III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. Trade policy has remained substantially unchanged since Zambia undertook a comprehensive reform programme in the 1990s, removing exchange controls, reducing import duties, eliminating import and export licence requirements, abolishing export bans and introducing a number of export incentives, removing subsidies, and decontrolling prices. According to the World Bank's Trade Tariff Restrictiveness Index, Zambia's trade regime is more open than that of an average sub-Saharan African or low-income country.[1] The simple average applied MFN tariff of 13.4% has dropped only slightly since the late 1990s, but Zambia continues to work toward lower trade barriers, especially through the COMESA and SADC free-trade areas. The large gap between the average applied rate of 13.4% and the bound rate of 105.7%, and the absence of bindings for over 83% of tariff lines, creates a degree of unpredictability for traders in the sense that there is scope for the authorities to raise tariffs, although, with one notable exception, applied tariffs have not been increased during the review period according to the authorities.[2] *Ad valorem* tariffs account for 97.8% of all tariff lines, which lends a high degree of transparency to the tariff, although for the remaining 2.2% (up from 1.3% in 2002) *ad valorem* equivalents are not available and tend to conceal relatively high rates.

2. In terms of customs operations, Zambia remains one of the world's least efficient countries according to the World Bank classification scheme.[3] It ranks 153rd out of 181countries, due to the higher number of required documents, considerably longer processing times for exports, and relatively high per container export and import costs compared with those of an average sub-Saharan African or low-income country. One of the main technical assistance efforts to improve this situation is the U.S. Millennium Challenge Corporation 2006-2008 programme[4], to promote economic governance by reducing barriers to trade and investment through: building capacity in modern customs tecghniques and integrated border control; strengthening the capacity of SPS units to provide services for local and export trade; and strengthening the standardization, certification, and inspection units of the Zambia Bureau of Standards.

3. In order to not to impede exports, Zambia has duty drawback schemes and it is possible to manufacture under bond in a bonded warehouse. Apart from exemptions, the most important of which apply to mining inputs, not much use is being made of these facilities. The duty drawback schemes suffer from delays in processing claims and refunding tariffs, and the Government frequently runs out of funds to finance these refunds.

4. The authorities have abandoned efforts to establish export processing zones, instead focusing on establishing multi-facility economic zones (MFEZs) which offer a wider set of incentives to both exporting and non-exporting enterprises. With the recent replacement of the Investment Act by the Zambia Development Agency (ZDA) Act, investment incentives based on tax holidays were introduced in early 2007 for companies operating in MFEZs and a long list of priority sectors. While additional investment is needed, international experience demonstrates that investors give lower priority to tax incentives than to a competitive investment climate generally.

[1] World Bank (2008e).

[2] The customs duty on cellular phone handsets was increased from 5% to 15% in the 2009 Budget to encourage local production of handsets.

[3] World Bank (2008a), p. 2.

[4] The objective of the programme was to reduce the number of days required to export products from 60 to 30 and the number of days required to import products from 62 to 30.

5. In 2008, Zambia enacted the Public Procurement Act, which repealed the Zambia National Tender Board Act with the result that the Zambia Public Procurement Authority has issued new thresholds. Zambia is not a member of the WTO Government Procurement Code. Since the early 1990s, the private sector has played a greater role in the national economy, following a privatization programme initiated to accelerate the development of the private sector. Prior to privatization, the State controlled over 80% of the country's productive and service-related activities, a share that is now seemingly reduced to between 10% and 15% as, according to the authorities, the bulk of the government-owned mining companies were privatized. The Zambia Development Agency (ZDA) succeeded the Zambian Privatization Agency in January 2007 as the country's privatization vehicle. Plans to privatize energy and fixed-line telecommunication services may encounter problems as productivity in both subsectors requires urgent improvement.

6. The authorities are drawing up a national policy on intellectual property, with outside assistance, and have stepped up efforts to combat trade in pirated and counterfeit goods.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

(a) Administration

7. Customs administration in Zambia is under the responsibility of the Customs and Excise Department of the Zambia Revenue Authority (ZRA). The department has undergone significant changes in the context of a Customs Reform and Modernization Program linked to the implementation of ASYCUDA++.[5] The Customs and Excise Department is responsible under the Customs and Excise Act, Chapter 322, for the following: collection of customs and excise duties and other taxes; licensing and management of registered excise manufacturers; licensing and control of bonded warehouses; regulation and control of imports and exports; facilitation of trade, travel and movement of goods; carrying out of controls on behalf of other government ministries; provision of trade statistics; and protection of society.

8. An importer wishing to challenge a customs-related determination can appeal to the Revenue Appeals Tribunal, established under the Revenue Appeals Tribunal Act of 1998. Appeals are accepted on issues related to customs valuation, customs classification or a refusal to license. Appeals to the Tribunal's ruling can be made to the High Court; final appeal is to the Supreme Court.

(b) Import documentation and procedures

9. Under Section 32 of the Customs and Excise Act, all imports must be cleared at the point of entry through approved customs-clearing agents unless the importer is authorized by the ZRA to selfclear. When the entry and relevant supporting documents have been registered and accepted by ZRA Customs, taxes are assessed, and a processing fee of K 50,040 is added to cover the costs of the ASYCUDA system application, and of Necor, a private agency that processes the entry declaration (form CE 20). Customs may call for a physical examination or additional documentation to ensure that a declaration is correct. An invoice is issued for immediate payment for the goods to be released,

[5] Zambia uses UNCTAD's Automated System for Customs Data and Management (ASYCUDA) declaration-processing system. The ASYCUDA++ system has recently been introduced and provides for streamlined customs clearance procedures. AYSCUDA ++ also has a risk module that suggests a particular risk profile for each shipment: green – no inspection, yellow – inspection of documents, blue – post audit, red – physical and document inspections. When fully implemented, the ASYCUDA national system is to be fully linked to the COMESA regional centre.

and, when all formalities are concluded and payment has been made, Customs will issue a release order for the goods.

10. According to the authorities, customs clearance is usually accomplished within a few hours, providing that all documents are in order. Subject to documents being in order, the ZRA states that clearance can be achieved within 8 hours for major clients who use credit account facilities to pay their taxes; however, a random check (carried out in the context of the DTIS) at the Chirundu border revealed waiting times of 2-4 days. At Lusaka airport, it has been reported that shipment clearance may take up to 4 days.

(c) Customs valuation

11. Zambia applies tariffs on the c.i.f. value of imports. According to the authorities, the dutiable value of goods is always considered to be not less than the f.o.b. price of the goods to the importer. Since 2000, the principal methods used for customs valuation have been based on the transaction value, i.e. the price actually paid or payable when a good is sold for export to Zambia. Where the transaction value cannot be ascertained, the price actually paid for similar goods, adjusted for differences in cost and charges based on distance and mode of transport, is determined as the transaction value.

12. While ZRA began to implement the WTO method of valuation in 2000, it appears that all the transaction values are checked using a central database of identical/similar goods. The authorities state that, in practice, Customs compares declarations to those for similar goods previously cleared and when the difference is large, may query the importer.

(d) Bonded warehouse facility

13. Zambia authorizes the use of bonded warehouses and permits the Removal of Goods in Bond (RIB). RIB allows goods to enter Zambia and remain in the country for 30 days without the payment of taxes; if goods remain beyond 30 days, taxes are to be paid, or the goods are to be assigned to a bonded warehouse. Goods may remain in the bonded warehouse for up to one year. However, the bonded warehouse facility appears to have been abused, with bonded goods leaking into the domestic market.[6]

(ii) Tariffs

14. The customs tariff generated revenue of around 2.6% of GDP between 1996 and 2001, falling to 2.2% in 2002, and around 2.1% between 2003 and 2005. Tariffs are changed on a financial-year basis as part of budgetary deliberations; an Act of Parliament is the final authority for tariff amendments. The First Schedule to the Customs and Excise Act specifies the structure of Zambia's customs tariff, and establishes four duty rates, 0%, 5%, 15% and 25%. Zambia's applied import duty rates range from 0% to 5% for raw materials, 15% for intermediate goods, and 25% for final or consumption goods. Goods imports from COMESA partners are duty free on a reciprocal basis.

