

CUTS Centre for
Competition, Investment
& Economic Regulation
Discussion Paper



Investment Policy in South Africa – Performance and Perceptions



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Investment Policy in South Africa

– Performance and Perceptions

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Contents

| | |
|---|-----------|
| Foreword | 8 |
| Preface | 9 |
| 1. Introduction | 11 |
| 1.1 FDI and South Africa in Historical Context | 11 |
| 1.2 Investment Climate Reform in SA | 12 |
| 1.3 The Investment for Development Project | 14 |
| 1.4 The Structure and Purpose of the Report | 14 |
| 1.5 FDI and Portfolio Investment | 15 |
| 2. Macroeconomic Context for FDI | 17 |
| 2.1 Market Size and Growth Rate | 17 |
| 2.2 Macroeconomic Stability | 18 |
| 2.3 Inflation | 19 |
| 2.4 Interest Rates | 19 |
| 2.5 The Exchange Rate | 20 |
| 2.6 Infrastructure | 20 |
| 2.7 Technology and Skills | 21 |
| 2.8 Investment Flows into SA | 21 |
| 2.9 Balance of Payments | 29 |
| 3. Main Policy Trends in SA | 31 |
| 3.1 SA's Economic Policy | 31 |
| 3.2 Trade Policy | 33 |
| 3.3 Capital Controls and Capital Account Restrictions | 34 |
| 3.4 Privatisation and Regulation | 35 |
| 3.5 Competition Law, Labour Market Regulation and the Environment | 37 |
| 3.6 Fiscal Regime for Foreign Investors and their Investment | 39 |
| 3.7 Intellectual Property Rights (IPRs) Regime | 39 |
| 4. Investment Policy Audit | 41 |
| 4.1 Registration | 41 |
| 4.2 Right to Entry and Establishment | 41 |
| 4.3 Investor Protection, Guarantees and Insurance Provisions | 42 |
| 4.4 Dispute Settlement Mechanisms | 43 |
| 4.5 Restrictions on Outward Capital Flows | 43 |
| 4.6 Bilateral/Regional Agreements on Investment, Transfer Pricing, Double Taxation Treaties | 43 |
| 4.7 Investment Facilitation Institutions and Initiatives | 45 |
| 4.8 Investment Incentives and Industrial Support Measures | 37 |
| 4.9 Performance Requirements | 48 |
| 4.10 The Policymaking Process for Investment Issues | 49 |
| 5. The Performance of FDI in SA: Three Sector Studies | 51 |
| 5.1 Introduction | 51 |
| 5.2 The Automotive and Components Industry | 51 |
| 5.3 Telecommunication | 57 |
| 5.4 Food, Beverages and Agro-processing | 64 |
| 6. Civil Society Perceptions of FDI in SA | 69 |
| 7. Conclusion | 73 |
| Endnotes | 74 |
| Bibliography | 76 |

List of Tables

| | | |
|-----------|---|----|
| Table 2.1 | Composition of SA's GDP by sector, 1971-2001 (1995 constant prices) | 18 |
| Table 2.2 | Inflation Rates in SA, 1990-2003 | 19 |
| Table 2.3 | Interest Rates in SA, August 2003 | 20 |
| Table 2.4 | Exchange Rates (period averages) | 20 |
| Table 2.5 | FDI Inward and Outward Stock, SA, 1980-2000 | 24 |
| Table 2.6 | FDI Stock and Commitments in SA | 26 |
| Table 3.1 | Restructured SOEs and Proceeds from Restructuring, 1995 to 2000 | 36 |
| Table 4.1 | Voluntary and Obligatory PRs in SA | 49 |
| Table 5.1 | Automotive Industry Employment, 1996 to 2001 | 52 |
| Table 5.2 | SA's Vehicle Exports, 1997-2003 | 53 |
| Table 5.3 | Automotive Production: Global and SA, 2000 and 2001 | 53 |
| Table 5.4 | Foreign Companies in SA's Food and Beverages Sector | 66 |
| Table 6.1 | Negative Perceptions of Civil Society of FDI in SA | 71 |
| Table 6.2 | Positive Perceptions of Civil Society of FDI in SA | 71 |
| Table 6.3 | Civil Society's Inclination towards FDI | 72 |
| Table 6.4 | Policies to Increase the Benefits of FDI | 72 |

List of Figures

| | | |
|------------|---|----|
| Figure 1.1 | Investment Climate Reform in SA | 13 |
| Figure 2.1 | Net Capital Inflows: Portfolio vs Direct (US\$bn), 1994-2002 | 23 |
| Figure 2.2 | Some Important FDI Deals in SA | 24 |
| Figure 4.1 | Incentives and the Cost of FDI: SA, Namibia and the Case of Ramatex | 47 |
| Figure 6.1 | Two FDI Surveys of SA and SADC | 69 |

Acronyms

| | |
|--------|--|
| AGOA | African Growth and Opportunity Act |
| AIDC | Automotive Industry Development Centre |
| AIDS | Acquired Immune Deficiency Syndrome |
| AIEC | Automotive Industry Export Council |
| ANC | African National Congress |
| BIT | Bilateral Investment Treaty |
| BEE | Black Economic Empowerment |
| BOP | Balance of Payments |
| CBU | Completely-built up |
| CCMA | Commission for Conciliation, Mediation and Arbitration |
| CGT | Capital Gains Tax |
| CKD | Completely-knocked Down |
| COSATU | Congress of South African Trade Unions |
| CUTS | Consumer Unity & Trust Society |
| DCCS | Duty Credit Certificate Scheme |
| DFA | Department of Foreign Affairs |
| DFID | Department for International Development |
| DG | Director-General |
| DTI | Department of Trade and Industry |
| EC | European Community |
| E&E | Economic and Employment |
| EFTA | European Free Trade Association |
| EPZ | Export Processing Zone |
| EU | European Union |
| FAWU | Food and Allied Workers' Union |
| FDI | Foreign Direct Investment |
| FIG | Foreign Investment Grant |
| FPI | Foreign Portfolio Investment |
| FTA | Free Trade Agreement |
| GATT | General Agreement on Tariffs and Trade |
| GDP | Gross Domestic Product |
| GEAR | Growth, Employment and Redistribution |
| GEIS | General Exports Incentive Scheme |
| GFCF | Gross Fixed Capital Formation |
| GM | Genetically Modified |
| GNP | Gross National Product |
| IBA | Independent Broadcasting Authority |
| HIV | Human Immuno Deficiency Virus |
| ICASA | Independent Communications Authority of SA |
| ICSID | International Centre for Settlement of Investment Disputes |
| ICT | Information and Communication Technology |
| IDC | Industrial Development Corporation |
| IDZ | Industrial Development Zone |
| I&E | Investment and Employment |
| IIC | International Investment Council |
| IGD | Institute for Global Dialogue |
| IMC | International Marketing Council |

| | |
|--------|---|
| IMS | Integrated Manufacturing Strategy |
| IPO | Initial Public Offering |
| IPR | Intellectual Property Rights |
| IRPS | International Relations, Peace and Security |
| ISCOR | Iron and Steel Corporation of SA |
| ITED | International Trade and Economic Development Division (SA DTI) |
| JV | Joint Venture |
| M&A | Merger and Acquisition |
| MERP | Microeconomic Reform Programme |
| MFN | Most Favoured Nation |
| MIDP | Motor Industry Development Programme |
| MIGA | Multilateral Investment Guarantee Agency |
| NAACAM | National Association of Automotive Component and Allied Manufacturers |
| NAAMSA | National Association of Automobile Manufacturers of SA |
| NEDLAC | National Economic Development and Labour Council |
| NER | National Electricity Regulator |
| NGO | Non-governmental Organisation |
| NT | National Treatment |
| OEM | Original Equipment Manufacturers |
| OPIC | Overseas Private Investment Corporation |
| PCAS | Policy Co-ordination and Advisory Services |
| PR | Performance Requirement |
| RDP | Reconstruction and Development Programme |
| RIDP | Regional Industrial Development Programme |
| SA | South Africa |
| SA | SA Airways |
| SACU | Southern African Customs Union |
| SADC | Southern African Development Community |
| SATRA | SA Telecommunications Regulatory Authority |
| SBC | Southwestern Bell |
| SBDC | Small Business Development Corporation |
| SDI | Spatial Development Initiative |
| SIP | Strategic Industrial Project |
| SKD | Semi-knocked Down |
| SMEDP | Small and Medium Enterprise Development Programme |
| SMMDP | Small and Medium Manufacturing Development Programme |
| SMME | Small, Medium and Micro Enterprises |
| SNO | Second Network Operator |
| SOE | State-owned Enterprise |
| STC | Secondary Tax on Companies |
| THRIP | Technology and Human Resources for Industry Programme |
| TISA | Trade and Investment SA |
| TNC | Transnational Corporation |
| TRIMs | Trade-related Investment Measures |
| TRIPs | Trade-related Intellectual Property Rights |
| UNCTAD | United Nations Conference on Trade and Development |
| US | United States |
| UK | United Kingdom |
| VANS | Value-added Network Services |
| WSSD | World Conference on Sustainable Development |
| WTO | World Trade Organisation |

Foreword

This report reviews key policy issues related to investment in South Africa, investment performance and perceptions of investment in South Africa, with specific focus on foreign direct investment (FDI).

A very important contribution of the report lies in the inter-disciplinary approach adopted and the qualitative assessment of key challenges associated with FDI and South Africa's attempts to attract more FDI. The case studies in particular make a significant contribution to our understanding of the key factors motivating an investment location decision, and from a policy perspective, the importance of anchoring FDI in the domestic economy so as to realise the benefits that FDI can (but does not necessarily) bring.

From a developing country perspective it is important to note that FDI to different sectors demonstrates significantly different risk profiles. For example the resource-based FDI has a very different risk profile to that of services sector-based FDI such as tourism (and Angola offers an interesting case in point with respect to oil and diamonds – despite significant risk factors such as political and social instability (even war), FDI flows, and flowed into Angola, attracted by the resource-based opportunities for return). As economies develop, and their structural transformation moves them to a greater dependence on the services sector (eg Tanzania), then FDI attraction focuses attention on very different risk factors.

The case of Ramatex is a very interesting case not only in terms of the discussion on incentive competition, but also as regards the mobility of FDI. FDI used to be regarded as 'a longer-term commitment.' This is no longer the case, especially for industries such as clothing and even textiles. The start-up costs are quite low to start with, and therefore such investments are very mobile. In addition, incentive competition increases mobility. Incentives are often specifically targeted at FDI only (not available to local investors). This has the potential to distort competition in domestic markets.

This report presents a very important contribution to the study of investment, the role of incentives and the attraction of FDI not only for South Africa, but for many other developing countries.

November, 2003

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Preface

This report represents a comprehensive treatment of South Africa's investment regime since the inception of its democracy in 1994. To the extent that it provides a rigorous analytical tour of the main contours of investment in South Africa, it is an important addition to the policy literature on the subject. The report, however, is not only about investment but also contains a very systematic overview of related policy areas. Hence, the general macro-economic context, its constituent elements and the new government's strategic thrust in other policy areas form a very useful backdrop to understanding the interface between economic performance and domestic and foreign investment.

What is critical in the case of South Africa—and this is equally applicable to the other countries studies under the project—is how investment can be harnessed in the service of developmental progress, especially insofar as it provides opportunities for improvement in economic performance with gains for social welfare. Besides South Africa, the other countries in the study—Bangladesh, Brazil, Hungary, India, Tanzania and Zambia—all variously face the spectre of social backwardness, poverty and inadequate economic resources. The challenge is how these countries can move towards a developmental ethos which discourages rent-seeking and predatory activities and sets them on a durable path of sustainable economic growth, able to mitigate extreme inequalities and mass poverty. The study thus proceeds from the hypothesis that investment, if properly managed, can be an important ingredient in the developmental recipe. Indeed, the exponential increases in capital flows over the last decade as an important systemic component of the global economy have proven to be an unmitigated blessing for some developing countries facing investment deficits. However, they also present a great challenge for many others still struggling to develop the necessary policy and regulatory tools to attract such investment. Over the long term, it would seem, therefore, that prudent economic and political governance and building policy capacity are of the essence.

While the nexus between investment and development and growth continues to be contested, there is an empirical basis to make certain claims regarding its salutary effects. Some of these are highlighted in a CUTS publication, *Making Investment Work for Developing Countries*. While obviously not unproblematic, depending on the domestic environment and other structural factors, the benefits noted include: overcoming the domestic investment gap, raising the productivity of labour and capital, generating employment, easing balance of payment constraints, raising exports, and providing access to technology, markets, management skills and marketing resources.

This report casts a full beam on how South Africa has fared on all these fronts in view of its domestic policy milieu. What lends further weight to the report is that it includes three highly instructive sectoral studies which showcase how investment has performed in South Africa. Although the trends and investment dynamics that were highlighted in the automotive and components industry, telecommunications, and food, beverages and agro-processing are different and vary greatly, they illuminate both the positive and negative spinoffs of the South African experience. If any lesson emerges from this reading, it is that investment amounts to a 'strategic embrace'.

The final part of the report presents the survey results of civil society perceptions of investment in South Africa. This is emblematic of the pluralist conceptualisation that ought to accompany economic and political processes such as investment. What is important in this regard is the critical prism through which FDI is viewed in South Africa. Although a small sample, the voices represented raise important questions about the utility or otherwise of investment, pointing to the need for better policy dialogue and stakeholder involvement in this regard.

What is a special privilege is to recognise and acknowledge the sterling and thorough work and absolute dedication of this report's author, Brendan Vickers. As the principal researcher for the South Africa study, his was no easy brief. The complex nature of the terms of reference, the analytical and conceptual rigour required and the research, travel and administrative demands that went with it are all testimony to the unique ensemble of skills and talents that Brendan brought to the project.

It is also fitting to express our gratitude to CUTS for the opportunity to participate in this important and relevant venture, the results of which will have far-reaching and positive implications in how developing countries can make investment work for them.

November 2003

Dr Garth le Pere
Executive Director
Institute for Global Dialogue
Johannesburg, South Africa

CHAPTER-1

Introduction

Many developing countries, particularly those with low levels of domestic savings and investment, consider foreign direct investment (FDI) an important channel for obtaining access to resources for development.¹ This is a very different orientation from only 20 years ago, when FDI in most developing countries was either prohibited, the industries in which they could invest limited, restrictions placed on profit remittances and capital repatriation, or stringent performance requirements imposed.

In most countries, foreign companies have access to domestic capital markets, whereas, in the past, they were denied this access on the grounds that this would induce them to bring scarce foreign exchange into countries.

Since the beginning of 1990s, developing countries started to liberalise their rules and regulations in this respect. Today, most have reduced obstacles to the operation of transnational corporations (TNCs), strengthened the standards of treatment of foreign affiliates, opened up most industries of the economy to TNC investment and eliminated or relaxed limitations on the repatriation of capital and profit remittances. Many no longer impose performance requirements (in the past used as a condition to have access to incentives) and most grant access to incentives available to domestic firms and, in some countries, foreign firms benefit from incentives that are not even available to domestic producers.

In most countries, foreign companies have access to domestic capital markets, whereas, in the past, they were denied this access on the grounds that this would induce them to bring scarce foreign exchange into countries. Nationalisation, which peaked in 1970s, has given way to the privatisation of state-owned enterprises (SOEs).

1.1 FDI and South Africa in Historical Context

FDI played an important role in South Africa's (SA) early development, particularly in the extractive industries of the colonial era. Foreign mining houses gradually became SA companies through the first part of the 20th century, and later diversified into other sectors of the economy. FDI by European, British and United States (US) companies also played an important role in the development of secondary industry from 1920s to 1970s. By this time, foreign investors were identified as substantial beneficiaries of SA's economic growth, often at the expense of the black majority, by the growing international anti-*apartheid* movement (Gelb, 2002).

The country continued to attract some investment during the pre-sanctions era, although this dried up in the 1980s. A worldwide anti-apartheid based consumer boycott also targeted a host of TNCs that continued to operate in SA.

The country continued to attract some investment during the pre-sanctions era, although this dried up in the 1980s. A worldwide anti-*apartheid* based consumer boycott also targeted a host of TNCs that continued to operate in SA. Barclays Bank's share of the student loan market, for example, declined from 27 to 15 percent under pressure from socially and ethically conscious clients (Klein, 2001).

Economic relations with SA were formally conditioned by the European Community (EC) Code of Conduct for European companies doing business in the country as well as its US counterpart, the Sullivan Principles. The Canadians adopted a similar set of guidelines, all of which expected those companies involved in SA to promote particular socio-political ends.

Some companies on their return to a democratic SA in the mid-1990s, expected to capitalise on their past moral highground and anticipated special treatment and privileges, particularly where their competitors had not withdrawn but had continued to profitably benefit from the apartheid economy.

1980s saw a massive outflow of capital from the country, particularly following then President PW Botha's August 1985 Rubicon Speech. While a large number of foreign companies and banks (led by Chase Manhattan) disinvested from the economy under pressure from international sanctions, trade boycotts, global disinvestment campaigns and the withdrawal of loan funding to SA, a number of others remained.² It is estimated that up to 350 companies exited from SA during the 1980s (Gelb, 2002). Some of these companies, on their return to a democratic SA in the mid-1990s, expected to capitalise on their past moral highground and anticipated special treatment and privileges, particularly where their competitors had not withdrawn but had continued to profitably benefit from the *apartheid* economy. This was, however, not the case.

From mid-1990s, sanctions were gradually lifted, until a fully democratic government led by the African National Congress (ANC) assumed office in May 1994. Since then, the government has progressively put in place a number of FDI-friendly policies and removed a number of obstacles and barriers to business.

1.2 Investment Climate Reform in SA

SA's regulatory regime and enabling environment for investment have undergone progressive transformation and liberalisation since early 1990s, with a view to stimulating higher levels of public and private sector economic activity. A central challenge facing the new ANC-led Government that took office in April 1994 (re-elected in 1999) was to build a modern and vibrant economy that is outward-oriented and internationally competitive, while simultaneously addressing the massive backlogs in access to essential social and economic services. Although a broad range of economic and social policies and instruments have been crafted and implemented since then to address these transformation challenges, the levels of poverty and inequality in SA remain extremely high.

SA has sequenced its reforms process from first addressing macro-economic constraints to savings and investment, and then shifting its attention to the microeconomic side of the economy and the efficient functioning of factor markets. The foundations for higher economic growth are now in place and the macroeconomic performance of the economy has significantly improved since early 1990s, when SA was on the verge of crisis. A central challenge for the government is to now raise levels of long-term investment, both from abroad and domestic sources.

Although investment climate reforms in SA has led to higher levels of long-term investment by domestic and foreign firms, the rate of new investment has been below expectations. Foreign capital inflows have not been on par with other competing developing countries or emerging markets, such as Argentina, Brazil, China, Mexico and Poland.

Although investment climate reforms in SA has led to higher levels of long-term investment by domestic and foreign firms, the rate of new investment has been below expectations. Foreign capital inflows have not been on par with other competing developing countries or emerging markets, such as Argentina, Brazil, China, Mexico and Poland. Investment as a percentage of the gross domestic product (GDP) has averaged around 16-17 percent, which is low by standards of successful developing countries (e.g., Egypt, 19 percent; Brazil, 21 percent; Malaysia, 37 percent; etc.). Figure 1 provides a general overview of investment climate reforms in SA.

| Figure 1.1: Investment Climate Reform in SA | |
|---|--|
| Economic Policy Instruments | Components |
| 1. Macroeconomic and microeconomic policy: <ul style="list-style-type: none"> • Reconstruction and Development Programme (RDP) • Growth, Employment and Redistribution Strategy (GEAR) • Microeconomic Reform Programme • Integrated Manufacturing Strategy | <ul style="list-style-type: none"> • Economic environment • Fiscal policy • Monetary policy • Restructuring/privatisation • Deregulation, improved regulatory quality • Trade and industrial policy • Competition policy • Labour market • Best practice corporate governance • Security of property and contractual rights • Black Economic Empowerment (BEE) |
| 2. Incentives, Industrial Support and Supply-side Measures | <ul style="list-style-type: none"> • Financial and fiscal • Spatial interventions (SDIs, IDZs) • Public-Private Partnerships (PPPs) • Infrastructure • Skills, training and education • Other |
| 3. Voluntary and Obligatory Performance Requirements (PRs) | <ul style="list-style-type: none"> • Export PRs • Technology transfer PRs • Research and development PRs • Employment and training PRs • Joint venture or domestic equity PRs |
| 4. Bilateral and Multilateral Legal Instruments | <ul style="list-style-type: none"> • Bilateral investment treaties • Avoidance of double taxation treaties • WTO: TRIPS, TRIMS, GATS |
| 5. Investment Facilitation and Promotion | <ul style="list-style-type: none"> • Trade and Investment SA (TISA) • Provincial investment promotion agencies • International Marketing Council • Presidential Working Groups: <i>Trade Unions, Big Business, Black Business, Commercial Agriculture</i> • Presidential International Advisory Structures: <i>International Investment Council, International Task Force on Information Society and Development.</i> |
| 6. Socio-political Context, Governance and Institutions | |

The challenge in SA is to develop an effective social accord between the government, business, labour and civil society that establishes a socially-acceptable and investor-friendly framework for increased FDI inflows, which augments increased investment by the three investor groups in the SA economy: the private sector, the government, and the parastatal. In particular, FDI in SA should ideally support the following developmental purposes:

- The transfer of knowledge, technology and management skills. It is common economic wisdom that technological innovation and advances in knowledge are at the core of long-term economic growth (along with capital investment and labour productivity). New growth theorists, moreover, add that national economic structures, institutions and public policies are major determinants of technological developments and economic growth;

The challenge in SA is to develop an effective social accord between the government, business, labour and civil society that establishes a socially-acceptable and investor-friendly framework for increased FDI inflows.

- Employment creation (including skills training and investment in human capital and resources);
- Shifting the economy away from the export of primary commodities towards manufacturing and higher value-added, goods;
- Integrating SA firms into the global production and supply-chains;
- Black Economic Empowerment (BEE), in terms of real ownership – rather than mere control and employment mobility – of new economic assets;
- Promoting Small, Medium and Micro Enterprises (SMMEs) development and other backward linkages with domestic enterprises;
- Lessening monopoly power in SA, by creating more competition in terms of product choice and pricing to benefit consumers;
- Corporate social responsibility;
- HIV/AIDS awareness; and
- Business against crime initiatives to reduce the operating costs of conducting business in an insecure environment.

1.3 The Investment for Development (IFD) Project

The IFD project endeavours to study the investment regimes of selected developing/transition economies and build capacity on investment policy. The emphasis is on co-operation between countries and within and between regions, sharing information and experience, and engendering joint initiatives. This two-year project, launched in September 2001, is being implemented by Consumer Unity & Trust Society (CUTS), India, in collaboration with the United Nations Conference on Trade and Development (UNCTAD), and is supported by the Department for International Development (DFID), UK. The project involves fact-finding and advocacy work on investment regimes in seven developing and transition economies, namely, Bangladesh, Brazil, Hungary, India, SA, Tanzania and Zambia. The Institute for Global Dialogue (IGD), Johannesburg, is working with CUTS as the partner organisation in SA for this project.

