrastructure should continue and includes:

- *Operationalization of the Lesotho Standards Institute and publication of National Standards;*
- *Effective legal instruments to cover measurement standards and the needed metrology bodies;*
- *Effective Legal Framework for the development of sanitary and Phytosanitary measures (SPS) and enforcement infrastructure;*
- *Effective mandates for the enforcement and market surveillance related to technical regulations;*
- *Support for testing labs and other Conformity Assessment bodies to become accredited;*
- *Promotion of quality and the use of the NQI infrastructure in Lesotho;*
- *Coordination of the development of technical regulations across all regulatory authorities to ensure better implementation, effective notifications and efficient enforcement*
- *It is recommended, in line with good international practice, that the institutional structure within the Ministry of Health provide for a separation of risk assessment and risk management functions*

Coordination: *Coordination between agencies, as well as between agencies and other stakeholders is identified as being critical for affective implementation of the respective policy objectives but also for the facilitation of trade. Temporary structures have been established such as the Lesotho Coordinating Committee on Trade (LCCT) aimed at achieving some level of* *coordination but, in some cases, these are less than effective and are not staffed by people at the correct levels of authority within their own agencies to allow them to affect the measures required to achieve the coordination needed to effect more efficient trade.*

Staffing and Resources: *Enforcement of technical regulations at points of entry into the market proportional to the risk associated with failure of those products and resources need to be deployed accordingly. In many cases, conformity based on documented proof is sufficient to allow for pre-approval, but competent inspection capacity is needed to support this process to verify compliance when necessary and to conduct post-market surveillance. In support of this, certain testing capacity is also required in the country in support of high volume, high risk or readily spoilable products.*

Support for the provision of services to assist in providing assertions in support of exports may also be considered. For certain products such as plant, animal and food products pre- export permits covering areas required under appropriate legislation in the destination countries will be required to be issued by the originating authorities (such as MRL certificates) and testing capacity will be required to support this permitting decision, but the services could be extended to support not only regulated but customer requirements in destination markets in support of growing exports. Without competent domestic testing capacity local suppliers might be at a disadvantage when accessing markets as they need to "export" their products to have them tested – the marginal cost of testing for example of supplying a locally sourced product to a South African supermarket operating in Lesotho can make it difficult for that product to compete with imported products imported directly by the supermarket (support for local testing or subsidies for foreign test services could help offset this cost).

8. INTELLECTUAL PROPERTY RIGHTS

Economic Environment

Lesotho currently has a very low level of economic activity arising from intellectual property rights (IPR). From music to publishing to high tech, there has been a lack of development in IPR industries in the country. This is true not only for home-grown businesses but also for economic activity arising from foreign direct investment and technology transfer. For example, Lesotho has a low level of technological innovation. There are very few patent filings and almost none by local nationals. Inventions are rarely monetized on a large scale such as through using corporate spin-offs to commercially develop scientific discoveries made at universities or research institutions. Creative industries also have not flourished in Lesotho economically. Often local inventors and artists develop their products only after leaving Lesotho for another country. This is due to a lack of IPR enforcement combined with insufficient large-scale infrastructure such as film studios or comprehensive and well-funded research laboratories.

Lesotho has a small domestic market and the economic value of IPR-based products exported to foreign markets from Lesotho is not significant. With few registered patents and insufficient enforcement of local trademarks and copyrights, few local IPR holders have been able to create enough local or foreign demand for their products to support a business built on their IPR. One way this demand could be increased is by enacting new IPR laws such as a law protecting products based on a Geographical Indication (GI). This type of law protects, for example, a wine or cheese produced in a specific area (Champagne and Normandy Camembert cheese are two examples of GIs in France) or a unique textile produced in a specific town. With no GI law, a group of products made in Lesotho that might have a high value due to the favourable reputation of the region have difficulty distinguishing themselves from products from other countries that use a similar or even the very same name.

Another major problem for Lesotho businesses and consumers generally is the low level of understanding by the public of how trademark law works and thus there is an underuse of the trademark registration system. This extends to the international level where, even though Lesotho has joined the signed treaty for international trademark registration process set out in the Madrid Protocol, there are still few trademarks from Lesotho filled under this system. This fact combined with insufficient enforcement of trademark rights makes it hard for local business to distinguish their products or compete against knock-off products both at home and abroad. Finally, there is insufficient Customs enforcement against counterfeits and pirated goods, whether through the prevention of them from entering Lesotho at all, or by seizure after entry.