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[6] RIB seems to facilitate a virtual re-exporting of the goods with false stamps from Customs officers proving that the goods made an exit out of Zambia when in reality they have not. Confronted with the loss of revenues due to the evasion of tax collection ZRA tends to restrict the permission for RIBs to certain companies with good repute and proper financial standing. It also has classified seven categories of products which could by stored in bonded warehouses, like some raw materials, spare parts and capital equipment. Perishable products are no longer be allowed to be stored under bond. See World Bank (2004), p. 39.

15. The 2008 tariff is based on HS07 nomenclature and consists of 5,962 lines at the HS eight-digit level. With the exception of 131 lines bearing alternate tariffs, all other lines have *ad valorem* tariffs. Products subject to alternate duties, for which AVEs are not available, include butter, wheat flour, clear beer, cotton (45 lines), and motor vehicles. No items are subject to seasonal, specific, compound, variable or interim tariffs.

(a) Applied MFN tariff

16. Zambia's tariff structure has remained broadly unchanged since its previous review. The tariff still consists of four rates as indicated above. A number of goods may be imported into Zambia duty free, including medicines, pharmaceuticals, veterinary, and medical equipment, chemicals in bulk, fertilizers, and seeds; also, duty on productive machinery for agriculture and mining is at 0%. The 2008 simple average applied MFN tariff was 13.4%, the same as in 2002 (Table III.1 and Chart III.1).

Table III.1
Tariff structure in Zambia, 2002 and 2008
(Per cent)

		2002	2008	Final bound[a]
1.	Bound tariff lines (% of all tariff lines)	16.3	16.6	16.6
2.	Simple average applied rate	13.4	13.4	105.7
	Agricultural products (HS01-24)	19.6	20.1	122.8
	Industrial products (HS25-97)	12.5	12.3	62.8
	WTO agricultural products	18.5	19.1	123.0
	WTO non-agricultural products	12.7	12.5	41.8
	Textiles and clothing	18.3	18.1	40.0
	ISIC 1 - Agriculture, hunting, fishing	18.5	19.1	120.3
	ISIC 2 – Mining	8.0	8.0	n.a.
	ISIC 3 – Manufacturing	13.2	13.1	100.4
	Manufacturing excluding food processing	12.5	12.3	61.0
	First stage of processing	15.3	15.8	118.8
	Semi-processed products	8.8	9.0	93.5
	Fully processed products	16.5	16.1	98.5
3.	Domestic tariff peaks (% of all tariff lines)[b]	0.0	0.0	0.0
4.	International tariff peaks (% of all tariff lines)[c]	31.0	31.4	100.0
5.	Overall standard deviation of tariff rates	9.5	9.6	35.5
6.	Coefficient of variation of tariff rates	0.7	0.7	0.3
7.	Duty-free tariff lines (% of all tariff lines)	20.9	22.1	0.0
8.	Non-*ad valorem* tariffs (% of all tariff lines)	1.3	2.2	0.0
9.	Non-*ad valorem* tariffs with no AVEs (% of all tariff lines)	1.3	2.2	0.0
10.	Nuisance applied rates (% of all tariff lines)[d]	0.0	0.0	0.0

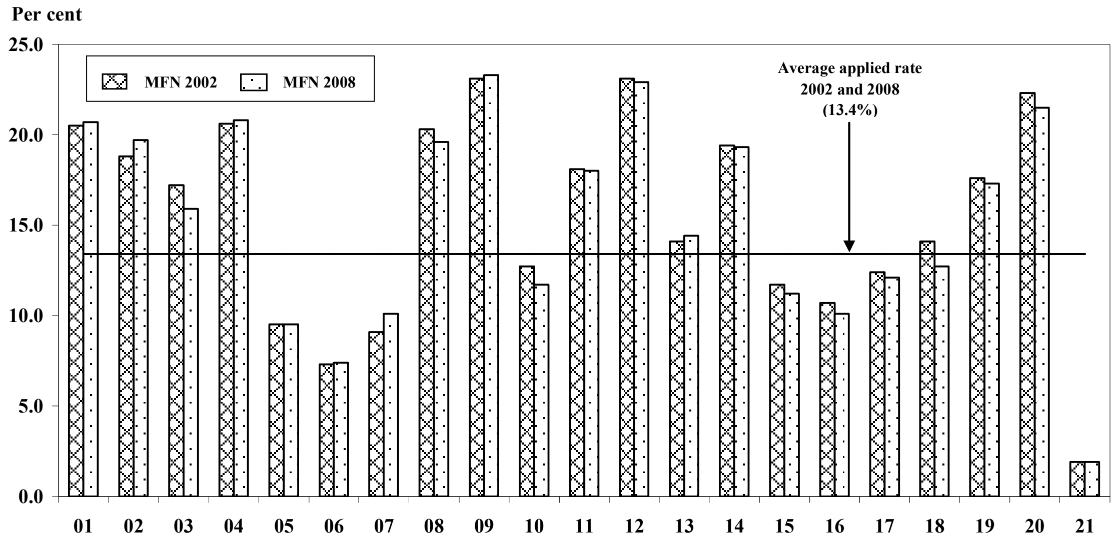
n.a. Not applicable.

a Based on 2008 tariff schedule in HS07 nomenclature. Calculations are based on 987 bound tariff lines (representing 16.6% of total lines); 100% are bound under the WTO definition of agriculture, only 4.1% under WTO non-agriculture. Implementation of the U.R. was reached in 1995.
b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.
c International tariff peaks are defined as those exceeding 15%.
d Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: The *ad valorem* part of alternate rates were taken into account for the calculations.
The 2002 tariff schedule is based on 8-digit HS96 nomenclature and consists of 6,041 tariff lines.
The 2008 tariff schedule is based on 8-digit HS07 nomenclature and consists of 5,963 tariff lines.

Source: WTO Secretariat calculations, based on data provided by the Zambian authorities.

Chart III.1
Average applied MFN tariff rates, by HS section, 2002 and 2008



01 Live animals & products	07 Plastic & rubber	13 Articles of stones	19 Arms & ammunition
02 Vegetable products	08 Hides & skins	14 Precious stones, etc.	20 Miscellaneous manuf.
03 Fats & oils	09 Wood & articles	15 Base metals and products	21 Works of art, etc.
04 Prepared food, etc.	10 Pulp, paper, etc.	16 Machinery	
05 Mineral products	11 Textiles & articles	17 Transport equipment	
06 Chemicals & products	12 Footwear, headgear	18 Precision instrument	

Note: Calculations include the *ad valorem* part of alternate rates. 2002 averages are based on HS96 nomenclature and 2008 on HS07.

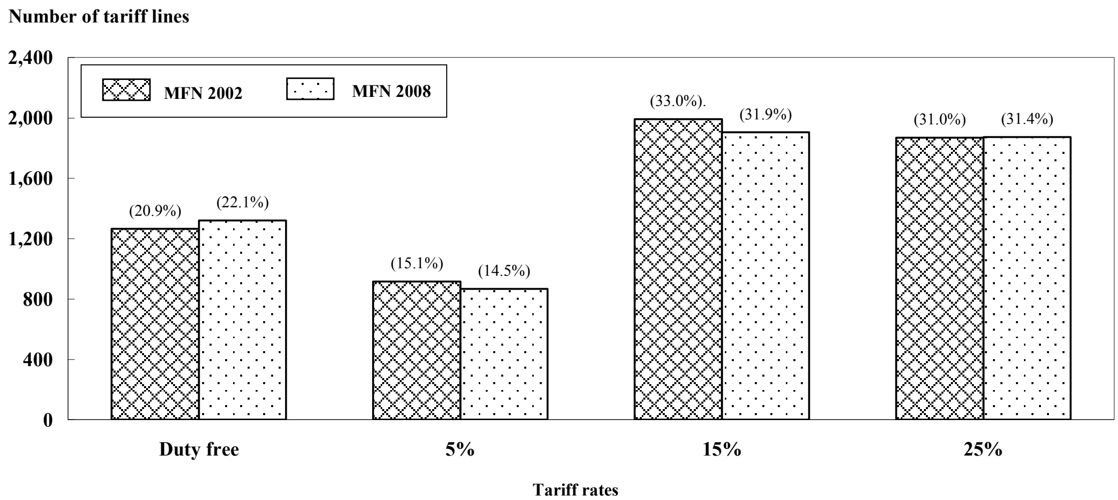
Source: WTO Secretariat calculations, based on data provided by the authorities of Zambia.