1.4 The Structure and Purpose of the Report

This report seeks to:

- Describe and outline SA's national regulatory regime and policy environment for FDI;
- Analyse the performance and impact of FDI in three selected sectors (namely automobiles and components, telecommunications and food and beverages); and
- Profile SA civil society perceptions of FDI.

It is important that South Africans understand the dynamics and role of FDI, as foreign investment and its enabling policies conjure up debates among those who are distrustful of foreign capital's intentions and those who would like to see SA attract as much FDI as the country possibly can.

The purpose of the report is to raise awareness and stimulate discussion and debate on investment-related issues in SA, particularly FDI. It is important that South Africans understand the dynamics and role of FDI, as foreign investment and its enabling policies conjure up debates among those who are distrustful of foreign capital's intentions and those who would like to see SA attract as much FDI as the country possibly can. These debates and views are sampled later on in the study. Importantly, the report seeks to address these issues in largely simple, accessible and non-economic terms for the benefit and understanding of all readers.

FDI involves the acquisition or creation of assets in a foreign country. Usually investors possess a controlling stake (at least 10 percent or more of the ordinary shares or voting power) and have long-term interests in the investment.

1.5 FDI and Portfolio Investment

To avoid confusion, a distinction should be drawn between *FDI* and *portfolio investment*.

FDI involves the acquisition or creation of assets in a foreign country. Usually investors possess a controlling stake (at least 10 percent or more of the ordinary shares or voting power) and have long-term interests in the investment. FDI can take three forms:

- *Greenfield Investment*: Investment that creates a new asset or facility (e.g., new factories or plants), either as a wholly owned-subsidiary or as a controlling equity stake in a joint venture (JV) with a local or foreign firm. The local firm may be privately or state-owned.
- *Cross-border Merger & Acquisition (M&A)*: involves a foreign firm acquiring a controlling stake in a local firm.
- *Brownfield Investment*: A hybrid form of investment in which the foreign investor acquires a firm but almost completely replaces the plant and equipment. (CUTS, 2001)

Portfolio investment ('hot money') is investment in stock or bond and financial markets. They tend to be short-term, highly volatile and largely unproductive, and can move rapidly from one country to the next.

Macroeconomic Context For FDI

2.1 Market Size and Growth Rate

For the purposes of this report, market size is defined as to a country's population size, although investors are more interested in that segment of the population which spends money, consumes goods and services, and contributes to economic activity (or has the potential to do so). The SA market is not very large and is not growing very rapidly, although it has, in recent years, shown an increase in purchasing power and a high propensity to consume. The SA market, moreover, accounts for 50 percent of the purchasing power of Africa.

Many firms enter the SA market with the explicit intention of expanding into the region (Southern or Sub-Saharan Africa), although the Southern African Development Community (SADC), with its 190 million people, is also a relatively small market.

The country's limited market potential is one of the primary reasons for low levels of FDI inflows into it. For this reason, many firms enter the SA market with the explicit intention of expanding into the region (Southern or Sub-Saharan Africa), although the Southern African Development Community (SADC), with its 190 million people, is also a relatively small market.

SA has a population of 44.8 million people (2001), with an annual average population growth rate of 2.0 percent and, since 1994, an annual average GDP growth rate of 2.7 percent.³

The prevalence of HIV/AIDS in SA has taken on emergency proportions, with the segment of the population between the ages of 20 to 49 years – the most vital segment in terms of social and economic development – particularly at risk. The prevalence of HIV/AIDS has increased from 7.6 percent of the population in 1994 to 24.8 percent in 2001. Thus far, the pandemic, coupled with poverty and other communicable diseases, has cut short life expectancy and devastated the livelihoods of millions of families. Various estimates claim that the epidemic could cost SA from 1.7 upto 17 percent of the GDP by 2010. The high incidence of HIV/AIDS in SA could also contribute to a slowdown in multi-factor productivity growth and add to the erosion of SA's social capital. This is an important risk factor, which necessarily impacts on risk-adjusted rates of return on investment (DTI TISA, 2003). The HIV/AIDS issue does not, however, feature very prominently in investor surveys of SA.

SA is a middle-income developing country with an estimated gross national product per capita of US\$3170. The country is, however, plagued by deep socio-economic inequalities: it has an overall Gini coefficient (measuring income inequality) of 0.60 in 2002.

SA is a middle-income developing country with an estimated gross national product (GNP) per capita of US\$3170. The country is, however, plagued by deep socio-economic inequalities: it has an overall Gini coefficient (measuring income inequality) of 0.60 in 2002. The economy is very much driven by domestic demand. Changing consumption patterns suggest a shift in favour of goods and services produced by the tertiary sector, providing a stimulus to domestic and foreign investment in these industries.

As Table 2.1 indicates, the SA economy has undergone noticeable structural changes since 1970s, with the tertiary sector (which includes services) expanding at expense of the primary sector (agriculture and

mining). The secondary sector's share in the GDP has remained relatively constant, although the manufacturing sector growth has averaged 4 percent per annum since 1994, and over 5 percent in late 2001 (GCIS, 2002:167). Manufacturing is increasingly at the heart of the SA economy.

**Table 2.1: Composition of SA's GDP, by Sector, 1971-2001
(1995 constant prices)**

| Sector | Average Share (Percentage) | | | | |
|-----------|----------------------------|-----------|-----------|-----------|-----------|
| | 1971-1980 | 1981-1990 | 1991-2001 | 1991-1996 | 1997-2001 |
| Primary | 16.1 | 13.3 | 11.4 | 12.1 | 10.7 |
| Secondary | 29.5 | 29.6 | 27.6 | 27.9 | 27.1 |
| Tertiary | 54.3 | 57.0 | 61.0 | 60.0 | 62.2 |

Source: TIPS South African Standardised Industry Database; note: GDP is measured at factor cost.

2.2 Macroeconomic Stability

The government's policies and reforms since 1994 have achieved a fair level of macro-stability. With these fundamentals more or less in place, the government has now tackled microeconomic obstacles to economic growth.

The government's policies and reforms since 1994 have achieved a fair level of macro-stability. With these fundamentals more or less in place, the government has now tackled microeconomic obstacles to economic growth. Listed below are some important macro-indicators for SA:

- The SA economy has experienced resilient growth and, out of 25 emerging economies, recorded the least volatile GDP growth for the period 1994 to 2001 (BusinessMap, 2003). SA's economy grew by 3 percent in 2002, which was largely domestic demand-driven, as exports declined in response to poor world economic conditions. This growth rate compared favourably with Canada (3.4 percent), Chile (3.5 percent) and Australia (3.8 percent), which slightly outpaced SA, but was more robust than growth in Japan (0.3 percent), the Euro region (0.8 percent), Britain (1.6 percent) and the US (2.4 percent). The real GDP growth for 2003 is expected to be 3.3 percent, steadily rising to 4 percent in 2005. This will rely on growth in investment spending of 6 percent per annum and a healthy improvement in export performance.
- The budget deficit has fallen from 9 percent of the GDP in 1992-93 to the current estimated 1 percent in 2003. The government will increase spending so that the budget deficit is expected to be between 2 – 2.5 percent of the GDP (Budget Speech by the Minister of Finance, 2003).
- Total public sector debt has fallen from over 64 percent of the GDP in 1994 to just 50 percent in 2003.
- Real wages and productivity have increased by over 20 percent since 1994, bringing rising living standards and strengthening the competitiveness of industry.

FDI inflows to SA since 1994 do not, however, reflect this credible macro-economic management by the National Treasury, the SA Revenue Service and the SA Reserve Bank (SARB). There is, thus, a general acceptance that SA needs to raise its growth rate to at least 5-6 percent, not only for domestic social upliftment and job creation but because investors are attracted to economies with strong and sustainable growth performance (and also regions recording such growth). For this reason, SA has driven and provided technical inputs to establish a framework for macroeconomic convergence in the SADC region.

2.3 Inflation

Inflation is persistent increases in the level of prices during a particular period. There are two measures of inflation in SA:

- Headline Inflation: measured by Consumer Price Index (CPI).
- CPIX: CPI minus mortgage rates, which is the inflation target introduced in February 2000. The adoption of this framework has improved the transparency of the SARB's policy framework. The government hopes to 'force' inflation to be within a band of 3-6 percent, by manipulating interest rates (i.e., raising or lowering interest rates). Monetary policy is, thus, tight and has been criticised by those who believe that it will exacerbate two of SA's major problems, namely low economic growth and high unemployment. High interest rates mean that the cost of capital is high, which is a disincentive to both foreign and domestic investors, particularly SMMEs.

There is a general downward trend in inflation in SA. Since 1994, inflation has been consistently registered under 10 percent. This downward trend has only been punctuated by instances where the Rand has dramatically depreciated, leading to a rise in food prices and housing and medical costs.

As can be seen from Table 2.2, there is a general downward trend in inflation in SA. Since 1994, inflation has been consistently registered under 10 percent. This downward trend has only been punctuated by instances where the Rand has dramatically depreciated, leading to a rise in food prices and housing and medical costs.

| Table 2.2: Inflation Rates for SA, 1990-2003 | | |
|--|---------|----------|
| Year | CPI (%) | CPIX (%) |
| 1990 | 14.3 | |
| 1991 | 15.6 | |
| 1992 | 13.7 | |
| 1993 | 9.9 | |
| 1994 | 8.8 | |
| 1995 | 8.7 | |
| 1996 | 7.3 | |
| 1997 | 8.6 | |
| 1998 | 6.9 | 7.0 |
| 1999 | 5.2 | 6.9 |
| 2000 | 5.4 | 7.8 |
| 2001 | 5.7 | 6.6 |
| 2002 | 9.2 | 9.3 |
| November 2003 | 0.4 | 4.1 |
| Source: Statistics SA (www.statssa.gov.za) | | |

2.4 Interest Rates

Interest rates in SA have been relatively high, compared to the country's major trading partners (e.g., the US and Europe). Interest rates averaged 18 percent between 1996-1999, peaking at more than 25 percent in 1998, in a major credit crunch. There is, however, a general long-term downward trend in interest rates. It is common knowledge that high interest rates raise the cost of capital, discourage direct investment and encourage volatile portfolio investment.

In light of the country's tight monetary policy, there is a strong link between interest rates, inflation and the depreciation of the Rand. The latter's depreciation in late 2001 led to increases of one percentage point four times, each in the prime interest rate in 2002. The Rand's appreciation in 2003 has eased inflationary pressures, leading to a number of interest

rate cuts during 2003. It may also be worth noting that SA bonds are among the most stable in the world. Table 2.3 below provides some of the key interest rates in SA.

| Table 2.3: Interest Rates in SA, November 2003 | |
|---|----------|
| Category of Interest Rate | % |
| Repo rate | 8.50 |
| Marginal lending rate | 13.50 |
| Prime overdraft rate (predominant rate) | 12.00 |
| <i>Source: SA Reserve Bank (www.resbank.co.za)</i> | |

2.5 The Exchange Rate

Foreign investors prefer a stable and predictable exchange rate. However, as Table 2.4 indicates, the Rand, which is one of the most traded currencies in the world, has been depreciating since mid-1990s. It has also suffered three major currency shocks, in early 1996, mid 1998 and late 2001.

During 2001, the Rand plunged by 37 percent against the US dollar, reaching a historic low of US\$1:R13.85 in late December 2001. There were various reasons for the crash, including capital flight to hard currency safety sparked by the events of September 11, 2001 the outflow of dividends from SA, speculative transactions and several dubious deals.

On the positive side, the Rand's depreciation boosted the competitiveness of SA's manufacturing exports and tourist arrivals. On the downside, the Rand's depreciation led to an inflation spiral and a series of interest rate hikes, which do not benefit consumers.

On the positive side, the Rand's depreciation boosted the competitiveness of SA's manufacturing exports and tourist arrivals. On the downside, the Rand's depreciation led to an inflation spiral and a series of interest rate hikes, which do not benefit consumers. For existing foreign investors, a 40 percent profit margin in 2001 also shrunk to 3 percent, after the Rand's fall. A constantly declining currency is, therefore, a disincentive to investors. The Rand has appreciated dramatically since then, gaining 14 percent against the dollar during 2003, along with its 40 percent gain during 2002, making it the best performing currency in 2002 (compared to worst performing currency against the US dollar in 2001). For investors, however, a stable and predictable Rand is more important than a strong one.

| Table 2.4: Exchange Rates (period averages) | | | | | | | | | | |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| R:US\$ | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
| | 3.27 | 3.55 | 3.63 | 4.30 | 4.61 | 5.53 | 6.11 | 6.94 | 8.60 | 10.81 |
| <i>Source: SA Reserve Bank (www.resbank.co.za)</i> | | | | | | | | | | |

2.6 Infrastructure

SA has modern and highly advanced telecommunications, technology, transport (roads, rail and ports) and energy provision infrastructure. Expanding new economic infrastructure and maintaining existing facilities are important components of an investment climate reform strategy. The government has, therefore, committed significant resources for infrastructure, to improve the quality and sustainability of capital projects and improve the overall efficiency, competitiveness and growth of the economy.

In particular, economic infrastructure on roads, rails and ports are being prioritised. This includes the Coega deepwater port and Industrial Development Zone (IDZ); the East London IDZ and rehabilitation of the

SA faces a severe shortage of skilled and semi-skilled labour. Some consultants estimate that SA has a shortage of between 350,000 and 500,000 employees in the managerial and technical sectors, with a particular shortage of skills in information and communication technology and financial services.

Unemployment in SA is high and there is an urgent need for job creation. The unemployment problem is said to be embedded in the structure of the economy, which is increasingly dominated by the services sector, as well as the industrial transition that is underway and the delayed impact of the apartheid social engineering

harbour; the Richard Bay IDZ and the John Ross highway; the rehabilitation and expansion of major ports, including the concessioning of the Durban container terminal; further improvements to major airports; the Dube Trade Port (the proposed La Mercy airport and freight handling facility); and the Gautrain rapid rail link between Johannesburg, Pretoria and the Johannesburg International Airport (The Presidency, 2003). An automotive supplier park to service the local motor industry (see case study) with logistical services such as warehousing, transport and consolidation has been established in Gauteng province and is said to be the first of its kind in Africa.

2.7 Technology and Skills

SA faces a severe shortage of skilled and semi-skilled labour. Some consultants estimate that SA has a shortage of between 350,000 and 500,000 employees in the managerial and technical sectors (SAIRR, 2001), with a particular shortage of skills in information and communication technology (ICT) and financial services. This leads to structural unemployment, which means that skills of the unemployed do not match available jobs. This skills gap could ultimately constrain economic expansion and deter foreign investment in certain sectors. Importing foreign skills and obtaining work permits for expatriate employees has, up to now, also been quite onerous, although it is receiving the government's attention.

Given these conditions, the government has introduced a Human Resource Development Strategy, supported by wide-ranging legislation and programmes, to promote training, learnerships and skills development. SA has legislated performance requirements for companies, both foreign and domestic, relating to skill development and training. Since 1999, all companies with an annual payroll in excess of R200,000 have to contribute 1 percent of their total payroll to a Skills Development Levy. Companies can then reclaim 70 percent of this levy to offset costs of training, while 20 percent of the levy is channelled into the National Skills Development Fund, which pays for training in areas that are identified as being of strategic importance to SA's socio-economic development. The remaining 10 percent pays for the administration of the National Skills System.

Unemployment in SA is high and there is an urgent need for job creation. The unemployment problem is said to be embedded in the structure of the economy, which is increasingly dominated by the services sector, as well as the industrial transition that is underway and the delayed impact of the *apartheid* social engineering. Those sectors in the economy that have grown have tended to employ relatively few workers, and growth did not create many jobs. In February 2001, the official unemployment rate was estimated at 26.4 percent, on a strict definition, but has since then climbed to over 30 percent. When 'discouraged' job seekers, who are no longer searching for a job, are also counted, the unemployment rate soars to almost 40 percent.

2.8 Investment Flows into SA

The study employs three sources of data on FDI into SA, namely, the SARB, BusinessMap and UNCTAD. Depending on the definition and methodology used to measure inward FDI,⁴ these figures may differ substantially, as demonstrated below. Calculations and measurements of FDI in SA are also complicated by such issues as transfer pricing, depreciation, taxation and currency volatility. FDI anomalies can be misleading; for example, the Anglo-American/De Beers deal in 2001 was

a large once-off transaction, rather than a change in long-term FDI trends. The three sources used to analyse FDI in SA reveal the following:

Calculations and measurements of FDI in SA are also complicated by such issues as transfer pricing, depreciation, taxation and currency volatility.

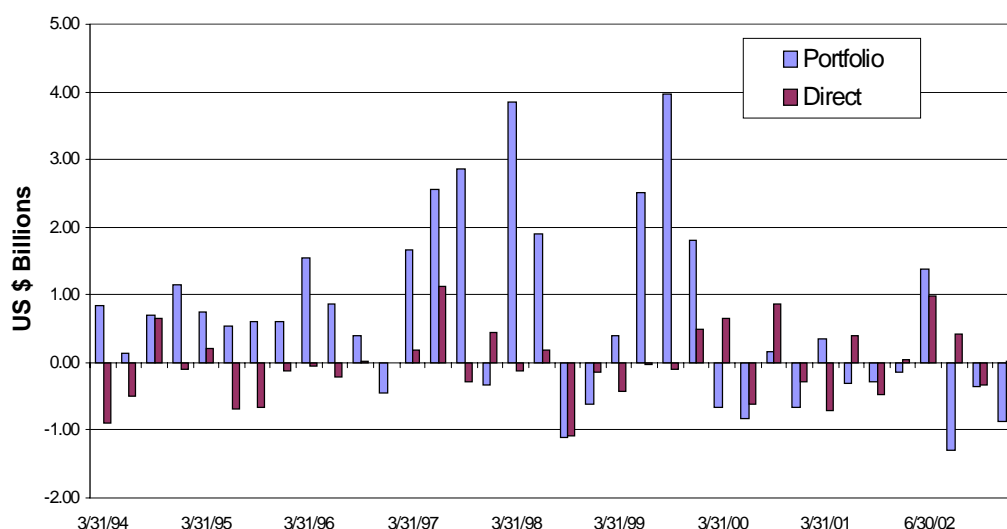
- The SARB records the total value of actual FDI inflows into SA between 1994 and 2001 as R103 bn (US\$16bn), or an average of R12.8 bn (US\$2bn) per annum. According to the Reserve Bank's figures, there has been a net positive FDI inflow to SA, largely because of the Anglo-American/De Beers deal in 2001. This large once-off FDI inflow contributed significantly to SA's jump of 17 places from 55th position in 2002 to 38th place in the last AT Kearney/Foreign Policy Globalisation Index Survey.
- BusinessMap values total FDI intentions over the same period at R131 bn (US\$22 bn), or an average of R14.6 bn (US\$2,4bn) per annum. In contrast to the SA Reserve Bank, BusinessMap does not record the 2001 Anglo-American/De Beers deal as a capital inflow, as it does not fit the commonly accepted definition of FDI (BusinessMap, 2003).
- UNCTAD records the total value of FDI into SA between 1994 and 2001 as US\$15,9 bn. According to UNCTAD (2002), SA was the top African recipient of FDI for 2001 – followed by Morocco, Algeria, Angola, Nigeria and Sudan – and ranked fourth in terms of the ten largest increases of inward FDI globally,⁵ mainly as a result of the Anglo-American/De Beers deal. However, in its FDI Performance and FDI Potential Indices, UNCTAD classified SA as an 'under-performer' (UNCTAD, 2002).

Capital inflows have increasingly taken the form of short-term portfolio flows destined for the bond and equity markets and, thus, absorbed by the private sector.

Figure 2.1 below charts the inflow of FDI and foreign portfolio investment SA since 1994. It is clear that capital inflows have increasingly taken the form of short-term portfolio flows destined for the bond and equity markets and, thus, absorbed by the private sector. SA's improved credit ratings by international agencies, coupled with relatively high interest rates, have improved SA's credentials for foreign portfolio investment (FPI).

Although there has been an accompanying surge in the private sector access to credit, Mohamed (2003) notes that the private sector has not utilised its improved access to credit for productive investment. Easier access to credit has, instead, supported existing negative trends in the economy, including growing household consumption and imports, higher share prices and capital flight. He argues that the surge in inflows is a cause for concern, because of the potential for instability it produces in the economy. As the 1998 East Asian crisis and its contagion effects have demonstrated, portfolio flows can be very short-term, mobile and harmful to national economies. Emerging markets have aptly been described as the 'Rollercoaster' and 'Wild West' of global capitalism.

Figure 2.1: Net Capital Inflows: Portfolio vs Direct (US\$ bn), 1994-2002



Source: Deutsche Bank/I-Net Bridge. Note: the Anglo-American/De Beers deal is excluded, as it was an exceptionally large-scale transaction.

Inward FDI into SA has increasingly taken the form of merger and acquisitions, largely as a result of state-leveraged deals and public sector restructuring (such as the Airports Company SA, SAA, Telkom and others).

Unlike the rest of Southern Africa, there has been little greenfield FDI into SA, and where this has occurred, it has largely been of a mega-project nature. Inward FDI into SA has increasingly taken the form of merger and acquisitions (M&As), largely as a result of state-leveraged deals and public sector restructuring (such as the Airports Company SA, SAA, Telkom and others).

This points to the highly developed nature of SA's equity markets, enabling asset purchases of this nature. A study by the Edge Institute has found that a relatively high proportion of investors interested in SA see the country's asset base as broadly similar to what they are familiar with (Gelb, 2002). On the other hand, this mode of entry is often associated with rationalisation and job losses and does not, generally, expand the productive capacity – that is, changes in the physical stock of capital – of the economy.

Downward trend in M&As has been off-set by an increase in FDI in new investment and the expansion of productive activity.