Legal Environment

Legal protection of IPR in Lesotho is currently insufficient to support a robust IPR economy. IPR laws and regulations are incomplete and outdated. The primary laws for patents, trademarks and copyrights were enacted in 1989 and no significant additional IPR laws have been put in place since then. Several substantial areas of IPR have no protection at all, such as trade secrets and GIs.

Second, the legal protections for IPR that do exist are barely enforced. This is due in part to a low level of understanding or even awareness of the existence of legal protections for IPR by those who should be enforcing them, including police, Customs, prosecutors, judges and even law makers.

Third, the IPR registration system mandated by current IPR laws does not function at a level such as what is seen in countries with strong IPR economies. One indication of this situation is the low level of use of the registration system by the public. Most registrations in Lesotho are for trademarks and patent registrations number in the single digits per year with the majority being for foreign patents. These registration systems are not fully automated or digitized which can make thorough reviews of registration applications time-consuming and potentially incomplete. For example, trademark applications currently can take up to four months for approval. In addition, the lack of complete automation of the trademark system increases the risk of that confusingly similar marks might be approved.

Even if the laws, enforcement and registration systems of IPR were stronger on a national level, there is an extremely low level of awareness in Lesotho of the existence of IPR protections or the economic and social value of IPR. This is true even for IPR owners which is the IPR stakeholder group that would most benefit from strong IPR. Lesotho's own artists, writers, musicians, inventors and entrepreneurs, as well as the media and the public in general do not understand the value of IPR protection. This is in part due to the weakness or nonexistence of civil society institutions that should be advocating for strong IPR. Writers unions, actors' guilds, publisher groups, university researchers, and other similar groups should be at the forefront of enforcing their member's rights as well as helping their members commercialize their IPRs, lobbying for new IPR laws and regulations, and disseminating information to the public on the value of IPR through media outreach and training resources.

Lesotho is a member of several regional and international trade groups such as SACU and the WTO. While the SACU Agreements have no specific IPR provisions, the WTO contains substantial IPR obligations arising under its Trade

Related Aspects of Intellectual Property Rights (TRIPS) Agreement. However, Lesotho still has several years of a grace period remaining before full compliance with TRIPS. Lesotho is also a member of other entities that focus on IPR, including the World Intellectual Property Organization (WIPO) and the African Regional Intellectual Property Organization (ARIPO). Lesotho has in the past received important technical support from WIPO, such as for example to increase the automation of the IPR registration process.

Policy Objective

Vision 2020 and the National Strategic Development Plan (NSDP) 2012/13 – 2016/17 (extended to 2018) indicate primary goals of accelerating economic growth and reducing the poverty rate. Strengthening IPR will assist the national objectives of increasing economic growth and employment. A strong IPR system encourages innovation, creativity and entrepreneurship, leading to the development of new industries and businesses. In addition, empowering both local and foreign companies to protect their trademarks not only improves their businesses but also protects consumers from low-quality counterfeit goods. Therefore, the policy objective of this National Trade Policy is to strengthen IPRs in Lesotho in order to 1) attract foreign investment and technology transfer into Lesotho and, 2) develop and retain in-country local entrepreneurs, innovators and creative artists.

Policy Recommendations

The government of Lesotho must strengthen and update IPR laws and increase IPR enforcement and awareness if it wishes to improve the climate in Lesotho for IPR business development, either by its own citizens or through international investment and foreign technology transfer.

General Recommendation

Update, finalize and approve the Intellectual Property Plan for Lesotho as developed with WIPO in 2015. Leverage existing group memberships, such as in SACU or ARIPO, and work with the EU, to request technical support for IPR development. Lobby for the inclusion of IPR assistance obligations into SACU commitments. Access WTO and ARIPO assistance on TRIPS compliance, general IPR support and for Customs development, including for anticounterfeiting resources.