17. The coefficient of variation of 0.7 indicates continued modest dispersion of tariff rates from one category of products to another. The most common rate of 15% applies to some 32% of tariff lines. Close to two thirds of all lines bear a tariff rate of either 15% or 25%, while around 22% of tariff lines (1,319 lines) are duty free (Chart III.2). Virtually all raw materials and most industrial or productive machinery fall within the 0% to 5% tariff categories, and nearly 70% of mining and quarrying-related tariff lines attract the 5% tariff rate. In 2006, the authorities reduced a number of tariffs, including on computer parts (from 15% to zero), and inputs used in textile and clothing manufacturing.

18. Agriculture (including hunting, forestry, and fishing) remains the most protected sector, followed by manufacturing with applied average MFN tariff rates of 19.1% and 13.1%, respectively. The 25% tariff rate applies to a relatively high number of agricultural products. The average applied MFN tariff in the mining and quarrying sector is 8.0%. When the WTO definition is used, agriculture is still the most tariff-protected sector (19.1% on average). Applied MFN tariffs on WTO defined non-agricultural products, including petroleum, average 12.5%.

19. In aggregate, Zambia's tariff structure shows negative escalation from first-stage processed products to semi-finished goods, and positive escalation to finished products (Table III.1). Positive escalation is present notably on: basic metal industries, with average applied MFN tariff rates ranging from 5% on first stage processed products to 6.4% on semi-processed products; and paper, paper products, printing and publishing, with average rates rising from 5.0% on first-stage processed products, to 9.4% on semi-processed products, and 16.8% on fully processed products (Chart III.3).

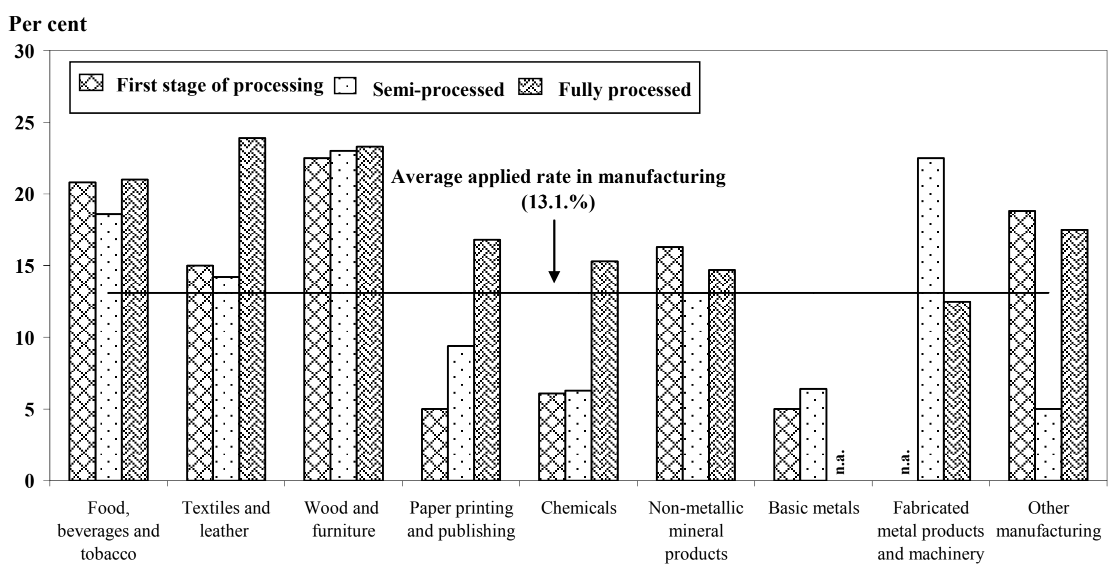
Chart III.2
Distribution of MFN tariff rates, 2002 and 2008



Note: Figures in parentheses indicate the share of total lines. Calculations include the *ad valorem* part of alternate rates.

Source: WTO Secretariat calculations, based on data provided by the authorities of Zambia.

Chart III.3
Tariff escalation by 2-digit ISIC industry, 2008



n.a. Not applicable.

Note: Calculations include the *ad valorem* part of alternate rates.

Source: WTO Secretariat calculations, based on data provided by the authorities of Zambia.

(b) Bound MFN tariff

20. Zambia has bound customs duties on 16.6% of all tariff lines, almost unchanged from the situation in 2002. The large gap between the average applied rate of 13.4% and the bound rate of 105.7% and the absence of bindings for over 83% of tariff lines, create a degree of unpredictability for traders in the sense that there is scope for the authorities to raise tariffs. However, the authorities have stated that applied tariffs have not been increased during the review period. In agriculture (WTO definition), all tariffs are bound, almost entirely at the ceiling rate of 123%, with a few exceptions, such as wheat, rye, barley, and oats (45%); cocoa beans, cocoa paste, cocoa butter, fat and oil, and chocolate and other food preparations containing cocoa (50%); and cocoa powder, not containing added sugar or other sweetening matter (60%). Tariffs were bound for non-agricultural products, at the simple average rate of 41.8%. Although tariff bindings are always desirable, their practical significance in Zambia in constraining future tariff increases is undermined, as bound rates substantially exceed applied tariff levels. Zambia has so far made no commitments to reduce these ceiling bindings.

(c) Tariff preferences

21. Exceptions to MFN tariff treatment include preferential access for members of regional trading arrangements in which Zambia participates: all goods are freely traded between Zambia and COMESA members that have met their free-trade area (FTA) commitments. Tariff preferences are accorded by Zambia to the other COMESA members on a reciprocal basis. By the end of 2006, 13 of the 20 members, including Zambia, had removed all barriers to trade between themselves, granted trade preferences to the COMESA members that are not part of the FTA and retained tariffs on imports from outside COMESA. COMESA has now reached an agreement on common external tariffs, although some issues with the classification of products as raw materials or processed products remain.

22. Effective 30 April 2001, Zambia began to implement its commitments under the SADC Trade Protocol and to grant duty-free access, on a reciprocal basis, to imports from SADC members. Zambia is on target to meet its obligations under the SADC free-trade area, so that 85% of goods from the region enter duty free; tariffs on the remaining sensitive goods will be phased out by 2012.

(d) Tariff exemptions

23. According to the IMF, the total value of imports exempted from customs duties (as well as VAT, excise duties, the fuel levy, and motor vehicle licences) fell from 35% in 2004 to 21% in 2005 and 13% in the first nine months of 2006.[7] The most important exemptions are granted to the mining sector on the basis that mining output is exported. The other main exemptions (new residents' effects, goods for diplomatic personnel, and goods for approved organizations) are standard exemptions granted by a number of countries. Exemptions on customs duties are more costly, in terms of revenue forgone, than those on VAT or excises, accounting for 1.9% and 0.8% of GDP in 2004 and 2005 respectively.

24. The 2006 ZDA Act introduced special tariff exemptions for designated priority sectors, mostly in the manufacturing sector, including 0% duty rate on all machinery and equipment for 5 years for enterprises under the ZDA. A number of import duty exemptions provided for in the context of the 2006 Budget are still in force: (a) for five years on all machinery, fixtures and equipment, tools, motor vehicle parts, motor cycles and bicycle parts used in the assembly of motor vehicles, motor cycles, and bicycles; (b) for five years on inputs used in the textile and clothing

[7] IMF (2007a), p. 33.

industry, such as grey fabrics, machinery, sewing threads, sewing machine spares, and trimmings; (c) for five years of material used in the manufacture and packaging of cement, and manufacture of roofing sheets; (d) for five years on machinery and equipment acquired by enterprises that will operate in the proposed MFEZ/priority sector or rural enterprises; (e) for computer parts; and (f) on printed paper board used for packaging UHT milk.