Since the beginning of 2000, there has been an improvement in the quantity of net FDI, including greenfield investment by foreign investors. This can be expected to continue to improve, if domestic conditions and policies continue to provide the fertile ground for investment. The increased rate of fixed investment by the government over the same period will contribute directly, and through encouraging further private investment (The Presidency, 2003). There is also a discernible downward trend, particularly from 1998, in M&A type transactions. This largely explains the decline in FDI inflows into SA during 2000. This downward trend in M&As has been off-set by an increase in FDI in new investment and the expansion of productive activity. BusinessMap (2003), however, notes a rising trend in disinvestment from SA, although small in absolute terms, which is often related to BEE and the need to roll back white minority control of the economy through the implementation of equity targets. Figure 2.1 notes some of the major FDI deals in SA over the past few years.

| Figure 2.2: Some Important FDI Deals in SA | |
|---|---|
| 1996, 1998 | In 1996, Petronas, the Malaysian state-owned oil company, acquired a 30 percent stake in Engen, SA's biggest oil refiner, for R1.7 bn(US\$0.24bn*). The Engen purchase gave Petronas control of 18 and 27 percent of SA's refining capacity and retail-fuel market, respectively. In 1998, in the largest foreign purchase of an SA asset, Petronas increased its stake in Engen from 30 percent to 100 percent in a R2.9 bn (US\$0.41bn) offer. In 1999, Petronas sold 20 percent of the issued shares in Engen to an empowerment company. |
| 1997 | The government completed its first partial privatisation transaction involving foreign participation, the sale of 30 percent equity interest in the national telecommunications operator, Telkom, to a consortium of non-residential companies (US and Malaysian investors, Southwestern Bell (SBC) and Telekom Malaysia). The deal raised R5.5 bn(US\$0.77bn). |
| 1998 | Aeroporti di Roma (ADR), an Italian airport management firm, won a competitive bid to become the Airports Company of SA's strategic equity partner and paid R819mn (US\$114.7mn) for 20 percent of the company's shares. ADR has an option to acquire a further 10 percent stake by April 2004. |
| 1999 | The sale of 20 percent equity in SA Airways (SAA) to Swissair was a part of Government asset restructuring. When Swissair filed for bankruptcy protection 18 months later, the government bought back the 20 percent from the Swissair Group for less than 30 percent of what the Swiss carrier had paid. The re-purchase, or 'denationalisation', of SAA resulted in a net benefit to the state of nearly R1bn (US\$0.14bn), although it dampened SAA's strategy of global expansion, via a strong equity partner. |
| 2001 | In the first-half of 2001, SA recorded a net capital inflow of R1.6 bn (US\$0.22bn). The acquisition of De Beers by Anglo-American, the non-resident company, now based in London, appeared as an inflow of foreign capital. This was an anomaly as Anglo-American purchased De Beers shares by paying the mainly SA-based owners in Anglo-American shares. The increase in FDI inflows to SA was accompanied by a simultaneous decline in FDI outflows from SA. It is believed that this transaction will, in the long run, aggravate the outflow of resources, in the form of payments of profits and dividends abroad by De Beers. |

* Using the current exchange rate prevailing on 15.01.04.

A focus on annual capital inflows *per se* may, however, significantly under-report the extent of FDI in SA, because of the failure to accurately capture the extent to which earnings of foreign subsidiaries are re-invested in the subsidiary, without any accompanying explicit balance of payments transaction. This problem can be overcome by analysing the annual changes in total FDI stock in SA, in spite of the inherent difficulties associated with valuation adjustments (Hawkins & Lockwood, 2002). Table 2.5 presents a view of inward and outward FDI stock.

| Table 2.5: FDI inward and outward Stock, SA, 1980-2000 | | |
|---|--------------------------------------|---------------------------------------|
| Year | Inward FDI Stock (US\$mn) | Outward FDI Stock (US\$mn) |
| 1980 | 16 519 | 5 722 |
| 1985 | 9 024 | 8 963 |
| 1990 | 9 121 | 14 864 |
| 1995 | 15 099 | 23 433 |
| 2000 | 47 418 | 35 277 |
| 2001 | 50 246 | 29 155 |
| 2002 | 50 998 | 28 755 |
| <i>Source: UNCTAD, World Investment Report 2003.</i> | | |

The large share of inward FDI originating from the US since 1994 has been due to the return of US companies that left the country during apartheid, although the dominance of US investment started diminishing by 1999, giving way to an increased European presence.

From this table, it is clear that investment inflows dropped drastically between 1980 and 1990, largely as a result of companies disinvesting from SA when sanctions were levied against the *apartheid* regime. Altogether, 256 US companies had left the country by 1991 (BusinessMap, 1999). Inward investment picked up again from mid-1990s, although not as much as was expected. The large share of inward FDI originating from the US since 1994 has been due to the return of US companies that left the country during *apartheid*, although the dominance of US investment started diminishing by 1999, giving way to an increased European presence. The table also reveals that there has been a steady growth in outward investment by SA companies since 1980s; this trend picked up pace from 1990s with the advent of political and economic liberalisation.

SA's levels of domestic investment and savings have also been low. SA domestic saving has shown a tendency to decline, as a proportion of the GDP, since late 1980s. Inward FDI, as a percentage of the gross fixed capital formation (GFCF), averaged 1.3 percent per annum from 1990 to 1995, rising to 15.8 percent in 1997, due to the Telkom deal, but declining to 2.5 percent in 1998, 7.6 percent in 1999 and 4.7 percent in 2000 (UNCTAD, 2002).

The government in 2003 announced that it will launch a massive investment drive over the next three years, focused initially on roads, rail and ports, which is meant to unlock obstacles to the country's export-led economic growth. The move, to be undertaken in conjunction with state enterprises, is expected to lead to the state taking over from the private sector, as the prime driver of the gross domestic fixed investment. Further investment will flow into social infrastructure under an expanded public works programme. The government will also continue to pursue options such as private sector concessions, equity sales and public-private partnerships, where necessary (*Business Day*, 4 August 2003).

Interestingly, some have argued that SA's low inward investment is a reflection of the strength of the SA economy. SA, the argument goes, does not have a technical shortage of capital, as widely reported, but rather lacks viable, bankable projects.

Interestingly, some have argued that SA's low inward investment is a reflection of the strength of the SA economy.⁶ SA, the argument goes, does not have a technical shortage of capital, as widely reported, but rather lacks viable, bankable projects. SA's national savings exceed its national fixed investment, so that there is no savings or resource gap. SARB has similarly noted that most of 1990s had been characterised by corporate excess savings (that is, the difference between gross savings and gross capital formation), and this may reflect "companies' negative assessment of potential risk-return possibilities" (SARB, 2001).

Second, SA's domestic capital markets are so well developed that TNCs can raise all their capital requirements locally, rather than bringing in capital from their home countries. This could explain low levels of FDI in SA, but not why overall investment is low. It also contradicts the expressed intention to use FDI to bring more foreign exchange into the country. Nevertheless, as capital markets integrate globally, projects are financed with a mix of local and FDI capital. It should be noted that inflows of FDI capital (often once off) are quickly swamped by outflows or profits/dividends, as well as the problem of transfer pricing.

The distribution of FDI stock in SA, as a percentage of the GDP in 2000, was concentrated in the tertiary sector (45.5 percent), which contributes the most to the country's GDP, followed by the primary (28.9 percent) and the secondary sector (26.4 percent). The industries that have

attracted the most FDI commitments between 1994 and 2002 are listed in Table 2.6. As can be seen, telecommunications and IT have attracted the most foreign investment commitments, largely due to Telkom's privatisation in 1997 and the Cell-C third cellular licence investment.

| Table 2.6: Sectoral Distribution of FDI Commitments, 1994-2002 | | |
|---|-------------|---------------|
| | R mn | US\$mn |
| Telecommunications and IT | 18,567 | 3,357 |
| Mining and Quarrying | 22,360 | 2,621 |
| Motor and Components | 15,230 | 2,457 |
| Food, Beverages and Tobacco | 13,090 | 2,431 |
| Energy and Oil | 9,295 | 1,935 |
| Metal Products and Minerals Beneficiation | 11,710 | 1,352 |
| Other Manufacturing | 4,374 | 1,149 |
| Transport and Transport Equipment | 5,621 | 946 |
| Hotels, Leisure and Gaming | 5,798 | 942 |
| Chemicals, Plastics and Rubber | 3,734 | 795 |
| <i>Source: The BusinessMap Foundation SA FDI database</i> | | |

The bulk of foreign investment into SA has been natural resource-seeking and market-seeking FDI, as evidenced by the high value concentration in the telecommunications, mining, food and beverages, and energy and oil sectors.

The bulk of foreign investment into SA has been *natural resource-seeking* and *market-seeking* FDI, as evidenced by the high value concentration in the telecommunications, mining, food and beverages, and energy and oil sectors. *Efficiency-seeking*, or *strategic* investment, where TNCs locate part of their value-added chain abroad to improve the profitability of their overall economic operations, in SA's export-oriented manufacturing sector has been very low, with the notable exception of SA's motor industry (see case study). This is the type of investment that the government's Growth, Employment and Redistribution (GEAR) macroeconomic policy hoped to attract, as part of its industrialisation strategy. The real benefit of FDI lies in backward linkages. In efficiency-seeking FDI, foreign investors are no longer only interested in cheap labour and natural resources; local-sourcing has become increasingly important. It is, however, difficult to get spin-offs from competitiveness-seeking FDI because this type of investment is characterised by a race to the bottom, high value-added and, high research and development (R&D).

The European Union (EU) is SA's largest investor (within the EU, the UK), followed by the Americas (the US and Canada). The strong investor relations between SA, the EU and the Americas can, in part, be explained by well-established trade (and tourism) links. Investors from these two regions have heavily invested in mining and quarrying, services, and manufacturing in SA. Asia has a much more diversified investment position in SA, where key sectors includes financial services, community services, transport storage and communication, trade catering and accommodation and manufacturing. The key Asian sources of FDI are Malaysia, Japan, Taiwan and Hong Kong, China (DTI TISA, 2003).

The following factors and trends partly explain why, despite SA's relative economic strength and lack of barriers to business, investment rates remain comparatively low:

There is high concentration in SA in virtually all industries with anti-competitive practices over several decades responsible for amongst the highest four-firm concentration ratios in the world.

(i) Domestic Market Structure/Potential:

- SA's domestic market is relatively small and segmented and not growing fast enough to induce mass production type investment projects. The ability to attract export-oriented FDI is the key to SA's economic success (e.g., SA's motor industry).
- There is high concentration in SA in virtually all industries with anti-competitive practices over several decades responsible for amongst the highest four-firm concentration ratios in the world. This includes both horizontal oligopolisation as well as vertical integration, which leads, through tied contracts, to a lockout of any foreign investor in the main inward-oriented production, warehousing, distribution, marketing and retailing networks.
- SA's capital markets are relatively well developed and can finance the current level of viable, bankable projects. In the past, due to the depreciating nature of the Rand, local capital has been a more cost-effective substitute for FDI.

(ii) Poor Market Intelligence:

- FDI investors are making long-term calculations and their poor understanding of democratic SA has been a significant constraint on their investment behaviour (The Presidency, 2003).
- The Africa perception (and broadly Afro-pessimism) has also hampered investment. AT Kearney (2000) suggests that SA's main challenge is to define and project its identity as an investment destination, distinct from the rest of Africa. Potential investors often view SA as another African commodity-exporting country, rather than a country that is diversifying and strengthening its capacity in high-value manufactures and a greater services component in the GDP.

SA's main challenge is to define and project its identity as an investment destination, distinct from the rest of Africa. Potential investors often view SA as another African commodity-exporting country.

(iii) The Role of Domestic Investment:

Private fixed investment has tended to move in the same pattern as public fixed investment. Foreign investors are said to be delaying investing in SA due to domestic corporate excess savings, which are not being productively re-invested. In turn, the private sector is awaiting its cue to invest more from greater government spending, particularly in infrastructure (constrained in the past by the tight fiscal policy and SOE restructuring).

(iv) Regulatory and Institutional Conditions:

This involves confidence and consistency in public policy reforms affecting business⁷, BEE requirements and hidden transactional costs (i.e., logistical, transport and bureaucratic costs). Gelb (2002) finds that some investors perceive that there has been deterioration in SA's institutional-regulatory environment. AT Kearney (2000), however, suggests that SA's attractive regulatory and business environments are the main investment drivers in SA. The World Bank's World Business Environment Survey (WBES) also finds that the registration process for new businesses in SA is more efficient than in several other developed countries, although SA is less efficient with respect to contract enforcement.

(v) Social Risks:

SA's relatively high levels of crime, compared to other competing developing countries, raises business costs and deters investors (i.e., higher insurance costs, disruption in production activities, etc.).

SA's labour market is regularly cited by businesses as over-regulated, onerous and inflexible. There are poor perceptions about labour regulations.

(vi) High User Cost of Capital:

- The cost of capital, relative to SA's main trading partners (in particular the prime interest rate and the cost of equity premium), coupled with exchange rate volatility of the SA Rand, are said to be barriers to investment. For SMMEs, access to capital is a particularly major constraint.
- Gelb (2002) finds that investors have limited greenfield investment they make in SA as a way of mitigating the adverse effects of exchange rate fluctuations, which can result in asset devaluation in home currency terms. Other potential strategies, which investors employ to mitigate this risk, include favouring partial acquisitions and investing in services, so that their investment is not in physical capital and is more easily reversible.

(vii) Labour Market Issues:

- SA's labour market is regularly cited by businesses as over-regulated, onerous and inflexible (in particular, the 'hassle factor', the time and energy of 'doing business' with unions, or fulfilling government requirements). The National Enterprise Survey (2001) suggests that there are poor perceptions about labour regulations. Wage rates do not feature strongly as retarding investment (more ambiguous for SMMEs). The World Bank's WBES also finds that SA has the eighth least regulated labour market out of more than 130 countries.
- An inadequately skilled labour force and a severe mismatch between the nature of the demand for labour and the quality of labour supplied are significant obstacles to increased investment (particularly in ICT, engineering, financial services and heavy manufacturing).

2.8.1 SA FDI into Southern Africa and the SADC

The share of SA investment in total FDI into SADC is significant, amounting to about 47 percent of all deals made in the region. A recent study by Liquid Africa has found that SA is now the largest source of FDI into Africa, far outstripping the US, UK and France.

Brief mention should be made of the considerable SA investment into the continent and region. The share of SA investment in total FDI into SADC is significant, amounting to about 47 percent of all deals made in the region.⁸ In 2001, SA's actual FDI into SADC amounted to R14,969mn (US\$2.09bn), mainly into Mozambique and the Democratic Republic of Congo (DRC); this increased to R68,596mn (US\$9.6bn) in 2002 (BusinessMap, 2003).

A recent study by Liquid Africa has found that SA is now the largest source of FDI into Africa, far outstripping the US, UK and France (*Business Day*, 3 July 2003). SA firms have invested an annual average of US\$1.4 bn since 1991, with impressive profit margins. This involves investment in mining and construction, financial services, telecommunications, consumer goods, health care, the media and retail. This increase in SA FDI is attributed to a range of factors, including: the liberalisation of exchange control regulations which now permit SA investment of up to R2 bn (US\$0.28bn) per project in Africa, compared with R500mn (US\$70mn) in any other region; an increasing appetite for African risk by the Development Bank of Southern Africa (DBSA) and the Industrial Development Corporation (IDC); and increased SA exports to the region (up by 59 percent over the past 3 years).

A range of other domestic and external factors also accounts for the impressive increase in SA's outward investment. The SA corporate tourist market (companies providing tourism, hospitality and recreation services) is saturated, which partly explains this industry's move into the region. SA retail and wholesale companies have reported profit margins of between

However, as is the trend in some sectors in SA with foreign TNCs, SA firms are starting to dominate and crowd out certain industries in some southern African countries. This is reinforcing the traditional 'core-periphery' division of labour in the region.

400 and 500 percent in their regional operations. They have an advantage over investors from outside Africa, as they have a better understanding of regional industrial trends and policy environments. New investment opportunities have also resulted from the SADC free trade area and privatisation. Noteworthy is the increase of SA's investment into the region's financial services sector, partly as a result of market deregulation in other SADC countries, and partly as a result of financial service institutions trailing their clients (mostly mining and retail and wholesale investments) into the region. Added to this is increased stability and security in countries such as Mozambique, Angola and the DRC.

However, as is the trend in some sectors in SA with foreign TNCs, SA firms are starting to dominate and crowd out certain industries in some southern African countries. This is reinforcing the traditional 'core-periphery' division of labour in the region, where SA continues to supply southern Africa with manufactured goods and inputs through trade and source, mostly raw materials or low value-added goods, from the region. This has led some analysts to depict SA firms as 'new exploiters' or 'hegemons', while others argue that these firms are the 'market developers' and 'market leaders' who increase competition and trade in under-developed markets. However, in the absence of a regional investment framework that would regulate and direct FDI (both from SA and abroad) according to regional development priorities, the above trends are likely to continue. The SADC is currently engaged in developing a Protocol on Finance and Investment through a bottom-up process of Memorandums of Understanding (MOUs).

2.9 Balance of Payments (BoP)

BOP is a tabulation of the credit and debit transactions of a country with other countries and international institutions. It is divided into current account (trade and services) and financial account (capital flows).

2.9.1 SA's Current Account

SA's current account in 2002 was in surplus, the first such surplus since 1994. This was equal to 0.3 percent of the GDP, compared to the deficit ratio of 0.3 percent in 2001. SA's current account deficit has usually been low, primarily due to competitiveness effects of trade liberalisation, SA's participation in free trade agreements and the depreciation in the Rand.

Services account has become important in the light of the increased presence of non-resident investment in SA and the movement of some major SA companies to London. It is useful in gauging costs of FDI, as opposed to benefits, which are reflected in the financial account.

Mention should also be made of the services account – that is, the outflow of resources in the form of dividends and interest payments to non-residents. This has become important in the light of the increased presence of non-resident investment in SA and the movement of some major SA companies to London. The service account is useful in gauging costs of FDI, as opposed to benefits, which are reflected in the financial account. Over the past fifty years, SA has almost always recorded a surplus on the trade account – SA exports more than the country imports – but a deficit on the whole current account.

2.9.2 SA's Financial Account

FDI entering SA is recorded on the financial account. SA has, since 1994, recorded net positive inflows of capital through this account, although these flows have been highly volatile. Portfolio investment flows and purchases of domestic equities by non-residents have become the main drivers behind the financial account surpluses.

Issues for Comments

- What are the constraints to the economic growth in SA?
- What effect does SA's geographic remoteness from major world markets have on investment in the country?
- What are the possibilities of attracting small and medium-scale companies (e.g., breweries, motor components, etc.) to SA, particularly in light of the importance of SMMEs for job creation?
- How relevant are the traditional determinants of investment in the light of the inward FDI performance of SA?
- What are the arguments for and against the introduction of a Basic Income Grant in SA and how would this affect SA's investment climate?
- Is SA's labour market over-regulated and what would the implications be of a more liberalised labour regime?
- It has been noted that SA only uses 80 percent of its productive capacity. Is this an international norm that countries only utilise 80 percent of their productive capacity? Does it mean SA does not need FDI because the country has a 20 percent excess of productive capacity?

Main Policy Trends in SA

3.1 SA's Economic Policy

3.1.1 The Reconstruction and Development Programme (RDP)

RDP formed the government's initial socio-economic policy framework in 1994. It set targets for essential social service and infrastructure delivery and addressed environmental and labour standards.

RDP formed the government's initial socio-economic policy framework in 1994, before being replaced by the GEAR strategy in 1996. The RDP set targets for essential social service and infrastructure delivery and addressed environmental and labour standards. The RDP White Paper also enjoined the government to negotiate with neighbouring countries to forge an equitable and mutually beneficial programme for increasing co-operation, co-ordination and integration in the region.

3.1.2 The Growth, Employment and Redistribution (GEAR) Strategy

GEAR was adopted in June 1996 as the government's overarching strategy for economic development, overriding the often-contradictory macroeconomic principles and objectives of RDP. GEAR had set out various 'targets' for macroeconomic policy outcomes and growth and employment, *inter alia*:

- 400 000 non-agriculture jobs per annum by the year 2000;
- six percent growth by the year 2000;
- 10 percent per annum increase in exports (13-14 percent increase in manufactured exports); and
- US\$2bn of FDI per annum.

GEAR was adopted in June 1996. It rested on two pillars: i) a rapid expansion of non-traditional (i.e., non-gold, manufactured) exports; and ii) an increase in private sector investment.

It rested on two pillars: i) a rapid expansion of non-traditional (i.e., non-gold, manufactured) exports; and ii) an increase in private sector investment. It viewed new inward FDI as an essential source of savings, needed to finance increased investment and, therefore, considered one of two main engines – the other being exports – of economic growth.

According to GEAR, for growth to take place, gross investment had to increase from 20 percent to 26 percent of the GDP (SA Government, 1996:5-6), which required capital inflows equivalent to 4 percent of the GDP, or more than five times the 1994 level. Policymakers thus viewed an increase in direct investment, relative to portfolio investment, as crucial (although GEAR did not clearly distinguish between these two forms of capital inflows). The government has been particularly keen to attract export-oriented FDI, in so doing hoping to stimulate innovation and exports in local firms through the technology, skills transfers and competitive pressures associated with FDI (SA Government, 1996). GEAR emphasised economic growth, as a powerful stimulus of FDI.

Although GEAR has delivered greater macro-stability and fiscal discipline, it has been criticised, particularly by trade unions and the left, for its failure to deliver in several key areas (particularly job creation, economic growth, manufactured exports and re-distribution).

3.1.3 The Microeconomic Reform Programme (MERP) and Integrated Manufacturing Strategy (IMS)

Since 2001, the government has shifted its economic policy focus to removing remaining microeconomic obstacles to investment and bolstering the economy's global competitiveness. The micro economic reform strategy focuses on:

- The high cost of services provided by some SOEs and the inconsistency of services and policies of some SOEs (including the partially privatised SOEs);
- The poor state of infrastructure in some rural areas and marginalised urban areas;
- The labour market, insofar as it is hampered by a severe mismatch between the nature of the demand for labour and the quality of labour supplied;
- Under-investment in innovation and, research and development since *apartheid* technology missions were abandoned;
- Low levels of investment in the integrated sectors, especially manufacturing and its service suppliers which form an increasingly important part of the value-chain; and
- Low levels of investment by the private sector, the government and the SOEs in key activities such as capital equipment, knowledge and training (The Presidency, 2003).

MERP, launched in early 2001, identifies six key performance areas or objectives, namely economic growth; employment; small business development; BEE; competitiveness; and the geographical spread of growth and development.

MERP, launched in early 2001, identifies six key performance areas or objectives, namely economic growth; employment; small business development; BEE; competitiveness; and the geographical spread of growth and development. MERP rests on three pillars:

- Cross-cutting issues: human resource development, infrastructure, access to finance, technology and research and development;
- Actions to improve the efficiency and lower the costs in three input sectors, namely, transport, telecommunications and energy;
- Growth Sectors that demonstrate a high potential for growth and employment, such as tourism, exports, agriculture, ICT and entertainment industries (GCIS, 2002:249-250; DTI website).

IMS sets out the framework for SA's economic strategies and seeks to eliminate constraints on the economy and efficiency. To do this, IMS, targets key sectors for growth, such as ICT, agro-processing, bio-technology, chemicals, textiles with value-added, tourism, craft and cultural industries, and the services sectors.

IMS sets out the framework for SA's economic strategies and seeks to eliminate constraints on the economy and efficiency. To do this, IMS, like MERP, targets key sectors for growth, such as ICT, agro-processing, bio-technology, chemicals, textiles with value-added, tourism, craft and cultural industries, and the services sectors, in general (GCIS, 2002:167; DTI website). This could lead to the creation of new sector-specific incentives, as is the case in the motor industry.

3.1.4 Black Economic Empowerment (BEE)

The BEE strategy, which is broadly supported by most investors, provides a framework through which the government seeks to redress the historical dispossession of black people's wealth and assets by governments of the *apartheid* era and colonial rule before that. It is, today, an integral part of investment climate reforms in SA (particularly for domestic investment). The broadening of the economic community of entrepreneurs amongst the historically disadvantaged people of SA is the key to the long-term success of the economy.