Specific Recommendations

Improve the Legal Environment
Laws: *Update existing laws and expand legal coverage to new areas of IPR, including GI and trade secrets.*
Enforcement: *Support an IPR docket for the Commercial Court through increased funding for legal resources and training. Encourage judges and attorneys to pursue IPR specialization and provide IPR legal training such as through expanded law school curriculum and continuing legal education for attorneys and judges. For Customs, develop an IPR office, increase IPR training for Customs officers and install searchable registries of IPR at customs offices. Reinvigorate the Lesotho IP Enforcement Unit and expand its mandate to include general IPR promotion.*
Administration: *Fully digitize and automate the trademark and patent registration process and allow for easy public searching of local registered trademarks and patents. Streamline the Intellectual Property Office to only focus on IPR issues. More fully participate in the international IPR registration system such as increasing public awareness of the advantages of international patent and trademark registration. Consider joining the ARIPO regional IPR database project.*
Develop IPR Institutions and Civil Society Interests:
Empower stakeholder groups by creating an interagency IPR task force. Support the development of the newly established collective management society and launch additional ones for specific areas of IPR. Increase IPR information dissemination to the public through media sources and public outreach.
Encourage Technological Innovation
Increase government support of science and technology education and for business and technology incubators. Develop IPR related curricula in law and other schools. Increase financial support to research institutions and laboratories. Create a task force to institute a method to leverage university research into commercialized products based on registered patents.
Empower Technology Transfer into Lesotho
Enact laws to protect trade secrets. Increase participation in international patent and trademark registration systems. Increase enforcement against piracy, counterfeiting and the theft of trade secrets.

9. COMPETITION AND CONSUMER PROTECTION POLICY

Competition and consumer protection laws will reinforce and complement other economic policy tools and instrument in the regulation of trade and the conduct of business in Lesotho's trade and business interaction at the domestic, regional and international levels.

These instruments and tools include application, observance and/or enforcement of trade defence measures for domestic and international trade (safeguards, countervailing measures and anti-dumping duties), Sanitary and Phytosanitary (SPS) measures, and technical barriers to trade (TBTs). These policy tools are detailed in other pieces of legislation but complement the competition and consumer protection laws.

Competition and consumer protection laws are increasingly becoming important economic and socio-political governance tools around the world. Over the last two to four decades, more and more countries have adopted and implemented competition and consumer protection laws. Competition and consumer protection laws seek to ensure fairness and equity of opportunity among economic operators, and justice and value for money for consumers.

As trade deepens and business interactions become more complex, competitive and interdependent among nations arising from the multilateral trading and regional integration initiatives, the need for a fair, transparent and predictable framework for doing business is an economic imperative in any economy, irrespective of size. Small economies need to regulate the conduct and behaviour of business operators as much as large economies do, and the Kingdom of Lesotho is no exception.

The Global Scenario

Competition and consumer protection laws are applicable and appropriate for all types of economies - least developed, developing, developed countries, small, emerging and large & advanced economies. Hence today, there are some 133 countries and economies, including China, Chile, Colombia, Venezuela, the USA, Russia, Germany, Japan, Singapore, Egypt, Israel, South Africa and Namibia, and 7 regional economic communities[44], or integration arrangements, with competition and consumer protection laws around the world.[45]

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[44] The 7 economic communities are the Caribbean Community, the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Eurasian Economic Commission, the European Commission, the European Free Trade Association (EFTA), and the West African Economic and Monetary Union (WAEMU)

[45] Source: UNCTAD, July 2018.

The Regional Scenario: SACU and SADC

Lesotho is a member of the Southern African Customs Union (SACU) and the Southern African Development Community (SADC). In SACU, all countries except Lesotho[46], have Competition Laws, however, a bill is in place and yet pass through national approval processes. In SADC, 12 of the 16 members have competition laws. Only 4 countries[47], including Lesotho, do not yet have competition laws.

While SACU remains the oldest customs union in operation, it does not have a harmonised competition law nor an enforcement authority. Four countries in SACU have enacted national competition laws and have established enforcement agencies at national level. Similarly, while SADC is a fully-fledged Free Trade Area, its membership has not yet agreed on a regional competition law nor established an enforcement authority. Lesotho is lagging in enacting and implementing this important economic policy tool.

Current Status with Competition and Consumer Protection Legislation in Lesotho

Lesotho approved a competition policy in 2007 and has drafted a national Competition Bill which is awaiting presentation to Parliament for enactment into law. Lesotho approved the Consumer Protection Policy in 2014 and a draft Consumer Protection Bill which is awaiting presentation to Parliament.

Competition and Consumer Protection Disciplines

In enacting and implementing competition law, Lesotho should ensure the three main tenets and core competition disciplines are addressed. These include:

Prohibiting Anti-Competitive Business Practices and Conduct;

ii) Regulating Mergers and Acquisitions; and
iii) Enforcing Consumer Protection.

9.1 Anti-Competitive Business Practices and Conduct

Under Anti-Competitive Business Practices and Conduct¸ Lesotho will seek to prohibit any agreement that prevents, restricts or distorts competition in the Lesotho economy. The law will define what constitutes an anti-competitive practice. The law will also define "a dominant position" as the ability to influence unilaterally the price or output of a given product in the

[46]SACU has 5 members namely Botswana, eSwatini, Lesotho, Namibia and South Africa.