(iii) Other charges affecting imports

25. Excise and VAT on imports are collected at the border; the same tax rates levied on imported and domestically produced goods.

26. The 2007 Budget introduced a refundable 3% advance tax on commercial imports (entered into effect on 1 April 2007 and was recently increased to 6%), excluding goods imported for personal use. The measure is intended to broaden the tax base by capturing unregistered businesses who make commercial imports. This is not an impediment to tax-paying companies on condition that the tax is fully credited/refunded promptly, although this may not be the case for companies enjoying tax holidays. The authorities have noted that tax-complying companies include the advance income tax in their returns so that it is reflected as an amount already paid.

(iv) Rules of origin

27. Zambia has both preferential and non-preferential rules of origin. Preferential rules of origin apply under regional trade arrangements to which Zambia is a signatory. While COMESA provides for four alternative criteria for determining origin, SADC rules of origin are negotiated, in many cases, on a product-by-product basis, making them complex and varied across products. In all cases, an appropriate certificate of origin, issued by the exporting country must accompany eligible imports. For countries covered by more than one agreement, an importer has a choice of arrangement under which to import the goods.

28. Under the non-preferential rules of origin specified in Section 73 of the Customs and Excise Act (Chapter 322 of the Laws of Zambia), manufactured goods are considered as originating from Zambia if at least 50% of the material is local or value addition is a minimum of 50% of the total cost of production.

(v) Import prohibitions, restrictions, and licensing

29. The importation of the following is expressly prohibited: false and counterfeit coins or bank notes; indecent, obscene, or objectionable material; goods manufactured or produced wholly or in part by prison labour; pirated and counterfeit goods; and any goods prohibited under any other law in Zambia, such as the Drug and Psychotropic Act, the Wildlife Act, and the National Heritage Act for Historical Artefacts. Ivory imports are also banned.

30. No import licences are required for general importation into Zambia.[8] However, certain agricultural goods require an import permit and a sanitary and phytosanitary (SPS) certificate prior to the order being confirmed with the exporter. SPS certificates must be obtained in advance and included in the shipment documentation; when the consignment arrives at the port of entry, the certificate is examined by the plant inspector at the border. The inspector may test samples before allowing the products to be released. Also, certification must be obtained for imports of meat and poultry (Veterinary Department); plants, plant parts, plant products, and regulated articles (Makulu

[8] In 2004, Zambia notified the WTO that it does not have import licensing procedures and has no regulations to that effect (document G/LIC/N1/ZMB/2, 18 February 2004).

Research Station); food and drugs (Ministry of Health); firearms and ammunition (Zambia Police). Standard customs declarations are required for imports.

(vi) Contingency measures

31. In November 2004, the Customs and Excise Act and the Import Control Acts were amended to allow for safeguard measures to be applied. The amendments were drafted with the objective of ensuring compatibility with the WTO, COMESA, and SADC agreements, and to address the concerns of the private sector, which has been particularly concerned about unfair competition and cases of predatory pricing. Under COMESA there is provision for measures in the form of anti-dumping duties, countervailing duties or QRs sufficient to reduce the flow of imports (to not below the last 3-year average). Under the SADC protocol, members may apply anti-dumping measures that are in conformity with WTO provisions, or countervailing duties consistent with WTO provisions, to offset the effects of subsidies.[9]

32. Under the Customs and Excise Regulations, any person whose interests may be harmed by imported goods that are being sold at rates below that of the country of production may make a complaint to the Controller of Customs. Upon review, if it is established that goods are being dumped in Zambia, an anti-dumping duty is levied. No safeguard measures have been applied since 2004.

(vii) Government procurement

33. Government procurement is governed by the Public Procurement Act No. 12 of 2008 and associated tender regulations. The Act is applicable to all public institutions, including government ministries and departments, parastatal and statutory bodies, and local councils. The Zambia National Tender Board Act of 1982 (chapter 394 of the Laws of Zambia) and associated Tender regulations were in force until repealed by the new Act. Zambia is not a member of the WTO procurement Code.

34. The District Tender Committees are authorized to make simplified bidding (informal tenders) for goods, services and works of up to K500 million. All government purchases exceeding K30 billion for goods, services and works and K10 billion for consulting services, including capital expenditures from external assistance, go through the Zambia Public Procurement Authority. Many large projects are funded by multilateral lending institutions and bilateral donors, in which case their procurement regulations are followed.[10]

35. Requests for bids are published in the Zambian *Government Gazette* and local English language daily newspapers. An eight-week period, from the first announcement in the *Gazette,* is allowed for international competitive bidding. Bids must be submitted in accordance with the instructions to bidders. Tenders are opened in public and price information is disclosed. The legal framework provides for local preferences, where applicable, of 15% for locally manufactured goods with at least 40% value-added content; 20% for goods produced in Zambian small businesses; 7.5% for local contractors; and 5% for imported goods held in stock by local merchants.

36. The Public Procurement Act does not have a threshold for international tenders as the authorities believed until recently that they could obtain all necessary goods and services primarily from Zambian suppliers. Decisions (by the Controlling Officers) to invite offers from local or international suppliers are based on whether the required goods and services could be obtained in Zambia. Mainly due to international agreements such as the EPAs with the EC and the COMESA

[9] Dun and Bradstreet (2006).

[10] According to the authorities, the value of government procurement averaged K 125 billion per annum from 2005 to 2007, equivalent to about 0.3% of GDP; an estimated 15% was through foreign suppliers.

Directive on procurement (which plans to harmonize public procurement systems among members states), the Government has begun to review its policy on procurement in terms of integrating international and regional procurement thresholds.

(viii) Import-related operations of state-trading enterprises

37. In 2007, Zambia notified the WTO that is does not maintain any state trading enterprises in accordance with the definition in GATT Article XVII.[11]

(ix) Standards and other technical requirements

38. A key activity for enhancing trade facilitation is the strengthening of the standardization, certification, and inspection units of the Zambia Bureau of Standards so that they can provide more efficient services for importing and exporting, thus ensuring conformity with international and regional standards and technical requirements.[12] It seems that Zambia does not have the capacity to properly test all imported products (for example, there is only minimal testing on electrical products), which provides considerable scope for exporters to find a market for substandard products in Zambia.

39. The 2005 Diagnostic Trade Integration Study[13] highlighted a number of problems in Zambia's standards infrastructure. While the Zambia Bureau of Standards (ZABS) is the main Government body responsible for setting, reviewing, monitoring, and implementing technical standards for all industries including agriculture, the Food and Drugs Control Laboratory and the Ministry of Agriculture also set standards, and they are not required to notify the ZABS. The ZBS maintains a comprehensive database of existing standards scattered across a wide range of legal instruments. The ZABS was established in 1982 by Act No 22, which was later repealed and replaced in 1994 by the Standards Act 416.

40. Zambian standards are to a considerable extent based on international standards developed by international standards-setting bodies such as the International Standards Organization (ISO), and the Codex Alimentarius Commission. Zambia is an affiliate member of the International Electro-Technical Commission (IEC), and has been a corresponding member of the ISO since 2003 and is planning to upgrade this to full membership. Currently, there are around 640 Zambian standards (42 adopted from ISO, 84 from the IEC, 140 from COMESA, and 34 SADC standards). They cover building and construction, food and agriculture, textiles, and chemicals. ZABS is the selling agent in Zambia for foreign and international standards, such as the International Organization for Standardization (ISO) and national standards of many countries in the world. ZABS is an observer member of ISO, ARSO and IEC.

41. ZABS formulates various standards and implements them through a product certification marking scheme: a manufacturer of a product that meets a Zambian standard may apply to use the Bureau's certification mark under a scheme of supervision that includes inspection and testing of the marked product. Participation in the certification scheme is also open to manufacturers outside of Zambia.