The BEE strategy provides a framework through which the government seeks to redress the historical dispossession of black people's wealth and assets by governments of the apartheid era and colonial rule before that.

A broad-based BEE strategy was released in early 2003. It sets out mechanisms to ensure that black people are given access to opportunities to develop their skills, enter management positions in companies, start and grow their enterprises, become suppliers to large companies and the government and, for certain sectors, buy equity in companies. It

envisages a target of 35 percent effective participation of black people in the SA economy by 2014. Extending black ownership of the economy has been progressing fairly slowly, with overall BEE ownership growing from an estimated 3.9 percent in 1997 to 9.4 percent in 2002. Most BEE investment is concentrated in the resources and financial sectors (BusinessMap, 2003; The Presidency, 2003; DTI website).

The main policy instruments for advancing BEE are legislation; preferential procurement by the state; restructuring SOEs; institutional support; financial and other incentive schemes; and regulation.

The main policy instruments for advancing BEE are legislation; preferential procurement by the state; restructuring SOEs; institutional support; financial and other incentive schemes; and regulation. The latter employs a 'balanced scorecard' approach to measure and benchmark the progress in achieving BEE by enterprises and sectors in respect of direct empowerment through ownership and control of economic assets, human resources development and employment equity and indirect empowerment through preferential procurement and enterprise development. Some sectors of the economy have also developed, or are in the process of negotiating, their own industrial charters to advance BEE in a clear, transparent and predictable manner. Charters have already been developed for the liquid fuels and mining industries and one is being negotiated for financial services.

Both critics and supporters of BEE argue that, to date, the strongest ideas on the table – i.e., sectoral charters, restructuring of state assets and targets for advancing black ownership and management – have strengthened a small group of players who constitute a black elite, rather than facilitating broad-based black ownership of, and participation in, the economy. BEE should be prioritised as a multifaceted process, which includes ownership and control of the economy, the development of new SMMEs, human resources development and training, land reform and rural development.

2.2.3 Medium Term Expenditure Framework (MTEF) and Medium Term Strategic Framework (MTSF)

MTEF, introduced in 1998, forms an important component of the government's macroeconomic policy. MTEF sets out three-year spending plans for national departments and summarises the spending projections of the provincial governments.

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MTSF is a statement of the government's medium-term strategic priorities. While MTSF sets out government's broad strategic direction, MTEF translates the development strategy into spending plans and budgets. Budgeting is primarily about choices and trade-offs that have to be made in deciding how to meet the agreed set of policy objectives for service delivery.

3.2 Trade Policy

Under the *apartheid* regime, SA entered trade negotiations during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) as a developed country; this Round established the World Trade Organisation (WTO). Although other WTO members were willing to grant SA 'transition' status in 1995, the EU insisted that SA should have the obligations of developed countries (IGD, 2000). A formal programme of phased tariff reductions and tariff harmonisation commenced in 1995, in terms of an Offer presented in 1993. Since then, SA has made significant reductions in tariff barriers, ahead of the WTO timetable, resulting in the lowest trade weighted average rate of protection in the SADC region. Steepest reductions have been in the sectors previously most heavily protected.

Under the apartheid regime, SA entered trade negotiations during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) as a developed country.

The Agreement on Trade-Related Investment Measures (TRIMs) specifies measures such as local content requirements and export incentives, which have been abolished in SA, including those in the Motor Industry Development Programme (MIDP). Signing the TRIMs agreement also helped the government to 'lock in' economic policy reforms necessitated by its new macroeconomic strategy. The wisdom and impact of such 'lock in' policies for developing countries are still contested.⁹

SA has diversified its export markets and trading relationships. Apart from the country's traditional trading partners, SA has developed more extensive relations with South America, Asia and Africa (the so-called 'butterfly' approach, which seeks to open up SA's 'trading wings' from Africa to North and South America and East Asia). As part of its trade strategy, the government has identified a number of 'strategic partner' countries with which to develop economic relations, through bilateral Free Trade Agreements (FTAs), although SA is not seeking FTA negotiations with all of them at this stage. These strategic partners include the US, UK, Brazil, France, Germany, Sweden, Russia, China, Japan, Australia and India.

SA has also been engaged in a number of multilateral trade negotiations, which hold benefits for foreign investors in SA. These include:

- SA played an important role in the launch of the new WTO Doha Round (which emerged with a developmental agenda);
- The Trade and Development Cooperation Agreement (TDCA) with the EU, which came into effect on 1 January 2000 (with the Wine and Spirits Agreement not yet ratified);
- The SADC Trade Protocol was signed in 1996 and, subsequently, there were negotiations around revised rules of origin;
- The new Southern African Customs Union (SACU)¹⁰ Agreement was concluded in October 2002;
- The first session of SACU-European Free Trade Area (EFTA)¹¹ negotiations to establish a FTA were held in May 2003 and it is expected that the negotiations will be concluded by the end of 2004;
- SACU-US FTA negotiations started in June 2003 (to be concluded in January 2005); and
- Substantive FTA negotiations with China, India and Mercosur are due to begin as soon as the exploratory phase underway is concluded (The Presidency, 2003).

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3.3 Capital Controls and Capital Account Restrictions

In September 1985, SA introduced exchange control over non-residents and the dual currency system of the commercial and financial Rand. This two-tier currency system was subsequently abolished on 13 March 1995. The exchange control restrictions on the free convertibility and repatriation of local sale proceeds of non-resident-owned SA investment were also repealed.

SA, in line with the liberalisation of its investment regime, maintains no restrictions on the repatriation of capital investment, profits or the transfer of dividends by non-residents. Interest payments are also freely transferable. Royalties, license fees and certain other remittances to non-residents do, however, require the approval of the SA Reserve Bank.

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The government has, since 1996, gradually relaxed the exchange controls on SA companies and private individuals (although this has led to large state-sanctioned capital outflows in the case of the latter). In his MTEF statement for 2003, the Minister of Finance raised the allowance governing SA corporations use of SA funds to finance new approved direct investment in Africa from R750mn (US\$105mn) to R2 bn (US\$0.28bn) and up to R500mn (US\$70mn) for approved projects outside of the continent. In February 2003, the ceiling for approved investment outside of Africa was increased to R1 bn (US\$0.14bn).

3.4 Privatisation and Regulation

The SA government has embarked on a steady programme of restructuring state-owned enterprises (SOEs). The *rationale* behind this programme is to stimulate investment, re-capitalise ailing public enterprises, inject new management expertise, reduce state debt and broaden economic participation (particularly BEE, by reserving a percentage of the deal to be purchased by a BEE partner). The term 'restructuring' has deliberately been chosen to convey the position that this is not merely a privatisation exercise, but a thorough reorganisation of some crucial economic sectors, a reorganisation of the state's involvement in the economy and the manner in which SOEs are managed. However, in some quarters, there remains widespread opposition to this programme, particularly among the communities concerned about access and affordability of privatised basic social services.

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In 1996, the government announced that it intended to divest itself of R40 bn (US\$40bn) worth of state-owned assets by 2004. As part of this restructuring programme and in preparation for private sector participation, sectoral regulators were established and strengthened, namely, the Independent Communications Authority of SA (ICASA) and the National Electricity Regulator (NER), and the Competition Board was upgraded to the Competition Commission.

Steady progress has been made since then, as indicated in Table 3.1. Of the 30 envisaged restructuring transactions on the government's agenda, about 20 have now been completed. The remaining parastatals are mostly subsidiaries of large entities such as Telkom (telecommunications), Eskom (power generation and distribution), Transnet (transportation) and Denel (arms manufacturing). Preparations are in progress for further equity partnerships in, or outright sales of, government businesses, opening up a number of opportunities for private sector investment.

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There is a strong restructuring-FDI link in SA: much of FDI into the country, over the past few years, has been in the form of acquisitions by foreign firms of SOEs, rather than greenfield investment. The state has, however, not always managed to raise the projected proceeds from its restructuring activities. For 2003, the government has scaled back its projected income from the sale of state assets, from R12bn (US\$1.68bn) to R10 bn (US\$1.4bn), the majority of which is expected to come from the Telkom Initial Public Offering (IPO) (*Business Day*, 3 March 2003). Another concern is the impact of restructuring and privatisation on the lives of ordinary South Africans. National Reference Group (NRG) meetings in SA held as part of the IFD project, found that the main FDI damage done in the privatisation process is to destroy the potential for cross-subsidies (which often benefits poorer consumers). This is demonstrated in the case study on the telecommunications sector later on.

| Table 3.1: Restructured SOEs and Proceeds from Restructuring, 1995 to 2000 | | | | | |
|---|-------------|------------------------|------------------------|----------------------|-------------------------|
| SOE | Date | Percentage Sold | Proceeds (R mn) | To NRF (R mn) | Transaction Form |
| SABC Stations | Mar-97 | 100 | 510 | 510 | SEP/BEE |
| Telkom | May-97 | 30 | 5,631 | 1,165 | SEP |
| Sun Air | Nov-97 | 100 | 42 | 21 | BEE |
| Transnet's Viamax | May-98 | 30 | 12 | N/A | BEE |
| ACSA | Jun-98 | 20 | 819 | 819 | SEP |
| ACSA | Oct-99 | 4 | 173 | 173 | BEE |
| ACSA | Oct-99 | 1 | 44 | 44 | ESOP |
| SAA | Jul-99 | 20 | 1,400 | 611 | SEP |
| Transnet's Connex | Aug-99 | 80 | 15 | N/A | SEP/BEE RESTR |
| SASRIA | Feb-00 | N/A | 7,100 | 7,100 | Dividend to state |
| SASRIA | Sep-00 | N/A | 2,400 | 2,000 | |
| M-Cell/MTN | Jun-00 | 6 | 2400 | 2000 | BEE |
| M-Cell | Jan-02 | 20 | 5,500 | 5,000 | MNTS |
| Transnet's Production House | Jul-00 | 100 | 11 | N/A | BEE |
| Transnet Chemical Services | Aug-00 | 100 | 3 | N/A | SOE-TSI |
| Transnet Transwerk | Sep-00 | 65 | 19 | N/A | SEP |
| Transnet Transmed | Sep-00 | 100 | 5 | N/A | SEP |
| Telkom (Ucingo) | Sep-00 | 3 | 564 | 564 | BEE |
| Safcol-KZN | Sep-00 | 75 | 45 | 100 | SEP/BEE |
| TOTAL | | | 26,793 | 20,087 | |
| <u>Acronyms used:</u> | | | | | |
| <i>NRF = National Revenue Fund (an account managed by the National Treasury)</i> | | | | | |
| <i>SEP = Strategic Equity Partner</i> | | | | | |
| <i>BEE = Black Economic Empowerment</i> | | | | | |
| <i>ESOP = Employee Share Ownership Programme</i> | | | | | |
| <i>SASRIA = South African Special Risks Insurance</i> | | | | | |
| <i>N/A = Proceeds were either not paid to the National Revenue Fund or no percentage stake applicable</i> | | | | | |
| <i>TSI = Technology Services International, a division of Eskom Enterprises.</i> | | | | | |
| <i>Source: Department of Public Enterprises Annual Report 2001/02, Government Printer, RSA</i> | | | | | |

The restructuring programme has, however, yielded a degree of regulatory uncertainty for potential investors, particularly in the:

- Telecommunications sector, after the much delayed introduction of a second network operator (SNO);
- Electricity sector, regarding the possibilities for private power stations to enter the market and compete with Eskom;
- Transport sector, after the concessioning of some of Portnet's port operations to private operators (government will retain ownership of port infrastructure); and
- Minerals and energy sectors over the Mining and Liquid Fuels Charters, which seek to advance BEE.

3.5 Competition Law, Labour Market Regulation and the Environment

3.5.1 Competition Policy

Competition (anti-trust) policy forms an important dimension of SA's investment regime, particularly as TNCs tend to congregate in already concentrated industries, such as mining.

Competition (anti-trust) policy forms an important dimension of SA's investment regime, particularly as TNCs tend to congregate in already concentrated industries, such as mining. The main statute currently governing competition law in SA is the *Competition Act of 1998*, which came into force on 1 September 1999. Subject to a few exceptions, the Competition Act applies to all economic activities within, or having an effect within SA.

The Competition Act is aimed at establishing a rigorous framework for addressing anti-competitive behaviour in the market. It provides a predictable business environment, which is deemed crucial by investors. The government encourages competition, in order to promote efficiency, adaptability and development of the economy; to provide consumers with competitive prices and product choices; to promote employment and advance the social and economic welfare of South Africans; to promote international competitiveness; to promote the participation of SMMEs in the economy; and to promote a greater spread of ownership.

Competition Act creates a new competition agency, consisting of the Competition Commission, the Competition Tribunal and the Competition Appeal Court. The Commission has a range of functions, including investigating anti-competitive conduct; assessing the impact of M&As on competition and taking appropriate action; monitoring competition levels and market transparency in the economy; identifying impediments to competition; and playing an advocacy role in addressing these impediments.

Competition authorities consider a number of factors when approving mergers, namely, the sectoral or regional impact of the transaction, its impact on employment and on the ability of SMMEs and firms owned by historically disadvantaged persons to compete in the sector, and on the ability of SA firms to compete in international markets. An anti-competitive practice, otherwise proscribed by the Act, may receive prior exemption, if the competition authorities are satisfied that the transaction contributes to a number of specified objectives, *inter alia*, the promotion of exports and the ability of SMMEs and firms owned by historically disadvantaged persons to become competitive.

Although the competition authorities are required to consider the public interest dimension of merger transactions – such as whether the proposed deal will advance or retard BEE – recent cases before the Competition Tribunal have shown that the authorities deal with cases in an independent, rational and logical manner and that their mandate does not extend to promoting BEE, unless a credible case for this can be presented.

Although the competition authorities are required to consider the public interest dimension of merger transactions – such as whether the proposed deal will advance or retard BEE – recent cases before the Competition Tribunal have shown that the authorities deal with cases in an independent, rational and logical manner and that their mandate does not extend to promoting BEE, unless a credible case for this can be presented.¹² This should enhance and raise business confidence in SA's product markets, as rules-bound and predictable, and opposed to a situation where the opaque public interest requirement of empowerment frames competition regulation.

3.5.2 Labour Market Policy

SA has enacted a number of new labour market laws that seek, through a system of regulated flexibility, to address the impact of *the apartheid* social engineering on the SA labour market.

SA has enacted a number of new labour market laws that seek, through a system of regulated flexibility, to address the impact of the apartheid social engineering on the SA labour market.

The Labour Relations Act of 1995 (amended in 1996) is the cornerstone of the entire regulatory structure. The Act provides various employee rights, a framework for collective bargaining at the workplace and sectoral level and promotes employee participation in decision-making, through workplace forums. It establishes a statutory body, the Commission for Conciliation, Mediation and Arbitration (CCMA), which is tasked with resolving labour disputes. Recently, changes have been proposed to exempt small firms from some of the Act's measures, such as around the enforcement of collective bargaining agreements. The Act is intended to facilitate greater employment creation in the SA economy, reinforce domestic companies' competitiveness in global markets and contribute to the implementation of the GEAR macroeconomic strategy.

The Basic Conditions of Employment Act of 1997 stipulates minimum conditions such as weekly working hours (a maximum 45-hour working week), breaks, sick leave, maternity leave, annual leave and overtime payments as well as procedures to be followed in the event of the termination of employment contracts. The Act also outlaws child labour.

The Employment Equity Act of 1998 aims to achieve representation of population groups and gender in employment and correct past discriminatory employment practices. The Act compels employers to adopt employment policies which do not unfairly discriminate on the basis of race, gender, disability, pregnancy, marital status, ethnic or social origin, sexual orientation, opinion, culture, language, religion or belief. Specific requirements of the Act are that employers draw up employment equity programmes with targets for the changes in the proportions of under-represented groups (generally women and black people) at different employment levels, as well as programmes for these targets to be achieved. There are penalties for employers who do not comply with these statutory provisions. The Act, furthermore, requires that these plans be registered with the Department of Labour, enabling monitoring of progress and compliance. An advisory Commission for Employment Equity is also to be established.

3.5.3 The Environment

SA hosted the World Conference on Sustainable Development (WSSD) in 2002. During 2003, SA also chaired the 11th session of the UN Commission on Sustainable Development (CSD).

The SA government, along with a host of local environmental non-governmental organisations (NGOs), is deeply concerned about managing the country's rich and varied natural resources. SA also hosted the World Conference on Sustainable Development (WSSD) in 2002, which reaffirmed sustainable development as a central element of the international agenda and gave new impetus to global action to fight poverty and protect the environment. During 2003, SA also chaired the 11th session of the UN Commission on Sustainable Development (CSD), which agreed on a global programme and timetable to monitor the implementation of WSSD targets.

New Acts and Bills on the environment have been enacted since 1994, to harmonise and co-ordinate the work of government departments on environmental issues. Recent legislation has made it compulsory for particular projects to undergo environmental impact assessments. It is significant that investors in SA's IDZs – in contrast to most other Export Processing Zones (EPZs) in Southern Africa – are not granted any labour and environmental regulation concessions.

The government seeks to encourage investment through a low standard rate of corporate tax, rather than selective tax incentives, which erode the tax base, distort investment choices and compromise the equity of the tax system.

3.6 Fiscal Regime for Foreign Investors and their Investment

SA has broadened its tax base by introducing Capital Gains Tax (CGT) and taxing the foreign income earned by South African individuals abroad. The government seeks to encourage investment through a low standard rate of corporate tax, rather than selective tax incentives, which erode the tax base, distort investment choices and compromise the equity of the tax system. In 1996, the government reduced the Secondary Tax on Companies (STC) from 25 to 12.5 percent. The STC is calculated on the net amount of dividends declared by the company. In 1999, the Tax Holiday Scheme was phased out and replaced with a reduction in the standard corporate tax rate from 35 to 30 percent of profits. All these changes have reduced the combined tax rate (non-mining companies) from 48 to 39 percent, since 1996. External companies are taxed at a flat rate of 35 percent on their SA source profits. (Ministry of Finance, 2002)

There are, however, concerns about creeping forms of taxation (e.g., the skills levy on wages and obligations of empowerment programmes and, municipal rates and levies are seen to be unpredictable additions to the tax burden of firms) (The Presidency, 2003). SA also has a 14-percent Value-Added Tax (VAT).

3.7 Intellectual Property Rights (IPRs) Regime

SA has a comprehensive and modern IPRs regime, which is based on European legislation and covers patents, industrial designs, copyright and trademarks. Patents may be registered under the *Patents Act* of 1978 and are granted for 20 years. Trademarks can be registered under the *Trademarks Act* of 1993, are granted for 10 years and may be renewed for an additional 10 years. New designs may be registered under the *Designs Act* of 1967, which grants copyrights for 5 years. Literary, musical and artistic works, cinematographic films and sound recordings are eligible for copyrights, under the *Copyright Act* of 1978 (amended in 1992 to include computer software). SA's intellectual property legislation is based on European legislation.

Even before the government signed the *Agreement on Trade Related Aspects of Intellectual Property Rights* (TRIPS) in 1995, SA's domestic intellectual property rights legislation exceeded the minimum standards of protection of intellectual property required by the Agreement.

Despite appeals from civil society, the government refused to declare a national health emergency; such a declaration was thought to have 'bad' economic consequences, particularly for SA's international credit ratings and FDI.

Three years after signing the TRIPS Agreement, the SA government became involved in a dispute with the US and European pharmaceutical companies over the proposed *Medicines and Related Substances Control Amendment Act* (Medicines Act). This would allow for compulsory licensing and parallel importing of essential medicines in national health emergencies, such as HIV/AIDS-related opportunistic infections. However, despite appeals from civil society, the government refused to declare a national health emergency; such a declaration was thought to have 'bad' economic consequences, particularly for SA's international credit ratings and FDI. This dispute was resolved diplomatically and the Bill has finally been enacted, but in a more watered down form.

Issues for Comments

- Is BEE, and its attendant imperatives, scaring off potential foreign investors?
- Should exchange controls be abolished completely?
- Is the government's policy of inflation targeting good or bad for the economy and consumers?
- Which sectors of the economy should be targeted for development and what kinds of sector-specific incentives should be developed?
- Has the restructuring of state assets benefited consumers in SA?
- How will the proposed negotiations on government procurement in the WTO affect BEE, particularly as procurement is an instrument for advancing empowerment?

Investment Policy Audit

No government approval is required for foreign investors to establish a new business in SA, apart from the approval required under the SARB's exchange control regulations.

4.1 Registration

No government approval is required for foreign investors to establish a new business in SA, apart from the approval required under the SARB's exchange control regulations. Investors will be required to appoint consultants/auditors/legal advisors to register a company on their behalf. The company should be registered within 21 days; it should also be registered for tax. There are no locations where foreign-owned business is prohibited or investment is officially discouraged.

Individuals, partnerships, trusts, close corporations, SA companies or branches of foreign companies may conduct business in SA. An SA company may be public (name ends in 'Limited') or private (name ends in '(Proprietary) Limited'). The provisions of the *Companies Act of 1973* govern both private and public companies. There is no minimum equity capital requirement for companies. A private company is the most common vehicle for operating a business in SA. It may have only one member and director. There is no requirement that the public/private company have SA resident directors or shareholders. A closed corporation may have only individuals (not companies or trusts) as members and, thus, is not usually a suitable vehicle for foreign investors. A foreign company may also operate through a branch in SA. A company incorporated outside SA that establishes a place of business in the country is classified as an 'external company' and its SA business is known as a 'branch'. Registration of a branch of a foreign company is accomplished in much the same way as for a domestic company and a branch is in, most respects, subject to the same regulations as an SA company.

Joint ventures (JV) may be conducted through any of the investment vehicles discussed above and be constituted between any two such vehicles. The structure is inherently flexible and offers the foreign investor many advantages, which setting up business alone in SA cannot do. There are no restrictions on the extent of ownership by a foreigner in a JV enterprise. International JVs represent a significant proportion of international operations in SA.¹³

4.2 Rights to Entry and Establishment

There are, generally, no restrictions on the type or extent of investment available to foreign investors in the SA economy. Restrictions would usually relate to a particular industry and be applicable to both residents and non-residents.

The SA government encourages direct investment by non-resident persons and companies. There are, generally, no restrictions on the type or extent of investment available to foreign investors in the SA economy. Restrictions would usually relate to a particular industry and be applicable to both residents and non-residents. Very few restrictions apply only to foreign companies. In the banking sector, for example, a foreign bank establishing a branch in SA may be required to employ a certain minimum number of local residents in order to obtain a banking license and may be obliged to maintain a minimum capital base of at least R1mn (US\$0.14mn). Restrictions also exist regarding the ownership of immovable property by foreign companies. Foreign firms are eligible for various national investment

incentives such as export incentive programmes, tax allowances and other trade regulations.

All SA's Bilateral Investment Treaties (BITs) provide flexibility to control the admission of FDI from the other party.¹⁴ A proposal floated in late 2001 to restrict non-resident participation in the local private security industry was, for instance, quickly dropped (*Business Day*, 11 October 2001).