[47] The 4 SADC countries which do not yet have competition laws are Angola, Comoros, the Democratic Republic of the Congo (DRC) and Lesotho.

Lesotho economy. The law will provide thresholds for dominance in the Lesotho market and prohibit abuse of the dominance.

The law will prohibit horizontal and vertical agreements, including resale price maintenance agreements. The law will further define other prohibited business practices and outline procedures for the determination of anti-competitive conduct.

9.2 Mergers and Acquisitions

On Mergers and Acquisitions, Lesotho will enforce measures to regulate mergers and acquisitions in an equitable, fair and transparent manner. Through the Competition law, Lesotho will specify what mergers would be notifiable to the competition commission and which mergers would not require to be notified. The law will specify notification thresholds and define the meaning of a merger, and controlling interest and other key elements of mergers and acquisitions including:

i. requirements for notification and notification thresholds;
ii. mergers subject to review;
iii. assessment of a merger;
iv. hearing in relation to a merger;
v. final determination by Commission on a merger and issues of concerns
vi. during consideration of merger;
vii. time limits for determination of mergers by the Commission;
viii. enforcement of determinations and directives of the Commission in relation to mergers;
ix. application to Court in the case of non-compliance; and
x. exemptions and exclusions under merger notification and assessment.

Public Interest Considerations

In all analyses of Mergers and Acquisitions, the Competition and Consumer Protection Commission shall take account of national aspirations and national economic and social development goals - all collectively referred to as "public interest considerations" - before arriving at a final decision.

9.3 Consumer Protection

Under the Consumer Protection law, Lesotho will seek to address the main consumer concerns as enunciated in the Consumer Bill of Rights.[48] These rights are:

i. the right to be safe;
ii. the right to choose freely;
iii. the right to be heard;
iv. the right to be informed;
v. the right to education; and
vi. the right to service.

The law will address the following main consumer concerns namely:

i. Definition of unfair trading practice

ii. Prohibition of unfair trading practice

iii. False or misleading representation of products or services;

iv. Warning notices to the public for all potentially dangerous products or services;

v. Product safety standards and unsafe goods;

vi. Product information standards, including language labelling;

vii. Compulsory product recall for faulty or defective products;

viii. Power of the Competition and Consumer Protection Commission to declare product safety or information standards;

ix. Prohibition of display of disclaimers such as "Goods Once Bought No Return No

  a. Exchange";

x. Prohibition of supply of defective and unsuitable goods and services;

xi. Compulsory price display;

xii. Unfair contract term;

xiii. Complaints on unfair contract term or trading practices, defective goods, misrepresentations, etc.;

xiv. Liability in respect of unsuitable products or services;

xv. Liability for defective goods causing injury and loss;

[48] Enunciated in a speech by President JF Kennedy in 1962.

xvi. Unidentified manufacturer;

xvii. Possible defences for manufacturers, suppliers and/or retailers.

Policy Objectives: Competition and Consumer Protection Law Enforcement Arrangements

Enforcement Agency

Lesotho proposes to enforce competition law and consumer protection under separate legislation and under separate agencies or authorities. It is proposed that competition law be enforced by a competition commission while consumer protection is enforced by a Department of the Ministry of Trade, Industry.

This arrangement is not ideal as consumer protection will inevitably be relegated to second grade issue and will have the prominence that competition issues will receive both in terms of resourcing (human and financial) and political attention and clout.

For efficacy and to ensure consumer protection issues receive adequate attention, it is advisable that ONE authority, with several departments, handles both competition and consumer protection issues.

In the region, the practice is split between those countries that assign consumer protection to Government / Ministerial departments and those that maintain ONE authority to enforce both competition and consumer protection laws.

Competition Commission and Sectoral Regulators

The Competition Bill 2017 provides for the Competition Commission to enter into Memoranda of Understanding with sectoral regulators such as the Lesotho Communications Authority (LCA) and the Lesotho Electricity and Water Authority (LEWA).

Jurisdiction and responsibility regarding specific competition cases and issues will be spelt out in these Memoranda of Understanding. The provision regarding jurisdiction and responsibility as drafted in the Competition Bill 2017 is adequate for now.