[11] G/STR/N/11/ZMB of 13 September 2007.

[12] According to the 2007 progress report of the Fifth National Development Plan, equipment was procured and training provided to enhance the operations of the Zambia Bureau of Standards and the Zambia Weights and Measures Agency. See Ministry of Finance and National Planning (2008), p. 63.

[13] World Bank (2005b), pp. 33-36.

42. ZABS also operates a small metrology laboratory (the Zambia Bureau of Standards Metrology Laboratory), which offers calibration services in the fields of mass, length, and pressure. The range of tests is limited by availability of standards and testing equipment.

43. Zambia notified the WTO in 1998 with respect to the adoption of the Code of Good Practice and the creation of a WTO/TBT Enquiry Point under the ZABS. The Enquiry Point has not been active because it lacks financial and basic technical resources. In 2004, the ZABS notified the WTO of its acceptance of the TBT Code of Good Practice.[14] Zambia also continues to participate in regional programmes aimed at harmonizing standards and conformity assessment schemes such as those under COMESA and SADC

(x) SPS measures

44. The Ministry of Agriculture and Cooperatives (MAC) is responsible for control and monitoring of animal and plant health in the production, distribution, and supply of raw materials to the food-processing sector. The Ministry of Health deals with other issues relating to food safety and labelling, and administers the Food and Drug Act. Zambia notified the WTO in 2008 that it had made strides in the formation and establishment of a dedicated office for the Enquiry Point[15], in line with WTO transparency requirements.

(a) Animal health

45. The Department of the Veterinary and Livestock Development, in the MAC, is the main service responsible for the control of animal diseases and the safety of livestock products. It promulgates policies and regulations on animal diseases, develops veterinary inspection procedures, and is responsible for inspection and certification of imports and exports of animal products. The Department has five regional veterinary laboratories that conduct tests on diseases, and cooperates with the National Livestock Epidemiology and Information Centre, which gathers and processes data on animal health and disease status and control. Zambia is a net importer of animal products. Exports are mostly confined to day-old chicks and to semi-processed hides and skins.

(b) Plant health

46. The Zambia Agriculture Research Institute is the responsible authority (under the MAC) for implementing, monitoring, and controlling plant health policies and issues. It has four divisions/branches among which is the Plant Quarantine and Phytosanitary Service (PQPS). Based on the Noxious Weeds Act and the Plant Pests and Diseases Act (Cap.231), the PQPS is responsible for carrying out the functions specified in the International Plant Protection Convention[16] (IPPC), and for overseeing the agricultural plant safeguarding system, including surveillance, inspection, issuing phytosanitary certificates for exports, and conducting pest risk analysis.

47. With the help of the FAO, the Government has prepared a new Plant Protection Bill, which is currently undergoing public review and comments and is expected to replace Cap 231. The main aims of the new Act are, *inter alia*: to prevent the introduction, and to control the spread, of plant

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[14] On 4 November 2004, the ZABS notified acceptance of the WTO TBT Code of Good Practice for the preparation, adoption and appreciation of standards.

[15] The WTO Enquiry Point was set up with support from the JITAP project and the Zambia Threshold Project, funded by USAID. See WTO document G/SPS/GEN/836 of 27 March 2008, Information on various SPS matters.

[16] Identified in the SPS Agreement as an organization that provides international standards for phytosanitary measures implemented by governments to protect their plant resources from harmful pests.

pests; to provide for the protection of plant resources; and to regulate trade in plants and plant products. The proposed new Act is a substantial improvement on the existing legislation as it would bring Zambia into line with its IPPC obligations.

(c) Needs assessment

48. In March 2006, following a request from the MAC, the World Bank conducted a sanitary and phytosanitary (SPS) needs assessment in Zambia.[17] The objectives were to identify where SPS and standards issues were constraining trade and recommend areas where further in-depth work was required.[18] These were: the functions and performance of Plant Quarantine and Phytosanitary Services (PQPS); food safety standards in agro-processing factories and restaurants/hotels; the current state of laboratories supporting the agriculture and food sectors and the plans for future investment; and, the demand for establishing a certification system for good agricultural practices for farmers supplying the high-end of the local horticultural market. The report concludes that Zambia's trade faces relatively few plant health constraints.

49. The report noted *inter alia* that Zambia exports very little food (other than sugar) and is a large net importer of food. Its processed food exports are directed at neighbouring countries where prevailing official and private standards are similar to those in Zambia. Zambia's food trade with developed countries is small and declining, consisting of a limited vegetable sales to the United Kingdom, Holland, Australia, and South Africa, and sales of honey and paprika to a few countries.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures and documentation

50. Exporters must complete form CE 20, declaring goods to be exported, this is submitted to customs electronically either through Necor (contracted by ZRA to impute trade data on behalf of traders) or directly online if the exporter is linked to Customs' ASYCUDA system. A hard copy of form CE 20 is also submitted, together with commercial invoices, the bill of lading, road manifest, and any other commercial documents that will accompany the goods. Where relevant, the appropriate certificate of origin must also be submitted. Customs examines the declaration against the physical export, stamps the documents, and releases the goods; according to the authorities, this process can be completed within one hour. The ZRA carries out inspections on exports as a check against the smuggling of proscribed goods, and to obtain information for VAT refunds and duty drawbacks.[19]

(ii) Export taxes

51. The 2008 Budget encouraged local value addition by introducing an export levy of 15% on the export of copper concentrates and cotton seed (subsequently raised in the 2009 Budget to 20% for

[17] World Bank (2006).

[18] The mission concluded that there were only a few significant SPS and standards issues constraining trade. However, it identified areas where trade might be constrained in the future and recommended that these should be evaluated further: subsequently, a larger mission was organized.

[19] Inspections are carried out by the ZRA to ensure that the content of the Export Declaration Form EXD is a correct representation of items being exported and to guard against smuggling of prescribed goods, e.g. drugs and those that require permits. In other cases, the foreign importer may request an inspection. Time taken for inspection depends on the availability of staff, the packaging, and the nature of goods, but generally takes a day, according to the Customs and Excise Department if the consignment is not complex.

cotton seed), in recognition of the availability of local capacity to process these products.[20] An export tax also exists on scrap metal, which is considered an important input for manufacturing.

(iii) Export prohibitions, restrictions and licensing

52. Export prohibitions apply to certain types of logs under international agreements, and occasionally for grains (during drought years). There are no general export licensing requirements (except for prescribed goods) although certain goods, such as fertilizers, live animals, gemstones, and firearms, require special export permits.

(iv) Duty and tax relief

53. In addition to tariff exemptions, a duty drawback scheme and a temporary admissions system (manufacturing under bond) are meant to provide exporters with relief on import duty paid. In 2002, the Government passed the Export Processing Zones (EPZ) Act to provide incentives for investors in export processing zones. However, implementation of the EPZ Act was suspended in 2004 because of concern about its impact on revenue, and the authorities have now abandoned efforts to establish export processing zones. Instead, they are focusing on multi-facility economic zones (MFEZs), which offer a wider set of incentives to exporting and non-exporting enterprises.

(v) Export promotion and finance

54. The Export Promotion and Market Development Division (EPMD) of the ZDA is responsible for promoting the non-traditional sector, which comprises products and services other than unprocessed copper and cobalt and tourism. The EPMD assists exporters, *inter alia,* by facilitating technical and financial assistance for export development, providing market intelligence, and organizing participation in trade fairs and trade missions.

55. EPMD provides financial support to the non-traditional export sector through low interest loans under the Zambia Export Development Fund (ZEDEF), an EU-financed export development loan fund. Its objective is to assist in the expansion of Zambian non-traditional exports. The fund succeeded an EU-funded scheme that ran from 2003 to end 2007. According to the authorities, the fund will eventually total in excess of US$5 million.[21] Beneficiaries currently include horticulture, floriculture, wood, leather, organic products, and crocodile industries.