4.3 Investor Protection, Guarantees and Insurance Provisions

All investment, returns of investors, investors and activities related to the investment are protected by most favoured nation (MFN) and national treatment (NT) standards in SA's BITs. There are, however, important exceptions to the MFN and NT standards. These include special privileges, or advantages, accorded by virtue of a contracting party's membership of an existing, or future, customs union, economic union, monetary union, free trade area, common market, or similar institutions, or any international agreement or other arrangement relating wholly, or mainly, to taxation. Therefore, special privileges conferred upon investors from SA's SACU or SADC partners, or any EU country (by virtue of its FTA with the EU), or any country with whom it has signed double taxation agreements, do not need to be extended to investors of any other country with whom it has signed a BIT.

There are important exceptions to the MFN and NT standards. These include special privileges, or advantages, accorded by virtue of a contracting party's membership of an existing, or future, customs union, economic union, monetary union, free trade area, common market, or similar institutions, or any international agreement or other arrangement relating wholly, or mainly, to taxation.

Another very important exception is included in the BITs concluded with China, Iran, Russia, Ghana, Nigeria, the Czech Republic and Mauritius. This exception provides that the NT and MFN, and any other preference or privilege granted by the BIT, will not apply where the SA Government (pursuant to Article 9 of the Constitution of the Republic of SA, 1996) enacts any law or measure, which has the purpose of promoting equality in its territory, or is designed to protect or advance natural or legal persons, or categories thereof, disadvantaged by unfair discrimination in the territory. This means that foreign firms cannot dispute the SA government's preferential awarding of public tenders to majority African-owned or female-owned firms to empower these previously disadvantaged groups. Significantly, none of SA's BITs concluded with any EU, or western European or North American country, includes this exception.

Another very important exception provides that the NT and MFN, and any other preference or privilege granted by the BIT, will not apply where the SA Government enacts any law or measure, which has the purpose of promoting equality in its territory, or is designed to protect or advance natural or legal persons, or categories thereof, disadvantaged by unfair discrimination in the territory.

A third exception to MFN treatment and national treatment, present in half of SA's BITs¹⁵, stipulates that the preferences granted by one contracting party to development finance institutions, even though they may have foreign participation, which operate with the sole purpose of providing development assistance through non-profit activities, need not be extended to the investors or development finance institutions of the other contracting party to the BIT (IGD, 2000).

SA is also a signatory to international investment protection agreements, including the Multilateral Investment Guarantee Agency (MIGA) of the World Bank. SA signed the Convention establishing the MIGA on 16 December 1992 and ratified it on 2 March 1994. The Agency has issued three guarantees and, currently, has seven applications pending. The Overseas Private Investment Corporation (OPIC), the self-sustaining US government risk agency, has committed more than US\$45mn in political risk insurance and project financing to US companies investing in SA, since 1994 (IGD, 2000).

A third exception to MFN and NT, present in half of SA's BITs, stipulates that the preferences granted by one contracting party to development finance institutions, even though they may have foreign participation, which operate with the sole purpose of providing development assistance through non-profit activities, need not be extended to the investors or development finance institutions of the other contracting party to the BIT.

The free transfer of payments is, however, not totally unconditional. The Protocol to the BIT between SA and Chile provides that capital invested may only be transferred one year after it has entered the territory of a party, unless its legislation provides for more favourable treatment.

4.4 Dispute Settlement Mechanisms

SA is a member of the New York Convention of 1958 on the recognition and enforcement of foreign arbitration awards, but is not a member of the International Centre for the Settlement of Investment Disputes (ICSID).

SA's BITs provide that if a dispute between a national company of one contracting party and the host state cannot be settled amicably, the investor (and not the host state) can, ultimately, choose a mechanism to submit the dispute.¹⁶ The following mechanisms can be used: the contracting party's court having jurisdiction in the territory of which the investment has been made; the Court of Arbitration of the International Chamber of Commerce; the ICSID; or an *ad hoc* arbitration tribunal.

Any dispute between the contracting parties concerning the interpretation or application of the BIT should be settled through diplomatic channels. In the event that the dispute cannot be settled within six months from the start of the negotiations, it will be submitted to an arbitral tribunal.

4.5 Restrictions on Outward Capital Flows

As has been stated, there are no exchange controls on foreign investors or restrictions on the repatriation of profits. SA's BITs adopt one of two different approaches on the transfer of payments. The first approach is to guarantee the free transfer of all payments related to, or in connection with, an investment. Because of the uncertainty that may arise over which payments are covered by this provision, a non-exhaustive list of payments that are to be covered is included (e.g., BITs with Chile, the Czech Republic, Egypt, the Hellenic Republic, Mauritius, the Netherlands and Spain). The second approach is simply to list the types of payments covered by the provision (e.g., BITs with Denmark, France and Iran). All SA's BITs rule that *the transfer of payments shall be made without delay, in a freely convertible currency, at the market rate of exchange, applicable on the date of transfer.*

The free transfer of payments is, however, not totally unconditional. The Protocol to the BIT between SA and Chile provides that capital invested may only be transferred one year after it has entered the territory of a party, unless its legislation provides for more favourable treatment. This is due to legislation in Chile, aiming to curb the rapid movement of finance capital into and out of the country. Many of SA's BITs have protocols ruling that once a foreign investor has become a permanent resident in SA, he is bound by the foreign exchange rules applicable to all SA residents. These provisions will automatically terminate, once SA has removed the relevant exchange control limitations. In each of these protocols, the SA government commits itself to undertaking every possible effort for the early removal of these exchange control restrictions (IGD, 2000).

4.6 Bilateral/Regional Agreements on Investment, Transfer Pricing, Double Taxation Treaties

4.6.1 Bilateral Investment Protection and Promotion Treaties (BITs)¹⁷

The new SA government signed its first BIT with the UK in September 1994. Since that date, it has signed at least another 30 such agreements. SA has also signed a Memorandum of Understanding on Concluding Agreements that Enhance Trade and Investment between the two countries with Malaysia in August 1994 and a Letter of Intent regarding the Promotion

and Reciprocal Protection with Côte d'Ivoire in September 1998. The previous SA regime also signed an Agreement of Co-operation on the Promotion of Investment with Taiwan, which was terminated when the SA government established official relations with the People's Republic of China.

SA's negotiation of investment treaties or agreements has, most often, developed from approaches by the other parties. That means that investment agreements, in particular, have been reactive, rather than proactive.

SA's negotiation of investment treaties or agreements has, most often, developed from approaches by the other parties. That means that investment agreements, in particular, have been reactive, rather than proactive. BITs are only one of a wide spectrum of investment policies implemented by SA (these were outlined in the previous section). A strong correlation has yet to be established between the conclusion of BITs and the size of FDI flows (UNCTAD studies have shown the existence of a stronger correlation between GDP and population size and positive inward FDI flows). This is not surprising, considering that a country's regulatory regime is only one of many factors influencing investment decisions. Other factors include market size, potential for returns on investment, political risk, exchange rate of local currency and macroeconomic indicators such as inflation and interest rates.

Investment flows may lead to economic growth, but not necessarily economic development. For economic development to take place, both domestic and foreign investment need to be encouraged and directed through government regulation.

This is a significant point, as the only presumed 'development' effect of BITs rests on the assumption that the protection of foreign investment would encourage investment flows into developing countries, which, in turn, will contribute to economic development. As seen in the previous sections, investment flows may lead to economic growth, but not necessarily economic development. For economic development (growth of a locally integrated value-added manufacturing industry, increasing capital stock to finance investment, rising employment, education and training of the local labour force, etc.) to take place, both domestic and foreign investment need to be encouraged and directed through government regulation (which may take the form of incentives). BITs may help to attract long-term infrastructure investment, which is conducive to development, by offering investors long-term protection against expropriation and the security that they will receive high standards of treatment and the right to arbitration, if they cannot settle disputes under the domestic legal system.

Nevertheless, one of the conclusions of the 1998 UNCTAD Report on BITs is that, in order to attract appropriate investment, BITs need to include investment promotion commitments, especially from developed country governments, from where most investment originates. In SA's BITs, however, these commitments are either vague or weak, or both, and are not enforceable, as are host country commitments to protect foreign investment and investors. Also, SA's BITs do not impose any enforceable obligations on investors, same as in all 2000-plus BITs that have been signed worldwide, although laws of their host countries are binding on foreign investors.

Most of SA's BITs have a similar structure, with similar provisions, and contain very few derogations or exemptions, although they are notable, from the model structure and provisions. For the most part, the only way in which these treaties can serve some developmental function is through derogations and exemptions, directing the location and terms for investment, based on a country's domestic industrial strategy. Although the SA government maintains control over the right of foreign investors in SA under all its BITs, it assumes obligations under these treaties that might prove costly at some time in the future, by preventing it from changing

BITs do not establish identical rights and obligations for both signing parties. The challenge for developing countries negotiating these treaties, therefore, is to ensure that they lead to increased flows of investment, while not impinging on their development efforts.

SA has no laws specifically regulating transfer pricing. The government deals with this practice in large companies on a case-by-case basis.

The Department of Trade and Industry's International Trade and Economic Development Division deals with trade and investment negotiations. Its mandate is to increase and diversify SA's exports and increase investment levels.

some of its economic policies or developing new ones, thus reducing its flexibility to pursue specific economic strategies deemed appropriate at any time in future.

BITs do not establish identical rights and obligations for both signing parties. The challenge for developing countries negotiating these treaties, therefore, is to ensure that they do, in fact, lead to increased flows of investment, while not impinging on their development efforts.

4.6.2 Transfer Pricing

SA has no laws specifically regulating transfer pricing. It is, thus, critical that a policy is developed to regulate this practice in a transparent and accountable manner, particularly given SA's history of mining sector transfer pricing to Switzerland. The government deals with this practice in large companies on a case-by-case basis. Companies such as BMW, for example, use transfer pricing to export components manufactured by their subsidiaries in SA back to Germany.

None of SA's BITs include any special clauses on transfer pricing, either requiring TNCs to comprehensively disclose their transfer pricing practices or committing developed country contracting parties to giving SA technical assistance in dealing with transfer pricing by foreign investors. This allows large companies engaged in intra-firm trading leeway to divert income from the SA fiscus.

4.6.3 Avoidance of Double Taxation Treaties

SA has signed avoidance of double taxation treaties with most of Europe (including an increasing number of eastern European countries), and a number of African and Asian countries.

4.7 Investment Facilitation Institutions and Initiatives

The SA government has placed a premium on diversifying SA's trade network, attracting FDI inflows, enhancing SA's international competitiveness, imaging and branding of the country and participating much more seriously in the institutions and processes of the multilateral trading system.

The Department of Trade and Industry (DTI) is the lead department responsible for these functions. The DTI's International Trade and Economic Development Division (ITED) deals with trade and investment negotiations. Its mandate is to increase and diversify SA's exports and increase investment levels. SA's foreign commercial representation in embassies abroad has also been beefed up. The DTI has been working in partnership with its provincial and local counterparts to develop an investment promotion strategy that is focused on needs of internationally competitive companies and their search for new and profitable markets. The strategy has taken into account international best practices in the field of investment promotion.

The South African president, Thabo Mbeki, has also established an International Investment Council (IIC), which boasts a number of prestigious and prominent global business leaders. The IIC advises the government on how to improve SA's investment climate for FDI and assists with marketing SA's investment credentials globally. It is thus not only an advisory structure, but plays activist role in building SA's investment credentials among global TNCs.

Trade and Investment South Africa has representatives in 48 of SA's diplomatic missions abroad, who provide core market intelligence, identify investment opportunities, target key investors in priority growth sectors and offer specific sectoral expertise to potential investors.

SA's nine provinces have also established their own trade and investment promotion offices and economic development agencies.

Investment SA (ISA) was launched in February 1997 as the country's official investment promotion agency. Since 2000, it functions as a division of the DTI, under the name Trade and Investment SA (TISA). Its work is divided into investment promotion and export promotion. TISA also seeks to co-ordinate provincial initiatives to match investors' requirements with opportunities available within each of the nine provinces. TISA has representatives in 48 of SA's diplomatic missions abroad, who provide core market intelligence, identify investment opportunities, target key investors in priority growth sectors and offer specific sectoral expertise to potential investors. TISA focuses on promoting eight sectors of the SA economy, namely, agro-processing; automotive and transport industries; chemicals, pharmaceuticals and biotechnology; cultural industries; ICT and electronics; mining and metal-based industries; textiles, clothing, leather and footwear; and tourism (DTI website). During 2001, government-facilitated FDI into SA accounted for R4.6bn (US\$0.64bn), or 20 percent of total FDI (Budget Speech by the Minister of Trade and Industry, 2002).

SA's nine provinces have also established their own trade and investment promotion offices and economic development agencies (e.g., the Gauteng Development Agency, the Eastern Cape Development Corporation, Trade and Investment KwaZulu-Natal, Wesgro, Invest North West, and Trade and Investment Limpopo). Other initiatives have also been launched by these sub-national authorities. The Gauteng Provincial government has, for instance, launched Blue IQ, which is a R3.5bn (US\$0.49bn) initiative, centred around 11 mega-projects.

The government licenses operators to develop and run selected IDZs. These operators will be expected to provide enterprise support measures, minimise red tape and provide efficient services to all enterprises within an IDZ. Some of IDZ authorities (e.g., the Coega Development Corporation) have also staged 'investment road-shows' to attract FDI. Several SA provinces and cities have, furthermore, concluded twinning, partnership, friendship, co-operation and sisterhood agreements with foreign sub-national authorities. This may assist with marketing potential investment opportunities, both inward and outward, in these particular regions.

The Industrial Development Corporation of SA Limited (IDC) is a state-owned development finance institution that provides financial assistance to foreign and local entrepreneurs for the establishment of new manufacturing industries and the expansion, modernisation or relocation of the existing industries. Finance is available in the form of loans, equity and quasi-equity loans.

Small Business Development Corporation (SBDC) is a JV between the government and the private sector, aimed at providing finance and support for the small business. The Ntsika Enterprise Promotion Agency and the Khula Enterprise Finance Corporation provide similar services to small investors.

An International Marketing Council (IMC) has also been established, which seeks to develop a distinctive and successful brand-image for SA in the world. The IMC's work is supported by non-governmental projects such as the 'Proudly South African' campaign. This campaign, an initiative of the National Economic Development and Labour Council (NEDLAC), is supported by organised business, labour, government and the community and seeks to promote SA companies, products and services which are helping to create jobs and economic growth.

4.8 Investment Incentives and Industrial Support Measures

While incentives do not necessarily determine the location of an investment, when packaged, they can play the important role in 'swing-factor', as was demonstrated in the case of the Malaysian multinational Ramatex, which was offered a better deal in Namibia, than in SA

When the ANC government came into power in 1994, it argued that the most appropriate way to attract FDI would be through the provision of a sound macroeconomic environment. The government has, since, reviewed its initial rejection of investment incentives and experimented with a broad range of measures to attract FDI. While incentives do not necessarily determine the location of an investment, when packaged, they can play the important role in 'swing-factor', as was demonstrated in the case of the Malaysian multinational Ramatex, which was offered a better deal in Namibia, than in SA (see Figure 4.1).

Figure 4.1: Incentives and the Cost of FDI: SA, Namibia and the Case of Ramatex

Ramatex, the Malaysian textile multinational, intended to invest almost R1bn (US\$0.14bn) in SA, with the construction of a new garment and textile factory in Buffalo City (East London). This investment was expected to generate up to 18,000 jobs in the economically depressed Eastern Cape province, as well as transfer skills in textile technology, garment design and production, sewing machines and the production of dyes. Inadequate and un-competitive investment incentives, particularly the delayed implementation of a R3bn (US\$0.42bn) strategic industrial incentive scheme, were blamed for Ramatex's decision in 2001 to relocate its investment plans from SA to Namibia. Namibia managed to attract the US\$100mn investment project by successfully outbidding both SA and Madagascar, another possible host, with a more lucrative package of concessions, which was even above those granted to other EPZ companies.

How did the incentives compare? In the Eastern Cape, Ramatex was offered 100 hectares of land at the old Bisho airport site for R250,000 (US\$35,000) and reduced wharfage fees. The cabinet is said to have rejected a more generous investment package, which included a 6-year tax break proposed by those negotiating with the company. Namibia, together with the water and power parastatals (Namwater and Nampower), as well as the Windhoek municipality, offered Ramatex subsidised water and electricity, a 99-year tax exemption on land use as well as over R100 mn (US\$14mn) to prepare the site, including the setting up of electricity, water and sewage infrastructure. This was justified on the grounds that the company would create 3000 to 5000 jobs during the first two years and another 2000 jobs in the following two years.

The Ramatex case is a classical example of SADC countries competing with each other in a race to the bottom in incentive measures for foreign investment. While Namibians have lost out substantially in tax revenue – the envisaged job creation has also been slow in materialising – Ramatex has greatly benefited, particularly as it can access the advantages of the African Growth and Opportunity Act (AGOA), which provides for duty free exports from Africa to the US. In SA, the loss of the investment to Namibia led to the charges that the country's industrial incentives were "killing" all its investment hopes.

Sources: Eastern Province Herald, 21 June 2001; Namibia Economist, 29 June-5 July 2001; Herbert Jauch, "Foreign Investment and Employment Creation: No Panacea for Southern Africa". Paper prepared for the CUTS/UNCTAD IFD Africa Regional Seminar, Nairobi, Kenya, October 2002.

There has been a shift from harmful tax incentives (i.e., tax holidays and other ring-fenced measures) to more effective and internationally acceptable investment measures (i.e., accelerated depreciation for qualifying production assets). These tax reforms have created an environment that is internationally competitive, thereby improving SA's investment climate. SA's industrial support measures seek to promote innovation (research and development); improve the competitiveness and efficiency of existing operations; establish, or expand, manufacturing concerns; and promote exports of manufactured goods. The latter includes generic export incentive schemes and rebate or duty credit schemes that are industry-specific (particularly for textiles and clothing and the motor industry).

SA has developed several incentive schemes and industrial support programmes since 1994, *inter alia*:

- The 1991 *Regional Industrial Development Programme* (RIDP) was intended as a short-term measure to attract investment to non-urban, underdeveloped areas. The RIDP attracted FDI worth R2.7 bn between 1994 and 1996, when it was phased out and replaced with a Tax Holiday Scheme (BusinessMap, 1998).
- The *Tax Holiday*, introduced in October 1996, required that projects should be 'new' and totally ring-fenced. The slow uptake of the scheme during 1997 reflected relatively low numbers of new or greenfield projects. In February 1999, the Minister of Trade and Industry reported that the scheme had attracted R3.6 bn (US\$0.50bn) in investment, with a potential for about 11 000 jobs out of 129 approved projects. The scheme was abolished in September 1999 and replaced with an overall reduction in corporate tax rates from 35 to 30 percent of profits.
- The *Small and Medium Manufacturing Development Programme* (SMMDP) was introduced in July 1997, with the purpose of encouraging investment in manufacturing by secondary manufacturing entities with an investment in qualifying assets of up to R3 mn (US\$0.42mn).
- The *Small and Medium Enterprise Development Programme* (SMEDP) replaced the SMMDP in September 2000. It provides assistance on an investment in qualifying assets of up to R100 mn (US\$14mn). Eligible projects will receive an annual cash grant of 10 percent of qualifying investment cost, paid over two or three years, if a labour usage criterion is met. The grant is tax-free.
- The *Foreign Investment Grant* (FIG), introduced in September 2000, is a cash incentive to assist with the transfer of new machinery, equipment and technology (excluding vehicles) to SA. The FIG will cover up to 15 percent of costs (freight, travelling, installations, etc.) of bringing these assets to SA, up to a maximum of R3 mn (US\$0.42mn).
- The *Strategic Industrial Project* (SIP), introduced in 2001, is an industrial investment allowance, in the form of tax relief, for qualifying industrial projects in specific industry sectors. The SIP has a set of performance requirements to be met (Gostner, 2002; BusinessMap, 2003; DTI website).

Industrial Development Zones (IDZs) are world-class, purpose-built industrial estates that include a controlled Customs Secured Area and are linked to an international airport or port.

Industrial Development Zones (IDZs) are world-class, purpose-built industrial estates that include a controlled Customs Secured Area and are linked to an international airport or port. A Customs Secured Area is exempt from customs duties on imported goods to be used in production and manufacturing of goods in the IDZ, as well as on capital equipment, and VAT on supplies procured in SA is suspended. All existing SA legislation and regulations (labour, environment, etc.) apply in the IDZs, thereby breaking the practice of many other countries that have used IDZs and EPZs as mechanisms for reducing the obligations of foreign investors. Twelve potential locations for IDZs in SA have been identified and gazetted, although investor response has been below expectations (although it is still too early to pronounce on the IDZ strategy).

IDZs have attracted largely capital-intensive mega-projects, raising concerns about the suitability of these interventions for sustainable job creation.

Some IDZs have attracted largely capital-intensive mega-projects, raising concerns about the suitability of these interventions for sustainable job creation. Some analysts put down this lack of strong interest to the lack of fiscal, labour or environmental concessions (Heese, 1999:39). NGOs and civil society communities have also voiced and flagged a number of green and red issues regarding SDIs and IDZs.

4.9 Performance Requirements

Under its TRIMS commitments, SA does not impose performance requirements (PRs), local content requirements (labour or suppliers) or require new investment to comply with specific criteria. SA does not limit a foreign investor's use of imported products to the volume or value of locally manufactured products that it exports, a measure generally used by governments to ensure that they have sufficient foreign exchange reserves for essential imports. The government phased out the General Exports Incentive Scheme (GEIS) by 1997.

Gostner (2002) has distinguished between 'voluntary' and 'obligatory' PRs in SA. In the case of the former, PRs are coupled to the receipt of a particular advantage (e.g., an incentive) and companies need only comply if they decide to access the advantage. Obligatory PRs, on the other hand, are mandatory for all domestic and foreign firms, as they are established by national legislation. SA's PRs are set out in Table 4.1:

| Table 4.1: Voluntary and Obligatory PRs in SA | |
|--|---|
| Voluntary PRs | Obligatory PRs |
| Export PRs: <ul style="list-style-type: none"> • Duty Credit Certificate Scheme (DCCS) for textiles and clothing • Motor Industry Development Programme | Employment and training PRs: <ul style="list-style-type: none"> • Labour regulations • Skills development and skills levy • Employment Equity (promote the representation of historically disadvantaged individuals within the company) |
| Technology transfer PRs: <ul style="list-style-type: none"> • Foreign Investment Grant (FIG) | Domestic equity PRs: <ul style="list-style-type: none"> • In the state procurement process • In the awarding of licenses in deregulated industries (e.g., mining and telecoms) • In obtaining an advantage through the Strategic Industrial Project (SIP) incentive programme |
| Research and development PRs: <ul style="list-style-type: none"> • Technology for Human Resources in Industry Programme (THRIP) | |
| Source: Gostner, 2002 | |

The Department of Trade and Industry is the line function department for SA's economic and trade relations with the world. It is supported in this function by other departments, including the Department of Foreign Affairs, the National Treasury and The Presidency.