Leniency Programme

For efficacy of the Commission in detecting and gathering information regarding anticompetitive business practices, it is essential that Lesotho includes a Leniency programme to allow whistle-blowers to come forward and alert the Commission of possible anticompetitive practices or provide information on past anti-competitive practices.

Whistle-blowers are the surest way of collecting vital information in such cases as cartel behaviour, bid-rigging and similar anti-competitive practices, and so it is an absolute necessity that a provision be made in the competition law relating to leniency programmes for whistle-blowers.

Criminal vs Civil Sanctions

The draft Competition and Consumer Protection laws of Lesotho provide only for civil sanctions in case of breach of the law. While some jurisdictions such as the USA provides for criminal sanctions, it is not advisable that such practices be introduced so early in Lesotho's competition jurisprudence.

Fines and civil sanctions are adequate for now and criminal sanctions may only be considered much later once Lesotho has amassed sufficient experience and expertise and the level of awareness of consumers and the business sector is deep enough to appreciate the full impact of competition and consumer law on the economic and social development of the Kingdom.

Co-operation with Other Countries in Competition and Consumer Protection Enforcement

Lesotho, being a member of both SACU and SADC, will establish or join existing frameworks for co-operation in competition and consumer protection law enforcement.

Under SADC, there already exists a framework for such co-operation: the "SADC

Declaration on Regional Co-operation in Competition and Consumer Policies" adopted by SADC Member States in 2009. As a full member of SADC, Lesotho will participate fully in these co-operation activities under this framework.

As a member of the SADC Free Trade Area, the implementation of competition and consumer protection law will ensure that the benefits of free trade under the SADC FTA are realisable for Lesotho citizens and business persons, and that anti-competitive practices that may be perpetrated under the SADC FTA are thwarted.

Under SACU, as all other SACU countries already have competition and consumer protection legislation and implementing authorities, the Lesotho Competition and Consumer Protection Commission will co-operate with these authorities in addressing cross-border and SACU-wide anti-competitive practices.

Such co-operation for both SACU and SADC may involve investigation, information sharing and exchange, participation in public hearings, joint awareness and publicity programmes, and staff exchanges and training, and institutional capacity building.

Lesotho will also participate in regional and global meetings and conferences on competition and consumer protection and lend support to the SACU and/or SADC positions in these meetings. These fora include the annual OECD Global Forum on Competition and Consumer Policies, the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy Meetings, and on-going discussions at the multilateral level (WTO) on competition and consumer protection law and policy.

Policy Recommendations

Lesotho has drafted a Competition Bill 2017 and a Consumer Protection Bill as separate pieces of legislation. The Consumer Protection Bill is anchored in a Consumer Protection Policy which is also in draft form and is awaiting adoption.

For ease of operations and efficacy of the implementing agencies, it is recommended that:

- ***Competition and consumer protection laws** be implemented by one agency and that the Competition Commission be re-named the **Competition and Consumer Protection Commission;***
- ***Competition and consumer protection** cases be adjudicated, in the first instances, by a single body and that the Competition Tribunal be re-named the **Competition and Consumer Protection Tribunal;***
- ***Sectoral Regulators** be encouraged to be interact more regularly and formally with the Competition Commission by way of regular meetings through formal committees or similar structures; joint investigations and market assessments to be outlined in Memoranda of Understanding;*
- ***Leniency programmes** be provided for in the Competition and Consumer Protection law;*
- *Extensive **awareness and education programmes and campaigns** be mounted across the country on the merits of implementing a competition and consumer protection law in Lesotho. The awareness and education programmes and campaigns should involve the general public, private sector, the business community, NGOs, civil society in general and the public sector. Once the law is enacted this will require the production of **booklets and guides** on selected aspects of competition and consumer protection law and their application in Lesotho. This will be one of the first activities of the Competition and Consumer Protection Commission.*

"The Comprehensive National Trade Policy prioritizes improving environmental governance and developing a strategy for building a more environmentally resilient economy.''

10. TRADE AND SUSTAINABLE DEVELOPMENT

Lesotho faces a series of environmental challenges including climate variability, soil erosion and land degradation, pollution, and waste and littering. Addressing these are important for ensuring sustainable development. These challenges stem from diverse origins, including global climate change, boundary changes, the rise and fall of migrant remittances, and domestic political economy issues. Trade policy aims to restrict the trade in products that are deemed by international convention to be environmentally harmful. Further, Lesotho's environmental policy ensures that economic activities are sustainable with systems and procedures in place to limit pollution.