56. A second EU-funded export development scheme, which covered the period 2002 to 2008 was the Mining Sector Development Programme (MSDP), a €30 million fund intended to provide adequate capital and equipment for mining, downstream processing, and marketing in the non-traditional small-scale gemstone mining sector. The MSDP had its own project office affiliated to the Ministry of Finance and National Planning and the Ministry of Mines and Minerals Development. Loans were administered by local banks under their own commercial lending conditions. Support was also given for the preparation of bankable documents for loan applications, and technical assistance and business assistance, including technical advisory services to the non-traditional mining sector in: mining techniques, geology, gemstone evaluation, export promotion and marketing, business entrepreneurship, mineral processing and appropriate technology, environmental and safety management, and funding access support (linkages, business proposal appraisals). Some of

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[20] An export levy generally has the effect of reducing the domestic price below what otherwise would be the case.

[21] The loans are disbursed in U.S. dollars for 12- to 24-month periods at the London Inter-bank Borrowing Rate (Libor) + 2%. Borrowers are required to contribute 25% of the project finance and collateral of a value of 50% of the loan amount.

the key achievements of the programme include the establishment of a gemstone processing centre and an iron ore processing project.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Framework for registration and licensing of a business

57. The main laws defining the framework for registration and licensing of businesses are: the Companies Act (chapter 388), the Registration of Business Names Act (chapter 389), the Trade Licensing Act (chapter 393), and the Zambia Development Agency (ZDA) Act (which replaced the Investment Act).

58. The Zambian Government has been engaged in a comprehensive reform of the business licensing regime, having recognized that many licensing requirements and practices present a significant burden to enterprise growth, wealth, and job creation. In certain sectors, such as tourism, the large number of licences that may be required, the time and the number of different authorities involved, and their discretion in the decision-making process, could be significant impediments to foreign investors.[22] Licensing reform forms a core part of the PSD programme in order to substantially reduce the number of licensing requirements, make the regime simpler, transparent, and focused on legitimate regulatory purposes, as well as to substantially reduce compliance costs. The Business Licensing Reform Committee, mandated to make recommendations on which licences should be eliminated, streamlined, or reclassified, is expected to complete its work in 2009.

59. According to the World Bank[23], the procedures required in order to register a business include: checking the name for uniqueness at PACRO; registering the company at PACRO; registering with the local ZRA office, direct tax division to obtain a corporate tax number; filing a VAT registration form with ZRA to obtain a VAT tax number; and registering with National Pension Scheme Authority for Social Security.

60. The U.S. Millennium Challenge Account (MCA) has provided funding to establish a limited network of provincial offices (removing the need for investors outside Lusaka to make the journey to the capital), thus decentralizing company registration. Furthermore, MCA assistance has facilitated the establishment of the ZDA as a one-stop facility for investors and business people and encouraged simplification of the economic regulatory framework.

61. The World Bank notes that Zambia has simplified business registration in recent years. It reorganized the one-stop shop through process reengineering and computerization and improved the operation of the Zambia Revenue Authority by creating a customer service centre. Similar improvements at the Land Registry office cut the time to register property by almost half. Amendments were made to the Income Tax Act and Value Added Tax Act to update, strengthen, and remove ambiguities in these laws and enhance the effectiveness of tax administration. In addition, the withholding tax on savings and deposit accounts was reduced from 25% to 15%. Overall, Zambia's *Doing Business* rank for 2009 was 100th (out of 181 countries), up from 116th in 2006. It has performed particularly well in the area of starting a business, ranking 71st; the number of procedures required is (6) considerably less than the regional average.

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[22] A 2004 World Bank-FIAS report identified a number of shortcomings in the procedures to establish a business, mainly due to lengthy licensing procedures (Foreign Investment Advisory Service, 2004).

[23] World Bank (2008a), p. 52.

(ii) Taxation

(a) Overview of tax system

62. The Income Tax Act, the Customs and Excise Act and the Value Added Tax Act are the basic laws that cover Zambia's tax system.

Indirect taxes

63. Zambia imposes excise taxes on a traditional range of goods, including soft drinks, alcoholic beverages, tobacco products, and petroleum products. In an effort to improve revenue, recent budgets have extended excises to motor vehicles, talk-time on cell phones, and, in 2006, an additional carbon tax was levied on motor vehicles. The only unusual excise tax in Zambia is an electricity, which typically is not subject to excise as it is a basic commodity but is considered an earmarked levy for rural electrification. Most excises are *ad valorem* and range from 10% for soft drinks to 125% for wine. The base for excises on imported goods is the c.i.f. value plus the import duty.

64. In addition, a value-added tax (VAT) of 16% (reduced from 17.5% on 1 April 2008) is payable on all imports and on locally produced goods and is levied on the duty-paid value of the goods. VAT is imposed on goods and services provided by suppliers with a turnover of over K 200 million (about US$55,000) per year.[24] Exemptions include agricultural products, health services, books, and educational services; a zero rate is applied on exports, medical supplies, and drugs, and supplies affecting the tourism industry. VAT is charged on imported goods based on the taxable value, which is the value for duty purposes plus the customs duty and excise tax if applicable.

Direct taxes

65. The general corporate tax rate is 35%. However, there have been a number of long-standing preferential rates and generous allowances for sectors the Government has wished to promote. For example, the agriculture sector enjoys a rate of 15% and successor mining companies to ZCCM have paid a concessionary rate of 25%. Companies listed on the Lusaka Stock Exchange pay 33%, to promote financial deepening, in their first year of listing. Commercial banks are taxed at 40% of their profits above K250 million (about US$83,500). Sectors that do not benefit from special incentive schemes remain heavily taxed compared with countries in the region. The ZRA has embarked on a modernization project to strengthen the effectiveness of tax administration (Table AIII.1).[25]

(b) Zambia Development Agency (ZDA) Act

66. Until 2006, investment tax incentives were provided under the Investment Act (1993), as amended in April 1996, and the Small Enterprise Development Act (1996). The Investment Act, which had abolished special incentives such as exemptions from indirect taxes, was replaced by the ZDA Act in 2006. This brought in a new set of incentives applicable only to investments over US$500,000, licensed by the Zambia Development Agency, and operating within a sector designated as a priority by the Minister of Commerce, Trade and Industry. The priority sectors include: floriculture; production and processing of cotton, and garments; manufacturing of engineering

[24] The sales level for VAT registration seems high and could discourage even medium-sized firms from entering the formal sector.

[25] IMF (2008), p. 6, May.

products; and production and processing of raw timber. The list of sectors may be amended by statutory instrument.[26]

67. Investment incentives based on tax holidays were reintroduced in early 2007 for companies operating in multi-facility economic zones and a long list of priority sectors. While additional investment is needed, international experience demonstrates that investors give lower priority to tax incentives than to a competitive investment climate characterized by sound economic policies and institutions; political and economic stability; quality infrastructure; a productive workforce; a secure and stable business environment; an efficient and responsive government administration; as well as transparent tax rules and administration.[27] A recent IMF study on the effective tax burden in Zambia did not recommend additional tax incentives, and urged the Government to take stock of all tax incentives and begin reporting them in the budget documents, with a view to quantifying the cost and streamlining them to broaden the revenue base.[28]

(c) Multi-facility economic zones

68. The ZDA Act also introduced multi-facility economic zones (MFEZs), under which developers, operators, and tenants benefit from a number of fiscal and non-fiscal allowances. The authorities have abandoned efforts to establish export processing zones (EPZs), and are focusing on MFEZs which offer a wider set of incentives to exporting and non-exporting enterprises. Currently, the two MFEZ sites are in Lusaka and Chambishi on the Copperbelt (under construction). Incentives within the MFEZ are available to both Zambian and foreign firms to promote manufacturing, exports, technological development, skills transfer, and job creation. Incentives are also available to priority sectors operating outside MFEZs.