4.10 The Policymaking Process for Investment Issues

The DTI is the line function department for SA's economic and trade relations with the world. It is supported in this function by other departments, including the Department of Foreign Affairs, the National Treasury and The Presidency. Government departments, not traditionally seen as oriented towards economic performance (such as education, communications, etc.), are also required to support investment and economic growth. An effective and integrated foreign economic policy also requires deepening co-ordination and partnership between the national and provincial levels of government, as well as between government and civil society.

The global political economy has witnessed the emergence of the 'competition state' in the global political economy, education programmes, health, taxation, social security and transport – all traditionally considered domestic issue areas – are increasingly subject to the degree to which

they enhance a state's competitiveness (Cerny, 1990). SA is no exception to this global trend, in which countries are actively seeking to promote and enhance their competitiveness.

The Policy Co-ordination and Advisory Services (PCAS) in the Presidency includes two chief directorates, which, respectively, deal with economic matters and international relations and trade. The PCAS also facilitates and co-ordinates the meetings of the Presidential Working Groups (i.e., Trade Unions, Big Business, Black Business and Commercial Agriculture) and the Presidential International Advisory Structures (i.e., the International Task Force on Information Society and Development and the IIC).

The development of a more comprehensive global economic strategy for SA is being facilitated through the Presidency's 'cluster approach' to governance¹⁸, at ministerial and director-general (DG) levels.

The development of a more comprehensive global economic strategy for SA is being facilitated through the Presidency's 'cluster approach' to governance¹⁸, at ministerial and director-general (DG) levels. In this regard, the DG Cluster on International Relations, Peace and Security (IRPS) has created a sub-committee on economic development. This sub-committee deals with a range of issues, including SA's multilateral economic development, trade and financial issues, and regional and bilateral trade and economic relations. There is also an Economics and Employment DG Cluster, which is split into two committees at ministerial level, namely, the Economic and Employment Committee (E&E) and the Investment and Employment Committee (I&E).

An Interdepartmental Permanent Trade Forum (PTF), affiliated to the Economics and Employment DG Cluster, has also been proposed. This forum will ensure effective co-ordination, preparation and execution of SA's various trade negotiations, given the complex and technical nature, and the diversity of issues which today characterise these negotiation agendas.

It is also important to recognise the role of NEDLAC, which is SA's primary institution for social dialogue. NEDLAC consists of four chambers for dialogue and consultation, namely the Development Chamber, Labour Market Chamber, Trade and Industry Chamber, and Public Finance Chamber. At NEDLAC, the government comes together with organised business, labour and community groupings on a national level to discuss and try to reach consensus on issues of social and economic policy. NEDLAC's aim is to make economic decision-making more inclusive and to promote the goals of economic growth and social equity (NEDLAC website).

Issues for Comments

- Does SA have an investor-friendly environment for foreign multinational companies and domestic entrepreneurs? What should be improved to facilitate investment?
- How important are incentives to investors and what type of incentives does SA need in order to attract FDI?
- How can SA attract capital-intensive and labour-intensive FDI?
- How best can civil society influence decision-making on investment policy in SA?

The Performance of FDI In SA: Three Sector Studies

5.1 Introduction

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The performance and developmental impact of FDI in SA has been mixed. Certain industries and economic sectors in SA have greatly benefited from FDI in terms of new capital formation, enhanced competitiveness, technology and skills transfers, and foreign exchange and would not have performed as strongly as they do without the foreign participation they have attracted. A case in point is SA's automobile and components sector – one of the largest employers in the country and a major contributor to the GDP – as well as the local ICT industry.

FDI has, however, also effectively displaced some local producers and companies through 'smash-and-grab' or 'raiding' investment. This trend is particularly visible in the dairy, chemicals, pharmaceuticals, engineering and electric and, electronics sectors, all of which have seen big investment in the past few years. Foreign companies have, at times, purchased local competitors, closed them down and expatriated their assets (*Business Day*, 31 October 2001). This is, however, a part of the globalisation game and the increasing internationalisation of production.

Another issue of concern is the trend towards warehousing, as foreign companies convert productive local industries into warehouses for imported cheaper goods. Foreign partners of some firms in SA have used the opening up of the economy to reshape productive local affiliates largely into warehouses for imported goods. Production capacity has, thus, been lost and value-added in real terms is effectively taking place outside of SA. This problem has been noted in such sectors as capital and consumer equipment, pharmaceuticals and dairy.

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FDI is often attracted with the idea of stimulating job creation and increasing exports. It has, however, been noted that a country needs a comparative advantage for export-oriented FDI. For example, the relatively low cost of electricity in SA gives the country a comparative advantage for aluminium production, which requires extraordinary amounts of cheap energy. Aluminium production is, however, a capital-intensive, rather than labour-intensive process. Comparative advantage is not always in areas that will lead to employment growth fast enough or on the scale required.

Three sector studies are discussed below, namely, the automobile and components industry, telecoms and food and beverages.

5.2 The Automotive and Components Industry

5.2.1 Background to the Sector

The SA motor industry has undergone a radical process of change. A decade ago, the country did not export virtually a single motor vehicle. In 2003, BMW, Mercedes, Volkswagen, Toyota and other major brands that

have production facilities in SA will export more than US\$6bn worth of vehicles to the USA, Europe, the UK, Australia, New Zealand and Japan. The SA automotive industry is increasingly acquiring a global reputation for quality, as illustrated by the recent award to BMW SA for outperforming plants in Europe, the US and other regions.

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As part of its plan to attract manufacturing investment, the government, in 1995, replaced its previous strategy to develop a local motor vehicle manufacturing industry with the seven-year old Motor Industry Development Programme (MIDP). In the past, the government made use of local content requirements and high tariffs on imported vehicles (in excess of 100 percent) to protect and develop the local industry. Although this policy led to the creation of a significant assembly industry, most producers were not internationally competitive. Most locally assembled vehicles were sold at a premium, compared to world prices. This protected environment led to the production of a number of vehicle makes and models for the domestic market, although the resulting low volumes per model was a significant cost-raising factor.

It was within this context of high-cost and low volume production that the MIDP was introduced to make SA's automotive industry globally competitive.

The MIDP abolished all the local content requirements of the previous programme, lowered tariffs on imported vehicles and components, established a duty free allowance (27 percent of the wholesale value of a finished vehicle) for original component equipment imports, allowed for the offsetting of import duties on components and vehicles through import rebate credits earned from exports and established a higher duty free allowance for low cost vehicles. These incentives were part of what attracted efficiency-seeking investment by German and, increasingly, Japanese Original Equipment Manufacturers (OEMs, the name given to assemblers or makers of cars). The OEMs have invested and re-invested in export assembly plants, expanded their operations and upgraded their facilities. SA is a cheap, low-cost manufacturing base; this is attributed to the low cost (by international standards) of utilities, water, electricity, land, general infrastructure and, services and management.

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Today, the automotive industry is one of SA's largest employers. Vehicle manufacturers alone collectively employ more than 30,000 people and the total number of people employed in the entire motor industry in SA – including assembly, component manufacturing, the tyre industry and the motor trade – exceeds 250 000. There have, however, been several job losses over the past few years, most dramatically in the component industry (See Table 5.1).

Table 5.1: Automotive Industry Employment, 1996 to 2001

| | 1996 | 1997 | 1998 | 1999 | 2000 | 2001* |
|--|---------|---------|---------|---------|---------|---------|
| Assembly industry | 38 600 | 37 100 | 33 700 | 32 000 | 32 300 | 32 700 |
| Component industry | 89 000 | 78 000 | 70 000 | 60 000 | 59 500 | 58 500 |
| Tyre industry | 10 000 | 9 500 | 9 100 | 9 000 | 8 600 | 8 700 |
| Motor trade | 180 000 | 180 000 | 170 000 | 175 000 | 175 000 | 175 000 |
| * projected figures Sources: DTI and the National Association of Automotive Component and Allied Manufacturers (NAACAM) | | | | | | |

The industry is a major contributor to SA's GDP and should contribute at least 6 percent in 2003. Together, the automotive component and vehicle assembly industries now rank third in the economy, after mining and agriculture. The industry accounts for approximately 28.5 percent of SA's manufacturing output (Hobday, 2002). According to BusinessMap (2003), between 1994 and 2002, the motor and components sector attracted FDI commitment of value of around R15,230 mn (US\$2,457mn). This is due to significant investment, consolidations and re-investments by car manufacturers and catalytic converter facilities.

As Table 5.2 indicates, SA's export performance has steadily increased since the inception of the MIDP in 1995. The country has become an important source for completely built up (CBU) vehicle exports and supplies quality cars, with a high proportion of SA-sourced components, to world markets. The automotive sector's contribution in 2001 comprised 12 percent of SA's total exports, up from a mere 4 percent in 1995. Vehicle exports are led by the supply of significant volumes of BMW 3-Series, Mercedes-Benz C-Class and Volkswagen Golf cars to markets that range from North America through Europe and Africa into the Far East. SA-built Toyota Corollas will soon be exported to international markets, as Toyota integrates its SA operations into its global network.

While the global market shrank in 2002, aggregate industry vehicle exports during the year increased by 17,013 vehicles – or 15.7 percent – to 125 306 units, compared to the 108,293 vehicle exports in 2001.

Table 5.2: SA Vehicle Exports, 1997-2003

| Exports | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 (Jan to Sep) |
|---------------------------------|-------|-------|-------|-------|--------|---------|-------------------|
| Cars | 10458 | 18342 | 52292 | 58204 | 97599 | 113 025 | 86914 |
| Light Commercials | 8000 | 6808 | 6504 | 9148 | 10229 | 11 699 | 9007 |
| Medium and Heavy Commercials | 1111 | 748 | 787 | 679 | 465 | 582 | 358 |
| Total exports | 19569 | 25898 | 59583 | 68031 | 108293 | 125 306 | 96279 |

Source: NAAMSA, Quarterly Review of Business Conditions, 24 November 2003

Although the local industry is making giant strides in integrating itself into the global supply chain, it still produces less than 1 percent of the world's total new vehicle output (*Business Day*, 4 February 2003). SA is ranked 19th in international vehicle production. The National Association of Automobile Manufacturers of SA (NAAMSA) notes that, while world vehicle production declined by 3.9 percent in 2001, vehicle production in SA increased by 13.9 percent.

Currently, major automotive component exports comprise catalytic converters, leather seat covers and parts (labour intensive), engines and engine parts, wheels, automotive tooling, safety glass, tyres and tubes,

Table 5.3: Automobile Production: Global and SA, 2000 and 2001

| | 2000 | 2001 | % Change |
|--|------------|------------|----------|
| World production (units) | 58 258 921 | 55 770 001 | - 3.9% |
| SA production (units) | 357 364 | 407 036 | + 13.9% |
| SA production as % of world production | 0.61% | 0.73% | |

Source: NAAMSA, Quarterly Review of Business Conditions, 31 March 2002 (www.naamsa.co.za)

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batteries and radiators. Germany is the largest export market for SA automotive components, while Europe, as a whole, accounts for over 70 percent of industry component exports. SA currently produces in excess of 10 million catalytic converter units a year, which is more than 10 percent of world output. These converters use Platinum Group Metals (mostly platinum, palladium and rhodium), of which SA is one of the world's leading producers, to reduce carbon dioxide emissions from motor vehicles. The growth of catalytic converters has attracted all the leading producers of exhaust systems to SA.

5.2.2 Current Investors and Sources of FDI

SA OEMs are part of a worldwide network, as are some of the component suppliers. SA has eight light vehicle assemblers and eleven medium and heavy vehicle producers, who are members of the National Association of Automobile Manufacturers of SA (NAAMSA). The fifteen members of the NAAMSA are: BMW SA; DaimlerChrysler SA; Delta Motor Corporation; ERF SA; Fiat Auto SA; Ford Motor Company of Southern Africa (previously the SA Motor Corporation¹⁹); IVECO SA; Man Truck & Bus SA; Nissan SA; Renault Export Ltd; Scania SA; Toyota SA; Tyco Truck Manufacturers; Volkswagen SA; and Volvo Southern Africa. The National Association of Automotive Component and Allied Manufacturers (NAACAM) has about 200 members. Many other components companies also supply assembly plants around the country.

5.2.3 Sector Incentives and Initiatives

The MIDP was introduced in 1995 after considerable consultation between all industry stakeholders, including the government, the OEMs and automotive component producers, as well as organised labour. The MIDP has five principal objectives:

- Improve the international competitiveness of OEMs and automotive component firms;
- Improve vehicle affordability in real terms;
- Enhance the growth of the assembly and components industries, particularly through exporting;
- Improve the industry's trade balance; and
- Stabilise employment levels (DTI and NAAMSA websites).

With the announcement of the extension of the MIDP in July 2000, the government also introduced the Productive Asset Allowance. This is a scheme whereby investors in new plant and equipment can qualify for a duty credit certificate up to 20 percent of the value of their investment over a five-year period.

The MIDP, which was a seven-year programme up to 2002, was subsequently extended to 2007 and now to 2012. Essentially, the MIDP lays out a schedule of reducing import tariffs for CBU and completely knocked down (CKD) cars and light commercial vehicles. CBU medium and heavy vehicles (above 3.5 tonnes) may be imported at a duty of 20 percent and components for these vehicles may be imported duty free, except for tyres, which attract a duty of 15 percent. Semi-knocked down (SKD) vehicles may be imported at the CBU rate, but imported second hand vehicles are not allowed. The scheme is administered by the DTI, with the help of customs officials. With the announcement of the extension of the MIDP in July 2000, the government also introduced the Productive Asset Allowance. This is a scheme whereby investors in new plant and equipment can qualify for a duty credit certificate up to 20 percent of the value of their investment over a five-year period.

The MIDP is unique, in that there is no cost to the government; it is the *threat* of paying duties, if the right decisions and behaviour are not made, that drives the scheme. This is important, as the government cannot afford expensive supply-side schemes, as is the case in some developed countries. With the MIDP, OEMs are forced to behave in a way beneficial

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to the country and industry, or pay duties and not be competitive in the country.²⁰

The Automotive Industry Export Council (AIEC) was established in 1999 to co-ordinate and address matters of interest to SA producers involved in the export of vehicles and automotive components. The Automotive Industry Development Centre (AIDC) was established to support the SA automobile industry with three objectives:

- Provide accessible and affordable world-class technical and project-focused resources, aimed at addressing the needs of the automotive industry in SA;
- Harness the collective expertise of a number of domestic and international organisations with world-class automotive competencies; and
- Build a network of government and technical service providers, aimed at addressing the technology needs of SA's automotive industry (TISA: Internet).

The provision of proper and efficient infrastructure is critical if the SA automotive industry is to maintain its global competitiveness. The Gauteng Provincial Government has launched a R1 bn (US\$0.14bn) automotive component manufacturing cluster outside Pretoria. The aim of the development is to attract automotive component makers as neighbours to the four auto groups – BMW, Fiat, Nissan and Ford – which are based nearby, bringing major savings in transportation and logistical costs. This is said to be the first of its kind in Africa.

5.2.4 Performance, Impact and Concerns of FDI in the Motor and Components Sector

The following are some of the positive developments and remaining challenges for SA's motor and components industry:

- FDI in this sector appears to have had the following effects:
 - Positive impact on technology transfer (the availability of new technologies, demonstration of better technologies to local firms and learning and technology upgradation by local firms);
 - Increased competition in the domestic market and the value of sales;
 - Improved quality and choice of products available to consumers;
 - Vehicle prices have gone down in real terms since 1995 (although the effects of the weaker rand reversed this trend during 2002), as OEMs can use the flexibility of their global supply chain and obtain economies of scale;
 - The integration of SA-based automotive and components firms into global value-added supply chains and networks; and
 - SA's balance of trade in this sector has been strengthened, reducing the trade deficit from R4.6 bn (US\$0.64bn) in 1995 to about R3.6 bn (US\$0.50bn) in 2001 (at 2000 constant prices).
- Although the automobile industry is one of SA's strongest export sectors, it too has shed a significant number of jobs. Between 1995 and 2001, automobile sector exports increased by over 500 percent, although the competitive pressures of the MIDP, increased efficiency requirements and tariff liberalisation meant a loss of about a third of the industry's jobs. A large part of this employment decline was accepted within aims for the MIDP by the government and industry, although the labour was against it. The MIDP was enacted with the major objective of slowly re-introducing SA into the international motor industry. This was to be done by slowly reducing import tariffs, to give

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local industry an opportunity to adapt. In practice, the GATT binding on imports was set at 50 percent, but the government felt that this level of protection was too high and, subsequently, set lower tariffs on imports of vehicles and components. This resulted in the loss of about half of the people employed in the total industry, over the programme's first five years (bringing the total employed in the industry to around 290 000). While there have been serious concerns about job-shedding, job losses appear to be bottoming up, and the debate is hardly as animated as it is in the telecoms sector.

- Motor manufacturers in SA form part of their parent company's global supply chain. It was, for instance, only after Toyota, Japan took control of the local SA company that it embarked on an export programme. The relationship between local manufacturers and their global parents have raised some concerns, as TNCs may decide to manufacture particular products in SA, because of costs and benefits, but could also move production elsewhere (particularly to some of SA's competitors), when these factors become less favourable.
- The global motor components industry has become extremely competitive in the past decade. Global pressures, together with the recent appreciation of the Rand and rising input costs (e.g., the cost of steel using import parity pricing), has forced a number of local components companies to close down shop, scale back or establish global links, as well as shed jobs. Successful foreign involvement in this industry has centred around partnerships to produce locally for export. The major component exporters are firms linked to OEMs, foreign-owned firms and larger domestically-owned groups.
- FDI in the motor industry has not really promoted BEE, in terms of ownership in the sector; none of the major motor manufacturers has a significant black empowerment investment. Almost all are now wholly-owned subsidiaries of foreign firms.
- An important challenge for the SA motor industry is to move from being a batch producer to become a mass producer of motor vehicles. A mass producer makes 2 million units a year and has a plant that can produce SA's total production, about 400 000 units, in a few months. It is believed that for SA to become a bigger player, it must prepare for when the combustion engine is replaced by the hydrogen-powered fuel cell; the first hydrogen-powered vehicles are expected to be produced by the end of this decade. SA has competitive advantages with its abundance of Platinum Group Metals needed by a hydrogen-powered vehicle (*Business Day*, 4 February 2003).
- The MIDP, which rewards motor and component manufacturers with reduced import duties, based on the value of exports, is very sector-specific and cannot be easily replicated in other sectors of the economy. The aerospace industry is, however, one potential industry which has been identified for a scheme similar to the MIDP.
- The experience of the motor industry shows that marketing plays a massive role in establishing and sustaining an export programme. Generating credibility for some SA products in foreign marketplaces can be exceedingly difficult. For example, it took full 18 months of concentrated relationship marketing to persuade dealers in the US to accept SA-made cars.

5.3 Telecommunication

5.3.1 Background to the Sector

The technological revolution, the globalisation of the ICT industry and a growing realisation that a liberalised and competitive telecommunication market is a key to overall industry and national economic growth led to a global telecom boom in the late 1990s. As state telephone companies were privatised and private service providers entered the market (aided by WTO disciplines), the role of governments changed from that of a direct player to that of a policymaker and regulator of the industry. FDI and freer trade in telecommunication promised to deliver three economic gains: new and improved products and services; a better resource allocation; and additional investment.

SA is the telecommunication giant of Africa. It ranks 23rd in telecoms development and is the 14th largest Internet country market in the world. The country has over 5.5 million installed telephones and 4.3 million installed exchange lines.

The 1990s telecommunication boom, however, went bust in the early 2000s. This was attributed to a range of factors, including, excessive spending on licenses to operate third generation mobile telephony; an estimated debt overhang of US\$100mn in Europe alone; investor confidence blunted by bankruptcies and corporate governance issues in North American and European telecommunication industries; and limited access to capital, excessive capacity and market consolidation. More than 500,000 jobs have been lost in the telecommunication sector worldwide, including service providers.

SA is the telecommunications giant of Africa. It ranks 23rd in telecoms development and is the 14th largest Internet country market in the world. The country has over 5.5 million installed telephones and 4.3 million installed exchange lines. This represents more than 30 percent of the total lines installed in Africa (GCIS, 2001:111). Measuring communications infrastructure, in terms of teledensity (telephones per 1000 of the population), SA stands at 11 percent, with a government target of 16 percent, to be reached by 2003. This, however, hides the fact that telecoms services are severely racially and spatially skewed. Income inequality also exacerbates universal access to and affordability of telecommunication services, particularly for poor and rural households.

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Based on other telephony indicators, SA clearly boasts of the best fixed line and mobile telecommunications infrastructure in the Southern African region. It is also noteworthy that mobile customers, as a percentage of total telephone customers, are very high in some SADC countries, such as Tanzania and Uganda. This is perhaps due to the fact that rolling out a mobile network is much easier, compared to the extensive infrastructure which fixed line telephony requires.

The SA industry, which is currently undergoing a process of 'managed liberalisation', contributes about 4-5 percent to the GDP and is estimated to generate about R4 bn in annual turnover. The telecommunications and IT sector has attracted the bulk of SA's FDI inflows since 1994, despite the existence of domestic equity PRs and other service obligations. The large inflow is attributed to the 1997 Telkom deal, the Cell-C third cellular licence investment and other large transactions e.g., the R850 mn (US\$119mn) merger of UUNet SA with US-based WorldCom in 2000.

SA has developed a strong and vibrant IT sector, with most of the world's major players having a presence in the market and a large number of local companies supplying both domestic and export markets. Projected revenue for e-commerce promises impressive growth from R13.3 bn

(US\$1.86bn) in 2000 to R56 bn (US\$7.84bn) in 2003 (*Leadership*, September 2002).

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(i) Fixed Line Services:

SA's national telecommunications operator is Telkom SA. Although the company's monopoly on fixed line services expired in May 2002, the market is still un-competitive. At the time of writing this report, the envisaged fixed line SNO has not yet been established.

Telkom officially came into being on 1 October 1991, when it was incorporated as a company with the SA government, as the sole shareholder. In 1997, in its first privatisation transaction involving foreign participation, the SA Government sold 30 percent equity interest in Telkom to a Strategic Equity Partner (SEP), Thintana Communications, which is a consortium comprising US-based SBC Communications and Telekom Malaysia Berhad. This led to a re-capitalisation of R4.5 bn (US\$0.63bn) to help Telkom fund its network roll-out and modernisation programme. In 2000, Telkom sold another 3 percent to Ucingo, an empowerment consortium.

In terms of its 1997 licence, the government awarded Telkom a monopoly for five years, in return for which Telkom would have to meet strict targets and conditions, in terms of network roll-out and service obligations. Telkom has formally met most of its network roll-out obligations, missing the 2.7 million target for which it will pay a financial penalty.