The depletion of natural resources has deepened poverty in rural areas, contributing to significant rural–urban migration. Ploughing on steep slopes and marginal lands, overgrazing of rangelands, increased use of biomass as the main source of energy, and increased frequency of droughts and floods have been the main causes of environmental degradation. In addition, the country has inadequate infrastructure and systems to prevent pollution caused by solid and hazardous waste. Lesotho has no specific climate change strategy or policy in place. Studies to inform the development of the strategy and policy have shown that the country has limited capacity to adapt to climate change and implement programs due to lack of human capacity. This has also resulted in the Government's failure to fully implement the National Adaptation Program of Action on Climate Change. In the same vein, there has been limited periodic evaluation and monitoring of environmental programs and activities.

Lesotho is a signatory to the principal international and regional environmental treaties and conventions. Some of these are trade related and cover environmental pollution and the depletion of natural resources through illegal imports, biodiversity, and restriction on products/materials depleting the ozone layer and causing climate change. This includes the ratification of the Basel Agreement (1989) which controlled the trans-boundary movement of hazardous waste and the Bamako (1994) Convention which controls the movement of hazardous waste in Africa, and the UNFCCC and Convention on Biological Diversity (CBD) in 1995. Lesotho is also bound by the Stockholm Convention that restricts the use of chemical and other persistent organic pollutants.

Well-designed environmental regulations have the potential to encourage investment in clean technologies and discourage continued development and operation of conventional and more polluting technologies.

At the multilateral level WTO members are working to remove trade barriers on goods and services that can benefit the environment. Trade policy has the potential to address environmental concerns by removing trade restrictions on environmentally sound goods and services. The reduction in trade costs will increase the availability of environment-related goods and services (for example, solar panels, and wind turbines) while also increasing demand. Lesotho should support initiatives within SACU to remove tariffs on environmental goods.

In Lesotho the Environment Act 2008 provides for the management of the environment and the sustainable use of natural resources. The Act considers every person living in Lesotho entitled to a 'scenic, clean and healthy environment.' The legislation also provides for a total ban on imports of hazardous waste. It is important that this restriction is based on internationally accepted standards relating to storage, carrying and handling of hazardous waste.

Environment legislation and policy is implemented by the Department of Environment (DOE) in the Ministry of Tourism, Environment and Culture. The DOE is responsible for issuing EIA clearance. The DOE website contains detailed guidelines on the EIA requirements. The entire process may take up to 12 months. It is complex and requires a large amount of information. Obtaining an EIA requires the investor to use a consultant to prepare the application. The DOE provides guidelines on who can carry out an Environmental Impact Assessment(EIA). The capacity of the DOE (with limited staff resources) represents a serious bottleneck to ensuring the rapid review and approval of EIA licenses.

The majority of new projects, both public and private, in Lesotho are required to obtain an EIA clearance.

Policy Objectives

The Government of Lesotho commits to strengthening environmental governance with particular reference to the mining sector, the waste created by the textile sectors, and to developing a comprehensive climate change resilient economy. Lesotho commits to ensuring that it remains compliant with its obligations under international environmental treaties and conventions.

Policy Recommendations

The Comprehensive National Trade Policy prioritizes improving environmental governance and developing a strategy for building a more environmentally resilient economy.

- *Streamline the administration of environmental protection to ensure the compliance burden imposed on businesses is commensurate with the risks resulting from their activities. Potential environmental risks should represent the basis for determining the level of environmental impact assessment and for specifying the minimum requirements. The existing system provides for a comprehensive EIA of all relevant activities without any reference to the risk of adverse environmental impact. This imposes additional costs on small businesses; delays permit processing and do not allow for Directorate of E Environment (DOE) resources to be focused on the higher risk activities.*
- *Reduce the regulatory burden by streamlining the lines of authority through reforming the existing Act. Currently multiple stakeholders are involved, including the Minister for Environment, the National Environment Council, the Director of the DOE, and various committees including the District Development Coordinating Committee.*
- *Remove the allowance for a 'pollution license' (section 44) as this undermines the existing environmental legislation. Entities obtaining a 'pollution license' are permitted to pollute beyond prescribed levels.*
- *Introduce plastic levy to curb the amount of waste and level of littering; and ultimately banning of use of plastic and encourage use of bio-degradable materials.*
- *Develop terms of reference and commission a comprehensive study to prepare a strategy for building a more environmentally climate resilient economy.*
- *Work within SACU to remove restrictions on the importation of environmentally sound goods.*

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KHOTSO PULA NALA

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

SADC

TOWARDS A COMMON FUTURE