69. Investment must be at least US$500,000 in a priority sector to qualify companies investing less than that amount in the MFEZ will benefit from the infrastructure provided in the zones. Incentives available to companies include: (i) 0% tax on dividends declared, for five years from the year of first declaration of dividends. Generally, the payment of dividends by Zambian resident companies is subject to deduction of withholding tax at 15%; (ii) no tax on profits for five years from the first year profits are made; (iii) for years six to eight only 50% of profits will be taxed. and for years nine and ten only 75% of profits will be taxed; (iv) deferment of VAT on machinery and equipment, including trucks and specialized motor vehicles imported for investment; (v) suspension of import duty to 0% on raw materials, capital goods, and machinery, including trucks.

(iii) Other incentives

70. According to the authorities, once a ZDA investment licence is obtained, a company has access to fiscal and non-fiscal incentives. The non-fiscal incentives include facilitation services by the ZDA in the acquisition of land, immigration permits, and other secondary licences that may be

[26] Since 2006, two statutory instruments (SIs) have been issued: SI 27 (2007) added a number of priority sectors in the areas of ICT and health; and SI 6 (2008) added tourism, processing of agricultural, forest and non-ferrous products and a range of manufacturing activities including machinery, iron and steel, electrical and electronic products, pharmaceuticals, pulp and paper, textiles, plastics, rubber products, leather, fertilizer and cement.

[27] A number of studies have come to this basic conclusion. See Howell et al. (2002). Vito Tanzi and Parthasarathi Shome examined the experiences of East Asian countries including Taiwan, Korea, and Singapore. See Tanzi and Shome (1992). For a similar conclusion for economies in transition see OECD (1995). The Zambian authorities acknowledged that while the IMF and World Bank contend that incentives never work in attracting investment, the majority of countries grant incentives to investors including developed countries.

[28] IMF (2006).

required. In addition, the Agency may collaborate with a foreign direct investor in identifying local partners where relevant.

(iv) Role of state-owned enterprises and privatization

71. Since the early 1990s, the private sector has played a greater role in the national economy, following a privatization programme that covered a wide range of public enterprises of differing sizes, mainly in manufacturing and mining. Prior to the privatization programme, the State controlled over 80% of the country's productive and service-related activities, a share that is now reduced to between 10% and 15% according to the authorities, as the bulk of the mining companies owned by the government and other parastatals were privatized. To date, privatization has been concentrated in mining, manufacturing and financial services (Table III.2). The Zambia Development Agency (ZDA) succeeded the Zambian Privatization Agency in January 2007 as the country's privatization vehicle.

Table III.2
Government shares in public enterprises, as of September 2007
(Per cent)

Entities	September 2007
Energy sector	
Indeni Petroleum Products	50
Tazama Pipelines	60
Zambia Electricity Supply Corporation	100
Mining sector	
Kagem Mining	20
Kariba Minerals	51
Maamba Collieries	100
Nitrogen Chemicals of Zambia	100
Zambia Consolidated Copper Mining Investment Holding	87.6
AHC Mining Municipal Services	100
Chambishi Metals	10
Chibuluma Mines	15
Copperbelt Energy Corporation	20
Kansanshi mining	20
Konkola Copper Mines	20.6
Luanshya Copper Mines	15
Mopani Copper Mines	10
Ndola Lime Company	100
NFC Africa Mining	15
Financial sector	
Development Bank of Zambia	67
Indo-Zambia Bank Limited	50
National Savings and Credit Bank	100
Zambia National Building Society	100
Zambia National Commercial Bank	51
Zambia State Insurance Company	100
Other sectors	
Contract Haulage	100
Engineering Services Corporation	100
Medical stores	100
MOFED (London)	100
MOFED (Tanzania)	100
Mpongwe Development	0.05
Mpulungu Harbour Corporation	100
Mupepetwe Engineering	100

Table III.2 (cont'd)

Entities	September 2007
National Airports Corporation	100
National Housing Authority	100
Nganga Farms	23.8
Tanzania-Zambia Railways	50
Times of Zambia	100
Zambia China Mulungushi Textiles of Zambia	40
Zambia Daily Mail	100
Zambia Education and Publishing House	100
Zambia Postal Corporation	100
Zambia Printing Company	100
Zambia Railways	100
Zambia State Lotteries	100
Zambia Telecommunication	100
Zamcapital Enterprises	100

Source: IMF (2008), IMF Country Report No. 08/30, *Zambia - Statistical Appendix,* Appendix II, p. 40, January. Viewed at: http://www.imf.org/external/pubs/ft/scr/2008/cr0830.pdf.

72. During the 1990s, Zambia opened its doors to foreign investment, reduced government intervention in commercial activities, privatized over 260 enterprises, and eliminated many market distortions. The main privatization was that of Zambia Consolidated Copper Mines in March 2000, which effectively ended its drain on state resources and enabled necessary fresh mining investment. The Zambia National Commercial Bank (ZANACO) was recently privatized and, according to the authorities, the bulk of identified companies have been privatized and the remainder (20) are at various stages of processing and consideration.

73. Some of the companies remaining to be sold are those whose finances are in bad condition or those that the Government considers to be in strategic sectors, including power generation, telecommunications, and oil refining, which remain under government monopoly control. As a result, these services are inefficient, resulting recently in an electrical power crisis that is likely to last for years, and regularly recurring fuel shortages. The plan to privatize energy and fixed-line telecommunication services (including Zesco and Zamtel) has stalled although the Government has embarked on an asset evaluation of Zamtel, with the possibility of looking for a strategic partner for the telecoms company.

(v) Competition policy

74. There is no competition policy *per se* in Zambia to enable successful enforcement of competition law, which is enshrined in the Competition and Fair Trading Act 1994. This Act is enforced by the Zambia Competition Commission whose role is to prevent abuse of dominant position, predatory behaviour, discriminatory pricing, restrictions on distribution, and collusion. The Commission is an independent body and its decisions can be appealed against in the High Court. According to the authorities, the Commission rarely ever raises competition concerns on a foreign company taking over a local company, where the foreign company has no presence in Zambia.

75. Currently the Zambian competition law does not have any set merger notification thresholds, meaning that all mergers must be notified to the Commission before they are effected.[29] The assessment process after notification varies depending on whether the proposed merger would raise competition concerns. Merger tests undertaken by the Commission are on substantial lessening of competition and abuse of dominant position of market power, Sections 7(1) and 7(2) of the Act, as

[29] Section 8 of the Competition and Fair Trading Act – the Act.

well as international precedence. These tests are based on an assessment of whether the merger may lead to the prevention, restriction or distortion of competition to an appreciable extent in Zambia or a substantial part of it.

76. During the period under review (2002-08), the Commission reviewed over 100 merger cases, most of which were granted final unconditional authorization. About 15 mergers were granted conditional authorization and less than 5 were rejected. Companies surveyed by UNCTAD agreed that the Commission's past merger authorizations have shown a good balance between competition objectives and the need to promote FDI in Zambia.[30] The Commission is of the view that competition law cannot be effectively enforced without the support of sector regulators, such as the Communications Authority, the Energy Regulation Board, and the National Water Supply and Sanitation Council.[31]

(vi) Protection of intellectual property rights

(a) Overview

77. During the period under review Zambia has not amended its intellectual property legislation, which remains essentially as described in its previous Review.[32] The Patents Act, Trade Marks Act, the Registered Designs Act, and the Copyright and Performance Rights Act provide the legal framework for intellectual property protection. The Patent Act provides patent protection for a period of 16 years, with the possibility of renewal; the Copyright and Performance Rights Act and the Registered Designs Act provide protection for 50 years (copyright) and 5 years (registered designs); the Trade Marks Act provides exclusive protection, initially for seven years, renewable in 14-year blocks thereafter.

78. However, there are plans to review legislation now that a new National Intellectual Property Policy is nearing completion.[33] The amended IP legislation will include protection for utility models, geographical indications, and appellations of origin and will include amendments to the Patents Act extending protection to 20 years (in line with the TRIPS Agreement). The Trademarks Act will include protection of service marks, which are not currently covered. The Copyright and Performance Rights Act of 1994 is also under review.