In terms of its 1997 licence, the government awarded Telkom a monopoly for five years, in return for which Telkom would have to meet strict targets and conditions, in terms of network roll-out and service obligations. These conditions included the construction of new telephone lines in under-served areas, installation of new public payphones and other targets relating to the provision of first-time services to villages, line digitisation and reducing the time taken to install and repair new and existing services. According to Telkom's Annual Report for 2002:

- Telkom connected 2.8 million fixed lines over the past 5 years. Its net line growth over the licence period was 665,819, which resulted in a total of 4.9 million fixed lines, including payphones and Integrated Services Digital Network (ISDN). However, while Telkom has connected millions of customers, there has also been a high rate of disconnections, as its tariff structure does not allow poor people to maintain a connection, or consumers switch to mobile telephony.
- The company has raised the digitisation of the fixed line network from 74 in 1997 to 99.8 percent by 2002.

Telkom has formally met most of its network roll-out obligations, missing the 2.7 million target (excluding payphones) by 16 448 lines, for which it will pay a financial penalty. The company has successfully met its under-served line and payphone targets and met all its service targets, except for the residential fault rate. SA's fixed line teledensity currently stands at 11 percent and fixed line household penetration at an estimated 31 percent. Telkom is also a key player in a US\$630mn optical fibre undersea cable project that will cater for Africa's growing telecommunications needs for the next 25 years.

The telecommunications market in SA is following a gradual liberalisation path. After many months of delay, Telkom, on 4 March 2003, privatised another 25 percent of the company, through an Initial Public Offering (IPO) on the New York and Johannesburg bourses.

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Three important developments will shape the future of SA's telecommunications industry:

- The telecommunications market in SA is following a gradual liberalisation path. After many months of delay, Telkom, on 4 March 2003, privatised another 25 percent of the company, through an Initial Public Offering (IPO) on the New York and Johannesburg bourses. The IPO was split into two, namely, a *global offering* to institutional investors in the US, SA and elsewhere and an *SA retail offering*. The latter entailed a strong empowerment dimension through the Khulisa offer. This offer specifically targeted historically disadvantaged South Africans and groups of such individuals ('stokvels') and offered them a 20-percent discount on the IPO price. Other South Africans also received a discounted share offer of five percent. The Khulisa offer caused much controversy, based as it were on the assumption that the poor have savings to invest in listed shares, and was threatened with legal action on the grounds that it was racially discriminatory. It was argued that income levels, rather than race, should be the basis for the discounted share offer, which the government acceded to, in the end. The administrative burden and associated costs of keeping in contact with such a shareholder body could prove a daunting challenge. For instance, the Iron and Steel Corporation of SA (ISCOR) realised this in 1999 – a decade following a public offering aimed at ordinary people – when it effectively expropriated its small shareholders at a fair market price, due to an onerous administrative burden (*Business Day*, 20 February 2003).
- The end of Telkom's exclusivity period means that an SNO will now be licensed (thus creating a duopoly, before full liberalisation). However, a year after the end of its monopoly, the SNO still has to be selected. This will make market penetration for the second operator even more difficult, as potential customers are 'locked' into short, medium or long-term contracts with Telkom in return for large price discounts (particularly big corporate customers). Global experience has, moreover, shown that SNOs rarely achieve penetration of more than 30 percent over time, meaning the monopoly effectively remains intact. Legislation governing telecoms makes provision for the SNO to share Telkom's infrastructure for two years, in addition to Eskom and Transtel's existing telecoms infrastructure {valued at almost R2 bn (US\$0.28bn)}.

A number of factors have delayed and confounded the licensing of the SNO, including the depressed global telecoms market; disagreements over the SNO licensing procedure between the Department of Communication and the regulator, the Independent Communications Authority of SA (ICASA); and poor bids tendered by the two bidding consortia, Optis and Goldleaf, which did not meet the government's criteria.

The structure of the SNO consists of the state-owned enterprises, Eskom Telecommunications and Transtel, which together hold a 30-percent stake, Nexus Connexion holds the 19-percent empowerment stake and the SEP will hold the remaining majority stake. The government has reduced the stake to be held by an empowerment company to 19 percent, from the original 30 percent, evidently to make way for foreign companies, which insisted on a controlling stake in the SNO (*Business Day*, 12 January 2002). The second licence will also set delivery and performance targets on network roll-out and community service. The objectives of the licence include attracting

The second licence will also set delivery and performance targets on network roll-out and community service. The objectives of the licence include attracting FDI, spurring economic growth, helping create jobs, boosting technical innovation and forging competition in the telecoms market.

FDI, spurring economic growth, helping create jobs, boosting technical innovation and forging competition in the telecoms market. The process of selecting the SNO is again underway, with ICASA currently screening the bids of CommuniTel and Two Consortium, which are competing for the 25-year licence.

- The government is in the process of developing a convergence policy for the telecommunication industry. This policy will seek to remove the distinctions between licences for fixed line and cellular phone and begin to remove the distinction between broadcasting and telecommunications (the internet is increasingly a form of broadcasting, and cell phones can also be used in this way, while broadcasters, such as pay television companies, can offer telecommunications services). This is a highly complex process and will have important implications for the market, particularly competition among the major players and the telecoms services they offer.

(ii) Mobile Services:

SA is the fourth fastest-growing Global Systems for Mobile Communications (GSM) market in the world and is growing at a rate of 50 percent per annum. By January 2002, there were 11.2 million cellular users in the country and the figure is expected to grow to 21 million by 2006 (GCIS, 2002:128). Six consortia bids for the third cellular licence (awarded in 2001) are indicative of a healthy interest in SA, as an investment location for telecommunication. There are three cellular network operators in SA, two established in 1994 and the third in 2001:

- **Vodacom:** Vodacom is SA's leading cellular network with a 60-percent share of the local market. Telkom is the majority shareholder, with 50 percent equity. The other prominent investor is the UK's Vodafone, with a 31.5-percent share of the company. Vodacom operates GSM networks in the DRC, Lesotho and Tanzania.
- **MTN:** MTN (known as M-Cell prior to October 2002) is Africa's largest cellular operator and has won licences to operate in Cameroon, Uganda, Rwanda, Swaziland and, most recently, Nigeria.
- **Cell C:** Cell C was awarded SA's third mobile operator's licence in June 2001 after a one-year delay. Cell C is backed by Saudi Oger. It also brings in Verizon Communications, the biggest cellular operator in the US, as an operating partner. Saudi Oger planned to invest over R3 bn (US\$0.42bn) in the industry (BusinessMap, 2002).

The countries that currently have the strongest presence in the SA telecommunication industry are Germany, France, the Netherlands, the UK, the US and Malaysia.

Since the introduction of cellular telephony in 1994, SA has also become a world leader in GSM services, with companies like iTouch and BulkSMS pioneering innovative mobile content services for a global market.

5.3.2 Current Investors and Sources of FDI

The countries that currently have the strongest presence in the SA telecommunication industry are Germany, France, the Netherlands, the UK, the US and Malaysia. These countries hold a dominant position in the local market through their TNCs:

- The German company, Siemens Telecommunications, shares the dominant position in the provision of telephone infrastructure and equipment (locally and regionally) with Ericsson's Southern Africa (US) and Alcatel (France).
- The Dutch company Phillips dominates microwave broadcasting equipment.
- The UK's Vodafone holds a 31.5-percent share of the local cellular provider Vodacom.
- Saudi Arabia's Oger holds a 60-percent interest in a consortium with

Cellstaff (made up of empowerment groups) of SA's third cellular provider Cell C.

- The US and Malaysia, through Thintana Communications – the SEP between SBC Communications and Telekom Malaysia Berhad – hold a 30-percent equity interest in Telkom SA, the national telecommunications operator.
- Other important investors include Unisys, SAP Africa, UUNet and IBM.

5.3.3 Regulation of the Industry: The Telecommunications Act of 1996 and ICASA

The Telecommunications Act of 1996 established an independent regulator, the SA Telecommunications Regulatory Authority (SATRA), to implement and interpret the Act. In May 2000, SATRA and the Independent Broadcasting Authority (IBA) were merged into the Independent Communications Authority of SA (ICASA).

Telecommunications Act gave the Minister of Communications the sole authority to set communications policy and to issue licences. SA Telecommunications Regulatory Authority role of interpreting the Telecommunications Act, issuing regulations and recommending licensees frequently led to conflict between the Ministry, Telkom and commercial telecommunications providers.

In terms of the Telecommunications Act, the government, in 1997, awarded Telkom a monopoly period of five years over the provision of voice communication lines and the direct sale of infrastructure to end-users. Furthermore, the Act gave the Minister of Communications the sole authority to set communications policy and to issue licences. SATRA's role of interpreting the Telecommunications Act, issuing regulations and recommending licensees frequently led to conflict between the Ministry, Telkom and commercial telecommunications providers. For three years, SATRA was unable to resolve the dispute between value-added network services (VANS), that supply a range of services to businesses, and Telkom, who claimed that VANS providers were violating the exclusivity provisions by reselling capacity. One of the VANS providers, AT&T, filed a complaint with the US Trade Representative, alleging that SA was not living up to its WTO commitments, by allowing Telkom to refuse service to VANS providers. More recently, the ICASA and the Minister of Communication were embroiled in disputes over the licensing procedure for the SNO, particularly the adjudication of the 19-percent empowerment stake and the 51-percent equity interest, as well as the possibility of granting an interim licence to the SNO's existing three shareholders (warehousing the 51-percent stake until global conditions improved).

The ICASA will have to be strengthened and assert its authority, if global telecommunication companies are to be attracted to a predictable, fair and well-regulated domestic telecommunications market.

Although the regulator has achieved progress in much lower profile areas, including several strong stands against unfair practices in the industry (which includes Telkom), the ICASA is perceived to lack financial independence, government support and resources to fulfil its mandate. Although its management systems have improved considerably, it is still under-capacitated, in terms of skilled staff. The ICASA will have to be strengthened and assert its authority, if global telecommunication companies are to be attracted to a predictable, fair and well-regulated domestic telecommunications market. It is accepted economic wisdom that regulators need to be well resourced to address major issues such as the digital divide, ensuring universal access and implementing regulations which will attract investment, ensure competition and contain market abuses.

Regulatory certainty and a clear telecommunications policy are imperative to attract large-scale FDI. There has recently, however, been considerable policy obfuscation in this sector. In February 2001, it was announced that an SNO licence would be awarded, in competition with Telkom. The SNO, which would have a cap of 49 percent on foreign shareholding and up to 30 percent for BEE groups, would be required to be operational as

early as May 2002. However, in August 2001, this policy unexpectedly changed by allowing for a third national operator (TNO) to be licenced. Shortly afterwards, the government back-pedalled to its original position of a duopoly. Such confusion and prevarication does not provide a predictable climate for business operations.

5.3.4 Sector Incentives and Initiatives

The Department of Communications is mandated with drafting the telecom policy. The responsibility for ICT development is spread over several national government departments. The SA Information Technology Strategy, which is now in its initial implementation phase, is based on four pillars: i) ICT sector development; ii) ICT usage development; iii) human resource development; and iv) ICT innovation. As part of its skill development strategy, the government envisages the establishment of an Advanced Institute for ICT. A range of incentives is available to qualifying investments.

5.3.5 Performance, Impact and Concerns of FDI in the Telecom Sector

The government's telecommunications policy and the incumbent operator's behaviour have generated strong views and concerns within civil society, the labour movement (particularly the Communication Workers' Union) and the NGO community. Some progressive organisations are strongly opposed to the managed liberalisation of the sector, and this is broadly related to their opposition to the sale of core public assets to private investors. For instance, the labour movement, by and large, ignored the Telkom IPO in March 2003.

The labour union COSATU is very concerned about implications of sector liberalisation for the accessibility and affordability of telecommunications, as a basic service to working people and the poor. Telecommunications policy, in the organisation's view, should be informed by universal service, affordability, state ownership and regulation, economic development, and job creation and retention. The optimum market structure would be for Telkom to have sole responsibility for the roll-out of basic telephony, with this responsibility funded both from the fiscus and dedicated levies on operators providing other telecom services. COSATU is also concerned about the role played by the private foreign management of Telkom. Telecommunications policy should, thus, be driven by SA's own specific needs and priorities.²¹

At the same time, the incumbent operators are concerned about their bottom lines and market share. When the government, in a policy about-turn, announced in August 2001 that a third national operating licence would be awarded instead of a duopoly, private sector interests, particularly Telkom, Vodacom and MTN, strongly protested that new entrants would erode market share and profits. Telkom's SEP, Thintana, was also reported to have threatened disinvesting from SA, after clashing with the government on telecom legislation (including carrier pre-selection, which will allow a new market entrant to piggyback on Telkom's network until established). Internet service providers, suppliers of value-added services, consumer lobby groups (such as the Communications Users Association of SA) and end-users welcomed the issuing of two additional fixed-line licences, as competitors to Telkom. A duopoly would not present real competition to the utility and would, thus, not reduce costs for consumers or improve the scale and scope of services. The government has, however, returned to its initial position of licensing only an SNO.

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FDI in the telecommunication sector appears to have had a positive impact on technology transfer (the availability of new technologies, demonstration of better technologies to local firms and, learning and technology upgradation by local firms).

Economic development has suffered because Telkom has been able to outmanoeuvre the regulator, ICASA, and offer expensive rates to private consumers and small businesses, and compete with its downstream customers.

Interestingly, in contrast to liberalisation of the motor industry, telecom liberalisation has led to an increase in prices.

A number of concerns, arising either directly or indirectly from FDI in the telecommunications sector, have been raised:

- FDI in the telecommunication sector appears to have had a positive impact on technology transfer (the availability of new technologies, demonstration of better technologies to local firms and, learning and technology upgradation by local firms). The introduction of a third cellular licence has enhanced competition in the mobile network market.
- The telecommunications industry has become an important vehicle for BEE, through its domestic equity PRs, skill development and training and procurement. Telkom's procurement spending on BEE increased to approximately R5 bn (US\$0.70bn) in 2002, from R4 bn (US\$0.56bn) in 2001 (Telkom, 2002). Cell-C also provides an example where FDI has contributed to BEE by creating a new venture; a number of black-owned media companies have also been established. In the telecommunications sector, BEE companies own:
 - 40 percent of the third mobile network operator;
 - 3 percent of the national fixed line operator;
 - 10 percent of the first mobile operator; and
 - 36.7 percent of the second mobile operator (Business Map Foundation, 2002).
- Although the partial privatisation of Telkom in 1997 led to a re-capitalisation of R4.5 bn (US\$0.63bn) for the company, this was – and continues to be – accompanied by severe job losses (for which the State must carry the burden of associated social costs). According to COSATU, Telkom shed 25,000 jobs during its exclusivity period, with another 10,000 envisaged job cuts post-IPO; this is almost a third of the company's total labour force. Downsizing, streamlining and the outsourcing of non-core businesses appeared to be in preparation for Telkom's IPO and the anticipated competitive pressures of a liberalised telecom market.
- Economic development has suffered because Telkom has been able to outmanoeuvre the regulator, ICASA, and offer expensive rates to private consumers and small businesses, and compete with its downstream customers. The monopoly has also blocked the emergence of telecom-enabled service businesses (e.g., call centres and business process outsourcing) and competition. It is estimated that consumers could save R1 bn (US\$0.14bn) due to the introduction of competition (*Business Day*, 3 February 2003). Telkom's policy of cross-subsidisation – that is, a local call received a large subsidy, paid for by long-distance users – was revised through a process of rate re-balancing. In the three years since 1997, the price of line rentals and local calls, the major expenses for low-income residential users, rose by 35 percent in real terms, while the cost of international phone calls, which mostly benefit business and the wealthy, fell by 40 percent in real terms. Price structures, rising costs for local calls and basic rentals have effectively pushed telephony beyond the reach of most South Africans.
- The high costs of telecom services for consumers has, in effect, restricted the roll-out of telephone lines. High rental and call charges lead to 'churning', that is lines being disconnected or falling into disuse because customers cannot pay. Thus, Telkom reports that in its financial year to March 2001, it had provided 620 000 new connections, while 220 000 lines were terminated (Telkom, 2001). There is considerable doubt about how many telephone lines remain active after installation, with non-payment and, therefore, disconnection thought to be rife. Interestingly, in contrast to liberalisation of the motor industry, telecom liberalisation has led to an increase in prices.

- SBC has enjoyed a significant management role in Telkom, with a number of senior US and Malaysian managers seconded to SA, in terms of a strategic services agreement entered into in 1997. Following the Telkom deal in 1997, about 75 managerial posts were filled by expatriate managers. By 2002, this had dropped to 30, and will fall to about 20 in 2003. Where feasible, the agreement calls for vacancies to be filled by suitably qualified previously disadvantaged South Africans (*Business Day*, 16 July 2003). This foreign management role has certainly led to the transfer of valuable management skills and techniques in operating the telecom industry. However, job losses have, inevitably, accompanied this new, streamlined and efficient management style. It has also become evident that Telkom pays its US expatriate managers nearly double of what it pays to Malaysians of similar rank and much more than their SA counterparts. These discrepancies in pay (throughout the expatriate management ranks) are said to arise because of the differences in pay scales between the US and Malaysia, as well as the differences in the sizes of the two economies and the costs of living (*Sunday Times Business Times*, 9 February 2003).

5.4 Food, Beverages and Agro-processing²²

5.4.1 Background to the Sector

SA derives over three percent of its GDP from agriculture and over 18.5 percent of its GDP from manufacturing, of which food manufacturing accounts for five percent and beverages one percent.

SA has for centuries been an important global player in agriculture and agro-processing and is one of the only ten net food-exporting countries in the world. Exports of agricultural products – mainly raw sugar, fresh grapes, citrus, nectarines, wine and deciduous fruit – have contributed, on average, approximately eight percent (seven percent in 2001) of total SA exports. SA derives over three percent of its GDP from agriculture and over 18.5 percent of its GDP from manufacturing, of which food manufacturing accounts for five percent valued at R44.4 bn (US\$6.216bn) in 2001 and beverages one percent valued at R8.9 bn (US\$1.25bn) in 2001. Trade, including retail food sales, contribute a further 13 percent of the GDP (GCIS, 2002). Employment in this sector has, however, been declining since 1990s, and fallen drastically over the past three years. In 1993, 245,000 people were employed in the food, beverages and tobacco sector; by 2001, the number had declined to 180,000 (Statistics SA: Internet).

Food processing is an important sector in the SA economy and consists of 11 downstream agricultural sub-sectors. Meat processing is the single largest sub-sector, contributing 25 percent of total food production. Ranked second is grain milling, followed by animal feeds.

Food processing is an important sector in the SA economy and consists of 11 downstream agricultural sub-sectors, namely: meat processing; dairy products; fruit and vegetable canning and preserving; vegetable and animal oils and fats; grain mill products; bakery products; sugar mills and refineries; cocoa; chocolate and sugar confectionery; other food products; and prepared animal feed. Meat processing is the single largest sub-sector, contributing 25 percent of total food production. Ranked second is grain milling (13 percent), followed by animal feeds (10 percent). The other sub-sectors each contribute between 4-9 percent of overall food production. Food exports have been bolstered by the deregulation of the local industry and the opening up of international markets to SA (TISA: Internet). According to one estimate, SA's fruit canning industry is the fourth-largest in the world and 90 percent of locally canned fruit is exported.

The country's food, beverages and tobacco sector has also attracted keen foreign interest, mainly natural resource and market-seeking investment. SA's major trading partners are located in the Northern Hemisphere, which gives the country a locational advantage, due to the differences in production seasons. A number of new multinationals have

entered the market since 1994, while others have a longer historical association with the country, some dating back at least two centuries. Others have purchased local industries through M&A transactions or established JVs, which have been the preferred modes of entry into the SA market. FDI commitments in the food, beverages and tobacco sector since 1994 have been R13 bn (US\$2.4bn), ranking it fourth in terms of overall foreign investment inflows.

A number of major SA companies have also become significant players in the global food and beverages market. The crowding out effect of SA companies on domestic entrepreneurs in the southern African regional market remains a matter of concern. SA firms are starting to dominate certain industries in some Southern African countries without being obliged to create linkages into the local economies.

This has led to a major restructuring of production techniques within the industry to ensure world standards. The government has also prioritised food security and a Draft Food Security Bill was developed in 2001, which has been hailed as the first of its kind to comprehensively address all pertinent food-related issues. This is important in the light of SA's location in Southern Africa; six SADC states – Zimbabwe, Zambia, Malawi, Lesotho, Swaziland and Mozambique, which are among SA's neighbours – currently face a serious food shortage which threatens the lives of 14.4 million people. The distribution of genetically modified and enhanced food, which has been packaged as aid, has been rejected and banned by some countries in the region, given the uncertainty of its long-term effects and risks for human and animal health and the environment.

A number of major SA companies have also become significant players in the global food and beverages market, particularly those specialising in canned, frozen and dried fruit and vegetables; wines, beer and spirits; and other value-added products. The crowding out effect of SA companies on domestic entrepreneurs in the southern African regional market remains a matter of concern. SA firms are starting to dominate certain industries in some Southern African countries (such as beer brewery in Tanzania, Zambia and Mozambique and retail in Zambia and Mozambique), without being obliged to create linkages into the local economies.

The countries that currently have the strongest presence in the SA food and beverages industry are the US, the UK, France, Switzerland, Italy, Canada and the Netherlands. These countries hold a dominant position in the local market, through their TNCs.

5.4.2 Current Investors

The countries that currently have the strongest presence in the SA food and beverages industry are the US, the UK, France, Switzerland, Italy, Canada and the Netherlands. These countries hold a dominant position in the local market, through their TNCs, as shown in Table 5.4.

5.4.3 Performance, Impact and Concerns of FDI in the Food and Beverages Sector

The following is a broad view of the performance, impact and concerns of FDI in this sector:

- The overall impact of FDI in this sector has been limited. While there have been significant re-investment, some FDI ventures have also miserably failed, as in the case of Pepsico in 1997. Pepsico failed to establish a local production base for its products, although there has, recently, been talk again of opening a bottling plant in SA. At present, Pepsico is bottled in Namibia and enters the SA market through the SACU customs union. In 1998, four years after entering the SA market, McDonalds closed two of its stores; the group has rarely closed any of its stores internationally.
- The preferred mode of entry for investment in this sector has been through M&As and JVs, which occur quite frequently. M&A transactions have been accompanied by substantial job losses and slow sales growth. However, as BusinessMap (2003) notes, the sector experienced the second-fastest growth in sales (after the transport sector) during the last year. This may be an indication that investment by foreign companies, as well as the generally high investment in

The overall impact of FDI in this sector has been limited. While there have been significant re-investment, some FDI ventures have also miserably failed, as in the case of Pepsico in 1997. In 1998, four years after entering the SA market, McDonalds closed two of its stores; the group has rarely closed any of its stores internationally.

capital assets, is starting to have an impact on the competitiveness of the sector. Other investment have had significant multiplier effects. One estimate, for instance, claims that in 1998, the Coca-Cola 'system' in SA directly employed 16,500 bottling workers, but that 178,200 jobs were supported, directly and indirectly, by the same system (University of South Carolina, 1999). JVs, particularly in the dairy industry, have contributed to innovation and the launch of new brands and products through the JV partner's skills, technology, R&D and training.²³

Table 5.4: Foreign Companies in SA's Food and Beverages Sector

| Company | Home Country | Industry |
|-------------------|--------------|----------------------------|
| Unilever | Netherlands | Processed foods |
| Coca-Cola | US | Beverages |
| Parmalat | Italy | Dairy, beverages |
| Nestlé | Switzerland | Processed foods |
| Danone | France | Dairy |
| Kellogg | US | Cereals, processed foods |
| HJ Heinz | US | Processed foods |
| Pillsbury | US | Beverages |
| Virgin Cola | UK | Beverages |
| Cadbury-Schweppes | UK | Processed foods, beverages |
| Minute Maid | US | Beverages |
| McCain Foods | Canada | Processed foods |
| Dole | US | Fruit and vegetables |
| Del Monte | US | Fruit and vegetables |
| Catmark | France | Fruit and vegetables |
| SA Breweries | UK | Beverages |
| Bulmers | UK | Beverages |

Source: DTI (www.dti.gov.za)

In certain sub-sectors of the agro-food complex, foreign multinationals have effectively displaced SA companies, closed them down or converted them into warehouses. The dairy industry is a case in point; a strong European presence has led to the import and warehousing of subsidised EU produce, rather than fully utilising local production capacity.