79. Zambia is a member of the World Intellectual property Organization (WIPO) and has signed the 1883 Paris Convention on industrial property and the 1886 Bern Convention on literary and artistic works. It is also a member of the African Regional Industrial Property Organisation (ARIPO), which was established to promote harmonization of intellectual property laws in the region. Zambia is a member of the ARIPO Protocol on Patents and Industrial Designs aimed at pooling and harmonizing regional IP administration in the field of patents, utility models, and industrial designs. As an LDC Member of WTO, Zambia has until 2013 to conform to TRIPs for patents, and until 2016 for

[30] UNCTAD (2006), p. 30.
[31] Zambia Competition Commission (2006), p. 50.
[32] WTO (2003), pp. 52-56.
[33] Work on a national IP policy, led by WIPO in cooperation with the authorities, includes a needs assessment to determine the compliance of Zambia's national legislation with international intellectual property rules in the area of industrial property. There is currently no national legislation on geographical indications, nor on layout-designs of integrated circuits.

pharmaceutical patents.[34] Plans are under way to accede to the WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonograms Treaty (WPPT).

80. The Patents and Companies Registration Office (PACRO) deals with the registration of patents, trademarks and industrial designs. PACRO has offices in Lusaka, Ndola (Copperbelt Province) and Livingstone and is decentralizing its operations. It had received substantial support from WIPO with regard to assessment of legislative compliance, IT-infrastructure for patent registry, and training for IP office personnel and other officials (e.g. customs and police officials, judges). PACRO had also initiated the establishment of an *ad hoc* committee (comprising ministries, and the university and private sectors) to discuss the development of a national IP policy.

81. Copyright and related rights are dealt with by the Copyright Unit under the Ministry of Information and Broadcasting Services. The Ministry of Science, Technology and Vocational Training is revising science and technology policy to include issues related to traditional knowledge.

(b) Patents

82. Patent protection is provided under the Patents Act of 1958 and the 1995 Statutory Instrument 54. A patent is obtainable under this law through either the national procedure or the ARIPO procedure. Many general principles provided for under the law are applicable to both procedures; the most notable requirements for patentability include that a process or product must be novel, not obvious (or must involve an inventive step), be capable of application in trade or industry, and must not be seen to promote immorality or otherwise be offensive to written laws.

83. A primary concern for Zambia, given the proliferation of premature deaths as a resultant of HIV and AIDS, malaria, tuberculosis, and dysentery is facilitating affordable access to essential medicines. HIV and AIDS-related complications are the second principle cause of death in Zambia, after malaria. The demand for more and cheaper ARVs is high.

84. For Zambia to become compliant with the TRIPS Agreement, national legislation and regulations will need to be assessed in the light of the flexibilities inherent in the TRIPS Agreement[35]: transition period accorded to LDCs, determination of patent criteria, determination of patent exclusions, content of patent applications, determination of exceptions to patentability, and application of compulsory licences. Article 61(A) of the Pharmaceutical Act (Act No. 14 of 2004) gives authority to the pharmaceutical regulatory authority, in the case of declaration of a national health disaster by the Health Minister, to authorize the manufacture of generic versions of patented medicines notwithstanding the Patent Act or any written law.

85. A compulsory licence is obtainable in Zambia on the grounds of insufficient use of the patented technology by the patentee in Zambia and, therefore, failure to meet the reasonable requirements of the public. The principal requirement for the issue of a compulsory licence is that attempts to obtain a licence under reasonable commercial terms must have failed over a reasonable period of time. Pharco Ltd, a pharmaceutical company in Zambia has a compulsory licence to manufacture ARVs. The TRIPS Agreement also provides that the requirements for a compulsory

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[34] The TRIPS Agreement was drawn up in such a way as to allow member States the flexibility in determining certain aspects of national intellectual property legislation. Furthermore, as a Least Developed Country (LDC) Zambia does not have to apply all of the provisions of the TRIPS Agreement until the 1st July 2013 and the provisions of the TRIPS Agreement as they relate to pharmaceutical products until the 1st of January 2016.

[35] LDCs are granted a transition period up to the 1 January 2016 with respect to TRIPS provisions as they apply to pharmaceutical products.

licence may be waived in certain situations, in particular cases of national emergency or extreme urgency or in cases of public non-commercial use.

(c) Other industrial property

86. The trade mark system is governed by the Trade Marks Act and the Merchandise Marks Act. While the Trade Marks Act is the only legislation that provides for the registration of trade marks and its incidental activities, it does not cover service marks. The Act regulates the registration of a trade mark, rights given on registration (e.g. the onus is on the proprietor to bring any civil action for infringement), infringement of these rights, and obligations on trade mark owners after registration. It provides for initial protection of seven years, extendable for 14 years at each renewal on payment of a renewal fee.[36] The Merchandise Marks Act regulates only the use of trade descriptions. It prohibits use of offending trade descriptions and forged trade marks on merchandise, imported or for manufacture or sale in Zambia.

87. The Registered Designs Act of 1958 provides for protection of designs that are artistic. To be registered, the design must be original and not similar to a design already registered. The application process is relatively simple and governed under both the national procedure and the ARIPO procedure. Following substantive examination of an application (filed using forms prescribed under the Registered Designs Act) and approval, protection is granted for five years renewable for two consecutive periods of five years.

(d) Copyright

88. Copyright is protected by the Copyright and Performance Rights Act, which covers, *inter alia*, literary, music, sound recordings, audio-visual and artistic works, broadcasts, and computer programs, and administered by the Office of the Registrar of Copyright, within the Ministry of Information and Broadcasting Services. The Copyright Act has not been amended since its enactment in 1994. The Registrar of Copyright, a public officer appointed under the Service Commissions Act, 1991, registers and monitors the activities of collecting societies, examines cases of alleged copyright infringement, and arbitrates between users of artistic works and artists/societies. Copyright protection covers both economic and moral rights. The rightholder has exclusive economic right to authorize or prohibit the use of the work. Exclusive moral right is to ensure that the work is not misrepresented. The duration of copyright protection extends for 50 years after the author's death or, for audio-visual work, 50 years after it was first created or first made available to the public. For computer programs, the duration is 50 years from the date of first use, while for typographic arrangements it is 25 years from the date of first publication.

89. Copyright infringements are actionable in a court of law and punishable, on a first conviction, by a fine or imprisonment for a term not exceeding five years. Right holders may also be granted compensation by way of damages, injunctions, and confiscation of profits.

(e) Enforcement

90. Enforcement is undertaken mainly by PACRO, the Zambia police IP unit, and the Copyright Unit of the Ministry of Information and Broadcasting Services. The latter has formed anti-piracy crack squads whose mandate is to fight piracy and counterfeiting. The squads comprise officers from: the Drug Enforcement Commission, which combats laundering of money from piracy and counterfeit trade; the Office of the President which provides intelligence information to the squads; local

[36] This Act was amended to incorporate provisions of the Madrid Protocol, to which Zambia became bound from 15 November 2001.

councils, which prohibit the sale of illegal goods in Council-owned; the Zambia Police Service; the Department of Immigration to check on foreigners engaging in counterfeit and piracy; the Zambia Revenue Authority, through border controls, where customs officers have the authority to seize infringing products *ex officio*; the Zambia Bureau of Standards; and Journalists Against Piracy in Zambia, a group providing information on the activities of the crack squads. In addition, PACRO assists in enforcement through awareness programmes in the form of workshops and seminars and via the internet, journals, and newsletter.

91. The authorities acknowledge that the main factors that continues to inhibit enforcement efforts include: law enforcement officers' insufficient capacity (in particular training on intellectual property matters as the police, customs, immigration, and other officials lack the necessary knowledge on copyright and related rights); difficulties for officers to differentiate between a genuine and pirated product; and lack of transport for the squad to conduct its operations. The latter is a major challenge as mobility is essential in order to curtail piracy and counterfeiting, which is mostly in border areas, according to the authorities. The authorities concede that in electronic and audio-visual media, there have been many instances of unauthorized reproduction and distribution of tapes, videos, and DVDs, which have occasionally been confiscated and destroyed. Enforcement-related statistics were not provided to the Secretariat in the context of this report.