- There has been severe job-shedding in the sector, particularly over the past three years. This could be attributed to factors including a decline in consumption, the impact of M&As, the use of less labour-intensive technologies, outsourcing of services or the increasing use of unregistered casual labour (Fig, 2003). One of the sectors in which SA has comparative advantage is food production and processing. The trade union, COSATU, argues that an important job-creating feature of SA's industrial strategy should be food production for export, or replacement of imports, together with linkages.
- In certain sub-sectors of the agro-food complex, foreign multinationals have effectively displaced SA companies, closed them down or converted them into warehouses. The dairy industry is a case in point; a strong European presence has led to the import and warehousing of subsidised EU produce, rather than fully utilising local production capacity. Smaller producers have, in response, shown themselves willing to grow into niche or mass products. The 'crowding out' of domestic firms may mean fewer linkages into the economy and no technological learning. This is because, in local firms, linkages with local suppliers are stronger, there is more interaction with local institutions, innovation and learning takes place and knowledge within firms is not exported to parent companies and exploited abroad.

The highly concentrated nature of the sector does not permit space for the entry of new empowerment entrepreneurs to further the government's BEE objectives.

- The highly concentrated nature of the sector does not permit space for the entry of new empowerment entrepreneurs to further the government's BEE objectives. For firms whose corporate strategy is to operate through wholly-owned subsidiaries, selling shareholdings to empowerment groups may be uncomfortable. There is also no incentive to encourage new competition with their own operations, especially where they enjoy a monopoly. Many of the multinationals have, however, committed their subsidiaries to promoting BEE in terms of employment mobility, skills development and, training and equity offers (Fig, 2003). On the other hand, a comprehensive BEE approach to this sector would also include land reforms, land restitution and improving the material and social conditions of the rural labour force. In this regard, the government has proposed a minimum wage for rural farm workers.
- The role and behaviour of multinationals in the agro-food complex inevitably raises the issue of genetically modified (GM) foodstuffs. GM products have been pioneered by such multinationals as US-based Monsanto. Since the GM issue directly impacts on food safety issues, human health and security, and the environment, it has generated controversy and debate worldwide, including SA. Over 175 field trials are under way in eight out of SA's nine provinces and five commercial releases have been approved (Fig, 2003). The Food and Allied Workers' Union (FAWU) has called for a moratorium on field trials and releases and, in February 2002, threatened to strike if its talks with NEDLAC to ban GM food for a period of 5 years failed (GCIS, 2002). Monsanto SA, a wholly-owned subsidiary of its US parent, has acquired a leading stake in the distribution of agricultural seed in SA. Monsanto obtained permission to conduct field trials to test insect and herbicide resistant cotton in SA in 1994, and later engaged in field trials for other crops (Fig, 2003).

Issues for Comments

- Is FDI appropriate means to develop the motor and components industry in SA?
- What are the benefits and disadvantages of FDI in this sector?
- How sustainable are the MIDP incentive scheme and the export programme?
- What should the government's policy in this sector be after 2012?
- How to ensure that the sector generates employment and meets the socio-economic targets such as BEE?
- Is FDI the appropriate means to developing the telecommunications industry in SA?
- What are the benefits and disadvantages of FDI in this sector?
- How does telecom and ICT contribute to SA's national development priorities?
- What needs to be changed, or what sectoral strategies adopted, to attract more FDI or make FDI work for developmental purposes?
- Has the domestic equity PRs for the SNO limited foreign interest in the licence?
- What effect has the depressed global telecoms market had on SA?
- What are the implications of the telecommunications convergence policy for the SA market?
- What should the role of the regulator, ICASA, be in the telecoms market?
- What are the benefits and disadvantages of FDI in the food and beverages sector?
- What needs to be changed, or what sectoral strategies adopted, to attract more FDI or make FDI work for developmental purposes?
- How can the food and beverages sector contribute to BEE?
- How do we deal with food insecurity in the region and the commodification of food?
- Which factors contribute to food price inflation in SA? What role do multinationals play in this regard?
- Is there a role for GM foods and crops in SA and SADC and how should it be regulated?
- How could we better enforce food safety regulations and legislation? What role should consumer movements play in this regard?

Civil Society Perceptions of FDI in SA

A number of surveys have been conducted in the past on the motivations, performance and implications of FDI in SA and SADC from the view of the parent or subsidiary company.

A number of surveys have been conducted in the past on the motivations, performance and implications of FDI in SA and SADC from the view of the parent or subsidiary company. The findings of two such recent surveys and studies are overviewed in Figure 6.1. The BusinessMap Foundation also publishes an annual Investor Survey of SA and SADC. An important component of the IFD Project was to survey civil society organisations and their perceptions of the role and economic impact of FDI in the project

Figure 6.1: Two FDI surveys of SA and SADC

FDI in Southern Africa: Determinants, Characteristics and Implications for Economic Growth and Poverty Alleviation (Jenkins & Thomas, 2002)

The survey examined the major factors determining the form and volume of European firms investing in the SADC. The main findings are:

- Market-seeking motive is more important than cost considerations, as a motivation for locating in Southern Africa.
- For non-primary sector enterprises, SA is more attractive than other Southern African countries. The location-specific reasons are superior infrastructure – physical and financial – and the size of the economy.
- Firms with historical links are more likely to remain in times of uncertainty, even though new firms may be deterred from entry.
- The majority of firms supply the local market. For some investors, the “local” market is perceived to be the entire region, particularly when the host country’s market is too small to support the enterprise.
- The major risk factors are regulatory uncertainty and exchange rate instability.
- Investment incentives are found to have very little influence on investment decisions.
- 50 percent of the firms interviewed expanded their operations in the last 5 years and more than 50 percent indicate that they are planning expansion in the next five years.

Foreign Companies in SA: Entry, Performance and Impact (Gelb, 2002)

The survey examined foreign firms that entered SA for the first time since 1990, excluding new investment by long-established firms. The main findings are:

- New foreign firms in SA, on average, are small. A few large firms have entered SA, but the median firm had 91 workers in 2000 and capital assets of less than R13 mn.
- Acquisitions (and partial acquisitions), rather than greenfield investment, have formed a substantial proportion of all new FDI entries into SA.
- Foreign firms have contributed to employment creation: 44 percent of all firms doubled their workforce since entry.
- SA is not deeply integrated into global production processes or sales networks. The main motivation for entry into SA is expansion into domestic and regional markets. Only a small minority of newly entered foreign firms see SA as an export platform for sales beyond Africa, or a major node of internal global production networks.
- The data provides strong support for the argument that FDI alone is an inadequate motor for improving growth and employment performance. Growth in aggregate production and in employment depends far more heavily on domestic firms and policy needs to address the concerns of this group.
- FDI brings some vital economic benefits, which could be optimised. In particular, FDI is helping to move SA closer to technology frontiers; and TNCs have pushed their SA competitors to improve their own technology and product offerings, increasing domestic competition. In manufacturing, however, competition from foreign investors has not ‘spilled over’ into greater efficiency of local producers.
- There are strong complementarities between foreign entrants and local partners in providing essential resources for the post-entry phase – the former providing technology and branding and the latter management and distribution capacities.
- Firms which spent more on training were also more satisfied with their performance in SA and report an improvement in skills availability since their entry.
- FDI, at least by firms newly entering SA, has not been a major vehicle for expanding BEE ownership levels during the 1990s. Empowerment has been realised more in relation to participation in the directing of economic assets than in relation to ownership. Public procurement has also not proved an effective lever to promote BEE equity stakes in foreign investor affiliates.

countries including SA.²⁴ The total number of respondents to the survey in SA is 26.

On the whole, as per the survey SA civil society respondents appear to be positively inclined towards FDI. It is believed that foreign investment has contributed to SA's national economic development objectives over the past two to five years. According to respondents, the greatest impact on the local economy has been FDI in the motor and components sector. This is followed by such sectors as mining, ICT and telecommunications, metal products and beneficiation and financial services.

A majority of the civil society respondents do not believe that any sectors of the economy should be closed to FDI; in other words, policies of national treatment and most favoured nation should apply.

A majority of the civil society respondents do not believe that any sectors of the economy should be closed to FDI; in other words, policies of national treatment and most favoured nation should apply. The respondents also believe that particular sectors should be strategically targeted for FDI. This is in line with the government's current approach to the economy under the MERP and IMS. The respondents identified the following sectors for prioritisation: automobiles, technology, middle-level manufacturing and processed agriculture as well as any industry with rand costs and potential dollar earnings. The surveys also suggested that export-oriented sectors should be encouraged. To encourage export oriented sectors they suggested that a competitiveness study be conducted. It is argued by the respondents that facilitating market access is the government's responsibility; market penetration is, however, the responsibility of the private sector, not the government.

A majority of the surveyed respondents believe that there are policy options, other than imposed requirements to influence the behaviour of foreign firms for the benefit of the economy. These include:

- Supporting local businesses to upgrade technology and gain access to finance;
- Strengthening environmental regulation, intellectual property rights laws, and competition policy – it is noticeable that there is negligible support among the respondents for strengthening the current labour market regime;
- Clarity and simplification of DTI incentive schemes and information (e.g., SA's competitive advantages) available to business;
- Policy and regulatory certainty;
- Performance requirements should not be imposed or legislated – TNCs should rather be *incentivised* to create jobs, employ local managers (where possible and depending on skills availability), transfer technology and skills, export from the economy and train local technical and managerial manpower;
- The government should provide an enabling environment for FDI through a well-managed, carefully regulated and market-friendly environment. The government should focus on supply factors such as skills, education, and technology (where appropriate);
- FDI must form part of an industrial strategy that can grow the economy and create jobs;
- The government should create an environment for money to circulate in SA – at present money is being sucked out of the system; and
- SA and the region should agree to an infrastructure development programme (roads, rail, ports, aviation, and telecommunications) to facilitate trade and transport.

Ultimately, it would appear from the survey results as if the focus of action in SA ought to be not so much FDI-targeted interventions, but more generally macro and micro policies that generates sustainable economic growth, domestic investment and market growth, and ensures an overall socio-economic environment that is conducive to a pipeline of new projects.

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an overall socio-economic environment that is conducive to a pipeline of new projects.

The findings of the perception surveys are set out in the tables below:

| Table 6.1: Perceptions of Civil Society on Negative Aspects of FDI in SA (Number of respondents) | | | | | | |
|---|-----------------------|---------------------|-----------------------------------|------------------------|--------------------------|-----------------------|
| Negative Perceptions | Agree Strongly | Agree Partly | Neither Agree Nor Disagree | Disagree Partly | Disagree Strongly | Response Total |
| FDI brings in environmentally harmful technologies | 3 | 3 | 11 | 9 | 0 | 26 |
| Foreign investors are only interested in getting access to the domestic market | 0 | 6 | 5 | 8 | 7 | 26 |
| FDI reduces the profitable opportunities available to domestic investors | 0 | 7 | 3 | 13 | 3 | 26 |
| FDI results out of unfair advantages of multinational firms | 1 | 7 | 7 | 8 | 3 | 26 |
| Foreign investors do not care about the impact of their investments on civil society | 0 | 6 | 9 | 11 | 0 | 26 |

| Table 6.2: Perceptions of Civil Society on Positive Aspects of FDI in SA (Number of respondents) | | | | | | |
|---|-----------------------|---------------------|-----------------------------------|------------------------|--------------------------|-----------------------|
| Positive Perceptions | Agree Strongly | Agree Partly | Neither Agree Nor Disagree | Disagree Partly | Disagree Strongly | Response Total |
| FDI makes up for insufficient domestic investment | 7 | 16 | 1 | 2 | 0 | 26 |
| FDI brings in valuable new technologies | 14 | 11 | 0 | 1 | 0 | 26 |
| FDI brings in valuable new management techniques | 9 | 17 | 0 | 0 | 0 | 26 |
| FDI improves the competitiveness of the national economy | 12 | 14 | 0 | 0 | 0 | 26 |
| FDI increases access to world markets | 15 | 11 | 0 | 0 | 0 | 26 |
| FDI is a valuable source of foreign capital | 14 | 12 | 0 | 0 | 0 | 26 |
| FDI helps to enhance exports | 13 | 13 | 0 | 0 | 0 | 26 |
| FDI helps to reduce imports | 1 | 16 | 3 | 4 | 2 | 26 |

| Table 6.3: Civil Society Respondents' Inclination towards FDI | | |
|---|-----------|-------------|
| | Numbers | Percent |
| Positive | 26 | 100% |
| Negative | 0 | |
| Total | 26 | 100% |

| Table 6.4: Policies to Increase the Benefits of FDI (Number of Respondents) | | | | | | | |
|---|---|----------------------------|------------|----------------------------|------------|-----|------------|
| | | Positively Inclined to FDI | | Negatively Inclined to FDI | | ALL | |
| | | Yes | Don't Know | Yes | Don't Know | Yes | Don't Know |
| a) | Support local businesses to upgrade technology/gain access to finance, etc. | 26 | | | | 26 | |
| b) | Strengthen environmental regulation | 14 | 2 | | | 14 | 2 |
| c) | Introduce/strengthen competition policy | 17 | | | | 17 | |
| d) | Strengthen sectoral regulation | 10 | | | | 10 | |
| e) | Strengthen labour legislation | 1 | | | | 1 | |
| f) | Strengthen intellectual property rights legislation | 18 | 2 | | | 18 | |
| g) | Impose requirements on firms to | | | | | | |
| i) | Create jobs | 12 | | | | 12 | |
| ii) | Employ local managers | 16 | | | | 16 | |
| iii) | Transfer technology | 19 | | | | 19 | |
| iv) | Source supplies from local firms or impose local content norms | 10 | | | | 10 | |
| v) | Export from the economy | 12 | | | | 12 | |
| vi) | Balance foreign exchange impact | 3 | 2 | | | 3 | 2 |
| vii) | Transfer skills and know-how to local subsidiary firms | 18 | | | | 18 | |
| viii) | Transfer skills and know-how to local non-affiliate firms | 10 | 3 | | | 10 | 3 |
| ix) | Train local technical and managerial manpower | 26 | | | | 26 | |

Conclusion

A central challenge facing the SA government that took office in April 1994 was to build a modern and vibrant economy that is outward oriented and internationally competitive, while simultaneously addressing the massive backlogs in access to social and economic services.

SA's regulatory regime and enabling environment for investment have undergone progressive transformation and liberalisation since early 1990s with a view to stimulating higher levels of public and private sector economic activity. A central challenge facing the SA government that took office in April 1994 was to build a modern and vibrant economy that is outward oriented and internationally competitive, while simultaneously addressing the massive backlogs in access to social and economic services.

Since 1994, the government has implemented macro- and microeconomic policies that are geared towards creating an enabling business environment for both local and foreign investors. Some of the key messages emerging from the SA investment climate reform experience are:

- Foreign and domestic investment levels in SA remain below the average for other comparable developing and emerging markets, despite improved macroeconomic conditions and success in some sectors (e.g., the motor industry).
- Although SA is fairly competitive with regard to a raft of generic host country factors, this has not been sufficient to attract investment. SA demonstrates the importance of crafting a unique investment identity for a country by actively marketing its commercial potential, identifying targeted opportunities, and facilitating investment (hence the roles of the IMC and IIC).
- Business confidence and market sentiment are highly sensitive to opaque regulations and regulatory uncertainty. This is clearly illustrated by the implementation of the BEE strategy in SA, which has not been adequately and effectively communicated to investors (e.g., the leak of the draft Mining Charter).
- Rather than FDI-targeted interventions, SA requires policies that will ensure an overall socio-economic environment which is conducive to a pipeline of capital investment projects.

For SA to win the confidence of foreign investors as a viable market to invest in, domestic firms need to lead the way and demonstrate their trust and confidence in the economy.

Ultimately, for SA to win the confidence of foreign investors as a viable market to invest in, domestic firms need to lead the way and demonstrate their trust and confidence in the economy. The real challenge is thus to ensure an overall socio-economic environment that is conducive to a pipeline of capital investment projects, rather than FDI-targeted interventions.

Endnotes

- 1 Other resources for financing development are Official Development Assistance (aid), commercial lending, portfolio equity and debt flows.
- 2 Since June 2002, four sets of lawsuits have been filed in New York by 'apartheid victims' against banks, corporations and other businesses that ostensibly profited from apartheid abuses. The companies being sued for compensation include British Petroleum, DaimlerChrysler, Deutsche Bank, Ford Motor, Barclays National Bank, Fukitsu, ICL, Caltex, Royal Dutch Shell, International Business Machines (IBM) and Exxon Mobil. The charges are based on the US Alien Tort Claims Act, which grants US courts jurisdiction over certain violations of international law, regardless of where they occur. The US is the only country in the world that allows for this type of litigation to be brought in its jurisdiction.
- 3 If the year 1998 is excluded – a year of exceptional international turmoil due to the Asian financial crisis – SA recorded an average growth rate of 3.1 percent.
- 4 The SA Reserve Bank uses the IMF definition of inward FDI, namely investment of foreigners in undertakings in SA in which they have individually or collectively at least 10 percent of the voting rights; unlike BusinessMap, the SARB does not measure intentions, or FDI where money capital was raised on the local market. The SARB only measures the transfer of money capital and not other income generating assets such as technology, management, capital equipment, and so on. BusinessMap records mergers and acquisitions (M&As), new investment, expansions that result in new productivity capacity (which could be funded from internal reserves), and firm plans or intentions. Investment, which span more than one year, are recorded in the year of announcement. Unlike the SARB, BusinessMap does not accurately record capital inflows on the country's balance of payments account; it does, however, provide a valuable and comprehensive reflection of FDI commitments and trends.
- 5 The ten largest increases for 2001 were, in descending order, *Mexico, France, China, SA, Singapore, Morocco, Turkey, Saudi Arabia, Chile and Italy*.
- 6 Iraj Abedian, Chief Economist of Standard Bank, in his Editor's brief for the first quarter of 2003; see Standard Bank Economics Division, *Are FDI inflows failing South Africa?*, Q1 (2003).
- 7 Since 1994, there have been over 500 legislative changes affecting business in SA. While much of these were necessary measures, they have also introduced an enormous amount of new complexity – and thus effectively new costs – into the business environment (CDE, 2001:20).
- 8 According to a 1999 count by the University of Cape Town-based Development Policy Research Unit of BusinessMap FDI data.
- 9 The policy reform 'lock in' theory has gained ground especially as far as trade reforms are concerned. The argument is that if a developing country such as SA, for example, concludes a free trade deal with the EU, investors, credit rating agencies, and other economic agents will view its trade reforms resulting from this deal as much more credible as SA is committed to these under treaty obligations and can be persuaded to keep to these reforms by its stronger and more credible treaty partner.
- 10 SA, Botswana, Lesotho, Namibia and Swaziland.
- 11 Switzerland, Norway, Iceland and Liechtenstein.
- 12 Decision of the Competition Tribunal on the merger of Anglo-American and Kumba Resources.
- 13 This summary of corporate organisation forms was put together from the following sources: DTI (www.dti.gov.za), Maitland & Co and Webber Wentzel Bowens (www.wwb.co.za/invest_sa), and Ernest & Young (www.mbendi.co.za/ernesty/sa/investment.htm).
- 14 The only BIT explicitly ruling that investment will be directed into specific economic sectors is the BIT between SA and the Russian Federation. It states that "each contracting party shall reserve the right to determine economic fields and areas of activity where activities of foreign investors shall be excluded or restricted" (article 3). It was most probably the government of the Russian Federation that insisted on including this condition (it can be verified by examining all other BITs concluded by the Federation) as no other SA BITs have this provision (IGD, 2000).
- 15 BITs with Sweden, Denmark, Greece, Netherlands, Cuba, Italy, Egypt, Mozambique, Switzerland, Senegal, Spain, Korea, Chile, China, Germany, Mauritius, and France

- 16 SA's BITs with the following countries include these provisions: Nigeria, Mauritius, Germany, Chile, Argentina, Spain, Senegal, Greece, Finland, Mozambique, Czech Republic, Egypt, Italy, United Kingdom, Russia, Cuba, the Netherlands, and Denmark. Some SA government officials in the DTI have cited SA's vulnerability in potential investor disputes as one of the reasons why they are supporting the negotiation of a set of investment rules on terms more favourable to developing countries in a multilateral forum such as the WTO (IGD, 2000).
- 17 This section draws on and updates the Report on SA's International Investment Agreements, prepared by the IGD for SOMO in Amsterdam, the Netherlands.
- 18 The Presidency has established five policy clusters for co-ordination, implementation and monitoring of national policy (made up of both Cabinet Ministers and Directors-General). The clusters are supported by five Chief Directorates which fall under the PCAS, which is headed and managed by a Deputy DG.
- 19 In 1985 Ford SA merged with the automotive operations of Anglo-American and became known as the SA Motor Corporation (Samcor). In 1988 Ford withdrew from SA along with other US companies as a result of pressure from customers opposed to SA's domestic political arrangements. During 2000 Ford increased its investment in SA by acquiring a majority shareholding of 90 per cent in Samcor; the company was officially renamed the Ford Motor Company of Southern Africa.
- 20 Correspondence with Clive Williams of NAACAM, 28 June 2002.
- 21 See COSATU's submission on the Telecommunications Amendment Bill to the Communications Portfolio Committee and the Select Committee on Economic Affairs, 28 September 2001.
- 22 Tobacco, which is usually included in this sector, is not addressed in this project.
- 23 Input made at the second IFD NRG meeting, Institute for Global Dialogue, 5 July 2002.
- 24 The response rate to the questionnaire – distributed on four separate occasions by hand, fax and email – was very poor, and only 26 responses were formally received. This can be attributed to a range of factors, foremost being over-consultation, fatigue and lack of capacity among civil society organisations. It is thus not clear to what extent the results of the survey accurately reflect the views of civil society. It does, nonetheless, present an interesting first cut of the national FDI mood.

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